

Living Ethics

AN INTRODUCTION
WITH READINGS

RUSS SHAFER-LANDAU



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Russ Shafer-Landau

University of Wisconsin–Madison

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To Robert Miller, friend and editor

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ABOUT THIS BOOK

The book you have in your hands offers one-stop shopping for those who are interested in learning about moral philosophy. It includes a lot of material that I have written, as well as numerous readings selected from a wide array of classic and contemporary works. There's an overview of the terrain (Chapter 1) and a primer on how to engage in moral reasoning (Chapter 2), followed by a substantial introduction to ethical theory (Chapters 3–11, the remainder of Part 1).

Abstract questions of moral theory are fascinating—I've spent the bulk of my career thinking about them—but it's just as interesting to drill down into the philosophical details that surround contemporary moral issues. That's the focus of Part 2 (Chapters 12–23), which covers a dozen of these issues. The material in this part provides important background for serious reflection on these issues, and supplements that with a handful of representative readings: as advertised, an introduction. It should be just enough to whet your appetite for more, but not enough to leave you confident that you've plumbed the depths of any of the issues included here.

In Part 1, my aim is to reveal the attractions of the theories under consideration, and then to introduce some of the sticking points that have led critics to shy away from enthusiastic endorsement. As you'll soon discover, each of these theories is based on a deeply plausible idea about the nature of morality. You'll also find, however, that when these ideas are developed into coherent theories, they almost

inevitably come into conflict with other ideas we hold dear. Though the bulk of Part 1 is given over to my writing about the various ethical theories we encounter, each of the chapters (3–11) devoted to ethical theories also contains classic primary source material that enables you to get a sense of what the originators of these theories were up to.

In Part 2, we consider twelve topics of major ethical importance. Each of the dozen chapters of this part has a similar structure. There is substantial introductory material, followed by a selection of topical readings. In each chapter, we begin with a section entitled *Just the Facts*. This section presents relevant factual material, providing necessary background for our ethical investigations. As it's been for ages, many moral disagreements are founded on false beliefs; our moral outlooks are improved to the extent that we winnow out such mistakes and base our moral views firmly on solid evidence.

Arming oneself with the facts is a vital first step in forming a well-considered moral outlook. But more is needed. In the second section of each chapter, entitled *Argument Analysis*, I reconstruct and critically assess a battery of arguments on the topics of the chapter. In some cases I am pretty opinionated—in my view, a number of popular arguments on these topics do not survive close scrutiny. With most of these arguments, though, I try to be even-handed, indicating their strengths and weaknesses. My interest isn't in converting you to my way of thinking. Indeed, in many cases I am still trying to make up my own mind about these issues,

and don't yet have an opinion to convert you to even if I wanted to!

Each chapter in Part 2 also contains a helpful grouping of *Essential Concepts*—key terms that are placed in **bold** on first mention in the text—along with their definitions. These are also collected at the end of the book in a Glossary, for ease of reference. Technical terms from outside of philosophy, as well as jargon from within it, can sometimes serve as barriers to the uninitiated. I don't like that. I've tried to identify all such unfamiliar terms and to be very clear about their meaning, so that these terms don't represent stumbling blocks. My aim is for you to become comfortable with these terms and concepts, so that you can appreciate what's going on at every step and eventually come to your own considered views about these matters.

Each of these chapters also contains a brief *Stat Shot*—a revealing set of statistics about the chapter's subject matter—as well as *Cases for Critical Thinking*. These are exercises designed to invite deeper reflection on issues related to our chosen topics. Often taken from the headlines, these brief case studies are designed to bring into sharp relief a set of practical and theoretical problems for your further consideration.

My hope is that all of this introductory material is interesting in its own right. But it is also meant to be useful, by providing the needed background to engage directly with the many readings that conclude each chapter. These selections are the work of contemporary authors who represent a wide spectrum of ethical standpoints. Enjoy!

INSTRUCTOR'S MANUAL AND STUDENT RESOURCES

Keshav Singh and Ben Schwan prepared this book's very substantial online resources; once you've had a look, I expect you'll agree that they have done a superb job. The Oxford University Press Ancillary Resource Center (ARC) designed

to support this book offers students free access to self-quizzes, flash cards, and web links to sites of further interest. In addition, the ARC also houses a password-protected Instructor's Manual, Computerized Test Bank, and PowerPoint lecture outlines. The manual itself has a "pen and paper" test bank of multiple-choice and essay questions, glossary, and case studies with accompanying discussion questions. For more information please visit <http://www.oup.com/us/shafer-landau>.

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I've tried to make this book as good as it can be. But I'm sure it can be better. If you have ideas for how this book might be improved, I'd be delighted to hear about them. The best way to get in touch is by email: russshaferlandau@gmail.com.



Moral Theory

What Is Morality?

Before investing yourself in the study of an academic subject, it would be useful to first have some idea of what you are getting yourself into. One way—sometimes the best—to gain such an understanding is by considering a definition. When you open your trigonometry text or chemistry handbook, you'll likely be given, very early on, a definition of the area you are about to study. So, as a responsible author, I would seem to have a duty now to present you with a definition of *morality*.

I'd certainly like to. But I can't. There is no widely agreed-on definition of *morality*. The absence of a definition does not leave us entirely in the dark, however. (After all, no one has yet been able to offer informative definitions of *literature*, or *life*, or *art*, and yet we know a great deal about those things.) Indeed, we can get a good sense of our subject matter by doing these four things:

1. Being clear about the difference between conventional and critical morality
2. Distinguishing the different branches of moral philosophy and their central questions
3. Identifying starting points for moral thinking
4. Contrasting morality with other normative systems, including religious ones

Let's get to work!

A. CONVENTIONAL AND CRITICAL MORALITY

Suppose you take a sociology or an anthropology course, and you get to a unit on the morality of the cultures you've been studying. You'll likely focus on the patterns of behavior to be

found in the cultures, their accepted ideas about right and wrong, and the sorts of character traits that these cultures find admirable. These are the elements of what we can call **conventional morality**—the system of widely accepted rules and principles, created by and for human beings, that members of a culture or society use to govern their own lives and to assess the actions and the motivations of others. The elements of conventional morality can be known by any astute social observer, since gaining such knowledge is a matter of appreciating what most people in a society or culture actually take to be right or wrong.

Conventional morality can differ from society to society. The conventional morality of Saudi Arabia forbids women from publicly contradicting their husbands or brothers, while Denmark's conventional morality allows this. People in the United States would think it immoral to leave a restaurant without tipping a good waiter or bartender, while such behavior in many other societies is perfectly OK.

When I write about morality in this book, I am *not* referring to conventional morality. I am assuming that some social standards—even those that are long-standing and very popular—can be morally mistaken. (We'll examine this assumption in Chapter 3.B.) After all, the set of traditional principles that are widely shared within a culture or society are the result of human decisions, agreements, and practices, all of which are sometimes based on misunderstandings, irrationality, bias, or superstition. So when I talk about morality from this point on, I will be referring to moral standards that are not rooted in widespread endorsement, but

rather are independent of conventional morality and can be used to critically evaluate its merits.

It's possible, of course, that conventional morality is all there is. But this would be a very surprising discovery. Most of us assume, as I will do, that the popularity of a moral view is not a guarantee of its truth. We could be wrong on this point, but until we have a chance to consider the matter in detail, I think it best to assume that conventional morality can sometimes be mistaken. If so, then there may be some independent, critical morality that (1) does not have its origin in social agreements; (2) is untainted by mistaken beliefs, irrationality, or popular prejudices; and (3) can serve as the true standard for determining when conventional morality has got it right and when it has fallen into error. That is the morality whose nature we are going to explore in this book.

B. THE BRANCHES OF MORAL PHILOSOPHY

As I'm sure you know, there are *lots* of moral questions. So it might help to impose some organization on them. This will enable us to see the basic contours of moral philosophy and also to better appreciate the fundamental questions in each part of the field you are about to study.

There are three core areas of moral philosophy:

1. **Value theory:** What is the good life? What is worth pursuing for its own sake? How do we improve our lot in life? What is happiness, and is it the very same thing as well-being?
2. **Normative ethics:** What are our fundamental moral duties? What makes right actions right? Which character traits count as virtues, which as vices, and why? Who should our role models be? Do the ends always justify the means, or are there certain types of action that should never be done under any circumstances?
3. **Metaethics:** What is the status of moral claims and advice? Can ethical theories,

Value theory, what makes up a good life, normative theory is basically what should be our moral duty. metaethics is basically meaning of life

moral principles, or specific moral verdicts be true? If so, what makes them true? Can we gain moral wisdom? If so, how? Do we always have good reason to do our moral duty?

The issues that take up the second half of this book—matters such as abortion, economic justice, animal rights, and so on—are for the most part best seen as belonging to normative ethics. In past, philosophers used to group all such issues under the heading of “applied ethics.” The thought—a very natural one, I believe—was that in order to make progress in solving moral problems, one first needs to determine which normative ethical theory is correct. One can then *apply* that theory to the facts at hand and crank out a correct verdict about the morality of the issues.

But, as you'll see when you get to the readings in the Moral Problems part of this book, many philosophers have opted to take a different path. They have thought it possible to resolve moral issues without first deciding on the correct moral theory. You might be skeptical about this—after all, how can we know whether the death penalty, for instance, is morally acceptable if we don't know what the fundamental moral rule is? Hold on to those doubts (if you have them), and then be sure to bring them to your readings in Part 2. Perhaps you'll be surprised at the progress we can make on those issues, even in the absence of a decided view about the ultimate principle of morality. Or you might instead find yourself returning to the material in Part 1, more convinced than ever that we need to first determine which moral theory is correct, before trying to resolve the moral issues of the day.

C. MORAL STARTING POINTS

One of the puzzles about moral thinking is knowing where to begin. Some skeptics about morality deny that there are any proper starting points for ethical reflection. They believe that moral reasoning is simply a way of rationalizing our biases and gut feelings. This outlook encourages us to be lax in moral argument and, worse, supports

an attitude that no moral views are any better than others. While this sort of skepticism might be true, we shouldn't regard it as the default view of ethics. We should accept it only as a last resort.

In the meantime, let's consider some fairly plausible ethical assumptions, claims that can get us started in our moral thinking. The point of the exercise is to soften you up to the idea that we are not just spinning our wheels when thinking morally. There are reasonable constraints that can guide us when thinking about how to live. Here are some of them:

- **Neither the law nor tradition is immune from moral criticism.** The law does not have the final word on what is right and wrong. Neither does tradition. Actions that are legal, or customary, are sometimes morally mistaken.
- **Everyone is morally fallible.** Everyone has some mistaken ethical views, and no human being is wholly wise when it comes to moral matters.
- **Friendship is valuable.** Having friends is a good thing. Friendships add value to your life. You are better off when there are people you care deeply about, and who care deeply about you.
- **We are not obligated to do the impossible.** Morality can demand only so much of us. Moral standards that are impossible to meet are illegitimate. Morality must respect our limitations.
- **Children bear less moral responsibility than adults.** Moral responsibility assumes an ability on our part to understand options, to make decisions in an informed way, and to let our decisions guide our behavior. The fewer of these abilities you have, the less blameworthy you are for any harm you might cause.
- **Justice is a very important moral good.** Any moral theory that treats justice as irrelevant is deeply suspect. It is important that we get what we deserve, and that we are treated fairly.
- **Deliberately hurting other people requires justification.** The default position in ethics is this: do no harm. It is sometimes morally acceptable to harm others, but there must be an excellent reason for doing so or else the harmful behavior is unjustified.
- **Equals ought to be treated equally.** People who are alike in all relevant respects should get similar treatment. When this fails to happen—when racist or sexist policies are enacted, for instance—then something has gone wrong.
- **Self-interest isn't the only ethical consideration.** How well-off we are is important. But it isn't the only thing of moral importance. Morality sometimes calls on us to set aside our own interests for the sake of others.
- **Agony is bad.** Excruciating physical or emotional pain is bad. It may sometimes be appropriate to cause such extreme suffering, but doing so requires a very powerful justification.
- **Might doesn't make right.** People in power can get away with lots of things that the rest of us can't. That doesn't justify what they do. That a person can escape punishment is one thing—whether his actions are morally acceptable is another.
- **Free and informed requests prevent rights violations.** If, with eyes wide open and no one twisting your arm, you ask someone to do something for you, and she does it, then your rights have not been violated—even if you end up hurt as a result.

There are a number of points to make about these claims.

First, this short list isn't meant to be exhaustive. It could be made much longer.

Second, I am not claiming that the items on this list are beyond criticism. I am saying only that each one is very plausible. Hard thinking might weaken our confidence in some cases. The point, though, is that without such scrutiny, it is perfectly reasonable to begin our moral thinking with the items on this list.

Third, many of these claims require interpretation in order to apply them in a satisfying way. When we say, for instance, that equals ought to be treated equally, we leave all of the interesting questions open. (What makes people equals? Can we treat people equally without treating them in precisely the same way? And so on.)

Not only do we have a variety of plausible starting points for our ethical investigations; we also have a number of obviously poor beginnings for moral thinking. A morality that celebrates genocide, torture, treachery, sadism, hostility, and slavery is, depending on how you look at it, either no morality at all or a deeply failed one. Any morality worth the name will place *some* importance on justice, fairness, kindness, and reasonableness. Just how much importance, and how to balance things in cases of conflict—that is where the real philosophy gets done.

D. MORALITY AND OTHER NORMATIVE SYSTEMS

We can also better understand morality by contrasting its principles with those of other **normative systems**. Each of these represents a set of standards for how we ought to behave, ideals to aim for, rules that we should not break.

There are many such systems, but let's restrict our focus to four of the most important of them: those that govern the law, etiquette, self-interest, and tradition. The fact that a law tells us to do something does not settle the question of whether morality gives its stamp of approval. Some immoral acts (like cheating on a spouse) are not illegal. And some illegal acts (like voicing criticism of a dictator) are not immoral. Certainly, many laws require what morality requires and forbid what morality forbids. But the fit is hardly perfect, and that shows that morality is something different from the law. That a legislature passed a bill is not enough to show that the bill is morally acceptable.

We see the same imperfect fit when it comes to standards of etiquette. Forks are supposed to be set to the left of a plate, but it isn't immoral to

set them on the right. Good manners are not the same thing as morally good conduct. Morality sometimes requires us *not* to be polite or gracious, as when someone threatens your children or happily tells you a racist joke. So the standards of etiquette can depart from those of morality.

The same is true when it comes to the standards of self-interest. Think of all of the people who have gotten ahead in life by betraying others, lying about their past, breaking the rules that others are following. It's an unhappy thought, but a very commonsensical one: you sometimes can improve your lot in life by acting immorally. And those who behave virtuously are sometimes punished, rather than rewarded, for it. Whistle blowers who reveal a company's or a government official's corruption are often attacked for their efforts, sued to the point of bankruptcy, and targeted for their courageous behavior. Though the relation between self-interest and morality is contested, it is a plausible starting point to assume that morality can sometimes require us to sacrifice our well-being, and that we can sometimes improve our lot in life by acting unethically. Unless this is shown to be mistaken—something that would require a lot of complex moral thinking, if it could be done at all—we are right to think that the standards of morality are not the very same as those of self-interest. (We will see a challenge to this view when considering *ethical egoism* in Chapter 3.A.)

Finally, morality is also distinct from tradition. That a practice has been around a long time does not automatically make it moral. Morality sometimes requires a break with the past, as it did when people called for the abolition of slavery or for allowing women to vote. And some nontraditional, highly innovative practices may be morally excellent. The longevity of a practice is not a foolproof test of its morality.

E. MORALITY AND RELIGION

Because many people look to religion for moral guidance, it is important to understand the

relation between morality and religion, and to explain why, in the pages to follow, I will not be relying on religious commitments to present and assess the views under discussion.

Many people have the following thought: if God does not exist, then morality is a sham. The only legitimate source of morality is God's commands. On this view, **atheism**—the belief that God does not exist—spells the doom of morality.

The underlying idea seems to be this: because morality is a set of **norms** (i.e., standards that we ought to live up to), there must be someone with the authority to create them. Without God, there is no one but we human beings to make up the moral law. And we lack the needed authority to do the work. Our say-so doesn't make things right; our disapproval cannot make things wrong. We are limited in understanding and bound to make mistakes. A morality built upon our imperfections would lack credibility.

This vision of God's role in morality—as its ultimate author, the one who makes up the moral code—rests on a crucial assumption: that morality must be created by someone. Personal confession: I don't understand why this assumption is appealing. But that may be just one of my many limitations. In any event, those who do like the view I've just sketched will find themselves embracing the **Divine Command Theory**:

An act is morally required just because it is commanded by God, and immoral just because God forbids it.

I think that this is the natural, default view for a religious believer when thinking of God's relation to morality. But this view is not without its problems.

There are two of them. The first is obvious. The Divine Command Theory makes morality depend on God's commands. Yet God may not exist. For the moment, though, let's just assume that God does exist, and see what follows.

To appreciate the second problem, imagine the point at which God is choosing a morality for us. God contemplates the nature of rape,

torture, and treachery. What does He see? Being **omniscient** (all-knowing), God sees such actions for what they are. Crucially, He sees nothing wrong with them. They are, at this point, morally neutral. Nothing, as yet, is right or wrong.

But God did, at some point, make a decision. He forbade rape, theft, and most kinds of killing. If the Divine Command Theory is correct, then He didn't forbid them because they were immoral. Did God have reasons for His decisions, or not?

If the Divine Command Theory is true, then there is trouble either way. If God lacks reasons for His commands—if there is no solid basis supporting His decisions to prohibit certain things and require others—then God's decisions are arbitrary. It would be as if God were creating morality by a coin toss. But that is surely implausible. That sort of God would be arbitrary, and thus imperfect.

So a perfect God must have had excellent reasons for laying down the moral law as He did. But then it seems that these reasons, and not God's commands, are what makes actions right or wrong. Actions are not right because God commands them. Whatever reasons support God's choices also explain why actions have the moral status they do.

Suppose, for instance, that God really did forbid us from torturing others, and that God had very good reasons for doing so. Although we can't presume to know God's thoughts, let's just assume for now that God based His decision on the fact that torture is extremely painful, humiliating, and an attack on a defenseless person. Assuming that these are the relevant reasons, then these reasons are enough to explain why torture is immoral. Torture is wrong because it is extremely painful, humiliating, and so on.

God's condemnation does not turn a morally neutral action into an immoral one. Rather, God recognizes what is already bad about torture. There is something in the very nature of torture that makes it morally suspect. To avoid

portraying God as arbitrary, we must assume that He issues commands based on the best possible reasons. And here are the best possible reasons: God sees that an action such as torture is immoral, sees, with perfect understanding, that such things as kindness and compassion are good, and then issues the divine commands on the basis of this flawless insight. **This picture preserves God's omniscience and integrity. But it comes at the expense of the Divine Command Theory, and God's authorship of the moral law.**

And after all, what is the alternative? If there is nothing intrinsically wrong with rape or theft, then God could just as well have required that we do such things. He could have forbidden that we be generous or thoughtful. But this makes a mockery of morality, and of our view of God as morally perfect.

This point is expressed by

The Divine Perfection Argument

1. If the Divine Command Theory is true, then a morally perfect God could have created a flawless morality that required us to rape, steal, and kill, and forbade us from any acts of kindness or generosity.
2. A morally perfect God could not have issued such commands—anyone who did so would be morally imperfect.

Therefore,

3. The Divine Command Theory is false.

The first premise is certainly true. The Divine Command Theory says that God's choices wholly determine morality, and that nothing determines God's choices. And the second premise is highly plausible. A moral code that required such horrific acts, and forbade such good ones, could not be authored by someone worthy of love and worship, someone fit to serve as a model of moral perfection.

Now suppose that God exists but is *not* the author of the moral law. God could still play a crucial role in morality—not by being its inventor, but by being its **infallible reporter**, and our expert guide.

God knows everything—including every single detail of the moral law. And if God is all-loving, then God will want to share some of that wisdom with us. How will He do it? By means of **revelation**, either personal and direct (say, by talking to you or giving you signs of certain kinds), or by **indirect means** (say, by inspiring the authors of a **bible**).

God doesn't have to be the author of morality in order to play a vital role in teaching us how to live. We can see this by considering an analogy. Imagine a perfectly accurate thermometer. If we wanted to know the temperature, we'd look to this device. But the thermometer is not creating the temperature. It is recording it in an error-free way. If we reject the Divine Command Theory, then **God is playing a similar role regarding morality. He is not creating the moral law. He is telling us what it is, in a way that is never mistaken.**

There are some worries, of course. Here are some worth considering:

- **Those who are not religious will need to look elsewhere for moral guidance.**
- **And they may be right to do so, because God may not exist.**

Even if God exists, there are still two serious problems for those who seek divine guidance:

- **We must select a source of religious wisdom from among many choices.**
- We must know how to interpret that source.

These two problems can be illustrated by working through the popular

Argument from Religious Authority

1. If the Bible prohibits abortion, then abortion is immoral.
2. The Bible prohibits abortion.

Therefore,

3. Abortion is immoral.

The first premise asserts the moral authority of the Bible. But which bible? **Different religions offer us different sacred texts, whose details sometimes contradict one another.** So we must choose.

There is presumably one right choice and many wrong ones. The odds are stacked against us.

Premise 1 is plausible only if God has authored the Bible, or dictated its terms. Religious believers therefore have to make a case that this is so. They must justify the claims that God exists, that God has communicated with humanity, and that their favorite bible is the one that contains God's wisdom. It won't be easy to do this.

If God is all-powerful, then He could provide some extremely clear, undeniable evidence to settle these matters, evidence that would convince agnostics, atheists, and members of competing religions. But God has thus far chosen not to do this. That makes defense of premise 1 especially tricky.

And the challenges don't end there. Even if theists—those who believe that God exists—can adequately defend the first premise, and so justify the selection of their preferred bible, there is the further matter of how to interpret the sacred text. Neither the Hebrew nor the Christian scriptures, for instance, ever explicitly *mentions* abortion, much less prohibits it. Thus, even if you wanted to adopt a literal reading of those scriptures, problems will arise. There will be many important topics (such as abortion) that are never mentioned in the crucial text. Those that are mentioned may receive contradictory treatments (consider, as an early example, the literally incompatible creation stories of Genesis chapters 1 and 2). There may also be morally troubling advice on offer (think of the passages in Leviticus that permit slavery and the subordination of women, or those that require killing adulterers and disrespectful children).

Yet if we move away from a literal reading, we are faced with countless possibilities for interpreting the biblical texts. Believers must choose among them, and justify their choice in the face of a wide number of conflicting approaches. A defense of premise 2 is, therefore, no easy matter.

A final difficulty comes when having to balance the demands of a sacred text with the layers

of tradition that form a crucial part of any living religion.

When your interpretation of a religious document conflicts with long-standing religious practice, or the advice of generations of religious authorities, which should win out? Consider as an example the famous eye-for-an-eye principle, which seems to be clearly required by God in the Hebrew scriptures (Exodus 21:23; Leviticus 24:20; Deuteronomy 20:21). Yet Jewish communities and their religious leaders have, for at least two millennia, read the decree in an imaginative, nonliteral way, softening its implications for wrongdoers and extending the principle to apply to cases where it cannot be taken literally. Does the text take priority over traditional practice and religious authority? Or is it the other way around? Believers must have a plausible view about how to settle such conflicts. Without one, their take on what God really wants for us may be very wide of the mark.

To summarize: those who seek divine guidance in trying to lead a moral life may succeed. But several conditions must be met. It must be the case that (1) God exists, and that we can be justified in believing this. (2) Theists must be justified in selecting a particular source of religious and moral wisdom, such as the Koran, the Book of Mormon, or the Christian scriptures. Theists must also (3) defend specific interpretations of those sources. Finally, when an interpretation conflicts with tradition, religious believers must (4) successfully argue for the priority of one over the other.

This is a daunting list. Yet philosophy is full of such lists, and the difficulty of a project is not, by itself, proof of its failure. Religious believers have their work cut out for them, no doubt of it. But then so does everyone else.

In the rest of the book, I do not make use of specifically religious claims. There are two reasons for this. First, we have seen the many challenges to the assumption that morality is based on religion, and it is worthwhile seeing how far we can get without having to rely on that assumption. Second, there is important precedent among

religious philosophers for thinking that God gave us reason and understanding in order to make the fundamental truths of morality available to everyone. After all, a caring God would want even nonbelievers to understand the immorality of rape and genocide, and to appreciate the goodness of generosity and loving kindness.

F. CONCLUSION

Although it has proven difficult to come up with a sharp definition of *morality*, we can take several steps to help us get a better understanding of what we'll be focusing on for the remainder of this book. There is first of all the distinction between conventional and critical morality, where the former includes the moral views and practices that are actually accepted by a society or culture, and the latter represents moral standards that are free of the errors that sometimes infect conventional morality. Understanding the three branches of moral philosophy—value theory, normative ethics, and metaethics—can also help us to focus on our target. Identifying a set of plausible starting points for moral thinking can do the same. We can also come to appreciate what morality is by seeing what it is not—here, the contrast with other normative systems, such as the law, etiquette, self-interest, and tradition, may be helpful. Finally, while many people look to religion for moral guidance, there are some problems with doing so on the basis of the divine command theory, and there are, in any event, several hurdles that theists need to overcome in order to assure themselves that such reliance is appropriate.

ESSENTIAL CONCEPTS

Atheism: the view that God does not exist.

Conventional morality: the system of widely accepted rules and principles that members of a

culture or society use to govern their own lives and to assess the actions and the motivations of others.

Critical morality: a set of moral norms that

(1) does not have its origin in social agreements; (2) is untainted by mistaken beliefs, irrationality, or popular prejudices; and (3) can serve as the true standard for determining when conventional morality has got it right and when it has fallen into error.

Divine Command Theory: the view that an act is morally required just because it is commanded by God, and that it is immoral just because God forbids it.

Normative system: a set of norms; that is, a set of standards that specify how we ought to behave, ideals to aim for, and rules that we should not break.

Norms: standards that we ought to live up to.

Omniscient: all-knowing.

Theists: those who believe that God exists.

DISCUSSION QUESTIONS

1. Can you think of a good definition of morality?
2. What are some elements of conventional morality that you think are morally mistaken? Be sure to provide the reasons that support your verdict.
3. Do you agree with all of the starting points for moral thinking that were provided in section 1.C? If not, explain why. Can you think of any other plausible starting points?
4. Many people think that the standards of self-interest and morality can conflict. Do you agree? What reasons do you have for your response?
5. Critically assess the Divine Perfection argument. Do you think that it succeeds? Why or why not?

Moral Reasoning

Moral reasoning, like all reasoning, involves at least two things: a set of reasons, and a conclusion that these reasons are meant to support. When you put these two things together, you have what philosophers call an **argument**. This isn't a matter of bickering or angrily exchanging words. An argument is simply any chain of thought in which reasons (philosophers call these **premises**) are offered in support of a particular conclusion. Watch for such words as *therefore*, *hence*, *thus*, or *so*—a claim that follows these words is usually the conclusion of an argument someone is offering you.

Not all arguments are equally good. This is as true in ethics as it is science, mathematics, or politics. It is easy to mistake one's way when it comes to ethical thinking. We can land at the wrong conclusion (by endorsing child abuse, for instance). We can also arrive at the right one by means of terrible reasoning. We must do our best to avoid both of these mistakes.

In other words, our moral thinking should have two complementary goals—getting it right, and being able to back up our views with flawless reasoning. We want the truth, both in the starting assumptions we bring to an issue and in the conclusions we eventually arrive at. But we also want to make sure that our views are supported by excellent reasons. And this provides two tests for good moral reasoning: (1) we must avoid false beliefs, and (2) the logic of our moral thinking must be rigorous and error-free.

There is no surefire test for determining when a belief is true or false. This goes for all beliefs, not just moral ones. Many people are firmly convinced by beliefs that turn out to be false;

indeed, this probably describes you, me, and everyone we know. Of course we aren't aware of which of our beliefs are false, or else we'd change them. Still, none of us is omniscient. We all have our blind spots and intellectual limitations.

This isn't meant to be a counsel of despair. Though each of us is likely to have at least a few false beliefs, we also have lots of true ones. And while there is no surefire test to sort the true from the false, we can always seek to support our views by means of evidence and argument.

Importantly, it is possible to develop moral arguments that fail, even though every single one of their premises is true. The failure is of the second sort mentioned earlier: a failure of logic. Since logical reasoning is a key to successful reasoning, let's take some time to consider some of the basic elements of logic.

A. VALIDITY AND SOUNDNESS

Consider this argument:

1. Heroin is a drug.
2. Selling heroin is illegal.

Therefore,

3. Heroin use is immoral.

This is a moral argument. It is a set of reasons designed to support a moral conclusion. Both of the premises are true. But they do not adequately support the conclusion, since one can accept them while consistently rejecting this conclusion. Perhaps the use of illegal drugs such as heroin really is immoral. But we need a further reason to think so—we would need, for instance, the additional claim that all drug use is immoral.

The argument in its present form is a poor one. But not because it relies on false claims. Rather, the argument's logical structure is to blame. The logic of an argument is a matter of how its premises are related to its conclusion. In the best arguments, the truth of the premises guarantees the truth of the conclusion. When an argument has this feature, it is **logically valid**.

The heroin argument is invalid. The truth of its premises does not guarantee the truth of its conclusion—indeed, the conclusion may be false.

Since the best arguments are logically valid, we will want to make sure that our own arguments meet this condition. But how can we do that? How can we tell a valid from an invalid argument, one that is logically perfect from one that is logically shaky?

There is a simple, three-part test:

1. Identify all of an argument's premises.
2. Imagine that all of them are true (even if you know that some are false).
3. Then ask yourself this question: supposing that all of the premises were true, could the conclusion be false? *If yes*, the argument is invalid. The premises do not guarantee the conclusion. *If no*, the argument is valid. The premises offer perfect logical support for the conclusion.

Validity is a matter of how well an argument's premises support its conclusion. To test for this, we must assume that all of an argument's premises are true. We then ask whether the conclusion must therefore be true. If so, the argument is valid. If not, not.

Note that an argument's validity is a matter of the argument's structure. It has nothing to do with the *actual* truth or falsity of an argument's premises or conclusion. Indeed, *valid arguments may contain false premises and false conclusions*.

To help clarify the idea, consider the following argument. Suppose you are a bit shaky on your US history, and I am trying to convince you that John Quincy Adams was the ninth

president of the United States. I offer you the following line of reasoning:

1. John Quincy Adams was either the eighth or the ninth US president.
2. John Quincy Adams was not the eighth US president.

Therefore,

3. John Quincy Adams was the ninth US president.

In one way, this reasoning is impeccable. It is logically flawless. This is a valid argument. If all premises of this argument were true, then the conclusion would have to be true. It is impossible for 1 and 2 to be true and 3 to be false. It passes our test for logical validity with flying colors.

But the argument is still a bad one—not because of any logical error, but because it has a false premise (number 1; Quincy Adams was the sixth US president) and a false conclusion. The truth of an argument's premises is one thing; its logical status is another.

The lesson here is that truth isn't everything; neither is logic. We need them both. What we want in philosophy, as in all other areas of inquiry, are arguments that have two features: (1) they are logically watertight (valid), and (2) all of their premises are true. These arguments are known as **sound** arguments.

Sound arguments are the gold standard of good reasoning. And it's easy to see why. They are logically valid. So if all of their premises are true, their conclusion must be true as well. And by definition, sound arguments contain only true premises. So their conclusions are true. If you can tell that an argument is valid, and also know that each premise is correct, then you can also know that the conclusion is true. That is what we are after.

You're now in a position to avoid a rookie mistake: referring to arguments as true or false. Premises can be true or false. Conclusions can be true or false. Arguments, though, are

neither. Arguments are valid or invalid, sound or unsound.

I started this section by claiming that not all moral arguments are equally good. We're now able to see why. Some arguments rely on false premises. Others rely on invalid reasoning. Still others—the worst of the lot—commit both kinds of error. When developing your own arguments to support your moral views, it pays to keep both types of error in mind, so that you can be alert to avoiding these mistakes.

B. NECESSARY AND SUFFICIENT CONDITIONS

Logic is a huge field, and we are going to touch only the tip of the iceberg. In my experience, however, there are just a few key ideas that you need to master in order to be in a position to construct valid arguments and to determine whether those you are considering really do have a good logical structure.

One of the key ideas in logic is that of a **sufficient condition**. A sufficient condition is a guarantee. If X is a sufficient condition of Y, then X suffices for Y; X is enough for Y; X guarantees Y. If X is true, then Y is true; if X is the case, then Y is the case. In most classrooms, getting a 95 percent average is a sufficient condition of receiving an A. Being a human is a sufficient condition of being a mammal. Having a child is a sufficient condition of being a parent.

The importance of this will become clear in a moment. But first, consider another key logic concept: that of a **necessary condition**. Necessary conditions are requirements. If X is a necessary condition of Y, then X is needed for Y; X is a prerequisite of Y; X is required for Y. Y can be true only if X is true; Y can occur only if X does. Having some money is a necessary condition of being a millionaire; having a brain is a necessary condition of being a philosopher; for some, having one's morning caffeine is a necessary condition of being able to function properly.

Both sufficient and necessary conditions are conditions *of* or *for* something else. It doesn't

make sense to speak of something as a sufficient or necessary condition, full stop. This becomes clear when you abandon the technical talk and just think of a guarantee or a requirement. If someone told you that this was a guarantee, or that was a requirement, you'd naturally ask: a guarantee of *what*? What is it a requirement for?

OK, why is any of this important? Here's one reason. One of the big goals of ethical thinking is to try to identify a good, wide-ranging test of what's morally right (or wrong). One way to think about such a test is to view it as a statement of conditions that are *both necessary and sufficient* for being morally right (or wrong). A claim that supplies necessary and sufficient conditions is called a **biconditional**, because it incorporates two conditions. A shorthand way to state biconditionals is to use this phrase: if and only if. To take a familiar example: someone is a bachelor if and only if he is an unmarried male. This says that being an unmarried male is both sufficient and necessary for being a bachelor: *if* someone is an unmarried male, then he's a bachelor, and he's a bachelor *only if* he's an unmarried male.

Think of this as a kind of fill-in-the-blank exercise. In moral philosophy, we want sufficient conditions for being morally right. So: if _____ (fill in your sufficient condition), then an act is morally right. Now make sure that however you filled in that blank is also a necessary condition: An act is morally right only if _____. The very same thing needs to fill in both blanks. So: an act is morally right if and only if _____. If you can fill in that blank in a way that withstands scrutiny, you will have done something truly great. You will have identified conditions that guarantee the moral rightness of an act, and that are also required for the act to be right.

Here's why we are on the lookout for conditions that are both necessary and sufficient for the morality of actions. Suppose your friend tells you: an act is wrong *only if* it causes pain. Notice what's going on here. Your friend is saying that

an action's causing pain is a necessary condition of its being wrong; causing pain is a requirement of acting wrongly. I doubt your friend is right about this—there seem to be cases where people have acted immorally but no one has suffered as a result—but suppose my doubts are mistaken. Now this same friend tells you of a case where Tina has caused Tommy pain. Do you have enough information to know whether Tina's act is right or wrong? You don't. Sometimes it's morally OK to cause others pain; even if causing pain is a requirement of immoral action, it is *not* a sufficient condition, a guarantee, of immoral behavior.

Compare: a person is alive only if she has a heart; having a heart is a necessary condition of a person's being alive. Suppose I tell you that the person over there has a heart. Do you now know whether that person is alive? You don't. The person could be a corpse. Having a heart isn't a sufficient condition of being alive.

So you might think: fine, necessary conditions aren't all that helpful; it's sufficient conditions that are really important. Yet you're usually going to want something more than a sufficient condition, too. After all, I could tell you that betraying a vulnerable child just for kicks is sufficient for your action to be wrong; if you engage in such betrayal, then you're acting wrongly. I think this is true. But how often do you encounter such cases? This sufficient condition doesn't provide a good general test for moral wrongness, because most situations don't involve such betrayals. You're looking for a test that applies across the board and that can help you with the moral difficulties you're actually facing. That requires that you identify conditions that are both necessary and sufficient for moral rightness (or wrongness, depending on what you're trying to figure out).

C. VALID ARGUMENT FORMS

Necessary and sufficient conditions are important not just because of the role they play in constructing a general test for the morality of actions. They are central to understanding why

some classic forms of valid argumentation work as they do.

There are lots of ways to construct logically valid arguments—and, as a quick review of our public culture reveals, a lot of ways to construct invalid arguments! (More on these in the next section.) Insofar as you care about supporting your ideas with solid reasoning, you'll want to avoid the latter and devote yourself to the former. We can't review every kind of logical argument, but we can do a quick survey of the ones that will take center stage in this book. After a chapter or two, you'll become quite familiar with them and will hopefully be in a position to construct such valid arguments on your own. Ideally, you'll incorporate true premises into those arguments, yielding the best kind of reasoning, and applying it to moral issues of great significance.

For the remainder of this chapter, I'm going to explain things by using variables—symbols that can be replaced by lots of different items of the same kind. If you're like me, and you see variables, you start to freeze up. Don't worry, all will be well. In particular, I'm going to use Ps and Qs as my variables; these stand in for any declarative sentence at all. Whenever you see 'P' or 'Q', feel free to replace it with whatever declarative sentence you like, no matter how short or long, no matter how plausible or crazy. It won't make any difference to the points we're about to discuss.

There are three argument forms that I'll be using over and over. They have fancy Latin names that you just need to memorize—sorry. The first is called **modus ponens**, and it takes the following form:

1. If P, then Q.
2. P.

Therefore,

3. Q.

As I mentioned earlier, 'P' and 'Q' are just meant to stand in for any declarative sentence. Try it

out with any sentences you like, from something totally commonplace to something outrageous. The key thing is that no matter what sentences you substitute for ‘P’ and ‘Q’—no matter whether they are true or false, related to each other or not—you are going to end up with a logically valid argument.

Here are two examples to soften you up:

1. If humans have rights, then you have rights.
2. Humans have rights.

Therefore,

3. You have rights.

1. If you have rights, then pencils have rights.
2. You have rights.

Therefore,

3. Pencils have rights.

The first one looks pretty good, yes? Its logic is impeccable: if premises 1 and 2 are true, the conclusion, 3, has to be true. The argument is not just valid; it is also sound, as all of its premises (1 and 2) are true. This guarantees that the conclusion is true.

The second argument probably looks fishy to you. But its logic is also flawless: if premises 1 and 2 were true, its conclusion would have to be true. Recall the test for validity: imagine that all premises are true, even if you know they aren’t. Then ask whether the conclusion would have to be true. The answer here is *yes*; that indicates that this second argument is valid. But of course it is unsound—not all of its premises are true. Premise 1 is false, as is its conclusion.

Every instance of modus ponens reasoning is logically valid. That might seem an unsupportable claim; there are billions of ways to fill in ‘P’ and ‘Q’ in the formula—how could we know that every single one will yield a valid argument?

To answer that question, I need to introduce another technical term, one that may be

familiar to you from middle school grammar lessons: a **conditional**. A conditional is just an ‘if-then’ sentence. The first premises in both of the arguments we just considered are conditionals. A conditional has two parts, the ‘if’ part and the ‘then’ part. These, too, have names that you may recall from sixth or seventh grade. The ‘if’ clause is called the **antecedent** (literally: that which comes before); the ‘then’ clause is called the **consequent** (literally: that which comes after).

Now reread that last paragraph. I know there have been a lot of technical terms thrown at you all at once. But we’ll use these repeatedly, so it pays to really get them ingrained. And we need to rely on these terms to understand exactly why every instance of a modus ponens argument is logically perfect.

Here’s the explanation. Look at the first premise of a modus ponens argument. It is a conditional. It has two parts, its antecedent and its consequent. A conditional contains two crucial bits of information. The first is this: its antecedent is a sufficient condition of its consequent. In simpler terms: the ‘if’ clause is a guarantee of the ‘then’ clause. In a modus ponens argument, the second premise says that the guarantee is in place. The antecedent, which guarantees the consequent, is true. It follows that the consequent, which has been guaranteed, is true as well.

Think about this for a minute. In a conditional, you are stating that if one thing holds (I’ve arbitrarily labeled it ‘P’, but you could call it anything you want), then another thing (Q) will hold as well. In the conditional premise of a modus ponens argument, you are saying that the antecedent guarantees the consequent, that P guarantees Q. When you proceed, via premise 2, to affirm P, you say that the guarantee is secure. It follows logically that Q—the thing guaranteed by P—is also secure. This is why every modus ponens argument is logically valid.

Here is another type of argument that is always logically valid: it’s called **modus tollens**.

A modus tollens argument has the following form:

1. If P, then Q.
2. Q is false.

Therefore,

3. P is false.

Note that modus tollens arguments start out just like modus ponens arguments do—with a conditional. Now here's where things get a little bit unexpected. I said earlier that there are two crucial bits of information contained in a conditional. The first, already mentioned, is that its antecedent is a sufficient condition of its consequent. Perhaps this seemed obvious to you. But the second bit of information rarely strikes people as obvious. When I took logic for the first time, I kept bumping up against it—I didn't find it intuitive at all. The second piece of information contained in a conditional is this: its consequent is a necessary condition of its antecedent. Sticking with our talk of Ps and Qs, the second bit of information says that Q is a necessary condition of P; P is true *only if* Q is true; P's truth requires Q's truth; Q's truth is necessary for P's truth.

So when I say, for instance, “If humans have rights, then you have rights,” I am conveying two things. First, that humans have rights guarantees that you have rights. But second, and perhaps less obviously (it certainly seems less obvious to me), I am also relaying this information: humans have rights *only if* you have rights, too.

This second bit of information is crucial to seeing why every instance of modus tollens is logically valid. In a modus tollens argument, the conditional tells you that the consequent is a requirement for the antecedent. The second premise says that this requirement fails to hold. So the antecedent can't hold, either.

Perhaps a simpler way to see this is by introducing a principle that logicians take for granted but that we ordinary folk can find it hard to see.

The principle says that the following two statements are logically equivalent:

1. If P, then Q.
2. P only if Q.

In other words, whenever you write a conditional in the first way, you could also write it the second way (and vice versa), and the truth (or falsity) of the conditional would not change. Since it's true that *if* (P) humans have rights, *then* (Q) you have rights, it's also true that (P) humans have rights *only if* (Q) you have rights. Since it's false that *if* (P) you have rights, *then* (Q) pencils have rights, it's also false that (P) you have rights *only if* (Q) pencils have rights.

So we can see that modus tollens arguments can also be written in this way:

1. P only if Q.
2. Q is false.

Therefore,

3. P is false.

Maybe this makes the validity of all modus tollens arguments more intuitive. Written this way, it's clearer that the consequent, Q, is a necessary condition of the antecedent, P. The second premise says that Q, which is needed for P, is false. So P is false as well. And this is so no matter what 'P' and 'Q' stand for.

We're now in a position to show how to test for the truth of a conditional, which is going to be very important in the rest of the book, since so many of the arguments presented there take the form of a modus ponens or modus tollens argument. Here's the test: try to come up with a case in which the conditional's antecedent is true, but the consequent is not. If you can identify such a case, then the conditional isn't true. That's because the antecedent is supposed to guarantee the consequent; if you can come up with a case in which it fails to do so, then the conditional is false. It's also because the consequent is meant to be a necessary condition of the antecedent; if there is a case in which the

antecedent holds even though the consequent doesn't, that shows that the consequent isn't, after all, a requirement of the antecedent. And so the conditional is false.

The **hypothetical syllogism** is a third type of argument whose instances are always valid. A hypothetical syllogism takes this form:

1. If P, then Q.
2. If Q, then R.

Therefore,

3. If P, then R.

Though I've written this with just two premises, a hypothetical syllogism can have three or more premises, so long as each additional one is a conditional that takes the consequent of the previous conditional and makes it the antecedent of the next.

Here's why every single hypothetical syllogism is valid. Focus on the first bit of information contained within a conditional: its antecedent guarantees its consequent. So, in the first premise, P guarantees Q. In the second premise, Q guarantees R. If one thing guarantees a second thing, and the second guarantees a third, then the first guarantees the third—the guarantee flows from the initial antecedent to the final consequent. A hypothetical syllogism basically represents a chain of guarantees, with the initial "hypothesis" (hence the name of this argument) guaranteeing the last link in the chain of conditionals.

There is a *lot* more logic one could learn about. But this is all you need to know in order to succeed with the material in this book.

D. FALLACIES

A **fallacy** is a mistake in reasoning. A formal fallacy is a kind of argument all of whose instances are logically invalid. In other words, no argument that commits a formal fallacy is *ever* logically valid. Informal fallacies are other kinds of mistaken patterns in reasoning. Here, as earlier, I'll need to be selective—whole courses and

textbooks are devoted to the nature of logical (and illogical) reasoning. I'll draw your attention to a few of the more common mistakes we make in our reasoning, with the hope that being alerted to them will enable you to purify your reasoning and avoid these errors when engaging in your own critical reflections.

Let's first take a look at a couple of classic formal fallacies. Here's an example of one of them. Suppose your friend tells you that if God exists, then abortion is immoral. But she proceeds to claim that God doesn't exist. So, she concludes, abortion is morally OK. Or suppose that someone makes you the following offer: if you buy this item now, then you'll get 50 percent off. So you think: well, if I don't buy it now, then I'm not going to get that discount. Both of these lines of thought are **fallacious** (i.e., commit a fallacy). They are instances of the **fallacy of denying the antecedent**. This occurs when one reasons as follows:

1. If P, then Q.
2. P is false.

Therefore,

3. Q is false.

The fallacy gets its name from the action taking place in premise 2—denying the antecedent of the conditional in premise 1. The problem is that when you assert a conditional and then deny its antecedent, you have given *no* basis for denying the consequent. To see this, recall what the antecedent does: it serves as a sufficient condition, a guarantee, of the consequent. Premise 2 says that this guarantee doesn't hold. What follows? *Nothing*. That's because there can be many sufficient conditions for something. Suppose I tell you, correctly, that if someone is currently riding a bike, then he is alive. But I'm not riding a bike. Therefore . . . I'm dead? Not so fast. There are many sufficient conditions of being alive: riding a bike, reading an ethics textbook, having a conversation, eating breakfast, listening to music, and millions of other

possibilities. The fact that someone fails to fulfill one of these sufficient conditions for being alive gives us no basis at all for thinking that he's dead.

To cement this thought, consider another example of denying the antecedent: if I'm a millionaire, then I have at least ten dollars. (True.) I'm not a millionaire. (True.) Therefore, I don't have ten dollars. (False.) This is a terrible argument, right? All premises are true; the conclusion is false; therefore, this argument cannot be valid. Note, though, that it has exactly the same logical form as the argument about God and abortion, and the argument about receiving a discount. Each of these arguments fails—they are all fallacious—though it is sometimes difficult to see this, especially if you find its conclusion attractive.

Another formal fallacy is known as the **fallacy of affirming the consequent**. This also begins with a conditional. And then, as the name implies, one affirms its consequent (i.e., states that it is true). One then concludes that its antecedent is true: if P, then Q; Q is true; therefore, P is true.

Consider: if life is meaningful, then God exists; God *does* exist; therefore, life is meaningful. Or: if God exists, then morality is objective; morality *is* objective; therefore, God exists. Many people have found these arguments persuasive. But they are fallacious. We can see this if we compare them to other arguments with the very same logical structure. Suppose I tell you that if I'm a millionaire, then I have ten dollars. (True.) I have ten dollars. (True.) Therefore, I'm a millionaire (sadly, false—if only it were that easy!) Or: if you're a famous ex-president, then you're a person. You're a person. Therefore, you're a famous ex-president. Again, both of these premises are true; the conclusion is false; therefore, this argument is invalid. Yet this argument and the one before have the very same logical structure as the two arguments that opened this paragraph. All four of those arguments are invalid.

The reason is simple. Think of the second crucial bit of information contained in a conditional—namely, that the consequent is a necessary condition, a requirement, of the antecedent. If Q is needed for P, you can't determine that P is the case just by determining that Q is the case. That's because there can be many necessary conditions for something. You need a lot of things to build a house, for instance—there are many necessary conditions that have to be met. You can't tell if a house has been built just by knowing that one of these conditions has been fulfilled. If there are many requirements for P, then you're in no position to know whether P is the case just because you know that one of its requirements is met. That's why affirming the consequent is a fallacy.

Let's turn now to some informal fallacies. One of these is the **ad hominem fallacy**, which occurs when you try to undermine a position by attacking the person who is advancing it. Politicians (and their supporters) do this all the time. "His views on immigration can't be trusted; after all, he's Latino." "She's rich, so don't believe a word she says about how to improve the economy." "He's a hypocrite; he didn't live up to his ideals, so his ideals must be bankrupt." These are all instances of bad reasoning. The truth is one thing; a person's motives, status, inherited traits, group membership, or character is another. The wisdom of an immigration or economic policy depends on the facts about these complicated matters, and not at all on the character or circumstances of the person who is defending them. Even bad people speak the truth sometimes. Even good people make mistakes. Greedy people can end up defending wise economic policies. And terrible immigration policies can be defended by those whose compassionate motives have misled them on this occasion.

A familiar type of ad hominem fallacy occurs when people discover that others have behaved hypocritically. If a person fails to live up to her ideals, then this shows that she lacks integrity. It says nothing, however, about the merit

of those ideals. After all, a person might preach generosity and kindness, all the while betraying these values in her personal life. Such hypocrisy does *nothing* to undermine these values, though it says a lot about her character. The truth of a position is one thing; the person advancing it is another. If you want to determine whether her claims are correct, then you need to focus on the evidence for or against her position, rather than on the content of her character.

Another informal fallacy involves **appeals to irrelevant emotions**. This occurs when someone tries to convince you of a claim by playing on your emotions, rather than by offering facts and evidence that bear on the truth of the claim. Many different emotions can be targeted. Marketers are experts in appealing to *jealousy*, *envy*, and *insecurity* when trying to sell something depicted as exclusive or prestigious or elite—you don’t want to be left behind, do you? Had you done some research, however, you would have discovered in many cases that the advertised products were no better, and perhaps even worse, than more ordinary ones. Politicians and pundits often appeal to *anger* or *fear* when arguing to close borders against would-be immigrants. Rather than citing relevant facts about the actual costs and benefits of more welcoming immigration policies, many who seek to limit immigration present inflammatory images or biased claims designed to evoke emotions of fear and anger that will prompt opposition to such policies.

Almost any emotion can be manipulated. We need to remember this, since emotions play powerful roles in our moral thinking. And some of these are illuminating, rather than distorting. We are often alerted to morally relevant facts by having an emotional experience, as when someone’s suffering elicits our compassion, or a gross injustice provokes our outrage. The essential point is not to place a ban on emotions in our moral reflections, but rather to recognize that many appeals to emotions will distract us from appreciating the relevant facts.

Another informal fallacy is the **appeal to authority**, which involves relying on authority figures to substantiate a position outside of their area of expertise. There is nothing wrong with trusting a doctor’s advice when trying to recover from a broken ankle, because that’s within the scope of the doctor’s expertise. But suppose that someone tries to get you to adopt a pro-choice position by claiming that 80 percent of the doctors in the United States favor abortion rights. That’s an example of this fallacy. A medical degree does not make someone a moral expert. Even if most doctors are pro-choice, that is not itself any evidence that a pro-choice position is morally correct. The same fallacy occurs whenever a parent tries to justify his political views by saying, “I’m the grown-up here, so what I say goes.” As we all know, being a grown-up doesn’t make someone infallible. Parents may want to silence their children, or just end a discussion and move on, but one doesn’t acquire political wisdom just by raising a child.

The **straw man fallacy** depicts an opponent’s position in a way that makes it easy to refute, thereby diverting attention from the real position being advanced. This occurs when someone avoids engaging with the best arguments for a position one opposes, and instead substitutes an obviously terrible argument for the one that has actually been offered. The terrible argument is the straw man—something that can be easily demolished. But it is a basic principle of good reasoning that one should *charitably* interpret the views of those one disagrees with. Rather than construing their beliefs in the worst possible way, one should instead seek to identify the most plausible version of their position, and then critically engage with that. It is easy to score cheap points by painting someone’s argument as ridiculous, especially when a critic replaces the real argument with a substitute that can be easily torn apart. While this sort of move may win a politician some votes, or a radio personality more listeners, it blocks reasoned inquiry, rather than offering a path to understanding.

The **appeal to ignorance**, known officially by its Latin name *ignoratio elenchi*, can take one of two forms. The first one, which we'll consider in this paragraph, occurs when one thinks that a claim is true because it hasn't been proven false. The basic idea is this: you don't know (hence the ignorance) that my claim is false. Therefore, it's true. The problem is that the absence of contrary evidence—the absence of good reason to doubt my claim—is not itself reason to believe my claim. Suppose I believe that there is an even number of stars in the universe. You can't prove me wrong. But that's no reason to think I'm right! Yet this is the same form of reasoning used by those who argue that the death penalty must be an effective deterrent, because it hasn't been proven to be useless. Or that plants and trees are conscious, because it hasn't been proven that they're not.

The second form that an appeal to ignorance can take is the mirror image of the first. This occurs when one thinks that a claim is false because it hasn't been proven true. Here, if we don't know that your claim is true, we just assume that it's false. Like the close cousin discussed in the previous paragraph, this form of reasoning is also fallacious. Some people assert, for instance, that scientists haven't proven that climate change is caused by increased fossil fuel consumption; therefore, it's false that such consumption is causing climate change. Set aside the contested question of whether climate scientists have or have not proven this link. Even if they haven't, this reasoning is fallacious. We can see this by applying it to a variation of an earlier example. I can't prove that there is an even number of stars in the universe. But you'd be making an obvious error if you concluded that there must be an odd number of stars out there! Likewise, even if we are ignorant of whether humans have caused climate change, this ignorance does not license us in claiming that they haven't.

The last of the informal fallacies that we'll consider is the **hasty generalization**, which occurs when someone illicitly draws a general

lesson from only a small handful of cases. Consider the smear, popular in some circles, that all Muslims are terrorists. It's certainly true that *some* Muslims are terrorists. But so too are some Jews, some Christians, some Buddhists, some Hindus, and some atheists. It's obviously implausible to claim that all Christians or Jews are terrorists, even if one's attention is drawn especially to those who are. Some Americans commit acts of terror. That is no basis for thinking that all Americans are terrorists. The sort of fallacy at play here is common and easy to fall into—we naturally think that a few salient examples represent broader trends or even universal truths. But good reasoning requires that we survey a large and representative sampling of cases before making such sweeping claims.

E. CONCLUSION

Moral reasoning is a matter of creating and assessing arguments for some moral claim. Arguments are built from premises, designed to support a conclusion. The truth or falsity of the premises is one thing; the logical support they offer to a conclusion is another. Arguments can be poor despite having only true premises, because those premises can fail to logically support their conclusions. And arguments can be logically flawless—valid—even though their premises are false, leaving us no basis for believing their conclusions. The gold standard of moral reasoning is a sound argument—a valid argument all of whose premises are true.

Modus ponens, modus tollens, and hypothetical syllogism arguments are invariably valid. No matter whether their premises are actually true or false, every instance of these argument types is logically valid. In order to understand why this is so, one needs to grasp the notion of a necessary condition (a requirement) and a sufficient condition (a guarantee). Biconditionals are statements of conditions that are at once necessary and sufficient for something. If you are especially intrepid, you'll spend some time thinking about the biconditionals that

correctly specify the necessary and sufficient conditions for the moral concepts you're most interested in, while avoiding all of the fallacies that we have just discussed. Good luck!

ESSENTIAL CONCEPTS

Ad hominem fallacy: trying to undermine the truth of a position by attacking the person who is advancing it.

Antecedent: the 'if' clause of a conditional; the clause that specifies a sufficient condition of the conditional's consequent.

Appeal to authority: an informal fallacy that involves relying on authority figures to substantiate a position outside of their area of expertise.

Appeal to ignorance: an informal fallacy, also known as *ignoratio elenchi*, that can take one of two forms. In the first, one believes a claim to be true because it hasn't been proven false. In the second, one believes that a claim is false because it hasn't been proven true.

Appeal to irrelevant emotions: an effort to convince you of a claim by playing on your emotions, rather than by offering facts and evidence that bear on the truth of the claim.

Argument: a chain of thought in which reasons are offered in support of a particular conclusion.

Biconditional: a claim that supplies a condition that is both necessary and sufficient for something; an 'if and only if' sentence.

Conditional: an 'if-then' sentence.

Consequent: the 'then' clause of a conditional; it specifies a necessary condition of the conditional's antecedent.

Fallacious: the feature of exhibiting or having committed a fallacy.

Fallacy: a kind of poor reasoning. A formal fallacy is an argument form all of whose instances are invalid. Informal fallacies are other kinds of mistakes in reasoning.

Fallacy of affirming the consequent: any argument of the form: if P, then Q; Q is true; therefore, P is true.

Fallacy of denying the antecedent: any argument of the form: if P, then Q; P is false; therefore, Q is false.

Hasty generalization: illicitly drawing a general lesson from only a small handful of cases.

Hypothetical syllogism: An argument of the form: if P, then Q; if Q, then R; therefore, if P, then R.

Logical validity: the feature of an argument that guarantees the truth of its conclusion, on the assumption that its premises are true.

Modus ponens: An argument of the form: if P, then Q; P; therefore, Q.

Modus tollens: An argument of the form: if P, then Q; Q is false; therefore, P is false.

Necessary condition: a requirement, a prerequisite, a precondition.

Premises: the reasons within an argument that, taken together, are meant to support the argument's conclusion.

Soundness: the feature that arguments have when they are logically valid and all of their premises are true.

Straw man fallacy: a form of reasoning that depicts a position in a way that makes it easy to refute, thereby diverting attention from the real position being advanced.

Sufficient condition: a guarantee.

DISCUSSION QUESTIONS

Consider these sample arguments. Some are valid and some are invalid. Reveal the logical structure of each argument by presenting it in terms of Ps and Qs and then explain why each argument is valid or invalid.

- A1.** The sun is a star.
2. The earth is a planet.

Therefore,

- 3.** The earth is 93 million miles from the sun.

- B1.** If Hillary Clinton is president, then Bill Clinton is vice president.
2. Hillary Clinton is president.

Therefore,

3. Bill Clinton is vice president.

C1. If water at sea level boils at 212 degrees F, then water at sea level boils at 100 degrees C.

2. Water at sea level boils at 212 degrees F.

Therefore,

3. Water at sea level boils at 100 degrees C.

D1. Either God exists or life has no meaning.

2. God doesn't exist.

Therefore,

3. Life has no meaning.

E1. If there is an afterlife, then it is wise to be moral.

2. There is no afterlife.

Therefore,

3. It isn't wise to be moral.

F1. If I am riding a bike, then I am alive.

2. I am not riding a bike.

Therefore,

3. I am not alive.

G1. If fetuses are human beings, then abortion is immoral.

2. Abortion is immoral.

Therefore,

3. Fetuses are human beings.

H1. If I am a millionaire, then I can afford to buy a new TV.

2. I can afford to buy a new TV.

Therefore,

3. I am a millionaire.

I1. If euthanasia is legalized, then this will reduce the overall amount of misery in society.

2. If euthanasia reduces the overall amount of misery in a society, then it is morally acceptable.

Therefore,

3. If euthanasia is legalized, then it is morally acceptable.

J1. If animals have rights, then it is wrong to eat them.

2. It isn't wrong to eat animals.

Therefore,

3. Animals don't have rights.

K1. Anti-drug laws are morally legitimate only if paternalistic laws are morally acceptable.

2. Paternalistic laws are morally unacceptable.

Therefore,

3. Anti-drug laws are not morally legitimate.

L1. If societies disagree about moral issues, then there is no objective morality.

2. Societies agree about moral issues.

Therefore,

3. There is an objective morality.

M1. The death penalty is justified only if it gives criminals their just deserts.

2. The death penalty gives criminals their just deserts.

Therefore,

3. The death penalty for murderers is justified.

N1. If you want to succeed in your moral reasoning, then you have to master the details of this chapter.

2. If you have to master the details of this chapter, then you should ask your instructor for help if you don't understand any aspect of it.

Therefore,

3. If you want to succeed in your moral reasoning, then you should ask your

instructor for help if you don't understand any aspect of this chapter.

Review the following fallacious arguments and identify the informal fallacy committed by each.

- O.** The death penalty is an excellent deterrent of crime; after all, sociologists haven't been able to prove that it isn't.
- P.** Some philosophers argue that we are morally required to give away most of our earnings to the needy, even if it means devoting less money to our loved ones. But in times of family emergency, these philosophers will always end up spending money to care for their family members. That shows that the rest of us aren't morally required to give away most of our earnings to the needy.
- Q.** Some corporations have voluntarily taken steps to reduce their emission of

greenhouse gases. So we don't need to impose any regulations in order to mitigate the effects of climate change.

- R.** How would you feel if someone killed a member of your family? Angry, right? That shows that the death penalty is morally justified.
- S.** Two politicians are engaged in a debate.

First politician: We should not spend billions of dollars building a border wall; the money saved could be better spent on other types of immigration enforcement.

Second politician: That might make you feel good, but I can't support giving illegal immigrants all the rights and protections of ordinary US citizens.

- T.** Abortion is immoral. How do I know that? Because my priest says so. How do I know I can trust my priest's opinions on this matter? Because my church tells me so.

Skepticism about Morality

There are many skeptical worries that can arise about morality. In this chapter we consider three of the most important of these doubts. The first of these—**ethical egoism**—says that we have no **basic obligations** to others; the only moral duty we have is to ourselves. The second source of doubt is **relativism**, which denies the objectivity of ethics and views moral rules as **human creations**, as binding (or not) as the rules of games. The third is known as **error theory**—the view that morality is make-believe, that moral claims are never true, that moral knowledge is impossible. My aim here is to clearly identify these sources of skepticism and to reveal why people have been attracted to them—while also explaining why the arguments for these doubts may not be as compelling as they appear.

A. EGOISM

Some people—not many—hold that your only moral duty is to yourself. As they see it, the supreme moral principle requires you to maximize your own self-interest. You are allowed to help others, but only if doing so is going to benefit you in the long run. This view is known as **ethical egoism**.

If ethical egoism is true, then morality isn't anything like we think it is. We assume that morality requires us to be generous, compassionate, and benevolent. We think it counsels us to avoid selfishness and self-centeredness. We think it requires some kind of impartiality, a recognition that we are not fundamentally more important than others. And we believe that it sometimes requires us to sacrifice our own interests for those of others who are needier or

more deserving. **Ethical egoism rejects all of these common assumptions.**

There are three familiar considerations that people sometimes offer in support of ethical egoism. Here is one offered by Ayn Rand (1905–1982), whose writings on behalf of ethical egoism have been very influential in contemporary culture.¹ Call it

The Self-Reliance Argument

1. The most effective way of making everyone better off is for each person to mind his own business and tend only to his own needs.
2. We ought to take the most effective path to making everyone better off.
3. Therefore, we each ought to mind our own business and tend only to our own needs.

There are two problems with this argument. Its first premise is false. And its second premise is one that egoists cannot accept.

The first premise is false, because those who are in need of help would not be better off if others were to neglect them. If you are suffering a heart attack and I know CPR and am the only one able to help, then you are definitely *worse off*, not better, if I decide to leave you alone and go on my way.

Nor is complete self-reliance even a good general policy. It might be better if everyone were self-reliant than if everyone were

1. Her novels *The Fountainhead* (1943) and *Atlas Shrugged* (1957) have sold millions; for a more explicit presentation of her philosophical views, one might try *The Virtue of Selfishness* (1964).

constantly sticking his nose into other people's business. But these are surely not our only two options. **There is a middle path that allows a lot of room for self-interest but also demands a degree of self-sacrifice, especially when we can offer great help to others at very little cost to ourselves. Everyone would be better off if people helped others to some extent, rather than if people offered help only when doing so served self-interest.**

Further, the argument's emphasis (in premise 2) **on our doing what will improve everyone's well-being is not something that the egoist can accept. For ethical egoists, the ultimate moral duty is to maximize personal benefit. There is no moral requirement to make everyone better off. The egoist allows people to help others, or to have a care for the general good, but only when doing so will maximize their own self-interest. And not otherwise.**

Here is another popular argument, also given by Rand, for severely limiting our duties to others. Call this the *Libertarian Argument*. Libertarians claim that our moral duties to help other people have only two sources: **consent and reparation**. In other words, any duty to aid another person stems either from our voluntarily agreeing to accept that duty (i.e., our **consent**), or from our having violated someone's rights, and so owing a duty to repair the wrong we have done. **But if I do not consent to help other people, and have done them no wrong, then I have no duty to help them.**

This is a fascinating argument, and there is a lot one might say about it. Indeed, I think that it poses one of the most fundamental challenges in political philosophy. Yet we can avoid a look into its details, because even if the argument is sound, it cannot support ethical egoism.

The basic explanation for this is that egoists cannot accept the argument's central claim. Egoists deny that there are two ultimate sources of moral duty (consent and reparation). In fact, egoists deny that *either* of these is a source of moral duty. For them, **self-interest is the only**

source of our moral duties. We must fulfill our voluntary agreements, or repair the damage we've done, **only when doing so is in our best interest. When it is not, we have no moral duty.**

The Libertarian Argument tells us, for instance, that if we promise to volunteer at a local hospital, or consent to the details of a home sale, then we should follow through. However, if doing so fails to make us better off, then egoism says that we have no duty to stick to our agreements. **Indeed, egoism forbids us from holding up our end of the deal.** Libertarians would require that we keep our word. **Since egoism and libertarianism often give such conflicting advice, egoism cannot gain support from libertarianism.**

A third source of support for ethical egoism comes from a theory known as **psychological egoism**—the view that our sole motivation is the **pursuit of self-interest**. **If this theory is true, then altruism—the direct desire to benefit others for their own sake, without any ulterior motive—does not exist.** Here is

The Argument from Psychological Egoism

1. If psychological egoism is true, then we can't be altruistic.
2. If we can't be altruistic, then it can't be our duty to be altruistic.
3. Therefore, if psychological egoism is true, then it can't be our duty to be altruistic.
4. Psychological egoism is true.
5. Therefore, it can't be our duty to be altruistic.

That conclusion isn't exactly ethical egoism, but it's very close. So long as we assume that we have some duties, then those duties must be egoistic, since they can't be altruistic. And that's what ethical egoism says.

Premise 1 is true by definition. No matter whether you like or hate psychological egoism, you should accept this premise. Premise 2 is also very plausible. If we can't be altruistic, then it can't

be our duty to be altruistic. Why? Because we are not required to do the impossible—morality might be pretty demanding at times, but it can't be *that* demanding. The initial conclusion, 3, follows logically from 1 and 2, so if they are true, as they certainly seem to be, then 3 must be true as well.

That leaves only premise 4, which asserts the **truth of psychological egoism**. But psychological egoism, though it can seem the only clear-eyed and sensible view of human motivation, is actually not that plausible. After all, there are many reports of people **jumping into freezing waters or blazing automobiles** in order to save **complete strangers**. Perhaps some of them were motivated by a desire for fame or a reward. But *all* of them? The evidence is strongly opposed to such a drastic claim.

All the evidence we have about how humans are motivated takes two forms: **testimony (how people describe their own motivations)** and **behavior (how they act)**. Millions of people will say that they are sometimes—not always, and perhaps not even usually—motivated directly to help others for their own sake. And millions of people actually do help others. Surely some of this evidence is misleading: some people **convince themselves of their altruistic motivations when in fact, deep down, they are really looking out for themselves**. But why discount *all* of this evidence? If you are committed in advance to denying the possibility that anyone's testimony or behavior can count as good evidence for altruism, then your commitment to psychological egoism is a matter of blind faith rather than serious attention to the evidence.

Psychological egoists have of course offered some support for their view. There is, first,

The Argument from Our Strongest Desires

1. Whenever you do something, you are motivated by your strongest desire.
2. Whenever you are motivated by your strongest desire, you are pursuing your self-interest.

3. Therefore, whenever you do something, you are pursuing your self-interest.

Let us grant for the moment that premise 1 of the argument is true. So we always do what we most want to do. But *that doesn't yet show that our strongest desires are always for personal gain*. That is precisely what has to be proven. Premise 2 of this argument **begs the question**—it assumes the truth of the conclusion that it is meant to support. It is preaching to the converted. It is not a neutral thesis that can appeal to both fans and opponents of psychological egoism. Premise 2 assumes that **just because a desire is mine, it must have a certain object—me and my self-interest**. But *whose* desire it is, and *what* the desire is for—these seem to be completely separate issues. Why couldn't my desire be aimed at your welfare? Or the well-being of a friend, or my country, or even a stranger?

Here is another argument:

The Argument from Expected Benefit

1. Whenever you do something, you expect to be better off as a result.
2. If you expect to be better off as a result of your actions, then you are aiming to promote your self-interest.
3. Therefore, whenever you do something, you are aiming to promote your self-interest.

I have my doubts about this argument. Premise 1 seems to ignore the existence of pessimists. And even optimists sometimes expect to suffer for their actions. Consider a person who thinks **she can get away with a convenient lie but admits the truth anyway**, knowing the misery that's in store for her as a result. Or imagine an employee late for an important appointment who increases his delay by helping a stranger cross a dangerous street. **He doesn't anticipate any reward for his good deed**, and knows that this delay is only going to stoke his boss's anger. Both cases seem to be counterexamples to the

claim that our actions are always accompanied by an expectation of personal benefit.

For now, let's assume that my doubts are mistaken and that premise 1 is secure. Even so, the second premise—the one that says that if you expect a benefit, then that is your aim—is very implausible.

The problem is that it looks like the egoist is begging the question again. Think about those who enjoy volunteer work. Such people may well expect to gain something from their activities. Volunteers often report feelings of deep satisfaction from their efforts. But this doesn't show that their motives are self-interested.

The egoist might rely on a general principle to establish premise 2:

(G) Whenever you expect your action to result in X, then your aim is to get X.

But (G) is false. Whenever I lecture to a large audience, I expect some people to fall asleep. Believe me, that is not my goal. If I ever had the chance to play against a professional tennis player, I'd expect to lose. But it wouldn't be my aim to do so. My goal would be to enjoy the experience and to learn a thing or two. If a student fails to prepare for an exam, she may expect to receive a poor grade. It hardly follows that she is trying for one. The bottom line is that even if premise 1 of the Argument from Expected Benefit can withstand the earlier criticisms, premise 2 begs the question. We don't have good reason to find this argument compelling.

It seems that we have strong counterexamples to psychological egoism in the form of those who have taken great risks to oppose oppressive regimes. Many of these people claim that their conscience wouldn't let them do otherwise—had they taken the safe path, they wouldn't be able to live with themselves. In their eyes, to give in to evil is to tarnish oneself. Many people speak of the terrible guilt they'd feel if they did nothing to fight against injustice.

Egoists insist that even these people are wholly self-interested. They are opposing injustice

in order to make sure that they can sleep well at night, that they can be free of crippling guilt. Having a clean conscience is a benefit. And so such people are acting from self-interested motives.

It is important to see why this sort of reasoning does not work. If a person is truly good, she will certainly be troubled at the thought of doing wrong. But that does not prove that her actions are motivated by a desire for a guilt-free conscience. Indeed, if she did not care about others, then she wouldn't lose a wink of sleep at the thought of their misery. Those who suffer pangs of guilt from having harmed others, or having missed a chance to help them, are precisely those who care about other people.

There appear to be many people who are altruistically motivated, and who show this by their expressions of care for those they love. Consider the mother who gives away the last of her food to save her only child. This seems like the essence of altruism. And yet the egoist might say that the mother is really looking out for herself, by trying to avoid a terrible personal loss, for she would be devastated at witnessing the death of her child. By helping her child, the mother is thereby helping herself.

Much of what was just said is true. But this cannot be good news for the egoist, since the details of this little story imply that egoism is false. For most parents, their own well-being crucially depends on that of their children. And so, when parents tend to the needs of their children, they are usually helping themselves in the bargain. But this doesn't show that parents are motivated by self-interest when they offer such help. As we've seen, even if people expect to gain by helping others, that doesn't prove that their aim is to acquire such benefit. Further, if a parent suffers at the thought of her child's misery, then that is evidence of altruism, not egoism. Those who care only for themselves do not suffer when thinking of the misery of others.

B. RELATIVISM

Each of us has our doubts about morality. Most of these reflect our occasional puzzlement about

what's right and wrong—we aren't sure, for instance, whether it is ever okay to lie or to break a deathbed promise.

But there is another kind of doubt, one that can undermine all of our confidence in morality. This sort of puzzlement is not about the content of morality—what it requires or allows—but about its status. The worry, specifically, is that there are no **objective moral standards**. Such standards are those that apply to everyone, even if people don't believe that they do, even if people are indifferent to them, and even if obeying them fails to satisfy anyone's desires. Moral claims are objectively true whenever they accurately tell us what these objective moral standards are or what they require of us.

Ethical relativism denies that there are any **objective moral standards**. Relativists are not entirely skeptical, though. They do believe that some moral standards are correct, and that these determine which moral claims are true and which are false. Many are true. People sometimes get it right in ethics, and they do that when their beliefs agree with the correct moral standards.

But these standards are never *objectively* correct. Rather, these standards are correct only *relative to each society*. A moral standard is correct just because a society is deeply committed to it. That means that the standards that are appropriate for some people may not be appropriate for others. There are no objective, universal moral principles that form an eternal blueprint to guide us through life. Morality is a *human construct*—we make it up—and like the law, or like standards of taste, there is no uniquely correct set of rules to follow.

Relativism says that *an act is morally acceptable just because it is allowed by the guiding ideals of the society in which it is performed, and immoral just because it is forbidden by those ideals*. People find relativism attractive for a variety of reasons. One such source comes from the idea that morality is made especially for humans.

Before humans entered the picture, there was no such thing as morality. And once our planet heats up to intolerable levels, or the big asteroid hits, our species will vanish, and morality will be extinguished along with us. Moral requirements don't apply to snakes or cockroaches or blue jays, and relativism can easily explain why—**morality is a set of rules that humans invented for their own use**; these animals lack the brainpower to create or obey such rules. On this view, **morality is made by and for human beings**.

This leads to a second attraction—**relativism provides a straightforward, scientifically respectable account of morality**. There is nothing mysterious about its decrees—**morality is a code that reflects cultural taste, nothing more (or less)**.

And this in turn leads to a third source of appeal—the **ease with which relativists can explain the possibility of moral knowledge**. For relativists, moral knowledge comes from having **your finger on the pulse of society**. That is all that's needed to know right from wrong.

Fourth, **relativism is egalitarian** in ways that many people find deeply attractive. According to relativism, we are unable to judge one culture's moral code as morally superior (or inferior) to another's, and this has seemed to many like a refreshing kind of equality in the moral sphere.

Finally, many embrace relativism because they believe that it offers strong support for a **policy of tolerance**. If each culture's moral code is neither superior nor inferior to another's, then it seems that we must tolerate cross-cultural differences, rather than insisting that we are right and they are wrong, or, as is sometimes done, backing up such insistence with force.

But this line of thinking is deeply mistaken. If a culture's deepest values support intolerance—and this is certainly the case for many, perhaps most, cultures—then for those in such a society, **being tolerant is immoral**. According to relativism, tolerance is valuable if,

but only if one's society has a deep commitment to its importance. The problem here is obvious: **tolerance is most needed just where it is valued the least.** If relativism is correct, then there is nothing morally wrong about silencing minority views or killing those who hope to expand the rights of minorities if that is what the culture stands for. Relativism is thus a very weak basis on which to support the value of tolerance.

There are other concerns. Relativism implies that a culture's fundamental moral code is **infallible**—incapable of being mistaken. Relativists believe that whatever a society holds most dear is morally right. If relativism is true, then a society's ultimate moral principles can be based on prejudice, ignorance, superficial thinking, or brainwashing, *and still be correct*. According to relativism, the origins of our basic moral beliefs are irrelevant. No matter how we came by them, the relativist claims that our ultimate moral beliefs cannot be mistaken.

But social codes are sometimes based on principles of slavery, of warlike aggression, of religious bigotry or ethnic oppression. Cultural relativism would turn these core ideals into ironclad moral duties, making cooperation with slavery, sexism, and racism the moral duty of all citizens of those societies. The **iconoclast**—the person deeply opposed to conventional wisdom—would, by definition, always be morally mistaken. And yet it seems to make sense to ask whether the basic principles of one's society are morally acceptable. If relativism is correct, however, such questioning shows that you don't really understand what morality is all about.

Relativism also has trouble accounting for moral progress in our moral beliefs. This occurs when more of them are true and, in particular, when our most fundamental beliefs change for the better. The gradual reduction in racist and sexist attitudes in the United States seems to represent this sort of moral progress, for instance. The problem for relativism is that if a society's deepest beliefs are true by definition, then they

cannot change for the better. They can change, of course. But **no such change would mark a moral improvement.**

A final problem for relativism arises when it tries to account for moral disagreement. Relativism says that *a moral judgment is true just because it correctly describes what a society really stands for.* For instance, if different societies disagree about the appropriate political status of women, then members of each society are speaking the truth when they assert (or deny) female moral equality. But they can't all be right. The statement that women are deserving of full political equality cannot be simultaneously true and false.

Relativists can escape this problem in familiar ways. They will claim that moral judgments are **true only relative to social agreements.** On this line of thinking, moral judgments are just like legal ones. It isn't contradictory to say that smoking marijuana, for instance, is both legal and illegal, so long as we qualify things to note that it is legal in some areas and illegal in others.

Relativists will say that all of our moral claims have to be understood by reference to social agreements. When you say that meat eating is right, and your Hindu friend from Calcutta says that it is wrong, what is really being said is this:

You: Meat eating is accepted by my social customs.

Your friend: Meat eating is forbidden by my social customs.

And again, both of these claims can be true. The contradiction disappears. There is no single **judgment** that is both true and false.

But then the existence of cross-cultural moral **disagreement** also disappears. If all we do when making moral judgments is to issue sociological reports about what our society stands for, then cross-cultural moral disagreement vanishes. We are no longer talking about (for example) **meat** eating, abortion, or drug use.

We are talking about how our society feels about such things.

But it doesn't seem as if that is what serious moral debate is all about. For instance, it appears possible to note that one's society approves of making wives domestic slaves and yet to disagree with the morality of that policy. **But that's not so if relativism is to escape the contradiction problem.**

So the cultural relativist faces a dilemma. If moral claims are taken literally, then relativism generates contradiction. If moral claims are instead veiled reports of cultural commitments, then contradictions disappear, but cross-cultural disagreement becomes impossible.

Indeed, the cultural relativist may be unable to escape contradiction after all. People who are members of subcultures—smaller cultural groups located within larger ones—often face a familiar problem. They are forced to choose between allegiance to the larger society and to their particular subculture. **They are members of at least two societies, and when their ethical codes conflict, these unfortunate people** are faced with contradictory moral advice.

We could solve this problem if we could figure out which society's code is more important. But relativism doesn't allow us to do that. By its lights, no society's moral code is morally any better than another's. We might be tempted to let the conflicted individuals decide and say that the social code that takes priority is the one that they prefer. But this would undermine cultural relativism, since such a move would make the morality of their actions depend on personal choice, rather than cultural opinion.

Indeed, when your views and society's views clash, why think that society is always right? If morality is created by humans, then it is hard to justify the claim that moral wisdom always lies with the masses rather than with individuals. **The majority may have the power to force the minority to do as it says. But might doesn't make right.**

C. ERROR THEORY

Did you ever have the feeling, deep down, that **morality is a sham?** That it's just a set of traditional rules inherited from ancestors who based it on ignorance, superstition, and fear? Perhaps it's only a convenient fiction, with no underlying authority at all.

The **error theory** of morality is built upon these doubts. It is defined by three essential claims:

1. There are no moral features in this world.

Nothing is morally good or bad, right or wrong, virtuous or vicious. A careful inventory of the world's contents will reveal all sorts of scientific qualities: being symmetrical, being a liquid, being two feet long, carbon-based, spherical, and so on. But the list will contain no moral features.

2. No moral judgments are true. Why not?

Simple: there is nothing for them to be true of. There are no moral facts. And so no moral claims can be accurate, since there are no moral facts for them to record.

3. Our sincere moral judgments try, and always fail, to describe the moral features of things.

Thus we always lapse into error when thinking in moral terms. We are trying to describe the moral qualities of things when we make moral judgments. But since nothing has any moral qualities, all of our **moral** claims are mistaken. Hence the error.

It follows that:

4. There is no moral knowledge. Knowledge

requires truth. If there is no moral truth, there can be no moral knowledge.

Error theorists are not launching some small-scale attack on morality. They are not criticizing our current views on, say, welfare policy or capital punishment, and trying to replace them with better ones. Rather, as they see it, **all** moral views are equally bankrupt. **There is some very deep mistake that everyone committed to morality is making.** The error theorist promises to reveal that mistake and to expose the real truth: morality is nothing but a fiction.

Moral error theorists can vindicate their view only if they can show that there is some **fatal flaw at the heart of morality. And that depends on what the fundamental error of morality is supposed to be.** In principle, we can develop any number of error theories, depending on which basic error morality is supposed to commit. But in practice, there really has been only one candidate.

All error theorists have agreed that the core mistake that undermines morality is its assumption **that there are objective moral standards that supply each of us with categorical reasons—reasons that apply to us regardless of whether acting on them will get us what we want.** If this central assumption is mistaken, then the entire enterprise of morality is bankrupt.

There are two substantial points that error theorists must convince us of. First, they must show that buying into morality really does assume a commitment to **moral objectivity** and **categorical reasons.** That will be news to many—to relativists, for instance. If morality does not, in fact, rely on these assumptions, then the error theorist's criticisms will fail.

But suppose that the coherence of our moral thinking and practice does indeed depend on the twin assumptions that morality is objective and that it provides us with categorical reasons. This reveals the second point that error theorists must convince us of: **they must show that at least one of these assumptions is false.**

Perhaps they can do that. Though we can't consider all of the arguments that have been offered against the objectivity of moral standards, we do have time to examine the strongest of them.

One classic argument against moral objectivity takes its cue from a simple observation: **there is a lot more disagreement in ethics than there is in science.** And there is a ready explanation for this. Scientists are trying to understand the nature of objective reality, whereas in ethics, there is no objective reality to be discovered. When it comes to morality, we are merely

expressing our personal opinions, ones that have been obviously shaped by the time and place in which we've been raised. **Different upbringings, different moral outlooks.** But scientists the world over can agree on a wide set of truths, no matter their religious or cultural backgrounds.

This line of thought is nicely summarized by

The Argument from Disagreement

1. **If well-informed, open-minded, rational people persistently disagree about some claim, then that claim is not objectively true.**
2. Well-informed, open-minded, rational people persistently disagree about all moral claims.
3. Therefore, no moral claim is objectively true.

Perhaps premise 2 is too strong. Maybe there are some moral claims that every smart, rational, open-minded person accepts. But without a lot more investigation, it would be premature to assume that this is so.

What is clearly true is that for any moral claim—even one you find to be simply obvious—there will always be someone else who thinks that **it is false.** But that doesn't show that premise 2 is true, since such people may not be well informed, or open-minded, or rational.

Indeed, moral disagreement might well be **a product of sloppy reasoning, of mistaken non-moral beliefs, of having a personal stake in the outcome, or of a general prejudice.** What if we were able to correct for these sources of error? Imagine people who were absolutely on top of *all* of the details, say, of affirmative action policies, who were free of personal bias and other prejudices, and who were able to reason flawlessly. Perhaps they'd all agree about whether affirmative action is morally acceptable.

Perhaps. But I share the skeptic's concerns here and am not sure that even perfectly ideal reasoners would agree about every moral issue. So let's accept, at least for the moment, that premise 2 is true. What of premise 1?

That premise must be false. There are counterexamples galore. Brilliant physicists disagree about whether the fundamental elements of matter are subatomic strings; eminent archaeologists disagree about how to interpret the remains discovered at ancient sites; the finest philosophers continue to debate whether God exists. And yet there are objective truths in each area. There are objective truths about the fundamental nature of the physical world, about the nature of various prehistoric tribes, about whether there is or isn't a God. Gaining knowledge of these truths can be hard, and perhaps, in some cases, impossible. But our beliefs on these matters must answer to an objective reality. Our views don't make physical or archaeological or philosophical claims true; the facts are what they are, independently of what we think of them.

There is another reason to doubt premise 1: this premise is itself the subject of deep disagreement. Really smart people still argue about whether it is true. And so, if such disagreement is enough to undermine objective truth, then the premise, by its own lights, can't be objectively true! And it certainly isn't "relatively" true—that is, true just because I, or my society, believe in it. The premise, then, is false.

So deep disagreement, even among the best minds, is not enough to show that skepticism in an area is correct. As a result, the many disagreements we see in ethics are perfectly compatible with its objectivity.

Another classic argument against the objectivity of morality stems from this thought: morality is a sham if God does not exist. The idea seems to be this: the only way morality could rest on solid foundations is by being authored by God.

Some **atheists**—those who believe that God does not exist—have taken up this line of thinking and turned it into the following:

The Argument from Atheism

1. Morality can be objective only if God exists.

2. God does not exist.

3. Therefore, morality cannot be objective.

I'm going to make things much easier on myself by leaving that second premise alone. If it's false, and God exists, then the argument crumbles. But let's just assume for now that there is no God. Then what?

Well, if premise 1 is true, and objective morality really does depend on God, then morality isn't objective after all. Many people think that 1 is true. They reason as follows. Moral laws, like other laws, must have an author. But if the laws are objective, then (by definition) no human being can be their author. So who is? Three guesses.

This reasoning has always been very popular. But it is mistaken. It rests on this key assumption: *laws require lawmakers*. Suppose this assumption is true. It then follows that objective laws need lawmakers, too. But human beings cannot play this role, since objective truths are true independently of human opinion. That leaves only God to do the work.

But if atheism is true, then the crucial assumption is false. Laws would not require lawmakers. Atheists believe that there are objective laws—of logic, physics, genetics, statistics, and so on. And yet if God does not exist, these laws have no author. We discovered these laws. We invented the words to describe the laws. But they are not true because we believe them to be. Their truth is objective, not subjective. If atheists are correct, no one authored such laws.

Thus if atheism is true, objective laws do not require lawmakers. So, for all we know, objective moral laws do not require a lawmaker, either.

Atheists might say, though, that *moral* laws require lawmakers, even though other laws do not. But why single out morality like that? Until atheists can provide an explanation for holding moral laws to a different standard from other objective laws, they are best advised to allow that moral laws do not require an author, either.

The Argument from Atheism is thus unconvincing. It will obviously do nothing to convince

religious believers, since it just assumes (in premise 2) that they are wrong. But even if atheists are correct, and God does not exist, premise 1 is highly doubtful, because its best support is flawed. That support comes from the assumption that laws require lawmakers—an assumption that atheists themselves should not accept.

A third worry about objective morality is based on the idea that science is our exclusive **path to understanding reality**. And scientists never have to include moral features in their explanations of molecular structure, biological adaptations, heat transfer—or anything else. We no longer believe in ghosts or leprechauns because science cannot confirm their existence. Perhaps we should do the same with objective moral standards.

We can summarize this line of thinking in

The Argument from the Scientific Test of Reality

1. If science cannot verify the existence of X, then the best evidence tells us that X does not exist.
2. Science cannot verify the existence of objective moral standards.
3. Therefore, the best evidence tells us that objective moral standards do not exist.

This argument reflects a basic commitment to the idea that the supernatural does not exist, and that everything in the world can ultimately be explained by science. Since scientific investigation does not tell us whether actions are moral or immoral, good or evil, this seems to leave objective morality out in the cold.

Although there is a lot of controversy in philosophical circles about premise 2, I find it very plausible. Science tells us how things are. Science does not tell us how things ought to be. Science describes; morality prescribes. I just don't see how science could verify the existence of objective moral standards. I may be wrong about this, of course, but if I am, then this argument collapses right away: premise 2 would

be false. But let's assume for now that premise 2 is secure.

What of premise 1? Is science the exclusive measure of reality? I have my doubts. Science has its limits. It is out of its depth when trying to tell us about our ultimate purpose, the basic goals we ought to aim for, the fundamental standards we should live by. Science can tell us a lot. But it can't tell us everything.

There is some reason to deny that science really **does** have the final word on *everything*. Consider this:

(T) A claim is true only if science can verify it.

(T) can't be true. For science cannot verify it. (T) is not a scientific statement. We cannot test its truth by analyzing what we see, hear, taste, feel, or smell. We cannot mathematically test it. There are no lab experiments that will confirm it.

Since (T) is false, it follows that **there are some truths that science cannot confirm**. Perhaps moral ones are among them.

Now consider this principle:

(B) You are justified in believing a claim only if science can confirm it.

(B) is also problematic, since science cannot confirm it. Only philosophy can do that. If we take (B) at face value, then by its own lights we cannot be justified in thinking that it is true. So we are not justified in thinking that science is the source of *all* truths.

This line of reply does not prove that **objective moral values exist**. But if successful, it does show that science cannot have the final say about everything. This means that at least some non-scientific claims are true, and perhaps highly credible. Moral claims may be among them.

Even if these arguments against objective morality fail, error theorists have a final argument that might do the trick. The argument relies on the familiar thought that all moral duties **come prepackaged** with a special power. They automatically supply people with reasons

to obey them. And it doesn't matter what we care about. If it's really your duty to repay that loan or help your aged grandparents, then you've got an excellent reason to do so—even if doing these things fulfills none of your desires.

That's unusual. My reasons for writing this book, using my treadmill, or listening to music all depend on what matters to me. Most reasons are like this. The reasons that come from morality, however, are categorical. They apply to us regardless of what we care about.

Many philosophers cannot see how categorical reasons are possible. Their puzzlement has given rise to a powerful argument against the objectivity of morality:

The Argument from Categorical Reasons

1. If there are objective moral duties, then there are categorical reasons to obey them.
2. There are no categorical reasons.
3. Therefore, there are no objective moral duties.

This argument has convinced some very smart philosophers. And they may be right to be convinced. But there are two lines of response, each of which has been taken up by a large number of other philosophers. Since the argument is logically perfect, those who believe in objective morality will have to reject either the first premise or the second.

The first strategy is to challenge premise

1. **This approach denies that objective moral duties must supply us with reasons for action.** It may be that some people have no reason to do what morality requires of them. Whether there are objective moral standards is one thing; whether they supply us with reasons to obey them is another. The answer to the first question may be *yes*, even if the answer to the second is a disappointing *no*. If this line of thinking is right, then we will have to abandon the age-old hope of showing that everyone has reason to be moral.

The second strategy stands by premise 1, but rejects premise 2. On such a view, objective

moral duties really exist, and they really do provide categorical reasons. There are reasons to behave morally, even if that good behavior doesn't get us what we want.

We can support such a view by appealing to compelling examples. Suppose you are hiking along a cliff path and notice a stranger who is absent-mindedly walking from the opposite direction. You see that he's about to take a wrong step and plunge to his death. There is a reason to yell to him and alert him of the danger. And that reason applies to you even if you don't care a bit about the man or about the pats on the back you'll receive when the story gets out. There is something to be said on behalf of your warning him, **something that favors it**, that justifies it, that makes it a legitimate thing to do. These are just different ways of saying the same thing: there is an excellent reason for you to save that stranger's life, **even** if doing so won't get you anything you care about.

I don't pretend that my analysis of this argument, or the earlier ones against objective morality, is conclusive. Philosophers have devoted thousands of pages to these arguments, and it would be arrogant to suppose that I could settle these matters in so short a span. Still, I do hope to have shown that things are more complicated here than one might have thought, and that anyone tempted to skepticism about morality will have to do *a lot* more work in order to justify their doubts.

D. CONCLUSION

There are many sources of concern about whether **morality** is all it's cracked up to be. These are not superficial worries, to the effect that one or another of our moral views may be mistaken, or that we are bound to make moral mistakes every now and then. The skeptical doubts discussed in this chapter go to the heart of the moral enterprise.

If ethical egoism is correct, then the story that we tell each other about what morality requires of us is all wrong. This form of egoism dictates that morality is all about the pursuit of

self-interest. Perhaps the strongest argument for this view depends on the truth of **psychological egoism**, which poses its own threat to morality. If we cannot be **altruistic**, then we can't be required to be. But as we have seen, though psychological egoism can seem like the cynical truth about human motivation, the arguments offered in its support are quite weak.

Relativists direct their criticism to the thought that **morality could be objective**. As they see it, morality is a human creation, possessed of the same status as the law or etiquette. But the arguments for relativism are, in the end, less impressive than they have been taken to be, and there are some quite serious problems that emerge if we assume that relativism is true.

Error theorists **regard morality as a convenient fiction**. But the strongest of the critical arguments that target objective morality and categorical reasons are, at best, inconclusive, as there are **plausible replies to each of those criticisms**. This does not guarantee that morality is in good order. But our discussion has shown that skepticism about morality should not be our default position. Any such skepticism must be earned by providing a *very* compelling argument. It's not yet clear whether any such argument exists.

ESSENTIAL CONCEPTS

Altruism: the motivation to benefit others for their own sake.

Atheists: those who believe that God does not exist.

Begging the question: assuming the truth of the conclusion that one's argument is meant to support.

Categorical reasons: reasons that apply to us regardless of whether acting on them will get us what we want.

Error theory: the view that says that (1) there are no moral **features** in this world; (2) no **moral judgments are true**; (3) our sincere moral judgments try, and always fail, to describe the moral features of things; and, as a result, (4) there is no moral knowledge.

Ethical egoism: the ethical theory that says that an action is morally right if and only if it maximizes one's self-interest.

Iconoclast: a person whose views are deeply opposed to conventional wisdom.

Infallible: incapable of making a mistake.

Objective moral standards: those that apply to everyone, even if people don't believe that they do, even if people are indifferent to them, and even if obeying them fails to satisfy anyone's desires.

Psychological egoism: the psychological theory that says that the ultimate motivation behind every human action is the pursuit of self-interest.

Relativism: the view that there are no objective moral standards, and that all correct moral standards hold only relative to each person or each society.

DISCUSSION QUESTIONS

1. How do psychological egoists explain extreme acts of self-sacrifice, such as falling on a grenade for one's fellow soldiers? Do you find their explanation of such phenomena compelling?
2. Suppose that people always do what they most want to do. Is that enough to show that psychological egoism is true? Why or why not?
3. If someone expects to benefit from an action, does that show that she is trying to advance her self-interest? Why or why not?
4. Can ethical relativism make sense of the idea of moral progress? Does moral progress really exist?
5. Can actions be performed in more than one society at a time? If so, and if relativism is true, how might this lead to contradiction? Can relativists escape this problem? Why or why not?
6. What do error theorists typically claim is the "error" at the heart of our moral practice? Is the assumption that they identify really essential to our moral thought? If so, do you agree that it is an error?

7. What is the best explanation of the existence of widespread disagreement in ethics? Does the existence of disagreement suggest a lack of objective moral truth?
8. If ethics is not a science, and moral facts are fundamentally different from scientific ones, would this threaten the objectivity of morality? If so, how?
9. A character in Dostoevsky's *The Brothers Karamazov* said that "if God is dead, then everything is permitted." Do you find such a claim plausible or implausible? What reasons support your view?
10. What are categorical reasons? Do any categorical reasons exist? If not, does this undermine the claim that morality is objective?

READINGS

Trying Out One's New Sword

Mary Midgley

Mary Midgley focuses on a claim she calls *moral isolationism*—the view that we are unable to adequately understand other cultures, and so must suspend judgment about their merits or flaws. Many accept moral isolationism because they value tolerance and respect for other cultures, and think that the only way to justify these attitudes is by embracing isolationism. Midgley, however, thinks that such a position is not only unattractive but incoherent.

One cannot respect what one does not understand. If other cultures really were opaque to us, we would not be in a position to respect or tolerate them. Indeed, we are sometimes rightly in a position to praise other cultures, which requires understanding. But it is deeply implausible to suppose that we can correctly praise them without also being able to correctly condemn them. This is not a chauvinistic view; members of other cultures can sometimes see the shortcomings (as well as the benefits) of our own culture, too. The accuracy of their judgments, and the chance that we might learn from them to improve ourselves, depends on the falsity of moral isolationism. Indeed, says Midgley, the ability to judge *our own culture* depends on our understanding other cultures—they provide a framework of comparison that enables us to see what is better elsewhere, and what is worse, and so what needs improvement here, as well as what is worth preserving.

All of us are, more or less, in trouble today about trying to understand cultures strange to us. We hear constantly of alien customs. We see changes in

From Mary Midgley, *Heart and Mind* (St. Martin's Press, 1981), pp. 160–165.

our lifetime which would have astonished our parents. I want to discuss here one very short way of dealing with this difficulty, a drastic way which many people now theoretically favour. It consists in simply denying that we can ever understand any culture except our own well enough to make

judgements about it. Those who recommend this hold that the world is sharply divided into separate societies, sealed units, each with its own system of thought. They feel that the respect and tolerance due from one system to another forbids us ever to take up a critical position to any other culture. Moral judgement, they suggest, is a kind of coinage valid only in its country of origin.

I shall call this position "moral isolationism." I shall suggest that it is certainly not forced upon us, and indeed that it makes no sense at all. People usually take it up because they think it is a respectful attitude to other cultures. In fact, however, it is not respectful. Nobody can respect what is entirely unintelligible to them. To respect someone, we have to know enough about him to make a *favorable* judgement, however general and tentative. And we do understand people in other cultures to this extent. Otherwise a great mass of our most valuable thinking would be paralysed.

To show this, I shall take a remote example, because we shall probably find it easier to think calmly about it than we should with a contemporary one, such as female circumcision in Africa or the Chinese Cultural Revolution. The principles involved will still be the same. My example is this. There is, it seems, a verb in classical Japanese which means "to try out one's new sword on a chance wayfarer." (The word is *tsujigiri*, literally 'crossroads-cut'.) A samurai sword had to be tried out because, if it was to work properly, it had to slice through someone at a single blow, from the shoulder to the opposite flank. Otherwise, the warrior bungled his stroke. This could injure his honour, offend his ancestors, and even let down his emperor. So tests were needed, and wayfarers had to be expended. Any wayfarer would do—provided, of course, that he was not another Samurai. Scientists will recognize a familiar problem about the rights of experimental subjects.

Now when we hear of a custom like this, we may well reflect that we simply do not understand it; and therefore are not qualified to criticize it at all, because we are not members of that culture. But we are not members of any other culture either, except our own. So we extend the principle to cover all extraneous cultures, and we seem therefore to be moral isolationists. But this is, as we shall see, an impossible position. Let us ask what it would involve.

We must ask first: Does the isolating barrier work both ways? Are people in other cultures equally unable to criticize *us*? This question struck me sharply when I read a remark in *The Guardian* by an anthropologist about a South American Indian who had been taken into a Brazilian town for an operation, which saved his life. When he came back to his village, he made several highly critical remarks about the white Brazilians' way of life. They may very well have been justified. But the interesting point was that the anthropologist called these remarks "a damning indictment of Western civilization." Now the Indian had been in that town about two weeks. Was he in a position to deliver a damning indictment? Would we ourselves be qualified to deliver such an indictment on the Samurai, provided we could spend two weeks in ancient Japan? What do we really think about this?

My own impression is that we believe that outsiders can, in principle, deliver perfectly good indictments—only, it usually takes more than two weeks to make them damning. Understanding has degrees. It is not a slapdash yes-or-no matter. Intelligent outsiders can progress in it, and in some ways will be at an advantage over the locals. But if this is so, it must clearly apply to ourselves as much as anybody else.

Our next question is this: Does the isolating barrier between cultures block praise as well as blame? If I want to say that the Samurai culture has many virtues, or to praise the South American Indians, am I prevented from doing *that* by my outside status? Now, we certainly do need to praise other societies in this way. But it is hardly possible that we could praise them effectively if we could not, in principle, criticize them. Our praise would be worthless if it rested on definite grounds, if it did not flow from some understanding. Certainly we may need to praise things which we do not *fully* understand. We say "there's something very good here, but I can't quite make out what it is yet." This happens when we want to learn from strangers. And we can learn from strangers. But to do this we have to distinguish between those strangers who are worth learning from and those who are not. Can we then judge which is which?

This brings us to our third question: What is involved in judging? Now plainly there is no question here of sitting on a bench in a red robe and

sentencing people. Judging simply means forming an opinion, and expressing it if it is called for. Is there anything wrong about this? Naturally, we ought to avoid forming—and expressing—*crude* opinions, like that of a simple-minded missionary, who might dismiss the whole Samurai culture as entirely bad, because non-Christian. But this is a different objection. The trouble with crude opinions is that they are crude, whoever forms them, not that they are formed by the wrong people. Anthropologists, after all, are outsiders quite as much as missionaries. Moral isolationism forbids us to form *any* opinions on these matters. Its ground for doing so is that we don't understand them. But there is much that we don't understand in our own culture too. This brings us to our last question: If we can't judge other cultures, can we really judge our own? Our efforts to do so will be much damaged if we are really deprived of our opinions about other societies, because these provide the range of comparison, the spectrum of alternatives against which we set what we want to understand. We would have to stop using the mirror which anthropology so helpfully holds up to us.

In short, moral isolationism would lay down a general ban on moral reasoning. Essentially, this is the programme of immorality, and it carries a distressing logical difficulty. Immoralists like Nietzsche are actually just a rather specialized sect of moralists. They can no more afford to put moralizing out of business than smugglers can afford to abolish customs regulations. The power of moral judgement is, in fact, not a luxury, not a perverse indulgence of the self-righteous. It is a necessity. When we judge something to be bad or good, better or worse than something else, we are taking it as an example to aim at or avoid. Without opinions of this sort, we would have no framework of comparison for our own policy, no chance of profiting by other people's insights or mistakes. In this vacuum, we could form no judgements on our own actions.

Now it would be odd if Homo sapiens had really got himself into a position as bad as this—a position where his main evolutionary asset, his brain, was so little use to him. None of us is going to accept this sceptical diagnosis. We cannot do so, because our involvement in moral isolationism does not flow

from apathy, but from a rather acute concern about human hypocrisy and other forms of wickedness. But we polarize that concern around a few selected moral truths. We are rightly angry with those who despise, oppress or steamroll other cultures. We think that doing these things is actually *wrong*. But this is itself a moral judgement. We could not condemn oppression and insolence if we thought that all our condemnations were just a trivial local quirk of our own culture. We could still less do it if we tried to stop judging altogether.

Real moral scepticism, in fact, could lead only to inaction, to our losing all interest in moral questions, most of all in those which concern other societies. When we discuss these things, it becomes instantly clear how far we are from doing this. Suppose, for instance, that I criticize the bisecting Samurai, that I say his behaviour is brutal. What will usually happen next is that someone will protest, will say that I have no right to make criticisms like that of another culture. But it is more unlikely that he will use this move to end the discussion of the subject. Instead, he will justify the Samurai. He will try to fill in the background, to make me understand the custom, by explaining the exalted ideals of discipline and devotion which produced it. He will probably talk of the lower value which the ancient Japanese placed on individual life generally. He may well suggest that this is a healthier attitude than our own obsession with security. He may add, too, that the wayfarers did not seriously mind being bisected, that in principle they accepted the whole arrangement.

Now an objector who talks like this is implying that it is possible to understand alien customs. That is just what he is trying to make me do. And he implies, too, that if I do succeed in understanding them, I shall do something better than giving up judging them. He expects me to change my present judgement to a truer one—namely, one that is favourable. And the standards I must use to do this cannot just be Samurai standards. They have to be ones current in my own culture. Ideals like discipline and devotion will not move anybody unless he himself accepts them. As it happens, neither discipline nor devotion is very popular in the West at present. Anyone who appeals to them may well

have to do some more arguing to make *them* acceptable, before he can use them to explain the Samurai. But if he does succeed here, he will have persuaded us, not just that there was something to be said for them in ancient Japan, but that there would be here as well.

Isolating barriers simply cannot arise here. If we accept something as a serious moral truth about one culture, we can't refuse to apply it—in however different an outward form—to other cultures as well, wherever circumstances admit it. If we refuse to do this, we just are not taking the other culture seriously. This becomes clear if we look at the last argument used by my objector—that of justification by consent of the victim. It is suggested that sudden bisection is quite in order, *provided* that it takes place between consenting adults. I cannot now discuss how conclusive this justification is. What I am pointing out is simply that it can only work if we believe that *consent* can make such a transaction respectable—and this is a thoroughly modern and Western idea. It would probably never occur to a Samurai; if it did, it would surprise him very much. It is *our* standard. In applying it, too, we are likely to make another typically Western demand. We shall ask for good factual evidence that the wayfarers actually do have this rather surprising taste—that they are really willing to be bisected. In applying Western standards in this way, we are not being confused or irrelevant. We are asking the questions which arise *from where we stand*, questions which we can see the sense of. We do this because asking questions which you can't see the sense of is humbug. Certainly we can extend our questioning by imaginative effort. We can come to understand other societies better. By doing so, we may make their questions our own, or we may see that they are really forms of the questions which we are asking already. This is not impossible. It is just very hard work. The obstacles which often prevent it are simply those of ordinary ignorance, laziness and prejudice.

If there were really an isolating barrier, of course, our own culture could never have been formed. It is no sealed box, but a fertile jungle of different influences—Greek, Jewish, Roman, Norse, Celtic and so forth, into which further influences

are still pouring—American, Indian, Japanese, Jamaican, you name it. The moral isolationist's picture of separate, unmixable cultures is quite unreal. People who talk about British history usually stress the value of this fertilizing mix, no doubt rightly. But this is not just an odd fact about Britain. Except for the very smallest and most remote, all cultures are formed out of many streams. All have the problem of digesting and assimilating things which, at the start, they do not understand. All have the choice of learning something from this challenge, or, alternatively, of refusing to learn, and fighting it mindlessly instead.

This universal predicament has been obscured by the fact that anthropologists used to concentrate largely on very small and remote cultures, which did not seem to have this problem. These tiny societies, which had often forgotten their own history, made neat, self-contained subjects for study. No doubt it was valuable to emphasize their remoteness, their extreme strangeness, their independence of our cultural tradition. This emphasis was, I think, the root of moral isolationism. But, as the tribal studies themselves showed, even there the anthropologists were able to interpret what they saw and make judgements—often favourable—about the tribesmen. And the tribesmen, too, were quite equal to making judgements about the anthropologists—and about the tourists and Coca-Cola salesmen who followed them. Both sets of judgements, no doubt, were somewhat hasty, both have been refined in the light of further experience. A similar transaction between us and the Samurai might take even longer. But that is no reason at all for deeming it impossible. Morally as well as physically, there is only one world, and we all have to live in it.

Mary Midgley: Trying Out One's New Sword

1. What is the point that Midgley is trying to illustrate with the example of the samurai? How plausible do you think that point is?
2. Does the value of tolerance depend on moral isolationism? Why or why not?
3. Suppose a society is itself deeply intolerant—of other societies, or of certain minorities within its borders. Do we have resources

- to criticize that society? Does it make a difference whether that society is our own, or another?
4. Midgley claims that if we are able to rightly praise other societies, then we must also be able to rightly criticize their shortcomings. Do you accept this claim? Why or why not?

5. Many believe that tolerance can be supported only if we judge the practices of all societies as morally on a par with one another—if we thought that some social practices were better than others, then we would have to abandon tolerance. What do you think of this line of reasoning?

The Subjectivity of Values

J. L. Mackie

J. L. Mackie (1917–1981), who taught for many years at Oxford University, regarded all ethical views as bankrupt. In this excerpt from his book *Ethics: Inventing Right and Wrong* (1977), Mackie outlines the basic ideas and the central motivating arguments for his *error theory*—the view that all positive moral claims are mistaken. All moral talk, as Mackie sees it, is based on a false assumption: that there are objective moral values. This fundamental error infects the entire system of morality. The foundations are corrupt, and so the entire moral edifice must come tumbling down.

Mackie offers a number of important arguments to substantiate his critique of morality. The argument from relativity claims that the extent of moral disagreement is best explained by the claim that there are no objective values. The argument from queerness contends that objective moral values would be objectionably different from any other kind of thing in the universe, possessed of strange powers that are best rejected. Mackie concludes with his account of why so many people, for so long, have fallen into error by succumbing to the temptation to think of morality as objective.

MORAL SCEPTICISM

There are no objective values. This is a bald statement of the thesis of this chapter, but before arguing for it I shall try to clarify and restrict it in ways that may meet some objections and prevent some misunderstanding. . . .

The claim that values are not objective, are not part of the fabric of the world, is meant to include

Approximately two thousand five hundred (2,500) words from *Ethics: Inventing Right and Wrong* by J. L. Mackie (Penguin Books, 1990). Copyright © J. L. Mackie, 1977.

not only moral goodness, which might be most naturally equated with moral value, but also other things that could be more loosely called moral values or disvalues—rightness and wrongness, duty, obligation, an action's being rotten and contemptible, and so on. It also includes non-moral values, notably aesthetic ones, beauty and various kinds of artistic merit. I shall not discuss these explicitly, but clearly much the same considerations apply to aesthetic and to moral values, and there would be at least some initial implausibility in a view that gave the one a different status from the other. . . .

The claim to objectivity, however ingrained in our language and thought, is not self-validating. It can and should be questioned. But the denial of objective values will have to be put forward not as the result of an analytic approach, but as an 'error theory,' a theory that although most people in making moral judgements implicitly claim, among other things, to be pointing to something objectively prescriptive, these claims are all false. It is this that makes the name 'moral scepticism' appropriate.

But since this is an error theory, since it goes against assumptions ingrained in our thought and built into some of the ways in which language is used, since it conflicts with what is sometimes called common sense, it needs very solid support. It is not something we can accept lightly or casually and then quietly pass on. If we are to adopt this view, we must argue explicitly for it. Traditionally it has been supported by arguments of two main kinds, which I shall call the argument from relativity and the argument from queerness. . . .

THE ARGUMENT FROM RELATIVITY

The argument from relativity has as its premiss the well-known variation in moral codes from one society to another and from one period to another, and also the differences in moral beliefs between different groups and classes within a complex community. Such variation is in itself merely a truth of descriptive morality, a fact of anthropology which entails neither first order nor second order ethical views. Yet it may indirectly support second order subjectivism: radical differences between first order moral judgements make it difficult to treat those judgements as apprehensions of objective truths. But it is not the mere occurrence of disagreements that tells against the objectivity of values. Disagreement on questions in history or biology or cosmology does not show that there are no objective issues in these fields for investigators to disagree about. But such scientific disagreement results from speculative inferences or explanatory hypotheses based on inadequate evidence, and it is hardly plausible to interpret moral disagreement in the same way. Disagreement about moral codes seems to reflect people's adherence to and participation in different ways of life. The causal connection

seems to be mainly that way round: it is that people approve of monogamy because they participate in a monogamous way of life rather than that they participate in a monogamous way of life because they approve of monogamy. Of course, the standards may be an idealization of the way of life from which they arise: the monogamy in which people participate may be less complete, less rigid, than that of which it leads them to approve. This is not to say that moral judgements are purely conventional. Of course there have been and are moral heretics and moral reformers, people who have turned against the established rules and practices of their own communities for moral reasons, and often for moral reasons that we would endorse. But this can usually be understood as the extension, in ways which, though new and unconventional, seemed to them to be required for consistency, of rules to which they already adhered as arising out of an existing way of life. In short, the argument from relativity has some force simply because the actual variations in the moral codes are more readily explained by the hypothesis that they reflect ways of life than by the hypothesis that they express perceptions, most of them seriously inadequate and badly distorted, of objective values.

But there is a well-known counter to this argument from relativity, namely to say that the items for which objective validity is in the first place to be claimed are not specific moral rules or codes but very general basic principles which are recognized at least implicitly to some extent in all society—such principles as provide the foundations of what Sidgwick has called different methods of ethics: the principle of universalizability, perhaps, or the rule that one ought to conform to the specific rules of any way of life in which one takes part, from which one profits, and on which one relies, or some utilitarian principle of doing what tends, or seems likely, to promote the general happiness. It is easy to show that such general principles, married with differing concrete circumstances, different existing social patterns or different preferences, will beget different specific moral rules; and there is some plausibility in the claim that the specific rules thus generated will vary from community to community or from

group to group in close agreement with the actual variations in accepted codes.

The argument from relativity can be only partly countered in this way. To take this line the moral objectivist has to say that it is only in these principles that the objective moral character attaches immediately to its descriptively specified ground or subject: other moral judgements are objectively valid or true, but only derivatively and contingently—if things had been otherwise, quite different sorts of actions would have been right. And despite the prominence in recent philosophical ethics of universalization, utilitarian principles, and the like, these are very far from constituting the whole of what is actually affirmed as basic in ordinary moral thought. Much of this is concerned rather with what Hare calls ‘ideals’ or, less kindly, ‘fanaticism.’ That is, people judge that some things are good or right, and others are bad or wrong, not because—or at any rate not only because—they exemplify some general principle for which widespread implicit acceptance could be claimed, but because something about those things arouses certain responses immediately in them, though they would arouse radically and irresolvably different responses in others. ‘Moral sense’ or ‘intuition’ is an initially more plausible description of what supplies many of our basic moral judgements than ‘reason.’ With regard to all these starting points of moral thinking the argument from relativity remains in full force.

THE ARGUMENT FROM QUEERNESS

Even more important, however, and certainly more generally applicable, is the argument from queerness. This has two parts, one metaphysical, the other epistemological. If there were objective values, then they would be entities or qualities or relations of a very strange sort, utterly different from anything else in the universe. Correspondingly, if we were aware of them, it would have to be by some special faculty of moral perception or intuition, utterly different from our ordinary ways of knowing everything else. These points were recognized by Moore when he spoke of non-natural qualities, and by the intuitionists in their talk about a ‘faculty of moral intuition.’ Intuitionism has long been out of favour, and it is indeed easy

to point out its implausibilities. What is not so often stressed, but is more important, is that the central thesis of intuitionism is one to which any objectivist view of values is in the end committed: intuitionism merely makes unpalatably plain what other forms of objectivism wrap up. Of course the suggestion that moral judgements are made or moral problems solved by just sitting down and having an ethical intuition is a travesty of actual moral thinking. But, however complex the real process, it will require (if it is to yield authoritatively prescriptive conclusions) some input of this distinctive sort, either premisses or forms of argument or both. When we ask the awkward question, how we can be aware of this authoritative prescriptivity, of the truth of these distinctively ethical premisses or of the cogency of this distinctively ethical pattern of reasoning, none of our ordinary accounts of sensory perception or introspection or the framing and confirming of explanatory hypotheses or inference or logical construction or conceptual analysis, or any combination of these, will provide a satisfactory answer; ‘a special sort of intuition’ is a lame answer, but it is the one to which the clear-headed objectivist is compelled to resort.

Indeed, the best move for the moral objectivist is not to evade this issue, but to look for companions in guilt. For example, Richard Price argues that it is not moral knowledge alone that such an empiricism as those of Locke and Hume is unable to account for, but also our knowledge and even our ideas of essence, number, identity, diversity, solidity, inertia, substance, the necessary existence and infinite extension of time and space, necessity and possibility in general, power, and causation. If the understanding, which Price defines as the faculty within us that discerns truth, is also a source of new simple ideas of so many other sorts, may it not also be a power of immediately perceiving right and wrong, which yet are real characters of actions?

This is an important counter to the argument from queerness. The only adequate reply to it would be to show how, on empiricist foundations, we can construct an account of the ideas and beliefs and knowledge that we have of all these matters. I cannot even begin to do that here, though I have undertaken some parts of the task elsewhere.

I can only state my belief that satisfactory accounts of most of these can be given in empirical terms. If some supposed metaphysical necessities or essences resist such treatment, then they too should be included, along with objective values, among the targets of the argument from queerness.

This queerness does not consist simply in the fact that ethical statements are 'unverifiable.' Although logical positivism with its verifiability theory of descriptive meaning gave an impetus to non-cognitive accounts of ethics, it is not only logical positivists but also empiricists of a much more liberal sort who should find objective values hard to accommodate. Indeed, I would not only reject the verifiability principle but also deny the conclusion commonly drawn from it, that moral judgements lack descriptive meaning. The assertion that there are objective values or intrinsically prescriptive entities or features of some kind, which ordinary moral judgements presuppose, is, I hold, not meaningless but false.

Plato's Forms give a dramatic picture of what objective values would have to be. The Form of the Good is such that knowledge of it provides the knower with both a direction and an overriding motive; something's being good both tells the person who knows this to pursue it and makes him pursue it. An objective good would be sought by anyone who was acquainted with it, not because of any contingent fact that this person, or every person, is so constituted that he desires this end, but just because the end has to-be-pursuedness somehow built into it. Similarly, if there were objective principles of right and wrong, any wrong (possible) course of action would have not-to-be-doneness somehow built into it. Or we should have something like Clarke's necessary relations of fitness between situations and actions, so that a situation would have a demand for such-and-such an action somehow built into it.

The need for an argument of this sort can be brought out by reflection on Hume's argument that 'reason'—in which at this stage he includes all sorts of knowing as well as reasoning—can never be an 'influencing motive of the will.' Someone might object that Hume has argued unfairly from the lack of influencing power (not contingent upon desires)

in ordinary objects of knowledge and ordinary reasoning, and might maintain that values differ from natural objects precisely in their power, when known, automatically to influence the will. To this Hume could, and would need to, reply that this objection involves the postulating of value-entities or value-features of quite a different order from anything else with which we are acquainted, and of a corresponding faculty with which to detect them. That is, he would have to supplement his explicit argument with what I have called the argument from queerness.

Another way of bringing out this queerness is to ask, about anything that is supposed to have some objective moral quality, how this is linked with its natural features. What is the connection between the natural fact that an action is a piece of deliberate cruelty—say, causing pain just for fun—and the moral fact that it is wrong? It cannot be an entailment, a logical or semantic necessity. Yet it is not merely that the two features occur together. The wrongness must somehow be 'consequential' or 'supervenient'; it is wrong because it is a piece of deliberate cruelty. But just what *in the world* is signified by this 'because'? And how do we know the relation that it signifies, if this is something more than such actions being socially condemned, and condemned by us too, perhaps through our having absorbed attitudes from our social environment? It is not even sufficient to postulate a faculty which 'sees' the wrongness: something must be postulated which can see at once the natural features that constitute the cruelty, and the wrongness, and the mysterious consequential link between the two. Alternatively, the intuition required might be the perception that wrongness is a higher order property belonging to certain natural properties; but what is this belonging of properties to other properties, and how can we discern it? How much simpler and more comprehensible the situation would be if we could replace the moral quality with some sort of subjective response which could be causally related to the detection of the natural features on which the supposed quality is said to be consequential.

It may be thought that the argument from queerness is given an unfair start if we thus relate it to what are admittedly among the wilder products of

philosophical fancy—Platonic Forms, non-natural qualities, self-evident relations of fitness, faculties of intuition, and the like. Is it equally forceful if applied to the terms in which everyday moral judgements are more likely to be expressed—though still, as has been argued in the original work, with a claim to objectivity—‘you must do this,’ ‘you can’t do that,’ ‘obligation,’ ‘unjust,’ ‘rotten,’ ‘disgraceful,’ ‘mean,’ or talk about good reasons for or against possible actions? Admittedly not; but that is because the objective prescriptivity, the element a claim for whose authoritativeness is embedded in ordinary moral thought and language, is not yet isolated in these forms of speech, but is presented along with relations to desires and feelings, reasoning about the means to desired ends, interpersonal demands, the injustice which consists in the violation of what are in the context the accepted standards of merit, the psychological constituents of meanness, and so on. There is nothing queer about any of these, and under cover of them the claim for moral authority may pass unnoticed. But if I am right in arguing that it is ordinarily there, and is therefore very likely to be incorporated almost automatically in philosophical accounts of ethics which systematize our ordinary thought even in such apparently innocent terms as these, it needs to be examined, and for this purpose it needs to be isolated and exposed as it is by the less cautious philosophical reconstructions.

PATTERNS OF OBJECTIFICATION

Considerations of these kinds suggest that it is in the end less paradoxical to reject than to retain the common-sense belief in the objectivity of moral values, provided that we can explain how this belief, if it is false, has become established and is so resistant to criticisms. This proviso is not difficult to satisfy.

On a subjectivist view, the supposedly objective values will be based in fact upon attitudes which the person has who takes himself to be recognizing and responding to those values. If we admit what Hume calls the mind’s ‘propensity to spread itself on external objects,’ we can understand the supposed objectivity of moral qualities as arising from what we can call the projection or objectification of moral attitudes. This would be analogous to what

is called the ‘pathetic fallacy,’ the tendency to read our feelings into their objects. If a fungus, say, fills us with disgust, we may be inclined to ascribe to the fungus itself a non-natural quality of foulness. But in moral contexts there is more than this propensity at work. Moral attitudes themselves are at least partly social in origin: socially established—and socially necessary—patterns of behaviour put pressure on individuals, and each individual tends to internalize these pressures and to join in requiring these patterns of behaviour of himself and of others. The attitudes that are objectified into moral values have indeed an external source, though not the one assigned to them by the belief in their absolute authority. Moreover, there are motives that would support objectification. We need morality to regulate interpersonal relations, to control some of the ways in which people behave towards one another, often in opposition to contrary inclinations. We therefore want our moral judgements to be authoritative for other agents as well as for ourselves: objective validity would give them the authority required. Aesthetic values are logically in the same position as moral ones; much the same metaphysical and epistemological considerations apply to them. But aesthetic values are less strongly objectified than moral ones; their subjective status, and an ‘error theory’ with regard to such claims to objectivity as are incorporated in aesthetic judgements, will be more readily accepted, just because the motives for their objectification are less compelling.

But it would be misleading to think of the objectification of moral values as primarily the projection of feelings, as in the pathetic fallacy. More important are wants and demands. As Hobbes says, “whatsoever is the object of any man’s Appetite or Desire, that is it, which he for his part calleth *Good*”; and certainly both the adjective ‘good’ and the noun ‘goods’ are used in non-moral contexts of things because they are such as to satisfy desires. We get the notion of something’s being objectively good, or having intrinsic value, by reversing the direction of dependence here, by making the desire depend upon the goodness, instead of the goodness on the desire. And this is aided by the fact that the desired thing will indeed have features that make it desired, that enable it to arouse a desire or that make it such



as to satisfy some desire that is already there. It is fairly easy to confuse the way in which a thing's desirability is indeed objective with its having in our sense objective value. The fact that the word 'good' serves as one of our main moral terms is a trace of this pattern of objectification. . . .

J. L. Mackie: The Subjectivity of Values

1. Why does Mackie refer to his view as an "error theory"? What is the "error" that Mackie takes himself to be pointing out?
2. Mackie cites widespread disagreement about morality as evidence for his view that there are no objective moral values. Yet he admits that the existence of scientific disagreement does not suggest that there are no objective scientific truths. Why does Mackie think that ethics is different from science in this regard? Do you think he is right about this?
3. One might object to Mackie's argument from disagreement by noting that some moral prohibitions (against killing innocent people,
4. Mackie claims that objective values, if they existed, would be entities "of a very strange sort, utterly different from anything else in the universe." What feature of moral values would make them so strange? Do you agree with Mackie that the "queerness" of moral properties is a good reason to deny their existence?
5. Mackie suggests that his view is "simpler and more comprehensible" than accepting objective values. In what ways is his view simpler? Is this a good reason to reject the existence of objective values?
6. Mackie thinks that for his error theory to succeed, he must explain how people come to think that there are objective moral values in the first place. How does he attempt to do so? Do you think he is successful?

against adultery, etc.) are widely shared across cultures. Does this show that there is something wrong with the argument from disagreement? How do you think Mackie would respond to such an objection?

The Good Life

If you are like me, and like everyone else I know, you've spent a fair bit of time thinking about how your life can go better. You may be doing pretty well already, or may be very badly off, or somewhere in between. **But there is always room for improvement.**

To know how our lives can be better, we first need to know how they can be good. In other words, we need a standard that will tell us when our lives are going well for us. That standard will help us determine our level of *well-being*, or *welfare*.

Many things can improve our well-being: chocolate, sturdy shoes, vaccinations, a reasonable amount of money. These things pave the way to a better life—they help to make it possible, and may, in some cases, even be indispensable to it. Philosophers call such things **instrumental goods**, things that are valuable because of the good things they bring about.

If there are instrumental goods, then there must be something they are good *for*, something whose value does not depend on being a means to anything else that is good. Such a thing is worth pursuing for its own sake; it is valuable in its own right, even if it brings nothing else in its wake. Philosophers call such things **intrinsically valuable**. Instrumental values are things that are good precisely because they help to bring about things that are intrinsically valuable.

When asking about what makes a life go better for us, we will of course want to know which things are instrumentally valuable, so we can get our hands on them. But when we take a philosophical step back and ask *why* (for instance) going to the dentist, or making money, makes us better off, we will need to have some

grasp of what is intrinsically good for us—something whose presence, *all by itself*, makes us better off. What might that be?

A. HEDONISM

The most popular answer is just what you'd expect: **happiness**. On this view, a good life is a happy life. This means something pretty specific. It means that happiness is necessary for a good life; a life without happiness cannot be a good life. It also means that happiness is sufficient for a good life: When you are happy, your life is going well. The happier you are, the better your life is going for you. And the unhappier you are, the worse off you are.

There is a name for this kind of view: **hedonism**. The term comes from the Greek word *hēdoné*, which means “pleasure.” According to hedonists, a life is good to the extent that it is filled with pleasure and is free of pain.

Hedonism has many attractions. First off, it allows that there are a variety of ways to live a good life, because there are many paths to happiness. Because the sources of happiness vary quite widely, and **happiness is the key to a good life**, there are many ways to live a good life.

Second, hedonists provide each of us with a substantial say in what the good life looks like. What makes us happy is largely a matter of personal choice. As a result, **we each get plenty of input into what makes our lives go well**.

In one sense, however, hedonism does not allow us to have the final say about what is good for us. If hedonism is true, then happiness improves our lives, whether we think so or not. According to hedonists, those who deny that **happiness is the sole thing** that is intrinsically

good for us are wrong, no matter how sincere their denial. In this way, hedonism follows a middle path between approaches to the good life that dictate a one-size-fits-all model and those that allow each person to decide for herself exactly what is valuable.

Third, the claim that happiness is intrinsically beneficial seems about as obvious as anything in ethics. And the value of everything else seems easily explained by showing how it leads to happiness. If hedonism is true, then happiness directly improves one's welfare, and sadness directly undermines it. Just about everyone believes that. Indeed, how could we even argue for something as basic as this? This is where thinking in this area starts. Perhaps no claim about well-being is more fundamental than the one that insists on the importance of experiencing happiness and avoiding misery.

Fourth, hedonism can justify the many rules for living a good life, while at the same time explaining why there are exceptions to these rules. Almost all of us are better off if we manage to be free of manipulation, disabling illness, enslavement, constant worry, unwanted attention, treachery, and physical brutality. Remove these burdens, and you immediately improve the quality of life. The hedonist's explanation is simple and plausible: in almost every case, eliminating these things reduces our misery.

Hedonism can also explain why there are exceptions to these rules. Some people—not many—enjoy being humiliated or manipulated. For them, we must put these experiences on the positive side of the ledger. Hedonism thus explains why it is so hard to come up with universal, iron-clad rules for improving our lives. Such rules hold only for the most part, because increasing our welfare is a matter of becoming happier, and some people find happiness in extremely unusual ways. Hedonism honors both the standard and the uncommon sources of happiness; no matter how you come by it, happiness (and only happiness) directly makes you better off.

Unsurprisingly, hedonism has also come in for criticism. The first concern is that we can sometimes get pleasure from doing terrible things. But when such enjoyment comes at someone else's expense, it hardly seems a good thing, much less the best thing. This gives rise to

The Argument from Evil Pleasures

1. If hedonism is true, then happiness that comes from evil deeds is as good as happiness that comes from kind and decent actions.
2. Happiness that comes from evil deeds is not as good as happiness that comes from kind and decent actions.
3. Therefore, hedonism is false.

This argument fails, and it's instructive to see why. There is a confusion contained within it, and it's one that is easy to fall prey to.

When we say that happiness that comes from one source is as good as happiness from any other source, we might mean that each is *morally equivalent* to the other. When we read premise 2 and nod our heads approvingly, this is probably what we have in mind.

But this is not what hedonists have in mind. They don't think that each episode of happiness is as morally good as every other. Rather, they think that the same amount of happiness, no matter its source, is *equally beneficial*. According to hedonism, happiness gained from evil deeds can improve our lives just as much as happiness that comes from virtue. In this sense, happiness derived from evil deeds is as good as happiness that comes from virtue—each can contribute to our well-being just as much as the other. Hedonists therefore reject premise 2.

And aren't they right to do so? Think about why the happiness of the wicked is so upsetting. Isn't it precisely because happiness benefits them, and we hate to see the wicked prosper? If happiness doesn't make us better off, why is it so awful when the wicked enjoy the harms they cause? And for those who share my vengeful

streak: Why is it gratifying to see the wicked suffer? Because misery always cuts into our well-being, and we think it right that the wicked pay for their crimes. Hedonism makes perfect sense of these feelings.

A second criticism is that people's happiness sometimes rests on a false belief, which seems to undercut the value of the happiness. Imagine a woman who is happy in her marriage, partly because she trusts her husband and believes that he has been completely faithful. Suppose her belief is true. Now imagine another woman who is as happy as the first, and for the same reasons. But in this case, her belief is false—her husband has been cheating on her without her knowledge. It seems that the first woman's life is going better for her. And yet these two women are equally happy.

This story provides us with the basis of

The Argument from False Happiness

1. If hedonism is true, then our lives go well to the extent that we are happy.
2. It's not the case that our lives go well to the extent that we are happy; those whose happiness is based on false beliefs have worse lives than those whose happiness is based on true beliefs, even if both lives are equally happy.
3. Therefore, hedonism is false.

Hedonists accept the first premise, and so must deny the second.

But it is harder to do so here, when it comes to false beliefs. The late Harvard philosopher Robert Nozick tried to show this, in a thought experiment involving an "experience machine."¹ Imagine that there is an amazing virtual reality machine that lets you simulate any experience you like. Suppose you program it for a lifetime of the very best experiences. Once you plug in, you think that you are in the real world, and have no memory of life outside the machine. Your entire life from then on is lived in the machine, and

you are as happy as can be, believing yourself to be doing all of the things you truly enjoy.

Compare this with a case in which someone actually does the things and enjoys the experiences that the plugged-in person only imagines. It seems clear that the second life—the real one—is more desirable. Yet both lives contain the same amount of happiness.

This is meant to show that happiness is not the sole element of well-being. A good life is one that is happy, yes, but not only that. Our happiness must be based in reality. A pleasant life of illusion is less good for you than an equally pleasant life based on real achievement and true beliefs.

A third criticism starts with the assumption that one of the other things we want from life is to make our own choices about it. We resent it when other people manipulate us, even if they mean well. Sometimes we even prefer the definite prospect of sadness to a more pleasant life that is forced upon us without our consent. In short, we want autonomy—the power to guide our life through our own free choices. We want it even though acting autonomously sometimes costs us our happiness. We make free choices that lead to damaged relationships, financial disaster, and missed opportunities. Still, we need only imagine a life without autonomy to see what a tragedy it would be. That sort of life is one in which one is, at best, manipulated, and at worst, enslaved or completely brainwashed.

Here we have the makings of another argument against hedonism. Call this

The Argument from Autonomy

1. If hedonism is true, then autonomy contributes to a good life only insofar as it makes us happy.
2. Autonomy sometimes directly contributes to a good life, even when it fails to make us happy.
3. Therefore, hedonism is false.

The first premise is clearly true. The central claim of hedonism is that happiness is the only thing, in itself, that makes us better off. All other

1. See the reading at the end of this chapter.

things (e.g., autonomy, virtue, true knowledge) improve our lives only to the extent that they make us happier.

So everything hinges on the second premise. It seems plausible. When we consider the lives of those who have been deprived of their autonomy, we see the absence of a great value, something that, by itself, appears to make a life a better one. Given a choice between drug-induced contentment and plotting our own risky course through life, we prefer the latter path. We want our lives to be authentic, to reflect our own values, rather than those imposed on us from the outside—even if we are not always happier as a result. Hedonism cannot account for that.

Perhaps happiness is not, after all, the key to our well-being. Let's now consider an alternative approach—one that tells us that getting what you want is the measure of a good life.

B. DESIRE SATISFACTION THEORY

The desire satisfaction theory of human welfare tells us that your life goes well for you to the extent that you get what you want. At the other end of the spectrum, your life goes badly just when your desires are frustrated. More precisely, something is intrinsically good for you if it satisfies your desires, only if it satisfies your desires, and because it satisfies your desires. Something is instrumentally good for you if, only if, and because it helps you to fulfill your desires.

There is a lot to like about this theory. The first of its benefits is that it explains why there are many models of a good life, rather than just a single one. What makes my life good may be very different from what does the trick for you, because you and I may not want the same things. Our deepest desires determine what counts as life's improvements or failures. On this line of thinking, *nothing*—not health, love, knowledge, or virtue—is an essential ingredient in making everyone's life better off. Whether our lives have been improved depends entirely on whether our desires have been fulfilled.

Second, if the desire theory is right, then each of us has the final say on what makes our life go well, because it's our own desires that determine how well we are faring. Further, no one gets to dictate which basic desires we should have. That is a personal matter. There is no universal standard for appropriate desires: to each his own. This view gives us a huge amount of freedom to choose our own vision of the good life. The only limitation here is that the good life must consist of satisfied desires. But what these desires are for—that is entirely up to you.

A third benefit of the desire satisfaction theory is that it entirely avoids the difficulties associated with objective theories of human welfare. Such theories claim that what directly contributes to a good life is fixed independently of your desires and your opinions about what is important.

There are lots of objective theories of welfare. Some theories, for instance, insist that the more knowledge you have, the better your life is going for you—even if you don't care very much about obtaining knowledge. Other theories insist that virtue is required for a good life, no matter how you feel about virtue's importance. Hedonists claim that happiness is intrinsically valuable—even if, very unusually, you don't care about being happy.

Desire theorists reject all objective theories of welfare. In doing so, they spare themselves the huge controversies that surround the defense of objective values. It is really difficult to argue for such values. That's because, for any contender, we can always ask a simple question: how can something make my life better if I don't want it, and don't want what it can get me? Sure, if you want to be a star athlete or a world-class musician, then daily practice will improve your life. But if you have no such dreams, and don't care about anything that such practice can get you, then how could it be good for you? That's a very hard question. Desire theorists never have to answer it.

Fourth, the theory can easily explain the close connection between our well-being and our motivations. To see this, consider

The Motivation Argument

1. If something is intrinsically good for you, then it will satisfy your desires.
2. If something will satisfy your desires, then you will be motivated (at least to some extent) to get it—so long as you know what you want and know how to get it.
3. Therefore, if something is intrinsically good for you, then you will be motivated (at least to some extent) to get it—so long as you know what you want and know how to get it.

The first premise states a central claim of the desire theory. The second premise seems clearly true, **once we understand that desires motivate us to do things.** And the argument is valid, so if both premises are true, then the conclusion must be true. Indeed, desire theorists regard this conclusion as an important truth, and think that it is a major strike against objective theories that they cannot allow for it.

A fifth benefit is that the desire theory provides a straightforward answer to one of life's eternal questions: how can I know what is good for me? **The answer is simple: be clear about what you want. Then make sure you know how to get it.**

These five attractions help to explain why the desire satisfaction theory is so popular. But (you guessed it) there are also a number of difficulties that this theory faces, and some of them are serious enough to force us to revise the view, and possibly even to reject it.

To appreciate these worries, let's remind ourselves of the two central claims of the desire theory:

(A) **Something is intrinsically good for us only if it fulfills our desires; something is instrumentally good for us only if it helps us to fulfill our desires.**

(B) **If something fulfills our desires, then it is intrinsically good for us; if something helps to fulfill our desires, then it is instrumentally good for us.**

(A) tells us that something must (help to) satisfy our desires in order to be beneficial; desire satisfaction is *necessary* for becoming better off. (B) tells us that satisfying our desires is enough to make us better off; desire satisfaction is *sufficient* for becoming better off. Let's begin by considering (A), and then move to a discussion of (B).

We can test (A) by seeing whether we can come up with an example in which something benefits us, even though it doesn't satisfy or help to satisfy any of our desires. If there are any such examples, then (A) is false. There do seem to be such examples. Three spring to mind.

The first is **that of pleasant surprises.** These are cases in which you are getting a benefit that you didn't want or hope for. Imagine something that never appeared on your radar screen—say, a windfall tax rebate, an unexpectedly kind remark, or the flattering interest of a charming stranger. It makes sense to say that you're a bit better off as a result of such things, even though they didn't satisfy any of your desires. Of course, now that you've experienced such things, you may well want more of them. But that's because they have made your life better already. And they did that without answering to any of your pre-existing desires.

The second case is that of small children. We can benefit children in a number of ways, even though **we don't give them what they want and don't help them get what they want.** A parent benefits her five-year-old by teaching him to read, for instance, even though the child doesn't want to read and doesn't know enough about the benefits of literacy to find them appealing.

The third case is suicide prevention. Those who are deeply sad or depressed may decide that they would be better off dead. They are often wrong about that. Suppose we prevent them from doing away with themselves. This may only frustrate their deepest wishes. **And yet they may be better off as a result.**

In each of these cases, we can improve the lives of people without getting them what they

want or helping them to do so. They may, later on, approve of our actions and be pleased that we acted as we did. **But this after-the-fact approval is something very different from desire satisfaction.** Indeed, it seems that the later approval is evidence that we benefited them, even though we did not do anything that served their desires at the time. And that is evidence that (A) is mistaken.

If (B) is true, then we are better off whenever our desires are satisfied. There are many reasons to doubt this. First, we sometimes want something **for its own sake, but our desire is based on a false belief.** When we make mistakes like this, it is hard to see that getting what we want really improves our lives. Suppose you want to hurt someone for having insulted you, when he did no such thing. You aren't any better off if you mistreat the poor guy.

From now on, then, we should understand the desire theory to insist that **it is only informed desires whose satisfaction will improve our lives.** Fulfilling desires based on false beliefs may not improve our welfare. So the real thesis under consideration will be

(C) **If something fulfills our informed desires (i.e., those not based on false beliefs), then that thing is intrinsically good for us; if it helps us to fulfill our informed desires, then it is instrumentally good for us.**

But this seems subject to a new problem. All of us want some things that seem entirely unrelated to us. Our desires are directed, say, at the interests of strangers, or at no interests at all. (Perhaps I want there to be an even number of planets, and now that Pluto has been banned from the club, I've finally gotten my wish.) In such cases, we can get what we want, even though it is hard to see how our lives are improved as a result.

Even when we focus on desires about our own life, we encounter potential problems. Suppose that you want something for yourself, and your desire isn't based on any false beliefs. **And you get what you want. If (C) is true, this guarantees some improvement in your life.**

But consider a young musician who has staked his hopes on becoming famous some day. And that day comes—but all he feels is disappointment, emptiness, boredom, or depression. **It's hard to believe that desire satisfaction was sufficient in such a case for improving his life.**

Another problem for the theory arises from cases in which I get what I want, but never realize this. I never know that my goal has been met. It doesn't seem that I am any better off in such a situation. Imagine a person deeply committed to finding a cure for a terrible disease. After years of hard work, she makes a discovery that will eventually—long after her death—result in a cure. But she goes to her grave never realizing this. She thinks her efforts have been wasted. Her success does not seem to mark any improvement in her life.

Another problem arises when we get what we want, but there is something problematic about our desires themselves. Some parents have raised their children to believe themselves unworthy of love, or incapable of real accomplishment. Some societies continue to treat the women among them as second-class citizens (if citizens at all). Women in such societies are told from the earliest age that any political or professional hopes are unnatural and beyond their reach.

It's easy to take such messages to heart. If you are told from the cradle that your greatest ambition should be to serve your master, then you may well end up with no desire any stronger than that. If desire fulfillment is the measure of a good life, then such lives can be very good indeed.

That doesn't seem right. For instance, it is tempting to think that a slave cannot live a very good life, regardless of whether her desires are fulfilled. And that is because she is unfree. But desire theorists reject the idea that there is anything intrinsically valuable about freedom. Nothing is important in its own right—not intellectual or artistic achievement, not freedom, not pleasure—unless one desires it. If it has been

drilled into your head that it is foolish to seek freedom, or that education is unnecessary for “your kind,” then a reasonable response may well be to abandon hope for any such things. Better to have goals you can achieve than to set yourself up for constant disappointment.

And yet what kind of life is that? The desire theorist seems forced to say that it may be among the best. The lower your expectations, the easier they are to satisfy. As a result, those who set their sights very low may have a greater number of satisfied desires than those with more challenging goals. But this hardly seems to make for a better life.

C. CONCLUSION

Hedonism has always had its fans. And, as we have seen, there are many good reasons for its popularity. It explains why there are many paths to a good life. It strikes a balance between a view that imposes just one blueprint of a good life and a view that allows anything to be valuable so long as you think it is. Hedonism accounts for why the rules of a good life allow for exceptions. And yet hedonism is not problem-free. It is committed to judging happiness based on false beliefs as beneficial as happiness that isn’t. And hedonists cannot allow for the intrinsic value of autonomy.

There are a number of reasons to think that the good life consists in our getting what we want. But there are also some serious problems with this suggestion. Most of the problems boil down to this: the desire theorist cannot recognize that any desires are intrinsically better than any others. If your heart is set on repeatedly counting to nine, or on saying the word *putty* until you die, then (on this view) succeeding in such tasks yields a life as good as can be for you.

But a promising youth may have a death wish; an oppressed slave may want only to serve her master; a decent but self-loathing man may most want to be publicly humiliated. We can imagine these desires fulfilled, and yet the resulting lives appear to be impoverished, rather

than enviable. Indeed, we regard such people as unfortunate precisely because of what they want—their desires are not fit to be satisfied, because they fail to aim for worthy ends.

To say such a thing, however, is to side with the objectivist, and to reject an essential element of the desire theory. For the desire theorist, nothing but satisfied desires makes us better off, and there are no objective standards that elevate some basic desires over others. If getting what you want is not the be-all and end-all of a good life, then there must be some objective standards to determine what is good or bad for us. Exercise: find out what they are.

ESSENTIAL CONCEPTS

Autonomy: the power to guide our life through our own free choices.

Desire satisfaction theory: the view that something is intrinsically good for you if it satisfies your desires, only if it satisfies your desires, and because it satisfies your desires.

Hedonism: the view that a life is good to the extent that it is filled with pleasure and is free of pain.

Instrumental goods: things that are valuable because of the good things they bring about.

Intrinsically valuable: worth pursuing for its own sake; valuable in its own right.

DISCUSSION QUESTIONS

1. What is the difference between intrinsic value and instrumental value?
2. Can you think of any case in which experiencing pleasure fails to contribute to a person’s well-being? If so, consider what a hedonist might say in order to undermine such a case.
3. If you had a chance to get into the “experience machine” for the rest of your life, would you do it? Why might the idea of the experience machine pose a challenge for hedonism?
4. What are “evil pleasures” and why do they seem to be a problem for hedonism?

5. What is autonomy? Can hedonism account for the value of autonomy? Defend your answer.
6. Many people think that there is just one path to the good life. Do you agree? If so, what argument(s) can you give to someone who thinks otherwise?
7. Many people find the desire satisfaction theory attractive on the grounds that it

leaves what counts as a good life “up to us.” To what extent are our desires “up to us”? Can we really choose whether we want something or not?

8. The desire satisfaction theory tells us that our lives go better so long as we get what we want—no matter what we want. Can you think of any examples where this isn’t so?

READINGS

Hedonism

John Stuart Mill

John Stuart Mill (1806–1873) was one of the great hedonistic thinkers. In this excerpt from his long pamphlet *Utilitarianism* (1863), Mill defends his complex version of hedonism. Sensitive to criticisms that it counsels us to pursue a life of brutish pleasure, Mill distinguishes between “higher and lower pleasures” and claims, famously, that it is “better to be Socrates dissatisfied, than a fool satisfied.” He also offers here his much-discussed “proof” of hedonism, by drawing a parallel between the evidence we have for something’s being visible (that all of us see it) and something’s being desirable (that all of us desire it). He also argues for the claim that we do and can desire nothing but pleasure, and uses this conjecture as a way of defending the view that pleasure is the only thing that is always worth pursuing for its own sake.

The creed which accepts, as the foundation of morals, Utility, or the Greatest-happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain; by unhappiness, pain and the privation of pleasure. To give a clear view of the moral standard set up by the theory, much more requires to be said; in particular, what things it includes in the ideas of pain and pleasure, and to what extent this is left an open question. But these supplementary explanations do

not affect the theory of life on which this theory of morality is grounded,—namely, that pleasure, and freedom from pain, are the only things desirable as ends; and that all desirable things (which are as numerous in the utilitarian as in any other scheme) are desirable either for the pleasure inherent in themselves, or as means to the promotion of pleasure and the prevention of pain.

Now, such a theory of life excites in many minds, and among them in some of the most estimable in feeling and purpose, inveterate dislike. To suppose that life has (as they express it) no higher end than

pleasure,—no better and nobler object of desire and pursuit,—they designate as utterly mean and groveling; as a doctrine worthy only of swine, to whom the followers of Epicurus were, at a very early period, contemptuously likened: and modern holders of the doctrine are occasionally made the subject of equally polite comparisons by its German, French, and English assailants.

When thus attacked, the Epicureans have always answered, that it is not they, but their accusers, who represent human nature in a degrading light, since the accusation supposes human beings to be capable of no pleasures except those of which swine are capable. If this supposition were true, the charge could not be gainsaid, but would then be no longer an imputation; for, if the sources of pleasure were precisely the same to human beings and to swine, the rule of life which is good enough for the one would be good enough for the other. The comparison of the Epicurean life to that of beasts is felt as degrading, precisely because a beast's pleasures do not satisfy a human being's conceptions of happiness. Human beings have faculties more elevated than the animal appetites; and, when once made conscious of them, do not regard any thing as happiness which does not include their gratification. I do not, indeed, consider the Epicureans to have been by any means faultless in drawing out their scheme of consequences from the utilitarian principle. To do this in any sufficient manner, many Stoic as well as Christian elements require to be included. But there is no known Epicurean theory of life which does not assign to the pleasures of the intellect, of the feeling and imagination, and of the moral sentiments, a much higher value as pleasures than to those of mere sensation. It must be admitted, however, that utilitarian writers in general have placed the superiority of mental over bodily pleasures chiefly in the greater permanency, safety, uncostliness, &c., of the former,—that is, in their circumstantial advantages rather than in their intrinsic nature. And, on all these points, utilitarians have fully proved their case; but they might have taken the other, and, as it may be called, higher ground, with entire consistency. It is quite compatible with the principle of utility to recognize the fact, that some *kinds* of pleasure are more desirable

and more valuable than others. It would be absurd, that while, in estimating all other things, quality is considered as well as quantity, the estimation of pleasures should be supposed to depend on quantity alone.

If I am asked what I mean by difference of quality in pleasures, or what makes one pleasure more valuable than another, merely as a pleasure, except its being greater in amount, there is but one possible answer. Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure. If one of the two is, by those who are competently acquainted with both, placed so far above the other that they prefer it, even though knowing it to be attended with a greater amount of discontent, and would not resign it for any quantity of the other pleasure which their nature is capable of, we are justified in ascribing to the preferred enjoyment a superiority in quality, so far outweighing quantity, as to render it, in comparison, of small account.

Now, it is an unquestionable fact, that those who are equally acquainted with and equally capable of appreciating and enjoying both do give a most marked preference to the manner of existence which employs their higher faculties. Few human creatures would consent to be changed into any of the lower animals, for a promise of the fullest allowance of a beast's pleasures: no intelligent human being would consent to be a fool, no instructed person would be an ignoramus, no person of feeling and conscience would be selfish and base, even though they should be persuaded that the fool, the dunce, or the rascal is better satisfied with his lot than they are with theirs. They would not resign what they possess more than he for the most complete satisfaction of all the desires which they have in common with him. If they ever fancy they would, it is only in cases of unhappiness so extreme, that, to escape from it, they would exchange their lot for almost any other, however undesirable in their own eyes. A being of higher faculties requires more to make him happy, is capable probably of more acute suffering, and certainly accessible to it at more points, than one of an inferior type; but, in spite

of these liabilities, he can never really wish to sink into what he feels to be a lower grade of existence. We may give what explanation we please of this unwillingness; we may attribute it to pride, a name which is given indiscriminately to some of the most and to some of the least estimable feelings of which mankind are capable; we may refer it to the love of liberty and personal independence,—an appeal to which was with the Stoicks one of the most effective means for the inculcation of it; to the love of power, or to the love of excitement, both of which do really enter into and contribute to it: but its most appropriate appellation is a sense of dignity, which all human beings possess in one form or other, and in some, though by no means in exact proportion to their higher faculties, and which is so essential a part of the happiness of those in whom it is strong, that nothing which conflicts with it could be, otherwise than momentarily, an object of desire to them. Whoever supposes that this preference takes place at a sacrifice of happiness; that the superior being, in any thing like equal circumstances, is not happier than the inferior—confounds the two very different ideas of happiness and content. It is indisputable, that the being whose capacities of enjoyment are low has the greatest chance of having them fully satisfied; and a highly endowed being will always feel that any happiness which he can look for, as the world is constituted, is imperfect. But he can learn to bear its imperfections, if they are at all bearable; and they will not make him envy the being who is indeed unconscious of the imperfections, but only because he feels not at all the good which those imperfections qualify. It is better to be a human being dissatisfied, than a pig satisfied; better to be Socrates dissatisfied, than a fool satisfied. And if the fool or the pig are of a different opinion, it is because they only know their own side of the question. The other party to the comparison knows both sides.

It may be objected, that many who are capable of the higher pleasures, occasionally, under the influence of temptation, postpone them to the lower. But this is quite compatible with a full appreciation of the intrinsic superiority of the higher. Men often, from infirmity of character, make their election for the nearer good, though they know it to be the less

valuable, and this no less when the choice is between two bodily pleasures than when it is between bodily and mental. They pursue sensual indulgences to the injury of health, though perfectly aware that health is the greater good. It may be further objected, that many who begin with youthful enthusiasm for everyting noble, as they advance in years sink into indolence and selfishness. But I do not believe that those who undergo this very common change voluntarily choose the lower description of pleasures in preference to the higher. I believe, that, before they devote themselves exclusively to the one, they have already become incapable of the other. Capacity for the nobler feelings is in most natures a very tender plant, easily killed, not only by hostile influences, but by mere want of sustenance; and, in the majority of young persons, it speedily dies away if the occupations to which their position in life has devoted them, and the society into which it has thrown them, are not favorable to keeping that higher capacity in exercise. Men lose their high aspirations as they lose their intellectual tastes, because they have not time or opportunity for indulging them; and they addict themselves to inferior pleasures, not because they deliberately prefer them, but because they are either the only ones to which they have access, or the only ones which they are any longer capable of enjoying. It may be questioned whether any one, who has remained equally susceptible to both classes of pleasures, ever knowingly and calmly preferred the lower; though many in all ages have broken down in an ineffectual attempt to combine both.

From this verdict of the only competent judges, I apprehend there can be no appeal. On a question, which is the best worth having of two pleasures, or which of two modes of existence is the most grateful to the feelings, apart from its moral attributes and from its consequences, the judgment of those who are qualified by knowledge of both, or, if they differ, that of the majority among them, must be admitted as final. And there needs be the less hesitation to accept this judgment respecting the quality of pleasures, since there is no other tribunal to be referred to even on the question of quantity. What means are there of determining which is the acutest of two pains, or the intensest of two pleasurable sensations, except the general suffrage of those who are

familiar with both? Neither pains nor pleasures are homogeneous, and pain is always heterogeneous with pleasure. What is there to decide whether a particular pleasure is worth purchasing at the cost of particular pain, except the feelings and judgment of the experienced? When, therefore, those feelings and judgment declare the pleasures derived from the higher faculties to be preferable *in kind*, apart from the question of intensity, to those of which the animal nature, disjoined from the higher faculties, is susceptible, they are entitled on this subject to the same regard. . . .

It has already been remarked, that questions of ultimate ends do not admit of proof, in the ordinary acceptation of the term. To be incapable of proof by reasoning is common to all first principles; to the first premises of our knowledge, as well as to those of our conduct. But the former, being matters of fact, may be the subject of a direct appeal to the faculties which judge of fact—namely, our senses, and our internal consciousness. Can an appeal be made to the same faculties on questions of practical ends? Or by what other faculty is cognisance taken of them?

Questions about ends are, in other words, questions of what things are desirable. The utilitarian doctrine is, that happiness is desirable, and the only thing desirable, as an end; all other things being only desirable as means to that end. What ought to be required of this doctrine—what conditions is it requisite that the doctrine should fulfil—to make good its claim to be believed?

The only proof capable of being given that an object is visible, is that people actually see it. The only proof that a sound is audible, is that people hear it: and so of the other sources of our experience. In like manner, I apprehend, the sole evidence it is possible to produce that anything is desirable, is that people do actually desire it. If the end which the utilitarian doctrine proposes to itself were not, in theory and in practice, acknowledged to be an end, nothing could ever convince any person that it was so. No reason can be given why the general happiness is desirable, except that each person, so far as he believes it to be attainable, desires his own happiness. This, however, being a fact, we have not

only all the proof which the case admits of, but all which it is possible to require, that happiness is a good: that each person's happiness is a good to that person, and the general happiness, therefore, a good to the aggregate of all persons. Happiness has made out its title as one of the ends of conduct, and consequently one of the criteria of morality.

But it has not, by this alone, proved itself to be the sole criterion. To do that, it would seem, by the same rule, necessary to show, not only that people desire happiness, but that they never desire anything else. Now it is palpable that they do desire things which, in common language, are decidedly distinguished from happiness. They desire, for example, virtue, and the absence of vice, no less really than pleasure and the absence of pain. The desire of virtue is not as universal, but it is as authentic a fact, as the desire of happiness. And hence the opponents of the utilitarian standard deem that they have a right to infer that there are other ends of human action besides happiness, and that happiness is not the standard of approbation and disapprobation.

But does the utilitarian doctrine deny that people desire virtue, or maintain that virtue is not a thing to be desired? The very reverse. It maintains not only that virtue is to be desired, but that it is to be desired disinterestedly, for itself. Whatever may be the opinion of utilitarian moralists as to the original conditions by which virtue is made virtue; however they may believe (as they do) that actions and dispositions are only virtuous because they promote another end than virtue; yet this being granted, and it having been decided, from considerations of this description, what is virtuous, they not only place virtue at the very head of the things which are good as means to the ultimate end, but they also recognise as a psychological fact the possibility of its being, to the individual, a good in itself, without looking to any end beyond it; and hold, that the mind is not in a right state, not in a state conformable to Utility, not in the state most conducive to the general happiness, unless it does love virtue in this manner—as a thing desirable in itself, even although, in the individual instance, it should not produce those other desirable consequences which it tends to produce, and on account

of which it is held to be virtue. This opinion is not, in the smallest degree, a departure from the Happiness principle. The ingredients of happiness are very various, and each of them is desirable in itself, and not merely when considered as swelling an aggregate. The principle of utility does not mean that any given pleasure, as music, for instance, or any given exemption from pain, as for example health, is to be looked upon as means to a collective something termed happiness, and to be desired on that account. They are desired and desirable in and for themselves; besides being means, they are a part of the end. Virtue, according to the utilitarian doctrine, is not naturally and originally part of the end, but it is capable of becoming so; and in those who love it disinterestedly it has become so, and is desired and cherished, not as a means to happiness, but as a part of their happiness.

To illustrate this farther, we may remember that virtue is not the only thing, originally a means, and which if it were not a means to anything else, would be and remain indifferent, but which by association with what it is a means to, comes to be desired for itself, and that too with the utmost intensity. What, for example, shall we say of the love of money? There is nothing originally more desirable about money than about any heap of glittering pebbles. Its worth is solely that of the things which it will buy; the desires for other things than itself, which it is a means of gratifying. Yet the love of money is not only one of the strongest moving forces of human life, but money is, in many cases, desired in and for itself; the desire to possess it is often stronger than the desire to use it, and goes on increasing when all the desires which point to ends beyond it, to be compassed by it, are falling off. It may, then, be said truly, that money is desired not for the sake of an end, but as part of the end. From being a means to happiness, it has come to be itself a principal ingredient of the individual's conception of happiness. The same may be said of the majority of the great objects of human life—power, for example, or fame; except that to each of these there is a certain amount of immediate pleasure annexed, which has at least the semblance of being naturally inherent in them; a thing which cannot be said of

money. Still, however, the strongest natural attraction, both of power and of fame, is the immense aid they give to the attainment of our other wishes; and it is the strong association thus generated between them and all our objects of desire, which gives to the direct desire of them the intensity it often assumes, so as in some characters to surpass in strength all other desires. In these cases the means have become a part of the end, and a more important part of it than any of the things which they are means to. What was once desired as an instrument for the attainment of happiness, has come to be desired for its own sake. In being desired for its own sake it is, however, desired as part of happiness. The person is made, or thinks he would be made, happy by its mere possession; and is made unhappy by failure to obtain it. The desire of it is not a different thing from the desire of happiness, any more than the love of music, or the desire of health. They are included in happiness. They are some of the elements of which the desire of happiness is made up. Happiness is not an abstract idea, but a concrete whole; and these are some of its parts. And the utilitarian standard sanctions and approves their being so. Life would be a poor thing, very ill provided with sources of happiness, if there were not this provision of nature, by which things originally indifferent, but conducive to, or otherwise associated with, the satisfaction of our primitive desires, become in themselves sources of pleasure more valuable than the primitive pleasures, both in permanency, in the space of human existence that they are capable of covering, and even in intensity.

Virtue, according to the utilitarian conception, is a good of this description. There was no original desire of it, or motive to it, save its conduciveness to pleasure, and especially to protection from pain. But through the association thus formed, it may be felt a good in itself, and desired as such with as great intensity as any other good; and with this difference between it and the love of money, of power, or of fame, that all of these may, and often do, render the individual noxious to the other members of the society to which he belongs, whereas there is nothing which makes him so much a blessing to them as the cultivation of the disinterested love of

virtue. And consequently, the utilitarian standard, while it tolerates and approves those other acquired desires, up to the point beyond which they would be more injurious to the general happiness than promotive of it, enjoins and requires the cultivation of the love of virtue up to the greatest strength possible, as being above all things important to the general happiness.

It results from the preceding considerations, that there is in reality nothing desired except happiness. Whatever is desired otherwise than as a means to some end beyond itself, and ultimately to happiness, is desired as itself a part of happiness, and is not desired for itself until it has become so. Those who desire virtue for its own sake, desire it either because the consciousness of it is a pleasure, or because the consciousness of being without it is a pain, or for both reasons united; as in truth the pleasure and pain seldom exist separately, but almost always together, the same person feeling pleasure in the degree of virtue attained, and pain in not having attained more. If one of these gave him no pleasure, and the other no pain, he would not love or desire virtue, or would desire it only for the other benefits which it might produce to himself or to persons whom he cared for. We have now, then, an answer to the question, of what sort of proof the principle of utility is susceptible. If the opinion which I have now stated is psychologically true—if human nature is so constituted as to desire nothing which is not either a part of happiness or a means of happiness, we can have no other proof, and we require no other, that these are the only things desirable. If so, happiness is the sole end of human action, and the promotion of it the test by which to judge of all human conduct; from

whence it necessarily follows that it must be the criterion of morality, since a part is included in the whole. . . .

John Stuart Mill: Hedonism

1. Mill claims that “Pleasure, and freedom from pain, are the only things desirable as ends.” Are there any examples that can challenge this claim?
2. What does Mill propose as a standard to determine which kinds of pleasure are more valuable than others? Is this a plausible standard?
3. Mill states that it is “Better to be Socrates dissatisfied, than a fool satisfied.” What reasons does he give for thinking this?
4. In order to show that an object is visible, it is enough to show that people actually see it. Mill claims, similarly, “The sole evidence it is possible to produce that anything is desirable, is that people do actually desire it.” Are visibility and desirability similar in this way?
5. Mill claims that “Each person’s happiness is a good to that person.” He then concludes from this that “the general happiness” is therefore “a good to the aggregate of all persons.” Is this a good argument?
6. According to Mill, “The ingredients of happiness are very various, and each of them is desirable in itself.” Does this contradict his earlier claim, given in question 1?
7. At the beginning of this selection, Mill says that pleasure and the absence of pain are the only things desirable as ends. Toward the end he claims that “Happiness is the sole end of human action.” Are happiness and pleasure the same thing?

The Experience Machine

Robert Nozick

In this brief selection from his book *Anarchy, State, and Utopia* (1974), the late Harvard philosopher Robert Nozick (1938–2002) invites us to contemplate a life in which we are placed within a very sophisticated machine that is capable of simulating whatever experiences we find most valuable. Such a life, Nozick argues, cannot be the best life for us, because it fails to make contact with reality. This is meant to show that the good life is not entirely a function of the quality of our inner experiences. Since hedonism measures our well-being in precisely this way, hedonism, says Nozick, must be mistaken.

... Suppose there were an experience machine that would give you any experience you desired. Superduper neuropsychologists could stimulate your brain so that you would think and feel you were writing a great novel, or making a friend, or reading an interesting book. All the time you would be floating in a tank, with electrodes attached to your brain. Should you plug into this machine for life, preprogramming your life's experiences? If you are worried about missing out on desirable experiences, we can suppose that business enterprises have researched thoroughly the lives of many others. You can pick and choose from their large library or smorgasbord of such experiences, selecting your life's experiences for, say, the next two years. After two years have passed, you will have ten minutes or ten hours out of the tank, to select the experiences of your *next* two years. Of course, while in the tank you won't know that you're there; you'll think it's all actually happening. Others can also plug in to have the experiences they want, so there's no need to stay unplugged to serve them. (Ignore problems such as who will service the machines if everybody plugs in.) Would you plug in? *What else can matter to us, other than how our lives feel from the inside?* Nor should you refrain because of the few moments of distress between the moment you've decided and the moment you're plugged. What's a few moments

of distress compared to a lifetime of bliss (if that's what you choose), and why feel any distress at all if your decision *is* the best one?

What does matter to us in addition to our experiences? First, we want to *do* certain things, and not just have the experience of doing them. In the case of certain experiences, it is only because first we want to do the actions that we want the experiences of doing them or thinking we've done them. (But *why* do we want to do the activities rather than merely to experience them?) A second reason for not plugging in is that we want to *be* a certain way, to be a certain sort of person. Someone floating in a tank is an indeterminate blob. There is no answer to the question of what a person is like who has long been in the tank. Is he courageous, kind, intelligent, witty, loving? It's not merely that it's difficult to tell; there's no way he is. Plugging into the machine is a kind of suicide. It will seem to some, trapped by a picture, that nothing about what we are like can matter except as it gets reflected in our experiences. But should it be surprising that what *we are* is important to us? Why should we be concerned only with how our time is filled, but not with what we are?

Thirdly, plugging into an experience machine limits us to a man-made reality, to a world no deeper or more important than that which people can construct. There is no *actual* contact with any deeper reality, though the experience of it can be simulated. Many persons desire to leave themselves open to

From Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books 1974), pp. 42–45.

such contact and to a plumbing of deeper significance.¹ This clarifies the intensity of the conflict over psychoactive drugs, which some view as mere local experience machines, and others view as avenues to a deeper reality; what some view as equivalent to surrender to the experience machine, others view as following one of the reasons *not* to surrender!

We learn that something matters to us in addition to experience by imagining an experience machine and then realizing that we would not use it. We can continue to imagine a sequence of machines each designed to fill lacks suggested for the earlier machines. For example, since the experience machine doesn't meet our desire to *be* a certain way, imagine a transformation machine which transforms us into whatever sort of person we'd like to be (compatible with our staying us). Surely one would not use the transformation machine to become as one would wish, and thereupon plug into the experience machine!² So something matters in

1. Traditional religious views differ on the *point* of contact with a transcendent reality. Some say that contact yields eternal bliss or Nirvana, but they have not distinguished this sufficiently from merely a *very* long run on the experience machine. Others think it is intrinsically desirable to do the will of a higher being which created us all, though presumably no one would think this if we discovered we had been created as an object of amusement by some superpowerful child from another galaxy or dimension. Still others imagine an eventual merging with a higher reality, leaving unclear its desirability, or where that merging leaves us.

2. Some wouldn't use the transformation machine at all; it seems like *cheating*. But the one-time use of the transformation machine would not remove all challenges; there would still be obstacles for the new us to overcome, a new plateau from which to strive even higher. And is this plateau any the less earned or deserved than that provided by genetic endowment and early childhood environment? But if the transformation machine could be used indefinitely often, so that we could accomplish anything by pushing a button to transform ourselves into someone who could do it easily, there would remain no limits we *need* to strain against or try to transcend. Would there be anything left to *do*? Do some theological views place God outside of time because an omniscient omnipotent being couldn't fill up his days?

addition to one's experiences *and* what one is like. Nor is the reason merely that one's experiences are unconnected with what one is like. For the experience machine might be limited to provide only experiences possible to the sort of person plugged in. Is it that we want to make a difference in the world? Consider then the result machine, which produces in the world any result you would produce and injects your vector input into any joint activity. We shall not pursue here the fascinating details of these or other machines. What is most disturbing about them is their living of our lives for us. Is it misguided to search for *particular* additional functions beyond the competence of machines to do for us? Perhaps what we desire is to live (an active verb) ourselves, in contact with reality. (And this, machines cannot do *for* us.) Without elaborating on the implications of this, which I believe connect surprisingly with issues about free will and causal accounts of knowledge, we need merely note the intricacy of the question of what matters *for people* other than their experiences. Until one finds a satisfactory answer, and determines that this answer does not *also* apply to animals, one cannot reasonably claim that only the felt experiences of animals limit what we may do to them.

Robert Nozick: The Experience Machine

1. Nozick suggests that most people would choose not to plug in to an "experience machine" if given the opportunity. Would you plug in? Why or why not?
2. Hedonists such as Epicurus and Mill claim that pleasure is the only thing worth pursuing for its own sake. If some people would choose not to plug in to the experience machine, does this show that hedonism is false?
3. One reason Nozick gives for not getting into the experience machine is that "We want to *do* certain things, and not just have the experience of doing them." Do some activities have value independent of the experiences they produce? If so, what is an example of such an activity?
4. Nozick claims that "Plugging into the machine is a kind of suicide." What does he mean by this? Do you think he is right?

Consequentialism

Here we begin our extensive investigation into normative ethical theory, the area of philosophy that tries to identify the fundamental principles of morality. First up: **consequentialism**, a family of theories that places the emphasis on the consequences of our actions as the way to determine whether they are right or wrong.

A. THE NATURE OF CONSEQUENTIALISM

Consequentialism says that *an action is morally required just because it produces the best overall results*. Economists have coined a special word for this feature—being **optimific**. But how can we determine whether an act is optimific (i.e., whether it yields the best results)? It won’t always be an easy thing to do in practice. But in theory, it’s pretty straightforward. There are five steps to this process:

1. First, identify what is **intrinsically good**—valuable in and of itself, and worth having for its own sake. Familiar candidates include happiness, autonomy, knowledge, and virtue.
2. Next, identify what is intrinsically bad (i.e., bad all by itself). Examples might include physical pain, mental anguish, sadistic impulses, and the betrayal of innocents.
3. Then determine all of your options. Which actions are open to you at the moment?
4. For each option, determine the value of its results. How much of what is intrinsically good will each action bring about? How much of what is intrinsically bad?
5. Finally, pick the action that yields the greatest net balance of good over bad. That is the optimific choice. That is your moral duty. Doing anything else is immoral.

We can develop dozens of different versions of consequentialism, depending on which things we regard as intrinsically valuable. The many consequentialist alternatives include, for instance, views that state that acts are right if and only if they yield the greatest improvement in environmental health, or best advance the cause of world peace, or do more than any other action to increase the amount of knowledge in the world. Each of these is a version of consequentialism.

Thus consequentialism isn’t just a single theory, but is rather a family of theories, united by their agreement that results are what matter in ethics. We can’t discuss every member of the family here, so I will restrict my attention, for the most part, to its most prominent version—**act utilitarianism**.

According to act utilitarianism, well-being is the only thing that is intrinsically valuable. And faring poorly is the only thing that is intrinsically bad. Thus this view states that *an action is morally required if and only if it does more to improve overall well-being than any other action you could have done in the circumstances*. Philosophers call this ultimate moral standard the **principle of utility**. The focus, importantly, is on maximizing the *overall* amount of well-being in the world—not just yours, not just mine, but that of everyone affected by our actions. When we fail to maximize good results, we act wrongly, even if we had the best intentions. Though good

intentions may earn us praise, they are, according to utilitarians, irrelevant to an action's morality.

B. THE ATTRACTIONS OF UTILITARIANISM

Utilitarianism has garnered a lot of followers, not only among philosophers but also, especially, among economists and politicians. Let's consider some of its major selling points here, before turning our attention to some of its potential drawbacks.

Utilitarianism is a doctrine of impartiality, and this is one of its great strengths. It tells us that the welfare of each person is equally morally valuable. Whether rich or poor, white or black, male or female, religious or not, your well-being is just as important as anyone else's. Everyone's well-being counts, and everyone's well-being counts equally.

A second attraction is utilitarianism's ability to justify our basic moral beliefs. Consider the things we regard, deep down, as seriously immoral: slavery, rape, humiliating defenseless people, killing innocent victims. Each of these clearly tends to do more harm than good. Utilitarianism condemns such acts. So do we.

Now consider the things we strongly believe to be morally right: helping the poor, keeping promises, telling the truth, bravely facing danger. Such actions are highly beneficial. Utilitarianism commends them. So do we.

A third benefit of utilitarianism is its ability to provide advice about how to resolve moral conflicts. Because it has just a single ultimate rule—maximize well-being—it can offer concrete guidance where it is most needed.

Consider this familiar moral puzzle. I overhear some nasty gossip about my friend. She later asks me whether people have been spreading rumors about her. I know that she is extremely sensitive, and that if I answer honestly, it will send her into a downward spiral for several days. I also know that the source of this gossip is someone who actually likes my friend, and was

acting impulsively and out of character. She's probably feeling bad about it already, and probably won't repeat this unkindness.

Of course, we need to know a lot more about the situation before we can be confident about a recommendation, but if we just stick with the details given here, the utilitarian will advise me not to reveal what I have heard. Honesty may be the best *policy*, but that doesn't mean that full disclosure is always called for. When we consider our options, utilitarians tell us to pick the one that increases overall well-being. Telling the truth won't always do that.

Utilitarianism is also a doctrine that provides great moral flexibility—a fourth benefit. For utilitarians, no moral rule (other than the principle of utility) is **absolute**. An absolute rule is one that is not to be violated under any conditions. According to utilitarianism, it is morally okay to violate any rule—even one that prohibits cannibalism, or torture, or the killing of innocents—if doing so will raise overall well-being.

Most of us think that moral rules must allow some exceptions. But where to draw the line? How do we know whether to follow a moral rule or to break it? Utilitarianism gives us an answer. Morality is not a free-for-all. It is not a case of “anything goes.” We ordinarily do best when we obey the familiar moral rules (don’t steal, lie, kill, etc.). But there are times when we must stray from the conventional path in order to improve overall welfare. When we do this, we do right—even if it means breaking the traditional moral rules.

A fifth benefit of utilitarianism is its insistence that every person is a member of the **moral community**. To be a member of the moral community is to be important in your own right. It is to be owed a certain amount of respect. Membership in the moral community imposes a duty on everyone else to take one's needs seriously, for one's own sake.

Importantly, utilitarians also argue that non-human animals are members of the moral community. The reasoning behind their inclusion is recorded in a famous slogan by the pioneering

utilitarian Jeremy Bentham (1748–1832): “the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?¹ According to utilitarians, animals are important in their own right. Their importance does not depend on whether we happen to care about them. And the utilitarian explanation of this is very plausible: animals count because they can suffer.

Just to be clear, utilitarians allow that it is sometimes okay to harm members of the moral community. There are many cases in which maximizing overall well-being comes at a price. For instance, it may be acceptable to conduct certain intensely painful animal experiments, provided that they bring about very beneficial results. The point here is that, from the utilitarian perspective, we are not allowed to ignore the suffering of others. It doesn’t matter whether the victims are human beings or not.

C. SOME DIFFICULTIES FOR UTILITARIANISM

One problem for utilitarianism is that it seems like a very demanding theory, in two respects. A plausible moral theory is one that most of us can live by. But asking us to be constantly benevolent, never taking more than a moment or two for ourselves—how many of us can be so altruistic? If no one but a saint can meet its standards, then utilitarianism is in deep trouble.

Utilitarians would agree with this. They do *not* believe that we must always be strategizing about how to improve the world. The reason is simple. People motivated in this way usually fail to achieve their goal.

The idea is that those who are always trying to get the best outcome are often bound to miss it. This isn’t as strange as it sounds. Think of people whose sole purpose in life is to be as happy as they can be. Such people are rarely very happy. Constantly striving for this goal only makes it more elusive.

1. Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* (1781), ch. 17.

Utilitarians insist that we distinguish between a **decision procedure** and a **standard of rightness**. A decision procedure is just what it sounds like—a method for reliably guiding our decisions, so that when we use it well, we make decisions as we ought to. A standard of rightness tells us the conditions that make actions morally right.

Utilitarianism is, above all, a standard of rightness. It says that an action is right if and only if it is optimific. Importantly, a standard of rightness need not be a good decision procedure. Indeed, most consequentialists think that their standard of rightness—the principle of utility—fails as a decision procedure. Unless we find ourselves in very unusual circumstances, we should *not* be asking ourselves whether the act we are about to do is optimific.

The reasons given earlier explain this. Using the principle of utility as a decision procedure would probably *decrease* the amount of good we do in the world. That’s because we would probably spend too much time deliberating or second-guessing our motivations, thereby reducing our chances of doing good. Whenever that is so, utilitarians require that we use something other than the principle of utility to guide our deliberations and motivations.

But mightn’t utilitarianism demand too much of us in the way of self-sacrifice? Even if we needn’t always deliberate with an eye to doing what is optimific, and even if we needn’t always have a saint’s motivations, we really must act so as to achieve optimific results. Whenever we fail, we are behaving immorally. That is bound to strike most people as excessive.

It appears that a consistently utilitarian lifestyle would be one of great and constant self-sacrifice. Anytime you can do more good for others than you can for yourself, you are required to do so. If you are like most readers of this book—in no danger of starvation, able to afford a night out, a new pair of jeans, a vacation every so often—then utilitarianism calls on you to do a great deal more for others than you are probably doing.

If I have a choice between spending \$1,000 on a beach vacation and sending that money to UNICEF (the United Nations Children's Fund), it's an easy call. UNICEF literature claims that \$1,000 can provide 100 families with a basic water kit for use during emergencies, immunize 1,000 children against polio, or provide enough woolen blankets to cover 250 children during winter-weather emergencies. I'd be unhappy if I had to give up my vacation. But my unhappiness pales in comparison to the suffering of those whose lives could be saved if I spent my money on them, rather than myself. If utilitarianism is correct, then no more vacations for me (or you, probably).

There is an important lesson here: utilitarianism cannot make room for **supererogation**—action that is “above and beyond the call of duty.” Such behavior is admirable and praiseworthy, but is not required. A classic case of supererogation is that of a bystander dashing into a burning building in order to rescue strangers trapped inside. Utilitarians must deny that even this is a case of supererogation, because they deny that *any* actions are above and beyond the call of duty. Our moral duty is to do the very best we can do. If, among all of the options available to you at the time, dashing into the building is going to minimize harm, then this is what you must do. Attempting the rescue isn't optional. It is your duty.

Another worry about utilitarianism, ironically, is its attachment to impartiality. The impartiality required by utilitarianism really is a substantial benefit of the theory. The happiness of a celebrity or a billionaire is no more important than that of a homeless person or a refugee. From the moral point of view, everyone counts equally; no one's interests are more important than anyone else's.

Yet there is also something worrying about impartiality, since morality sometimes seems to recommend *partiality*. It seems right, for instance, that I care about my children more than your children, that I care more for friends than

strangers, more for my fellow citizens than those living halfway around the world. And it also seems right to translate my care into action. If I have saved a bit of money, and it could either pay for my son's minor surgery or relieve the greater suffering of famine victims, most of us will think it at least permissible to pay the surgeon. But to do that is to be partial to the interests of my son. Utilitarianism does not allow that. It rejects the idea that a person, just because he is my son, my dear friend, or my fellow citizen, is more deserving of my help and attention.

Utilitarians can argue that there are many situations in which we should give preference to our near and dear—not because they deserve it or are more important than strangers, but because that is what is most beneficial. They could argue, for instance, that the results of sending my money overseas would actually be worse than relieving my son's suffering. Utilitarians will remind us that we must consider all consequences, not just short-term ones. If I were to sacrifice my son's interests so readily, he would feel hurt, and less secure in my love for him. These feelings are bad in themselves and would probably cause further harm in the long run. By contrast, famine victims who don't even know me won't feel slighted by my passing them over so that I can care for my son's needs. So if we take a sufficiently broad view of things, we can see that being partial to the interests of family and friends is usually optimific after all.

This sort of reasoning is sometimes correct. When all is said and done, we often get better results when focusing on family, friends, and fellow citizens. But not always. After all, in the tale just told, the long-term result of my not sending famine aid is that some people actually die, whereas my son, though in pain and perhaps resentful of my sending the money abroad, would still be very much alive. From an impartial point of view, the death of famine victims is surely worse than my son's medical problems. When minimizing harm means giving one's time or money to strangers, utilitarianism

requires that we do so—even if that means sacrificing the important needs of friends and family.

This emphasis on impartiality leads to another problem. We are to count everyone's well-being equally. But suppose that nearly everyone in a society has a deep-seated prejudice against a small minority group. And suppose, further, that they use this prejudice to defend a policy of enslavement. Depending on the circumstances, it could be that utilitarianism *requires* slavery in this society.

When deciding the matter, we must take all of the harms to the slaves into account. But we must also consider the benefits to their oppressors. Everyone's interests count equally. Rich or poor, white or black, male or female. So far, so good. But also: ignorant or wise, just or unjust, kind or malicious—everyone's interests count, equally. If enough people are sufficiently mean and ignorant, then utilitarianism can require that we allow the sufferings they cause. Though such cases are not likely to occur that frequently, they can. And when they do, utilitarianism sides with the oppressors. That is a serious problem for any moral theory.

Perhaps the greatest problem for utilitarianism can be simply put: we must maximize well-being, but sometimes we can do this only by committing some serious injustice. Moral theories should not permit, much less require, that we act unjustly. Therefore, there is something deeply wrong about utilitarianism.

To do justice is to respect rights; to commit injustice is to violate rights. If it is ever optimific to violate rights, then utilitarianism requires us to do so.

Consider an example from wartime: **vicarious punishment**, which targets innocent people as a way to deter the guilty. Such a tactic often backfires. But it can sometimes be extremely effective. You might stop terrorists from their dirty work by abducting and threatening to torture their relatives. You might prevent guerilla attacks by killing the residents of the villages that shelter them. Though the

torture and deliberate killing of innocent civilians certainly infringes their rights, the utilitarian will require that it be done if it prevents even greater harm.

Cases of vicarious punishment are cases in which people do not deserve to be harmed. There are also many examples in which people do deserve some sort of penalty or punishment, but it is not optimific to give them their just deserts. Think of situations in which a student rightly receives a failing grade and appeals for a better one. Sometimes it really would be most beneficial to give the student the grade he wants, rather than the grade he has earned. Perhaps a job or a scholarship is on the line. If the benefits outweigh the costs, utilitarianism requires that the professor change the grade.

There are more serious cases. After World War II, US officials determined that it was beneficial to allow many Nazi scientists to escape punishment, so long as they agreed to share their weapons intelligence. Prosecutors sometimes let acknowledged murderers go free, if the killers testify against the crime bosses who once hired them. Political leaders with blood on their hands are often allowed to retire peacefully, so as to avoid the civil strife that would result were they prosecuted for their crimes. If utilitarianism is correct, then we must minimize harm—even if doing so means letting the guilty escape justice.

For as long as utilitarianism has been around, its fans have had to deal with the objection that it shortchanges justice. They have had ample time to develop replies. Let's consider these replies by framing each of them as a response to

The Argument from Injustice

1. The correct moral theory will never require us to commit serious injustices.
2. Utilitarianism sometimes requires us to commit serious injustices.
3. Therefore utilitarianism is not the correct moral theory.

There are four replies that are especially important. The first is that justice is also intrinsically valuable. It might sound puzzling, but those who make this first reply accept this argument in every respect. Utilitarianism cannot allow for the independent importance of justice, and that disqualifies it from being a good moral theory. Strictly speaking, then, utilitarianism is false. But if we make a small change to the doctrine, then all will be well.

A defining feature of utilitarianism is its view that well-being is the only thing that is intrinsically valuable. Suppose we amend that, and say that justice is also important in its own right. So we should maximize well-being *and* maximize justice in the world. That will solve the difficulty.

Or will it? If we are to maximize happiness and justice, what happens when we can't do both? Which should we give priority to?

We could say: always give priority to justice. But this isn't very plausible. Suppose that there has been gridlock in the state legislature. For months, lawmakers have been unable to pass a spending bill. Finally, a compromise package comes to the floor. If it doesn't get passed, there is no telling when another spending package will be voted on. In the meantime, government will shut down, and tens of thousands of people will not receive paychecks, medical assistance, or welfare support. Furthermore, the spending bill looks *terrific*. It solves a great number of the state's problems, gives aid to the neediest, and sponsors projects that will do genuine good for most communities. There is only one problem: it includes a clause that unfairly denies a small community the agricultural subsidies that the governor had promised it. Still, given the alternatives, a legislator should definitely vote for the spending bill, even though this means a minor injustice. As a general matter, if the stakes are extremely high, and the injustice very small, then it *may* be right to perpetrate injustice.

Rather than always giving priority to justice, we might instead always give priority to well-being. But then we are right back to the original theory, and so have made no progress in solving the problem of injustice.

What seems right to say is this: sometimes it's best to prefer well-being to justice, and sometimes not. But without any principle to sort this out, we don't really have a coherent theory at all.

In the face of this problem, some utilitarians opt for a second reply, and claim that injustice is never optimific. This amounts to denying premise 2. Those who favor this second reply say that if we carefully consider all of the results of unfair actions, we will see that those actions aren't really optimific. A policy of vicarious punishment, for instance, may work in the short run. But it will cause such anger among the target population that an even greater number of them will join the opposition. And that will mean more innocent bloodshed over time.

Such a calculation is certainly true in many cases. But it is unwarranted optimism to suppose that things will always work out so fortunately. Sometimes, for instance, terror movements do lose support when the surrounding civilian population is forced to take the hit. Injustice can sometimes prevent great harm. It can, on occasion, also produce great benefits. We can't tell the many stories of the criminals who have gotten away with it, because their happiness depends on their crimes remaining secret. In some of these cases, there is substantial benefit and little or no harm. Utilitarianism must approve of such actions.

A third reply to the problem of justice denies premise 1 of the Argument from Injustice. Those who offer this reply allow that well-being and justice sometimes conflict. But when they do, it is justice, and not well-being, that must take a backseat. Justice is only a part, not the whole, of morality. Of course it is important to respect people's rights, but that is because doing so is

usually optimific. When it isn't, rights must be sacrificed. So premise 1 of the Argument from Injustice is false.

Utilitarians who defend this strategy know that their recommendations will sometimes clash with conventional wisdom. But as we have seen, this is not a fatal flaw. Received opinion is not the final word in ethics. Utilitarianism began its life as a radical doctrine. That legacy remains.

Utilitarians can claim that our deepest moral convictions, including those that require us to do justice, reflect a utilitarian framework. We are socialized to tell the truth, protect the weak, keep our promises, and so on, *because doing so tends to be optimific*. But when it is not, utilitarians ask us to look at morality's ultimate standard, and to set aside our ordinary scruples in favor of the principle of utility.

Most of us agree that justice can sometimes be outweighed by other moral concerns. If, in a previous example, a legislator must authorize a minor injustice in order to pass an immensely beneficial spending bill, then morality gives the go-ahead. If you can administer CPR to a stricken passerby, and so save his life, then it is worth committing a minor injustice to do so. So justice may sometimes be sacrificed. But when? Utilitarians have an answer: whenever the results of doing so are optimific. If you don't like that answer, you need to supply a better principle that tells us when injustice is, and is not, permitted.

A fourth reply enables us to develop a closely related moral theory that deserves special mention here, because it promises to handle a number of objections to utilitarianism, while keeping much of its spirit. This is **rule consequentialism**—the view that *an action is morally right just because it is required by an optimific social rule*.

An optimific social rule is a rule that meets the following condition: if (nearly) everyone in a society were to accept it, then the results would be optimific.

The basic idea is this. Rather than determine an action's morality by asking about its results, we ask instead about whether the action conforms to a moral rule. This is a familiar model in ethics. Most moral theories operate this way. What distinguishes them from one another is their different claims about what makes something a moral rule. Rule consequentialists have a specific view about this. The moral rules are the optimific social rules.

To know whether a rule is an optimific social rule, follow these three steps:

1. Carefully describe the rule.
2. Imagine what a society would be like if just about everyone in it endorsed the rule.
3. Then ask this question: will that society be better off with this rule than with any competing rule?

If the answer to this question is *yes*, then this rule is an optimific social rule. If the answer is *no*, then it isn't an optimific social rule, and so is not a genuine moral rule.

Rule consequentialism will probably instruct professors to give their students the grades they deserve, rather than those they would like to have. It will condemn the actions of thieves, even if they don't get caught and their victims suffer in only minor ways. It will likely prohibit such practices as **vicarious punishment**. When we focus on what is optimific as a general policy, we repeatedly get advice that agrees with our notions of justice. Even rule consequentialists who reject the intrinsic value of justice, and insist that well-being is the only thing of ultimate value, will almost always defend policies that are just. That's because in the long run, and as a general matter, just *policies* maximize well-being, even if, in isolated cases, just *actions* do not.

Rule consequentialism also solves other problems with act utilitarianism. It supports our belief that morality permits a certain degree of partiality, because policies that allow

us to give preference to friends, loved ones, and fellow citizens will very often be highly beneficial.

Rule consequentialism can also say that certain actions are simply forbidden, even if they will sometimes achieve very good results. For instance, even if it would be optimific here and now to torture a prisoner, there may well be an optimific rule that forbids political torture. In most cases and over the long run, societies that ban torture may be much better off, in terms of both happiness and justice, than those that allow their officials to torture prisoners. If that is so, then torture is immoral—even if, in unusual cases, it yields real benefits.

So rule consequentialism has a lot going for it. And yet very few philosophers accept it. The reason was given over fifty years ago, by a prominent Australian philosopher, J. J. C. Smart.² In defending act utilitarianism, Smart accused rule consequentialists of irrational rule worship. That charge has stuck.

The basic worry is simple. Rule consequentialists demand that we obey moral rules, *even when we know that breaking them would yield better results*. But that is irrational, since in these cases, consequentialists know in advance that their ultimate goal (making the world the best place it can be) will not be fulfilled. It is irrational to knowingly defeat your own goals. Rule consequentialists do this whenever they issue a recommendation that differs from act utilitarianism.

Act utilitarianism demands that we always to do what is optimific. So, by definition, whenever rule consequentialists give us different advice, we are required to act in a way that fails to yield the best results. Rule consequentialists would forbid torture and embezzlement and vicarious punishment—even when

specific instances of such action would be most beneficial. This is self-defeating, since a consequentialist's ultimate aim is to produce the best possible results.

No matter what your ultimate goal is, the rules that *generally* achieve that goal will sometimes fail to do so. If you know that you are in one of those exceptional situations, then why follow the rule? Suppose that justice, not happiness, is the ultimate value. Suppose, too, that justice would be best served if everyone were to follow a certain rule, such as one that prohibits tampering with evidence. But why follow that rule if you know that this time, unusually, breaking the rule will yield the most justice?

If the ultimate purpose of morality is to make the world a better place, then it is irrational to knowingly behave in ways that fail to do this. And yet that is what rule consequentialism sometimes requires. That is why most consequentialists have rejected it.

D. CONCLUSION

Consequentialism is a perennial favorite with moral philosophers. Its emphasis on impartiality, its moral flexibility, its inclusion of non-human animals within the moral community, its orientation to the future, and its emphasis on results have great appeal for many ethical thinkers.

But we have also seen that there are worries for consequentialism, and these are not easily solved. We usually admire impartiality but sometimes think that partiality is what morality demands. Consequentialism can require a degree of self-sacrifice that strikes many people as extreme. And it sometimes calls on us to commit injustice. We reviewed the four most prominent replies to this concern, but we saw that each of them encountered difficulties. It's natural, then, to turn our attention next to a view that places primary importance on doing justice: the moral theory of Immanuel Kant.

2. See J. J. C. Smart, "Extreme and Restricted Utilitarianism," *Philosophical Quarterly* 6 (1956): 344–354.

ESSENTIAL CONCEPTS

Absolute rule: a rule that may never permissionably be broken.

Act utilitarianism: The moral theory that says that an action is morally required just because it does more to improve overall well-being than any other action you could have done in the circumstances.

Consequentialism: The family of moral theories that say that an action or a policy is morally required just because it produces the best overall results.

Decision procedure: a method for reliably guiding our decisions, so that when we use it well, we make decisions as we ought to.

Intrinsically good: valuable in and of itself, and worth having for its own sake

Moral community: that group of individuals who are morally important in their own right and, as such, are owed a certain amount of respect. Membership in the moral community imposes a duty on everyone else to take one's needs seriously, for one's own sake.

Optimific: producing the best results.

Optimific social rule: a social rule which, if nearly everyone accepted it, would yield better results than any competing social rule.

Principle of utility: the central doctrine of act utilitarianism.

Rule consequentialism: the view that an action is morally right just because it is required by an optimific social rule.

Standard of rightness: a principle that tells us the conditions under which actions are morally right.

Supererogation: action that is “above and beyond the call of duty.”

Vicarious punishment: punishment that targets innocent people as a way to deter the guilty.

DISCUSSION QUESTIONS

1. Most utilitarians think that sometimes people are not to blame for performing actions that are very wrong, and that sometimes people should not be praised for doing the right thing. Why do they think this? Do you agree?
2. Utilitarians reject the existence of absolute moral rules (other than the principle of utility). Do you think that there are any absolute moral rules? If so, what are they, and how can their absolute status be defended against the utilitarian view that the ends justify the means?
3. Is there any way of measuring how much happiness is brought about by an action? Do we have any method for comparing the happiness of two different people? If the answer to these questions is “no,” is this a problem for utilitarianism?
4. Critics claim that utilitarianism demands that we be saintly in our motivations. Explain this criticism and then discuss why you find it (im)plausible.
5. If utilitarianism is correct, then we may be morally required to undertake substantial sacrifice for others. What limits on such sacrifice does the utilitarian favor? Are these limits acceptable?
6. Utilitarianism requires us to be impartial. What does this amount to? In what sense does utilitarianism require that we treat all people equally? Is this a positive or a negative feature of the theory?
7. Which utilitarian reply to the Argument from Injustice do you think is the most promising? Do you think that this reply is ultimately successful? Defend your answer.

READING

Utilitarianism

John Stuart Mill

Though written over a hundred and fifty years ago in the form of a long pamphlet, Mill's *Utilitarianism* is the most influential presentation of the doctrine yet to appear. In this excerpt from its second chapter, Mill identifies the essential core of the moral theory, namely, its Greatest Happiness Principle: "actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness." Mill is keen to say that one's own happiness is no more important than another's—the utilitarian creed insists that a virtuous person will be concerned with the general happiness and align her own interests with those of the larger population to the extent possible.

The discussion here takes the form of replies to a series of objections; along the way, Mill takes the opportunity to identify positive attractions of the view. One objection is that utilitarianism demands too much of us by requiring that we always be motivated to promote the greater good. Mill replies by denying this and distinguishing between the standard of right action—the Greatest Happiness Principle—and the standard by which we assess people's motives and character. An act that yields only avoidable harm is wrong, even though the person who did it tried hard to do good. In such a case we need not blame the person, even though he acted immorally. Mill claims that only a small handful of people are in a position to do good on a large scale; as a result, most of us would do best not to ordinarily have the Greatest Happiness Principle as our primary motivation.

Indeed, rather than always ask ourselves which of our options will produce the greatest happiness, Mill thinks that we should rely on a battery of familiar moral rules to guide our actions and in most cases don't even need to reflect much in order to know which of our actions is the right one. We will do more good by relying on these familiar rules (e.g., don't lie, don't kill others, keep your promises) than on frequent, direct calculations of utility. But these rules are themselves justified because following them usually leads to increases in happiness or decreases in unhappiness. Further, these rules will sometimes conflict; when they do, Mill touts as a significant advantage of utilitarianism that its Greatest Happiness Principle provides a principled basis for determining how to resolve such conflicts.

The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended

From John Stuart Mill, *Utilitarianism* (1861).

pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure. To give a clear view of the moral standard set up by the theory, much more requires to be said; in particular, what things it includes in the ideas of pain and pleasure; and to what extent this is left an open question. But these supplementary explanations do not affect

the theory of life on which this theory of morality is grounded—namely, that pleasure, and freedom from pain, are the only things desirable as ends; and that all desirable things (which are as numerous in the utilitarian as in any other scheme) are desirable either for the pleasure inherent in themselves, or as means to the promotion of pleasure and the prevention of pain....

[T]he happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned. As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator. In the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as you would be done by, and to love your neighbour as yourself, constitute the ideal perfection of utilitarian morality. As the means of making the nearest approach to this ideal, utility would enjoin, first, that laws and social arrangements should place the happiness, or (as speaking practically it may be called) the interest, of every individual, as nearly as possible in harmony with the interest of the whole; and secondly, that education and opinion, which have so vast a power over human character, should so use that power as to establish in the mind of every individual an indissoluble association between his own happiness and the good of the whole; especially between his own happiness and the practice of such modes of conduct, negative and positive, as regard for the universal happiness prescribes; so that not only may he be unable to conceive the possibility of happiness to himself, consistently with conduct opposed to the general good, but also that a direct impulse to promote the general good may be in every individual one of the habitual motives of action, and the sentiments connected therewith may fill a large and prominent place in every human being's sentient existence. If the impugners of the utilitarian morality represented it to their own minds in this, its true character, I know not what recommendation possessed by any other morality they could possibly affirm to be wanting to it; what more beautiful or more exalted developments of human nature any other ethical system can be supposed to foster, or what springs of action, not accessible to

the utilitarian, such systems rely on for giving effect to their mandates.

The objectors to utilitarianism cannot always be charged with representing it in a discreditable light. On the contrary, those among them who entertain anything like a just idea of its disinterested character, sometimes find fault with its standard as being too high for humanity. They say it is exacting too much to require that people shall always act from the inducement of promoting the general interests of society. But this is to mistake the very meaning of a standard of morals, and confound the rule of action with the motive of it. It is the business of ethics to tell us what are our duties, or by what test we may know them; but no system of ethics requires that the sole motive of all we do shall be a feeling of duty; on the contrary, ninety-nine hundredths of all our actions are done from other motives, and rightly so done, if the rule of duty does not condemn them. It is the more unjust to utilitarianism that this particular misapprehension should be made a ground of objection to it, inasmuch as utilitarian moralists have gone beyond almost all others in affirming that the motive has nothing to do with the morality of the action, though much with the worth of the agent. He who saves a fellow creature from drowning does what is morally right, whether his motive be duty, or the hope of being paid for his trouble; he who betrays the friend that trusts him, is guilty of a crime, even if his object be to serve another friend to whom he is under greater obligations.

But to speak only of actions done from the motive of duty, and in direct obedience to principle: it is a misapprehension of the utilitarian mode of thought, to conceive it as implying that people should fix their minds upon so wide a generality as the world, or society at large. The great majority of good actions are intended not for the benefit of the world, but for that of individuals, of which the good of the world is made up; and the thoughts of the most virtuous man need not on these occasions travel beyond the particular persons concerned, except so far as is necessary to assure himself that in benefiting them he is not violating the rights, that is, the legitimate and authorised expectations, of any one else. The multiplication of happiness is, according to the utilitarian ethics, the object of

virtue: the occasions on which any person (except one in a thousand) has it in his power to do this on an extended scale, in other words to be a public benefactor, are but exceptional; and on these occasions alone is he called on to consider public utility; in every other case, private utility, the interest or happiness of some few persons, is all he has to attend to. Those alone the influence of whose actions extends to society in general, need concern themselves habitually about so large an object. In the case of abstinences indeed—of things which people forbear to do from moral considerations, though the consequences in the particular case might be beneficial—it would be unworthy of an intelligent agent not to be consciously aware that the action is of a class which, if practised generally, would be generally injurious, and that this is the ground of the obligation to abstain from it. The amount of regard for the public interest implied in this recognition is no greater than is demanded by every system of morals, for they all enjoin to abstain from whatever is manifestly pernicious to society.

The same considerations dispose of another reproach against the doctrine of utility, founded on a still grosser misconception of the purpose of a standard of morality, and of the very meaning of the words right and wrong. It is often affirmed that utilitarianism renders men cold and unsympathising; that it chills their moral feelings towards individuals; that it makes them regard only the dry and hard consideration of the consequences of actions, not taking into their moral estimate the qualities from which those actions emanate. If the assertion means that they do not allow their judgment respecting the rightness or wrongness of an action to be influenced by their opinion of the qualities of the person who does it, this is a complaint not against utilitarianism, but against having any standard of morality at all; for certainly no known ethical standard decides an action to be good or bad because it is done by a good or a bad man, still less because done by an amiable, a brave, or a benevolent man, or the contrary. These considerations are relevant, not to the estimation of actions, but of persons; and there is nothing in the utilitarian theory inconsistent with the fact that there are other things which interest us in persons besides the rightness and

wrongness of their actions. The Stoics, indeed, with the paradoxical misuse of language which was part of their system, and by which they strove to raise themselves above all concern about anything but virtue, were fond of saying that he who has that has everything; that he, and only he, is rich, is beautiful, is a king. But no claim of this description is made for the virtuous man by the utilitarian doctrine. Utilitarians are quite aware that there are other desirable possessions and qualities besides virtue, and are perfectly willing to allow to all of them their full worth. They are also aware that a right action does not necessarily indicate a virtuous character, and that actions which are blamable, often proceed from qualities entitled to praise. When this is apparent in any particular case, it modifies their estimation, not certainly of the act, but of the agent. I grant that they are, notwithstanding, of opinion, that in the long run the best proof of a good character is good actions; and resolutely refuse to consider any mental disposition as good, of which the predominant tendency is to produce bad conduct. This makes them unpopular with many people; but it is an unpopularity which they must share with every one who regards the distinction between right and wrong in a serious light; and the reproach is not one which a conscientious utilitarian need be anxious to repel.

If no more be meant by the objection than that many utilitarians look on the morality of actions, as measured by the utilitarian standard, with too exclusive a regard, and do not lay sufficient stress upon the other beauties of character which go towards making a human being lovable or admirable, this may be admitted. Utilitarians who have cultivated their moral feelings, but not their sympathies nor their artistic perceptions, do fall into this mistake; and so do all other moralists under the same conditions. What can be said in excuse for other moralists is equally available for them, namely, that, if there is to be any error, it is better that it should be on that side. As a matter of fact, we may affirm that among utilitarians as among adherents of other systems, there is every imaginable degree of rigidity and of laxity in the application of their standard: some are even puritanically rigorous, while others are as indulgent as can possibly be desired by sinner or by sentimentalist.

But on the whole, a doctrine which brings prominently forward the interest that mankind have in the repression and prevention of conduct which violates the moral law, is likely to be inferior to no other in turning the sanctions of opinion against such violations. It is true, the question, What does violate the moral law? is one on which those who recognise different standards of morality are likely now and then to differ. But difference of opinion on moral questions was not first introduced into the world by utilitarianism, while that doctrine does supply, if not always an easy, at all events a tangible and intelligible mode of deciding such differences.

It may not be superfluous to notice a few more of the common misapprehensions of utilitarian ethics. . . . We not uncommonly hear the doctrine of utility inveighed against as a godless doctrine. If it be necessary to say anything at all against so mere an assumption, we may say that the question depends upon what idea we have formed of the moral character of the Deity. If it be a true belief that God desires, above all things, the happiness of his creatures, and that this was his purpose in their creation, utility is not only not a godless doctrine, but more profoundly religious than any other. If it be meant that utilitarianism does not recognise the revealed will of God as the supreme law of morals, I answer, that a utilitarian who believes in the perfect goodness and wisdom of God, necessarily believes that whatever God has thought fit to reveal on the subject of morals, must fulfil the requirements of utility in a supreme degree. But others besides utilitarians have been of opinion that the Christian revelation was intended, and is fitted, to inform the hearts and minds of mankind with a spirit which should enable them to find for themselves what is right, and incline them to do it when found, rather than to tell them, except in a very general way, what it is; and that we need a doctrine of ethics, carefully followed out, to interpret to us the will of God. Whether this opinion is correct or not, it is superfluous here to discuss; since whatever aid religion, either natural or revealed, can afford to ethical investigation, is as open to the utilitarian moralist as to any other. He can use it as the testimony of God to the usefulness or hurtfulness of any given course of action, by as good a right as others can use it for the indication

of a transcendental law, having no connection with usefulness or with happiness.

Again, Utility is often summarily stigmatised as an immoral doctrine by giving it the name of Expediency, and taking advantage of the popular use of that term to contrast it with Principle. But the Expedient, in the sense in which it is opposed to the Right, generally means that which is expedient for the particular interest of the agent himself; as when a minister sacrifices the interests of his country to keep himself in place. When it means anything better than this, it means that which is expedient for some immediate object, some temporary purpose, but which violates a rule whose observance is expedient in a much higher degree. The Expedient, in this sense, instead of being the same thing with the useful, is a branch of the hurtful. Thus, it would often be expedient, for the purpose of getting over some momentary embarrassment, or attaining some object immediately useful to ourselves or others, to tell a lie. But inasmuch as the cultivation in ourselves of a sensitive feeling on the subject of veracity, is one of the most useful, and the enfeeblement of that feeling one of the most hurtful, things to which our conduct can be instrumental; and inasmuch as any, even unintentional, deviation from truth, does that much towards weakening the trustworthiness of human assertion, which is not only the principal support of all present social well-being, but the insufficiency of which does more than any one thing that can be named to keep back civilisation, virtue, everything on which human happiness on the largest scale depends; we feel that the violation, for a present advantage, of a rule of such transcendent expediency, is not expedient, and that he who, for the sake of a convenience to himself or to some other individual, does what depends on him to deprive mankind of the good, and inflict upon them the evil, involved in the greater or less reliance which they can place in each other's word, acts the part of one of their worst enemies. Yet that even this rule, sacred as it is, admits of possible exceptions, is acknowledged by all moralists; the chief of which is when the withholding of some fact (as of information from a malefactor, or of bad news from a person dangerously ill) would save

an individual (especially an individual other than oneself) from great and unmerited evil, and when the withholding can only be effected by denial. But in order that the exception may not extend itself beyond the need, and may have the least possible effect in weakening reliance on veracity, it ought to be recognised, and, if possible, its limits defined; and if the principle of utility is good for anything, it must be good for weighing these conflicting utilities against one another, and marking out the region within which one or the other preponderates.

Again, defenders of utility often find themselves called upon to reply to such objections as this—that there is not time, previous to action, for calculating and weighing the effects of any line of conduct on the general happiness. This is exactly as if any one were to say that it is impossible to guide our conduct by Christianity, because there is not time, on every occasion on which anything has to be done, to read through the Old and New Testaments. The answer to the objection is, that there has been ample time, namely, the whole past duration of the human species. During all that time, mankind have been learning by experience the tendencies of actions; on which experience all the prudence, as well as all the morality of life, are dependent. People talk as if the commencement of this course of experience had hitherto been put off, and as if, at the moment when some man feels tempted to meddle with the property or life of another, he had to begin considering for the first time whether murder and theft are injurious to human happiness. Even then I do not think that he would find the question very puzzling; but, at all events, the matter is now done to his hand.

It is truly a whimsical supposition that, if mankind were agreed in considering utility to be the test of morality, they would remain without any agreement as to what is useful, and would take no measures for having their notions on the subject taught to the young, and enforced by law and opinion. There is no difficulty in proving any ethical standard whatever to work ill, if we suppose universal idiocy to be conjoined with it; but on any hypothesis short of that, mankind must by this time have acquired positive beliefs as to the

effects of some actions on their happiness; and the beliefs which have thus come down are the rules of morality for the multitude, and for the philosopher until he has succeeded in finding better. That philosophers might easily do this, even now, on many subjects; that the received code of ethics is by no means of divine right; and that mankind have still much to learn as to the effects of actions on the general happiness, I admit, or rather, earnestly maintain. The corollaries from the principle of utility, like the precepts of every practical art, admit of indefinite improvement, and, in a progressive state of the human mind, their improvement is perpetually going on.

But to consider the rules of morality as improvable, is one thing; to pass over the intermediate generalisations entirely, and endeavour to test each individual action directly by the first principle, is another. It is a strange notion that the acknowledgement of a first principle is inconsistent with the admission of secondary ones. To inform a traveller respecting the place of his ultimate destination, is not to forbid the use of landmarks and direction-posts on the way. The proposition that happiness is the end and aim of morality, does not mean that no road ought to be laid down to that goal, or that persons going thither should not be advised to take one direction rather than another. Men really ought to leave off talking a kind of nonsense on this subject, which they would neither talk nor listen to on other matters of practical concernment. Nobody argues that the art of navigation is not founded on astronomy, because sailors cannot wait to calculate the Nautical Almanack. Being rational creatures, they go to sea with it ready calculated; and all rational creatures go out upon the sea of life with their minds made up on the common questions of right and wrong, as well as on many of the far more difficult questions of wise and foolish. And this, as long as foresight is a human quality, it is to be presumed they will continue to do. Whatever we adopt as the fundamental principle of morality, we require subordinate principles to apply it by; the impossibility of doing without them, being common to all systems, can afford no argument against any one in particular; but gravely to argue as if no such secondary principles could be had, and as if mankind

had remained till now, and always must remain, without drawing any general conclusions from the experience of human life, is as high a pitch, I think, as absurdity has ever reached in philosophical controversy.

The remainder of the stock arguments against utilitarianism mostly consist in laying to its charge the common infirmities of human nature, and the general difficulties which embarrass conscientious persons in shaping their course through life. We are told that a utilitarian will be apt to make his own particular case an exception to moral rules, and, when under temptation, will see a utility in the breach of a rule, greater than he will see in its observance. But is utility the only creed which is able to furnish us with excuses for evil doing, and means of cheating our own conscience? They are afforded in abundance by all doctrines which recognise as a fact in morals the existence of conflicting considerations; which all doctrines do, that have been believed by sane persons. It is not the fault of any creed, but of the complicated nature of human affairs, that rules of conduct cannot be so framed as to require no exceptions, and that hardly any kind of action can safely be laid down as either always obligatory or always condemnable. There is no ethical creed which does not temper the rigidity of its laws, by giving a certain latitude, under the moral responsibility of the agent, for accommodation to peculiarities of circumstances; and under every creed, at the opening thus made, self-deception and dishonest casuistry get in. There exists no moral system under which there do not arise unequivocal cases of conflicting obligation. These are the real difficulties, the knotty points both in the theory of ethics, and in the conscientious guidance of personal conduct. They are overcome practically, with greater or with less success, according to the intellect and virtue of the individual; but it can hardly be pretended that any one will be the less qualified for dealing with them, from possessing an ultimate standard to which conflicting rights and duties can be referred. If utility is the ultimate source of moral obligations, utility may be invoked to decide between them when their demands are incompatible. Though the application of the standard may be difficult, it is better than none at all: while in other

systems, the moral laws all claiming independent authority, there is no common umpire entitled to interfere between them; their claims to precedence one over another rest on little better than sophistry, and unless determined, as they generally are, by the unacknowledged influence of considerations of utility, afford a free scope for the action of personal desires and partialities. We must remember that only in these cases of conflict between secondary principles is it requisite that first principles should be appealed to. There is no case of moral obligation in which some secondary principle is not involved; and if only one, there can seldom be any real doubt which one it is, in the mind of any person by whom the principle itself is recognised.

John Stuart Mill: Utilitarianism

1. Utilitarianism claims that my happiness is no more important than yours. This kind of impartiality seems highly appealing. But this also appears to prohibit us from giving ourselves or our family priority over the interests of others. Is this appearance correct? Can utilitarianism allow for partiality to oneself or one's family?
2. Mill claims that virtuous people will rarely have the Greatest Happiness Principle in mind when acting. Why does he say this? Is his claim plausible? And is it what a utilitarian really should say?
3. Mill believes that the motives that prompt an action are irrelevant to that action's morality. Is this claim plausible? Why or why not?
4. Many critics of utilitarianism claim that the theory requires that we sacrifice too much for others. Mill counters by saying that only a very few people are in a position to do much good for many others; as a result, most of us are not required to focus our efforts in ways that require significant self-sacrifice. Is Mill's view too rosy, especially now that we are so easily able to learn of how unfortunate others are and are easily able to give to charities that can help improve the lives of those who are less well off than we are?
5. Some have argued that utilitarianism is a godless doctrine. What is Mill's reply to this? Do you find it plausible?

Kantian Ethics

Imagine a person who reasons as follows: I should keep my money rather than pay it out in taxes, because if I keep it, I'll be able to afford a wonderful vacation for myself and my family. And no one is actually going to suffer if I pocket the money, since it's only a few thousand dollars that we're talking about. There's no way that money could bring as much happiness in the government's hands as it could in mine.

Suppose he is right about that. He spends the money on his vacation. He and his family have a terrific time. He is never caught.

Still, he has done something wrong. So has the person who cheats on her exams and gets away with it. So has the person who gleefully speeds down the emergency lane and escapes the traffic jam that the rest of us are stuck in. So has the person whose campaign of dirty tricks has gotten him securely into office.

Despite any good results that may come from their actions, these people did wrong—or so we think. And the explanation of their immorality is simple. What they did was unfair. They took advantage of the system. They broke the rules that work to everyone's benefit. They violated the rights of others. No matter how much personal gain such actions bring, they are still wrong, because they are unfair and unjust.

Immanuel Kant (1724–1804) thought this way, and was very likely the most brilliant philosopher ever to have done so. He remains perhaps the most important voice of opposition to utilitarianism, and to its claim that the ultimate point of morality is to improve well-being rather than do justice.

A. CONSISTENCY AND FAIRNESS

There is a natural way to understand what is wrong with the actions in the examples just given. In each case, people are making exceptions of themselves. Their success depends on violating rules that most other people are following. This is a kind of inconsistency—of playing by one set of rules while insisting that others obey a different set.

People are inconsistent to the extent that they treat similar cases differently. Tax cheats or dirty politicians are in the same boat as the rest of us. There's nothing special about them, or their situation, that exempts them from the rules that everyone must follow. That you can get away with making an exception of yourself doesn't mean that it is right to do so.

Our deep opposition to unfairness, and the resulting importance we attach to consistency, are revealed in two very popular tests of morality. Each takes the form of a question:

1. What if everyone did that?
2. How would you like it if I did that to you?

When we ask such questions—in the face of a bully, a liar, or a double-crosser—we are trying to get the person to see that he is acting unfairly, making an exception of himself, living by a set of rules that work only because others are not doing what he is doing. These basic moral challenges are designed to point out the inconsistency, and so the immorality, of that person's behavior.

Consider the first question: what if everyone did that? This question is really shorthand for the following test: *if disastrous results would occur if everyone did X, then X is immoral*. If

everyone used the emergency lanes in traffic jams, then ambulances and fire trucks would often fail to provide needed help, leaving many to die. If everyone cheated on their taxes, society would crumble. If every candidate resorted to dirty tricks, then the entire political system would become corrupted. The test works easily and well for these cases.

But the test fails for other cases, and so it cannot serve as a reliable way to learn the morality of actions. Consider a common argument against homosexual sex: if everyone did that, disaster would soon follow, for the human race would quickly die out. Even if this were true, that wouldn't show that homosexual sex is immoral. Why not? Well, consider those who have decided to remain celibate—perhaps they are priests, or committed lifelong bachelors who believe that one shouldn't have sex without being married. What if everyone did *that*—in other words, refrained from having sex? The same results would follow. But that doesn't show that celibacy is immoral.

What about the other test, the one that asks: How would you like it if I did that to you? This is a direct application of the **Golden Rule**, which tells you to treat others as you would like to be treated. The Golden Rule is the classic test of morality. Clearly, it is meant to be a test of consistency. If you wouldn't want to be slandered or exploited, then don't do such things to others. If you do them anyway, you are acting inconsistently, hence unfairly, and therefore immorally.

The Golden Rule seems to work well for these cases and many others. Still, the Golden Rule cannot be correct. Kant himself identified the basic reason for this. The Golden Rule makes morality depend on a person's desires. Most of us don't like to be hit. And so the Golden Rule forbids us from hitting others. Good. But what about masochists who enjoy being hit? The Golden Rule allows them to go around hitting others. Bad. The morality of hitting people shouldn't depend on whether you like to take a beating every now and then.

Consider a related problem, that of the fanatic. Fanatics are principled people. It's just that their principles are ones that we find frightening and revolting. Some fanatics are so wedded to their cause, so strong-willed and self-disciplined, that they would accept the suffering that they want to impose on their victims, were the role of victim and persecutor reversed. True, few Nazis, for instance, would really accept a march to the gas chamber were they to discover their Jewish ancestry. Most Nazis, like most fanatics generally, are opportunists of bad faith, ones with very limited empathy and only a feeble ability to imagine themselves in someone else's place. If roles really were reversed, they'd much more likely beg for mercy and abandon their genocidal principles. But some would not. There are true believers out there who are willing to suffer any harm in the name of their chosen cause. The Golden Rule licenses their extremism because it makes the morality of an action depend entirely on what you want and what you are willing to put up with.

Because the Golden Rule sometimes gives the wrong answer to moral questions, it cannot be the ultimate test of morality. Something else must explain why it works, when it does. Kant thought he had the answer.

B. THE PRINCIPLE OF UNIVERSALIZABILITY

Kant, like most of us, felt the appeal of the two tests just discussed. He agreed that common sense is deeply committed to the importance of fairness and consistency, something that these two tests were trying, but not quite succeeding, in capturing. His aim was to identify the ultimate principle of morality, one that would explain the attraction of the two tests while correcting for their shortcomings.

He thought he had found it in the following standard, the **principle of universalizability**:

An act is morally acceptable if, and only if, its maxim is universalizable.

To understand what this means, we need to understand two things: what a **maxim** is, and what it is for a maxim to be **universalizable**.

A maxim is simply the principle of action you give yourself when you are about to do something. For instance, if you send a regular check to Oxfam, your maxim might be: contribute \$50 per month to Oxfam to help reduce hunger. A maxim has two parts. It states what you are about to do, and why you are about to do it. You dictate your own maxims. These are the rules you live by.

Kant thought that every action has a maxim. Of course we don't always formulate these maxims clearly to ourselves prior to acting, but at some level, whenever we act, we intend to do something, and we have a reason for doing it. A maxim is nothing but a record of that intention and its underlying reason. Maxims are what we cite when we try to explain to others why we act as we do.

If we lack a maxim, then we aren't really acting at all. We could be moving our bodies, as we do when we sneeze or roll across the bed in our sleep. But the absence of a maxim in these cases shows that these are mere bodily movements, rather than genuine actions.

Kant thought that an action's rightness depends on its maxim. And this leads directly to a very important point. For Kant, the morality of our actions has nothing to do with results. It has everything to do with our intentions and reasons for action, those that are contained in the principles we live by. This is a clear break with consequentialism.

Indeed, we can imagine two people doing the same thing, but for different reasons. That means that they will have different maxims. And even if their actions bring about identical results, one of the actions may be right and the other wrong, since only one of the maxims may be morally acceptable. This is something that act consequentialists cannot accept.

It might be, for instance, that I keep my promises to you because I think it's right to do

so. But I might instead keep my promises because I want you to like me so much that you leave your fortune to me in your will. Assume that these different reasons don't change the results of keeping my promises. Then the utilitarian thinks that each case of promise keeping is equally good. But since my maxim is different in these cases, Kant thinks that the morality of these actions might be different. It all depends, as we'll shortly see, on whether their maxims are universalizable.

Many people agree with Kant's view that the morality of our actions depends not on their results, but on our maxims. This supports our thought that those who set out to do evil are acting immorally, even if, through sheer chance, they manage to do good. It also justifies the claim that people who live by noble principles are acting morally, even when some unforeseeable accident intervenes, and their action brings only bad results.

So the morality of actions depends on their maxims. But how, precisely? Not every maxim is going to be a good one. We need a way to sort out the good maxims from the bad. That's where universalizability comes in.

How can we tell whether a maxim is universalizable? Here is a three-part test:

1. Formulate your maxim clearly—state what you intend to do and why you intend to do it.
2. Imagine a world in which everyone supports and acts on your maxim.
3. Then ask: Can the goal of my action be achieved in such a world?

If the answer to this last question is *yes*, then the maxim is universalizable, and the action is morally acceptable. If the answer is *no*, then the maxim is not universalizable, and the action it calls for is immoral.

This should strike a familiar note. The test of a maxim's universalizability clearly echoes the rule consequentialist's test for optimific social rules (see Chapter 5.C) and the *what if everyone*

did that? test discussed earlier. Indeed, Kant has us ask a version of that question in the second step of this three-part test. But unlike these other tests, Kant doesn't ask about whether people would be much better off in the imagined world, or about whether disaster would strike there. Instead, he asks about whether we could achieve our goals in that world. But what is so important about that?

The importance, for Kant, is that this three-part test serves as the real way to determine whether we are being consistent and fair. If our maxim is universalizable, then we are pursuing actions for reasons that everyone could stand behind. We are not making exceptions of ourselves. Our goals are ones that everyone *could* support, even if, in the real world, some are dead set against them. We are asking whether our aims could be achieved if everyone shared them. If they can be, this shows that we are living by fair rules. Were we making an exception of ourselves, our maxims wouldn't be universalizable.

Consider the tax cheat again. The only reason he can get what he is aiming for (a lovely vacation) is because enough others are not adopting his maxim. The same goes for the careless driver who speeds down the emergency lane. The morality of these actions doesn't depend on their results, but on their maxims. And those maxims are not universalizable. So those actions are immoral, as Kant says, and as we believe.

C. HYPOTHETICAL AND CATEGORICAL IMPERATIVES

Kant claimed that when we act on a maxim that can't be universalized, we are contradicting ourselves. We are being inconsistent. We are assuming that it is acceptable to act in a certain way, even though our purposes could not be achieved if others acted in that very same way. When we make an exception of ourselves, we are acting as if we were more important than anyone else, and going on as if we were exempt from rules that others must obey. But we are not more important than others, and we are not exempt from these requirements.

It follows that when we behave immorally, we are reasoning badly. We are making mistaken assumptions—that we are more important than other people, that the rules applying to them do not apply to us. Those mistakes, and the inconsistent, contradictory reasoning behind them, show that *immoral conduct is irrational*.

To act irrationally is to act and to reason very badly. If Kant is right, then when we act immorally, we are reasoning poorly. But can this be right? Haven't we heard of lots of folks who act immorally while also being sharp, cunning, and strategic—in short, while being rational?

Well, in one sense, Kant allows that these wrongdoers are rational, because they are following what he called **hypothetical imperatives**. Specifically, these are imperatives—commands—of reason. They command us to do whatever is needed in order to get what we care about. Hypothetical imperatives tell us how to achieve our goals. They require us, on pain of irrationality, to do certain things, but only because such actions will get us what we want.

For instance, if my goal is to lose twenty pounds (as it often is), then reason requires me to forgo that pint of luscious coffee ice cream. If I want to get that Wall Street job, then reason requires that I line up a good summer internship. Reason demands that I look both ways at a busy intersection if I want to remain alive. These rational commands apply to me because of what I care about. I am irrational if I disregard them or act in a way that violates them.

But what if I don't care about acting morally? Then it seems that I can rationally ignore its requirements. But Kant would have none of that. He wanted to show that some rational requirements are, in his jargon, **categorical imperatives**. Like hypothetical imperatives, categorical imperatives are commands of reason. But unlike hypothetical imperatives, categorical imperatives are rational requirements that apply to a person regardless of what

he or she cares about. They are requirements of reason that apply to everyone who possesses reason—in other words, everyone able to reflect on the wisdom of her actions, and able to use such reflections to guide her actions. Categorical imperatives command us to do things whether we want to or not, with the result that if we ignore or disobey them, we are acting contrary to reason (i.e., irrationally).

Kant thought that *all moral duties are categorical imperatives*. They apply to us just because we are rational beings. We must obey them even if we don't want to, and even if moral obedience gets us nothing that we care about.

One lesson Kant took from his thoughts about the Golden Rule is that the basic rules of morality do not depend on our desires. If they did, then moral rules would fail to apply to everyone, since our desires can differ from person to person. This would make morality too variable, and make it possible for people to escape from their moral duty just by changing what they want. Kant thought that he was defending common sense when he claimed that morality is, in this sense, universal—that everyone who can reason must obey its commands.

If moral duties really are categorical imperatives, then we act rationally when we act morally, and we act irrationally when we act immorally. Is that sort of view defensible? Can we really justify the claim that it is rational for everyone to act morally—even if we know that, for some people, moral conduct will only undermine their goals?

Kant thought he could do this. This is his line of reasoning:

The Argument for the Irrationality of Immorality

1. If you are rational, then you are consistent.
2. If you are consistent, then you obey the principle of universalizability.
3. If you obey the principle of universalizability, then you act morally.

4. Therefore, if you are rational, then you act morally.
5. Therefore, if you act immorally, then you are irrational.

It does seem that rationality requires consistency, as the first premise asserts. And, as we have discussed, the principle of universalizability is a demand of consistency. So, while more could certainly be said about these first two premises, let us take them for granted here and focus on the third. This is the claim that obedience to the principle of universalizability guarantees that our conduct is moral. Is this Kantian claim correct?

D. ASSESSING THE PRINCIPLE OF UNIVERSALIZABILITY

Unfortunately, the principle of universalizability fails as a general test for the morality of our actions. Look at premise 3 of Kant's Argument for the Irrationality of Immorality. It says that a maxim's universalizability is a guarantee of an action's rightness. That is false. We can act on universalizable maxims and still do wrong.

The principle of universalizability seems to be a very attractive way of pointing out how unfairness and inconsistency lead to immorality. So, for instance, when a thief robs a bank in order to gain riches, Kant can show why the robbery is immoral. If everyone acted on the thief's maxim, there would be no money in the bank to steal, and the thief's goal could not be achieved. But what if the criminal had robbed the bank in order to damage it and put it out of business? If everyone acted that way, then the thief's goal could be achieved. So the principle of universalizability fails to condemn the robbery. And yet such an act is surely wrong.

Recall the case of the fanatic that came up when we were discussing the *what if everyone did that?* test. The goals of fanatics are ones that can often be met in a world in which everyone shares their aims. Fanatics need not make exceptions of themselves. The murderous aims of

any number of groups could easily be achieved in a world in which everyone supported them. Thus fanatics can be consistent in the relevant sense: their guiding principles could be fulfilled if everyone else were to adopt them.

I think this shows that the principle of universalizability fails to give us an adequate test of fairness, for we can follow its advice while still singling out individuals or groups for discriminatory treatment. There can be consistent Nazis, after all. It doesn't follow that their policies are fair or morally acceptable.

E. KANT ON ABSOLUTE MORAL DUTIES

Kant thought that certain sorts of actions are never permitted. Lying is one of them. In a much-discussed case, that of the inquiring murderer, Kant has us imagine a man bent on killing. This man knocks at your door and asks if you know the location of his intended victim. You do. Should you reveal it? If you do, your information is almost certainly going to lead to murder.

Kant thought you had two decent choices. Ideally, you'd just say nothing. That wouldn't help the murderer, and it wouldn't involve lying. But what if you have to say something? In that case, you have to tell the truth—because you must never lie, under any circumstances.

I think that this is the wrong answer, and the interesting thing is that Kant's own theory does not require him to give it. Kant was so convinced that lying was wrong that he misapplied his own theory.

Kant never provided an argument for the claim that the moral rules that prohibit such things as lying and killing are **absolute** (i.e., never permissibly broken). The closest he came to supplying such an argument was in his belief that moral considerations are more important than anything else. In any conflict between moral duty and other demands—say, those of the law, self-interest, or tradition—morality wins.

Still, it doesn't follow that moral duties are absolute, for even if they always outweigh other kinds of considerations, moral duties might conflict *with other moral duties*. And if they do, they can't all be absolute. Some of them must give way to others.

And can't moral duties conflict with one another? It seems, for instance, that there is a duty to avoid hurting people's feelings, a duty not to start a panic, and a duty to protect innocent people from dangerous attackers. It also seems that fulfilling each of these duties will sometimes require us to lie, and that there is a moral duty not to do so. Perhaps none of these is really a moral duty. Or perhaps, implausibly, we'd never need to lie in order to respect these duties. But it's much more likely that these are real duties, and that they really can conflict with one another. And if that is so, then these duties cannot all be absolute.

This does not spell disaster for Kant. He does not need to defend the existence of absolute moral duties. His philosophy can, for instance, justify lying to the inquiring murderer. Kant's hatred of lying made him overlook a crucial element of his own view—namely, that the morality of action depends on one's maxim. He just assumed that anyone who lied would be operating with a maxim like this: tell a lie so as to gain some benefit. That maxim is not universalizable. In a world in which everyone did this, no one could trust the words of others, and people would be unable to obtain any of the goals they were trying to achieve through lying.

But Kant's maxim is not the only one you could have in such a situation. A maxim is a principle that you give yourself. No one forces it on you. When confronted with a potential killer, I might adopt this maxim: *say whatever I need to say in order to prevent the murder of an innocent person*. That maxim is universalizable. The goal I am aiming for—to save an innocent person's life—could be achieved if everyone acted this way.

For Kant, we can't determine whether an act is right or wrong until we know its maxim. And for any given action, there are countless maxims that might support it. After all, we make up our own maxims, and mine may be very different from yours. It follows that there is only one way for Kant to absolutely ban a type of action. And that is to be sure in advance that, of all the hundreds or thousands of maxims that might support an action, *none* of them is universalizable. It is hard to see how we could ever know that.

As a result, it is much harder than Kant thought to defend the existence of absolute moral duties. And in this particular case, that is all to the good, since it opens up the possibility that it is sometimes acceptable to lie—for instance, to the inquiring murderer. Of course, if Kant is right, then we would have to have a universalizable maxim that permits this. But nothing Kant ever said should make us think that this is impossible. Contrary to Kant's personal view, we don't have to regard all (or perhaps any) moral duties as absolute.

F. THE PRINCIPLE OF HUMANITY

In the course of his work, Kant identified a number of different candidates for the role of ultimate moral principle. Although the principle of universalizability clearly emphasizes the moral importance of fairness, another of Kant's formulations directs our attention to the respect and dignity that serve as the basis of morality. This formulation is widely known as the **principle of humanity**:

Always treat a human being (yourself included) as an end, and never as a mere means.

To understand this principle, we need to get clear about three things: humanity, ends, and means.

When Kant spoke of *humanity*, he wasn't thinking necessarily of *Homo sapiens*. Rather, he was referring to all rational and autonomous

beings, no matter their species. Perhaps there are aliens, or some nonhuman animals, who are rational and autonomous. If so, then they count as human beings for purposes of Kant's principle.

Treating someone *as an end* is treating her with the respect she deserves. Treating someone *as a means* is dealing with her so that she helps you achieve one of your goals. This may be perfectly okay. I do this, for instance, when I hire a plumber to fix a broken water pipe in my kitchen. In an innocent sense, I am using him—he is needed to get me what I want (a functioning sink, in this case). Yet if I greet him at the door, give him any help he asks for, and then pay him as he leaves, I am also treating him with respect, and so, in Kantian terms, I am also treating him as an end.

But what if, while the plumber is checking the leak, I remove a wrench from his tool kit and whack him over the head with it? He's out cold—excellent. I then snugly fit his head into the space where the pipe has corroded, thus plugging the leak. While he's unconscious, I rush off to the hardware store and buy a cheap bit of PVC pipe. The plumber wakes up just as I am returning from the store. I scold him for falling asleep on the job and usher him out the door with a curt good riddance. Then I proceed to fix the leak myself, saving a hefty fee.

What has happened in this ridiculous scenario is that I've used the plumber literally as a thing, as a piece of pipe. He might as well have been an inanimate object. I failed to treat him in a way that recognized any of his distinctively human features. That's why I have treated him as a *mere means*.

Although it often happens that people do treat one another both as an end and as a means, one can't treat people both as an end and as a *mere means*. Treating someone as an end implies a degree of respect that is absent when treating someone as a *mere means*.

Most of us think that there is something about humanity that lends us dignity and makes us worthy of respect. Most of us also think that

human beings are worthy of greater respect than anything else in creation. Humans are more important than monkeys or sharks or daffodils or amoebas. Is this a defensible position, or is it just a self-interested prejudice?

Kant had an answer. He claimed that we are each rational and autonomous, and that these traits are what justify our special moral status. These two powers make us worthy of respect. Being rational involves using our reason to tell us how to achieve our goals and to determine whether we can pursue them in a morally acceptable way. It takes a lot of brainpower to be able to formulate your goals, to imagine a world where everyone pursues them as you do, and then to ask about the consistency of your actions. Humans are the only beings on earth who can engage in such complex reasoning.

Being autonomous literally means being a self-legislator. Autonomous people are those who decide for themselves which principles are going to govern their life. You are an autonomous person. You possess the ultimate responsibility for the choices you make, the goals you aim for, and the manner in which you pursue them. You are not a slave to your passions; you can resist temptation, check your animal urges, and decide for yourself whether to indulge them. You are not forced to act as you do, but are free to choose your own path.

Kant thought that our rationality and autonomy made each of us literally priceless. Despite the work of actuaries, and juries in wrongful death suits, you can't really put a dollar figure on a human life. The assumption that we are infinitely valuable explains the agony we feel at the death of a loved one. If we had to choose between the destruction of the most beautiful art object in the world and the killing of a human being, we should choose the former. No matter how valuable the object, the value of a human life exceeds it by an infinite amount.

Kant argues that rationality and autonomy support the dignity of each human being, and that everyone is owed a level of respect because

of these traits. This makes excellent sense of a number of deeply held moral beliefs. Here are the most important of them.

1. It explains, in the first place, the immorality of a fanatic's actions. Such people don't regard human life as infinitely precious, but rather treat their despised opponents as mere obstacles to the achievement of their goals. The principle of humanity forbids such behavior, even when it is consistently undertaken, and thus allows us to address the most severe problem facing the principle of universalizability.

2. The importance of autonomy explains why slavery and rape are always immoral. Slavery treats the oppressed without regard for their own goals and hopes. Rape is treating another human being solely as a source of one's own gratification, as if the victim had no legitimate say in the matter. These are the most extreme examples of duress and coercion. They are immoral because of their complete denial of the victim's autonomy. As such, these crimes are perhaps the clearest cases of treating other people as mere means.

3. The principle of humanity easily explains our outrage at **paternalism**. To be paternalistic is to assume the rights and privileges of a parent—toward another adult. Paternalism has us limit the liberty of others, for their own good, against their will. It is treating autonomous individuals as children, as if we, and not they, were best suited to making the crucial decisions of their lives.

It is paternalistic, for instance, if a roommate sells your TV set because he is worried about your spending too much time watching *Archer* reruns and too little time on your homework. Or imagine a classmate who thinks that your boyfriend is bad for you, and so writes him a nasty note and forges your signature, hoping that he'll break off your relationship. Anyone who has experienced paternalistic treatment knows how infuriating it can be. And the reason is simple: we are autonomous and rational, and the ability to create our own life

plan entitles us to do so. We ought to be free to make a life for ourselves, even if we sometimes make a mess of things.

4. Our autonomy is what justifies the attitude of never abandoning hope in people. The chance that a very hard-hearted man will change his ways may be very small, but the probability never reduces to zero. No matter how badly he was raised, or how badly he has lived his life, he is still autonomous, and so can always choose to better himself. It is usually naïve to expect such a transformation. Changing your character and habits is hardly easy. But the possibility of redemption is always there, and that is only because we are free to set our own course in life.

5. Many people believe in universal human rights. These are moral rights that protect human beings from certain kinds of treatment and entitle each of us to a minimum of respect, just because we are human. Kant can explain why we have such rights. We have them because of our **rationality and autonomy**. These two traits are the basis for living a meaningful life. If you doubt this, just imagine a life without them. It is a life fit for an insect, or a plant. What endows our life with preciousness is our ability to reason and choose for ourselves how we are going to live it. Every person is rational and autonomous to some degree, and every person needs these powers protected in order to have the sorts of experiences, engage in the kinds of activities, and support the sorts of relationships that make life worth living. Human rights protect these powers at a very fundamental level.

6. Our autonomy is what explains our practices of holding one another accountable for our deeds and misdeeds. Because we are not robots, but rather free and rational human beings, we are morally responsible for our choices and actions. We are fit for praise and blame, and that is because our conduct is up to us. We don't blame sharks or falcons for killing their prey; neither do we condemn a wilted orchid or a nasty-smelling

ginkgo tree. Plants and animals deserve neither moral credit nor blame, and this is because their lives are not autonomous ones.

Despite its many attractions, the principle of humanity, with its emphasis on rationality and autonomy, is not trouble-free. In particular, the notion of treating someone as an end is vague, and so the principle is difficult to apply. Unlike the three-step process used to apply the principle of universalizability, there is no straightforward test that tells us how to apply the principle of humanity. It tells us to treat humanity as an end—in other words, with the respect that people deserve. It's sometimes crystal clear whether the principle is being honored. No one doubts, for instance, that the principle is violated by treating a plumber as a piece of pipe or by enslaving someone. But the vagueness of the notion of treating someone as an end often makes it difficult to know whether our actions are morally acceptable. Do we respect celebrities by telling the truth about their private lives—even when this is damaging to their reputations? Is it disrespectful to enemy soldiers to set landmines at our borders? Are we failing to give due respect to famine victims if we spend money on a new computer rather than donating it to an aid agency?

We can't know the answer to these questions without a better understanding of what it is to treat someone as an end. Without a more precise test of when we are respecting others and treating them as they deserve (i.e., as their rationality and autonomy demand), the principle of humanity fails to give us the guidance that we expect from an ultimate moral principle.

G. CONCLUSION

Kant's ethical views are rich and suggestive. They are extremely important in their own right, but it can also be quite helpful to contrast them with the consequentialist outlook that is so popular in political and economic circles

these days. Whereas utilitarians think of benevolence as the central moral virtue, Kant thought that fairness occupied that role. Kant regarded many of the basic moral rules as absolute, and so insisted that it was never acceptable to break them—even if breaking them led to better results. He also rejected the exclusive emphasis on the future and an action’s results in determining what is right and wrong, and instead asked us to focus on a person’s maxim, since rational consistency, rather than the utilitarian’s emphasis on maximizing happiness, is the test of morality.

Many of the shortcomings of consequentialism are nicely handled by the Kantian theory. But consequentialists are pleased to return the favor: the Kantian theory isn’t without its own problems, and many of those are neatly addressed by consequentialism. Let’s now have a look at another important contender, the social contract theory, whose defenders hope to secure many of the benefits of these two ethical outlooks, while escaping the problems that confront them.

ESSENTIAL CONCEPTS

Absolute: moral rules are absolute if and only if it is never permitted to break them.

Categorical imperative: a command of reason that requires us to act in a certain way regardless of whether doing so will get us anything we care about.

Golden Rule: the moral principle that requires you to treat others as you would like to be treated.

Hypothetical imperative: a command of reason that tells us to do whatever is needed in order to get what we care about.

Maxim: a principle of action you give yourself when you are about to do something.

Paternalism: the practice of assuming the rights and privileges of a parent toward another adult.

Principle of humanity: always treat a human being (yourself included) as an end, and never as a mere means.

Principle of universalizability: an act is morally acceptable if, and only if, its maxim is universalizable.

Universalizable: a maxim is universalizable if and only if the goal that it specifies can be achieved in a world in which everyone is acting on that maxim.

DISCUSSION QUESTIONS

1. Explain the difference between the Golden Rule and the *what if everyone did that?* test. What problems arise for each? Do you think that they can be remedied?
2. What is a maxim, and what does it mean for a maxim to be *universalizable*? Why does the principle of universalizability fail to be a good test of the morality of our actions?
3. According to Kant, it is always irrational to act immorally. What reasons does he give for thinking this? Do you agree with him?
4. What is the difference between hypothetical and categorical imperatives? Why did Kant think that morality consists of categorical imperatives?
5. Why does the existence of fanatics pose a challenge to Kant’s moral theory? How do you think that the Kantian should respond to this challenge?
6. What is the relationship between Kant’s principle of universalizability and the principle of humanity? Do the two ever give conflicting advice? If so, which do you think is a better guide to our moral obligations?
7. If rationality and autonomy explain why we are as important as we are, how (if at all) can we explain the moral importance of infants and nonhuman animals?

READING

The Good Will and the Categorical Imperative

Immanuel Kant

Immanuel Kant (1724–1804) was the greatest German philosopher who ever lived. In this excerpt from his *Groundwork of the Metaphysics of Morals*, Kant introduces two key elements of his moral philosophy. According to Kant, the first of these, the *good will*, is the only thing possessed of unconditional value: it is valuable in its own right, in every possible circumstance. The good will is the steady commitment to do our duty for its own sake. Our actions possess moral worth if, but only if, they are prompted by the good will.

The second important element is the *categorical imperative*, Kant's term for a requirement of reason that applies to us regardless of what we care about. Moral requirements are categorical imperatives—we must, for instance, sometimes give help to others in need, even if we don't want to, and even if such help gets us nothing that we care about. Kant believed that moral action is rational action. Each of us has a compelling reason to obey morality, even when doing so only frustrates our deepest desires.

Kant here sets out two tests for morally acceptable action. The first says that actions are morally acceptable only when the principles that inspire them can be acted on by everyone consistently. The second requires us to treat humanity always as an end in itself, and never as a mere means. Kant realizes that such formulations are somewhat abstract, and so here offers us a number of illustrations that are meant to help us understand and apply them.

THE GOOD WILL

It is impossible to think of anything at all in the world, or indeed even beyond it, that could be considered good without limitation except a **good will**. Understanding, wit, judgment and the like, whatever such *talents* of mind may be called, or courage, resolution, and perseverance in one's plans, as qualities of *temperament*, are undoubtedly good and desirable for many purposes, but they can also be extremely evil and harmful if the will which is to make use of these gifts of nature, and whose distinctive constitution is therefore called *character*, is not

good. It is the same with *gifts of fortune*. Power, riches, honor, even health and that complete well-being and satisfaction with one's condition called *happiness*, produce boldness and thereby often arrogance as well unless a good will is present which corrects the influence of these on the mind and, in so doing, also corrects the whole principle of action and brings it into conformity with universal ends—not to mention that an impartial rational spectator can take no delight in seeing the uninterrupted prosperity of a being graced with no feature of a pure and good will, so that a good will seems to constitute the indispensable condition even of worthiness to be happy.

Some qualities are even conducive to this good will itself and can make its work much easier; despite this, however, they have no inner unconditional

From *Groundwork of the Metaphysics of Morals*, trans. Mary Gregor (New York: Cambridge University Press, 1998), pp. 7–11, 25–26, 30–32, 36–39.

worth but always presuppose a good will, which limits the esteem one otherwise rightly has for them and does not permit their being taken as absolutely good. Moderation in affects and passions, self-control, and calm reflection are not only good for all sorts of purposes but even seem to constitute a part of the *inner* worth of a person; but they lack much that would be required to declare them good without limitation (however unconditionally they were praised by the ancients); for, without the basic principles of a good will they can become extremely evil, and the coolness of a scoundrel makes him not only far more dangerous but also immediately more abominable in our eyes than we would have taken him to be without it.

A good will is not good because of what it effects or accomplishes, because of its fitness to attain some proposed end, but only because of its volition, that is, it is good in itself and, regarded for itself, is to be valued incomparably higher than all that could merely be brought about by it in favor of some inclination and indeed, if you will, of the sum of all inclinations. Even if, by a special disfavor of fortune or by the niggardly provision of a stepmotherly nature, this will should wholly lack the capacity to carry out its purpose—if with its greatest efforts it should yet achieve nothing and only the good will were left (not, of course, as a mere wish but as the summoning of all means insofar as they are in our control)—then, like a jewel, it would still shine by itself, as something that has its full worth in itself. Usefulness or fruitlessness can neither add anything to this worth nor take anything away from it. Its usefulness would be, as it were, only the setting to enable us to handle it more conveniently in ordinary commerce or to attract to it the attention of those who are not yet expert enough, but not to recommend it to experts or to determine its worth. . . .

We have, then, to explicate the concept of a will that is to be esteemed in itself and that is good apart from any further purpose, as it already dwells in natural sound understanding and needs not so much to be taught as only to be clarified—this concept that always takes first place in estimating the total worth of our actions and constitutes the condition of all the rest. In order to do so, we shall set before ourselves the concept of **duty**, which

contains that of a good will though under certain subjective limitations and hindrances, which, however, far from concealing it and making it unrecognizable, rather bring it out by contrast and make it shine forth all the more brightly.

I here pass over all actions that are already recognized as contrary to duty, even though they may be useful for this or that purpose; for in their case the question whether they might have been done *from duty* never arises, since they even conflict with it. I also set aside actions that are really in conformity with duty but to which human beings have *no inclination* immediately and which they still perform because they are impelled to do so through another inclination. For in this case it is easy to distinguish whether an action in conformity with duty is done *from duty* or from a self-seeking purpose. It is much more difficult to note this distinction when an action conforms with duty and the subject has, besides, an *immediate* inclination to it. For example, it certainly conforms with duty that a shopkeeper not overcharge an inexperienced customer, and where there is a good deal of trade a prudent merchant does not overcharge but keeps a fixed general price for everyone, so that a child can buy from him as well as everyone else. People are thus served *honestly*; but this is not nearly enough for us to believe that the merchant acted in this way from duty and basic principles of honesty; his advantage required it; it cannot be assumed here that he had, besides, an immediate inclination toward his customers, so as from love, as it were, to give no one preference over another in the matter of price. Thus the action was done neither from duty nor from immediate inclination but merely for purposes of self-interest.

On the other hand, to preserve one's life is a duty, and besides everyone has an immediate inclination to do so. But on this account the often anxious care that most people take of it still has no inner worth and their maxim has no moral content. They look after their lives *in conformity with duty* but not *from duty*. On the other hand, if adversity and hopeless grief have quite taken away the taste for life; if an unfortunate man, strong of soul and more indignant about his fate than despondent or dejected, wishes for death and yet

preserves his life without loving it, not from inclination or fear but from duty, then his maxim has moral content.

To be beneficent where one can is a duty, and besides there are many souls so sympathetically attuned that, without any other motive of vanity or self-interest they find an inner satisfaction in spreading joy around them and can take delight in the satisfaction of others so far as it is their own work. But I assert that in such a case an action of this kind, however it may conform with duty and however amiable it may be, has nevertheless no true moral worth but is on the same footing with other inclinations, for example, the inclination to honor, which, if it fortunately lights upon what is in fact in the common interest and in conformity with duty and hence honorable, deserves praise and encouragement but not esteem; for the maxim lacks moral content, namely that of doing such actions not from inclination but *from duty*. Suppose, then, that the mind of this philanthropist were overclouded by his own grief, which extinguished all sympathy with the fate of others, and that while he still had the means to benefit others in distress their troubles did not move him because he had enough to do with his own; and suppose that now, when no longer incited to it by any inclination, he nevertheless tears himself out of this deadly insensibility and does the action without any inclination, simply from duty; then the action first has its genuine moral worth. Still further: if nature had put little sympathy in the heart of this or that man; if (in other respects an honest man) he is by temperament cold and indifferent to the sufferings of others, perhaps because he himself is provided with the special gift of patience and endurance toward his own sufferings and presupposes the same in every other or even requires it; if nature had not properly fashioned such a man (who would in truth not be its worst product) for a philanthropist, would he not still find within himself a source from which to give himself a far higher worth than what a mere good-natured temperament might have? By all means! It is just then that the worth of character comes out, which is moral and incomparably the highest, namely that he is beneficent not from inclination but from duty. . . .

Thus the moral worth of an action does not lie in the effect expected from it and so too does not lie in any principle of action that needs to borrow its motive from this expected effect. For, all these effects (agreeableness of one's condition, indeed even promotion of others' happiness) could have been also brought about by other causes, so that there would have been no need, for this, of the will of a rational being, in which, however, the highest and unconditional good alone can be found. Hence nothing other than the *representation of the law in itself, which can of course occur only in a rational being*, insofar as it and not the hoped-for effect is the determining ground of the will, can constitute the preeminent good we call moral, which is already present in the person himself who acts in accordance with this representation and need not wait upon the effect of his action.

But what kind of law can that be, the representation of which must determine the will, even without regard for the effect expected from it, in order for the will to be called good absolutely and without limitation? Since I have deprived the will of every impulse that could arise for it from obeying some law, nothing is left but the conformity of actions as such with universal law, which alone is to serve the will as its principle, that is, *I ought never to act except in such a way that I could also will that my maxim should become a universal law*. Here mere conformity to law as such, without having as its basis some law determined for certain actions, is what serves the will as its principle, and must so serve it, if duty is not to be everywhere an empty delusion and a chimerical concept. Common human reason also agrees completely with this in its practical appraisals and always has this principle before its eyes. Let the question be, for example: may I, when hard pressed, make a promise with the intention not to keep it? Here I easily distinguish two significations the question can have: whether it is prudent or whether it is in conformity with duty to make a false promise. The first can undoubtedly often be the case. I see very well that it is not enough to get out of a present difficulty by means of this subterfuge but that I must reflect carefully whether this lie may later give rise to much greater inconvenience

for me than that from which I now extricate myself; and since, with all my supposed *cunning*, the results cannot be so easily foreseen but that once confidence in me is lost this could be far more prejudicial to me than all the troubles I now think to avoid, I must reflect whether the matter might be handled *more prudently* by proceeding on a general maxim and making it a habit to promise nothing except with the intention of keeping it. But it is soon clear to me that such a maxim will still be based only on results feared. To be truthful from duty, however, is something entirely different from being truthful from anxiety about detrimental results, since in the first case the concept of the action in itself already contains a law for me while in the second I must first look about elsewhere to see what effects on me might be combined with it. For, if I deviate from the principle of duty this is quite certainly evil; but if I am unfaithful to my maxim of prudence this can sometimes be very advantageous to me, although it is certainly safer to abide by it. However, to inform myself in the shortest and yet infallible way about the answer to this problem, whether a lying promise is in conformity with duty, I ask myself: would I indeed be content that my maxim (to get myself out of difficulties by a false promise) should hold as a universal law (for myself as well as for others)? and could I indeed say to myself that every one may make a false promise when he finds himself in a difficulty he can get out of in no other way? Then I soon become aware that I could indeed will the lie, but by no means a universal law to lie; for in accordance with such a law there would properly be no promises at all, since it would be futile to avow my will with regard to my future actions to others who would not believe this avowal or, if they rashly did so, would pay me back in like coin; and thus my maxim, as soon as it were made a universal law, would have to destroy itself.

I do not, therefore, need any penetrating acuteness to see what I have to do in order that my volition be morally good. Inexperienced in the course of the world, incapable of being prepared for whatever might come to pass in it, I ask myself only: can you also will that your maxim become a universal law? If not, then it is to be repudiated, and that not because of a disadvantage to you or even to others

forthcoming from it but because it cannot fit as a principle into a possible giving of universal law, for which lawgiving reason, however, forces from me immediate respect. Although I do not yet *see* what this respect is based upon (this the philosopher may investigate), I at least understand this much: that it is an estimation of a worth that far outweighs any worth of what is recommended by inclination, and that the necessity of my action from *pure* respect for the practical law is what constitutes duty, to which every other motive must give way because it is the condition of a will good *in itself*, the worth of which surpasses all else. . . .

THE CATEGORICAL IMPERATIVE

Now, all imperatives command either *hypothetically* or *categorically*. The former represent the practical necessity of a possible action as a means to achieving something else that one wills (or that it is at least possible for one to will). The categorical imperative would be that which represented an action as objectively necessary of itself, without reference to another end.

Since every practical law represents a possible action as good and thus as necessary for a subject practically determinable by reason, all imperatives are formulae for the determination of action that is necessary in accordance with the principle of a will which is good in some way. Now, if the action would be good merely as a means to *something else* the imperative is *hypothetical*; if the action is represented as *in itself* good, hence as necessary in a will in itself conforming to reason, as its principle, *then it is categorical*. . . .

There is one imperative that, without being based upon and having as its condition any other purpose to be attained by certain conduct, commands this conduct immediately. This imperative is **categorical**. It has to do not with the matter of the action and what is to result from it, but with the form and the principle from which the action itself follows; and the essential good in the action consists in the disposition, let the result be what it may. This imperative may be called the imperative of **morality**. . . .

When I think of a *hypothetical* imperative in general I do not know beforehand what it will contain;

I do not know this until I am given the condition. But when I think of a *categorical* imperative I know at once what it contains. For, since the imperative contains, beyond the law, only the necessity that the maxim¹ be in conformity with this law, while the law contains no condition to which it would be limited, nothing is left with which the maxim of action is to conform but the universality of a law as such; and this conformity alone is what the imperative properly represents as necessary.

There is, therefore, only a single categorical imperative and it is this: *act only in accordance with that maxim through which you can at the same time will that it become a universal law.*

Now, if all imperatives of duty can be derived from this single imperative as from their principle, then, even though we leave it undecided whether what is called duty is not as such an empty concept, we shall at least be able to show what we think by it and what the concept wants to say.

Since the universality of law in accordance with which effects take place constitutes what is properly called *nature* in the most general sense (as regards its form)—that is, the existence of things insofar as it is determined in accordance with universal laws—the universal imperative of duty can also go as follows: *act as if the maxim of your action were to become by your will a universal law of nature.*

We shall now enumerate a few duties in accordance with the usual division of them into duties to ourselves and to other human beings and into perfect and imperfect duties.²

(1) Someone feels sick of life because of a series of troubles that has grown to the point of despair, but is still so far in possession of his

1. A maxim is the subjective principle of acting, and must be distinguished from the objective principle, namely the practical law. The former contains the practical rule determined by reason conformably with the conditions of the subject (often his ignorance or also his inclinations), and is therefore the principle in accordance with which the subject acts; but the law is the objective principle valid for every rational being, and the principle in accordance with which he ought to act, i.e., an imperative.

2. I understand here by a perfect duty one that admits no exception in favor of inclination.

reason that he can ask himself whether it would not be contrary to his duty to himself to take his own life. Now he inquires whether the maxim of his action could indeed become a universal law of nature. His maxim, however, is: from self-love I make it my principle to shorten my life when its longer duration threatens more troubles than it promises agreeableness. The only further question is whether this principle of self-love could become a universal law of nature. It is then seen at once that a nature whose law it would be to destroy life itself by means of the same feeling whose destination is to impel toward the furtherance of life would contradict itself and would therefore not subsist as nature; thus that maxim could not possibly be a law of nature and, accordingly, altogether opposes the supreme principle of all duty.

(2) Another finds himself urged by need to borrow money. He well knows that he will not be able to repay it but sees also that nothing will be lent him unless he promises firmly to repay it within a determinate time. He would like to make such a promise, but he still has enough conscience to ask himself: is it not forbidden and contrary to duty to help oneself out of need in such a way? Supposing that he still decided to do so, his maxim of action would go as follows: when I believe myself to be in need of money I shall borrow money and promise to repay it, even though I know that this will never happen. Now this principle of self-love or personal advantage is perhaps quite consistent with my whole future welfare, but the question now is whether it is right. I therefore turn the demand of self-love into a universal law and put the question as follows: how would it be if my maxim became a universal law? I then see at once that it could never hold as a universal law of nature and be consistent with itself, but must necessarily contradict itself. For, the universality of a law that everyone, when he believes himself to be in need, could promise whatever he pleases with the intention of not keeping it would make the promise and the end one might have in it itself impossible, since no one would believe what was promised him but would laugh at all such expressions as vain pretenses.

(3) A third finds in himself a talent that by means of some cultivation could make him a human being useful for all sorts of purposes. However, he finds himself in comfortable circumstances and prefers to give himself up to pleasure than to trouble himself with enlarging and improving his fortunate natural predispositions. But he still asks himself whether his maxim of neglecting his natural gifts, besides being consistent with his propensity to amusement, is also consistent with what one calls duty. He now sees that a nature could indeed always subsist with such a universal law, although (as with the South Sea Islanders) the human being should let his talents rust and be concerned with devoting his life merely to idleness, amusement, procreation—in a word, to enjoyment; only he cannot possibly will that this become a universal law or be put in us as such by means of natural instinct. For, as a rational being he necessarily wills that all the capacities in him be developed, since they serve him and are given to him for all sorts of possible purposes.

(4) Yet a *fourth*, for whom things are going well while he sees that others (whom he could very well help) have to contend with great hardships, thinks: what is it to me? let each be as happy as heaven wills or as he can make himself; I shall take nothing from him nor even envy him; only I do not care to contribute anything to his welfare or to his assistance in need! Now, if such a way of thinking were to become a universal law the human race could admittedly very well subsist, no doubt even better than when everyone prates about sympathy and benevolence and even exerts himself to practice them occasionally, but on the other hand also cheats where he can, sells the right of human beings or otherwise infringes upon it. But although it is possible that a universal law of nature could very well subsist in accordance with such a maxim, it is still impossible to will that such a principle hold everywhere as a law of nature. For, a will that decided this would conflict with itself, since many cases could occur in which one would need the love and sympathy of others and in which, by such a law of nature arisen from his own will, he would rob himself of all hope of the assistance he wishes for himself. . . .

If we now attend to ourselves in any transgression of a duty, we find that we do not really will that our maxim should become a universal law, since that is impossible for us, but that the opposite of our maxim should instead remain a universal law, only we take the liberty of making an *exception* to it for ourselves (or just for this once) to the advantage of our inclination. Consequently, if we weighed all cases from one and the same point of view, namely that of reason, we would find a contradiction in our own will, namely that a certain principle be objectively necessary as a universal law and yet subjectively not hold universally but allow exceptions. . . .

Suppose there were something the *existence of which in itself* has an absolute worth, something which as *an end in itself* could be a ground of determinate laws; then in it, and in it alone, would lie the ground of a possible categorical imperative, that is, of a practical law.

Now I say that the human being and in general every rational being *exists* as an end in itself, *not merely as a means* to be used by this or that will at its discretion; instead he must in all his actions, whether directed to himself or also to other rational beings, always be regarded *at the same time as an end*. All objects of the inclinations have only a conditional worth; for, if there were not inclinations and the needs based on them, their object would be without worth. But the inclinations themselves, as sources of needs, are so far from having an absolute worth, so as to make one wish to have them, that it must instead be the universal wish of every rational being to be altogether free from them. Thus the worth of any object *to be acquired* by our action is always conditional. Beings the existence of which rests not on our will but on nature, if they are beings without reason, still have only a relative worth, as means, and are therefore called *things*, whereas rational beings are called *persons* because their nature already marks them out as an end in itself, that is, as something that may not be used merely as a means, and hence so far limits all choice (and is an object of respect). These, therefore, are not merely subjective ends, the existence of which as an effect of our action has a worth *for us*, but rather *objective ends*, that is, beings the existence of which is in itself an end, and indeed one such that no other end, to which they

would serve *merely* as means, can be put in its place, since without it nothing of *absolute worth* would be found anywhere; but if all worth were conditional and therefore contingent, then no supreme practical principle for reason could be found anywhere.

If, then, there is to be a supreme practical principle and, with respect to the human will, a categorical imperative, it must be one such that, from the representation of what is necessarily an end for everyone because it is an *end in itself*, it constitutes an *objective* principle of the will and thus can serve as a universal practical law. The ground of this principle is: *rational nature exists as an end in itself*. The human being necessarily represents his own existence in this way; so far it is thus a *subjective* principle of human actions. But every other rational being also represents his existence in this way consequent on just the same rational ground that also holds for me; thus it is at the same time an *objective* principle from which, as a supreme practical ground, it must be possible to derive all laws of the will. The practical imperative will therefore be the following: *So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.* We shall see whether this can be carried out.

To keep to the preceding examples:

First, as regards the concept of necessary duty to oneself, someone who has suicide in mind will ask himself whether his action can be consistent with the idea of humanity as an *end in itself*. If he destroys himself in order to escape from a trying condition he makes use of a person *merely as a means* to maintain a tolerable condition up to the end of life. A human being, however, is not a thing and hence not something that can be used *merely* as a means, but must in all his actions always be regarded as an end in itself. I cannot, therefore, dispose of a human being in my own person by maiming, damaging or killing him. (I must here pass over a closer determination of this principle that would prevent any misinterpretation, e.g., as to having limbs amputated in order to preserve myself, or putting my life in danger in order to preserve my life, and so forth; that belongs to morals proper.)

Second, as regards necessary duty to others or duty owed them, he who has it in mind to make a

false promise to others sees at once that he wants to make use of another human being *merely as a means*, without the other at the same time containing in himself the end. For, he whom I want to use for my purposes by such a promise cannot possibly agree to my way of behaving toward him, and so himself contain the end of this action. This conflict with the principle of other human beings is seen more distinctly if examples of assaults on the freedom and property of others are brought forward. For then it is obvious that he who transgresses the rights of human beings intends to make use of the person of others merely as means, without taking into consideration that, as rational beings, they are always to be valued at the same time as ends, that is, only as beings who must also be able to contain in themselves the end of the very same action.

Third, with respect to contingent (meritorious) duty to oneself, it is not enough that the action does not conflict with humanity in our person as an end in itself; it must also *harmonize with it*. Now there are in humanity predispositions to greater perfection, which belong to the end of nature with respect to humanity in our subject; to neglect these might admittedly be consistent with the *preservation* of humanity as an end in itself but not with the *furtherance* of this end.

Fourth, concerning meritorious duty to others, the natural end that all human beings have is their own happiness. Now, humanity might indeed subsist if no one contributed to the happiness of others but yet did not intentionally withdraw anything from it; but there is still only a negative and not a positive agreement with humanity as an *end in itself* unless everyone also tries, as far as he can, to further the ends of others. For, the ends of a subject who is an end in itself must as far as possible be also *my* ends, if that representation is to have its *full* effect in me. . . .

Immanuel Kant: The Good Will and the Categorical Imperative

1. Kant claims that a good will is the only thing that can be considered “good without limitation.” What does he mean by this? Do you find this claim plausible?
2. Unlike hedonists, Kant believes that happiness is not always good. What reasons does he give for thinking this? Do you agree with him?

3. What is the difference between doing something “in conformity with duty” and doing something “from duty”? Is Kant correct in saying that only actions done *from duty* have moral worth?
4. Kant claims to have discovered a *categorical imperative*, a moral requirement that we have reason to follow regardless of what we happen to desire. Can people have reasons for action that are completely independent of their desires?
5. According to Kant, it is morally permissible to act on a particular principle (or “maxim”) only if “you can at the same time will that it become a universal law.” Do you think this is a good test of whether an action is morally permissible? Can you think of any immoral actions that would pass this test, or any morally permissible actions that would fail it?
6. Kant later gives another formulation of the categorical imperative: “So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.” What does it mean to treat someone as an end? Are we always morally required to treat humans in this way?

Social Contract Theory

The social contract theory, also known as contractarianism, originated as a political theory and only later developed into a theory of morality. It tells us that laws are just if, and only if, they reflect the terms of a social contract that free, equal, and rational people would accept as the basis of a cooperative life together. Its view of morality stems directly from that political ideal: *actions are morally right just because they are permitted by rules that free, equal, and rational people would agree to live by, on the condition that others obey these rules as well.*

A. THE BACKGROUND OF THE SOCIAL CONTRACT THEORY

The political origins of the social contract theory can be traced back to the ancient Greeks. Early in the *Republic*, Plato's brothers tell Socrates that they find the social contract view both appealing and troubling. They challenge Socrates to tell them what is wrong with it. His answer takes up almost the whole of the book, a testament to the power of contractarianism.

Here is the story that Socrates heard. We are all by nature largely, or entirely, self-interested. What we want is power over others, physical security, plenty of money, and sensual pleasure. Our deepest goal is to lord it over everyone else. Who among us wouldn't want the power of the president or the wealth of Bill Gates—or, ideally, both?

This points to an obvious problem. Everyone wants to be at the top of the heap, and only a few can make it there. Further, no one wants to be a patsy, the person who gets stepped on as others climb the ladder of success. We each

want to be number one. But we know that the chances of making it are slim, and we want to avoid being trampled as others claw their way to the top. So what do we do?

If we are rational, we will each agree to curb our self-interest and cooperate with one another. We'll do this *conditionally*—that is, on the condition that others do so as well. A complete free-for-all is going to make everyone miserable. If we all stop trying to get the better of each other, and instead agree to seek a little less for ourselves, then we'll all be better off.

That is what reason and morality require of us, according to the social contract theory. Starting with the assumptions that we each are largely motivated by self-interest, and that it is rational to be that way, contractarianism tells us that we each do best for ourselves by agreeing to limit the direct pursuit of self-interest and accept a bargain that gets us a pretty decent life. That everyone gets such a life means that we give up the chance of an absolutely fabulous life. But we also protect ourselves from a really terrible one, a life in which we are in the thick of a cutthroat competition, vulnerable to the attacks of everyone around us. That is a deal worth making. Here's why.

B. THE PRISONER'S DILEMMA

Consider life's basic scenario: There is intense competition for scarce resources. We each want as much of those resources as we can get. Being rational, we each try to get as much as we can, knowing that more for us means less for someone else. Things are going to get very bad, very quickly.

This is what happened when baseball players, Tour de France cyclists, and Olympic weight lifters began to take increasingly dangerous anabolic steroids, in a bid to gain a competitive edge and lucrative championships. This is what happens when a politician starts a smear campaign and his opponent feels the need to ramp up the abuse in order to stand a fighting chance in the race. This is what always happens in turf battles over the spoils of an illegal drug trade.

These cases all share the same essential features. In each, there is mounting competition over a scarce resource, and many are trying their best to increase their share of it. That seems to be rational, and yet, if everyone stopped being so selfish, each person would be better off.

These sorts of situations, in which everyone would be better off by scaling back their pursuit of self-interest, are known as **prisoner's dilemmas**. The name comes from a scenario, introduced by economists, in which two thieves (call them Al and Bob) are caught and sent to separate detention cells. Being rational, Al and Bob previously made a deal with each other: if they get caught, they'll each keep silent, to thwart the police and protect themselves. Now that they have been captured, the police tell each one the same thing: "If you keep your promise to your partner by keeping quiet, and he rats you out, then he's off the hook, and you're looking at a six-year sentence. If you break your word and snitch on him, while he remains silent, you're home free, while he spends the next six years in jail. If you both keep quiet, you'll each get two years. But if you both confess, you'll each get four."

The following diagram will help you keep track of the options. Each number represents years in jail. The first number in each pair is Al's prison sentence; the second is Bob's.

Suppose that both criminals know about the various outcomes, and that both have only one concern at this point: to minimize their jail time. If they are both rational, what are they going to do?

You might think that it's impossible to know the answer, since you don't know enough about Al or Bob, their bond with each other, their trustworthiness, and so on, to make an informed guess. But really, there is no doubt that each is going to confess. They are going to break their promise to each other, landing themselves a four-year sentence apiece. That's a far cry from getting off scot-free, and double the two years they'd get if they each kept quiet.

The important point is that remaining silent is the cooperative strategy. Silence here means keeping one's word, honoring the terms of the deal. Confession is a betrayal, breaking one's promise, abandoning a partner.

Al and Bob are going to betray each other. That's certain. They'll do this because they know the odds, because they are self-interested, and because they are rational.

Why will they confess? Because *no matter what his accomplice does, each criminal will be better off by confessing*.

Consider Al's choices. Suppose that

Bob remains silent. Then if Al confesses, Al is home free. If Al keeps his mouth

		Bob	
		Remains Silent (Cooperation)	Confesses (Betrayal)
Al (Cooperation)	Remains Silent (Cooperation)	2, 2	6, 0
	Confesses (Betrayal)	0, 6	4, 4

shut, Al gets two years. So if Bob remains silent, Al should confess. That will minimize his jail time. That is what he most wants. So, if Al is rational, he will confess.

Now suppose that

Bob confesses. Then if Al confesses, Al gets four years in jail. Silence gets him six. So if Bob confesses, Al should confess, too.

Thus, either way, Al does best for himself by spilling the beans and breaking his promise to Bob. And of course Bob is reasoning in the same way. So they are both going to confess and end up with four years in jail.

The prisoner's dilemma isn't just some interesting thought experiment. It's real life. There are countless cases in which the rational pursuit of self-interest will lead people to refuse to cooperate with one another, even though this leaves everyone much worse off.

C. COOPERATION AND THE STATE OF NATURE

So why don't competitors cooperate? The answer is simple: because it is so risky. The criminals in the prisoner's dilemma could cooperate. But that would mean taking a chance at a six-year sentence and betting everything on your partner's good faith. Unilaterally keeping silent, refusing the use of steroids, forsaking negative campaigning or violence—these are strategies for suckers. Those who adopt them may be virtuous, but they are the ones who will be left behind, rotting in jail, economically struggling, off the Olympic podium, or the victim of an enemy's gunshot. If enough people are willing to do what it takes to ensure that they get ahead, then you've either got to join in the competition or be the sacrificial lamb.

Englishman Thomas Hobbes (1588–1679), the founder of modern contractarianism, was especially concerned with one sort of prisoner's dilemma. He invited the readers of his magnum opus, *Leviathan*, to imagine a situation in which there was no government, no central authority,

no group with the exclusive power to enforce its will on others. He called this situation the **state of nature**. And he thought it was the worst place you could ever be.

In his words, the state of nature is a “war of all against all, in which the life of man is solitary, poor, nasty, brutish and short.” People ruthlessly compete with one another for whatever goods are available. Cooperation is a sham, and trust is nonexistent. Hobbes himself lived through a state of nature—the English Civil War—and thus had first-hand knowledge of its miseries. If you've ever read *The Lord of the Flies*, you have an idea of what Hobbes is talking about. As I write this, I can turn on my television and see pictures of states of nature from around the world—in parts of Syria, Iraq, and Sudan. The scenes are terrible.

The Hobbesian state of nature is a prisoner's dilemma. By seeking to maximize self-interest, everyone is going to be worse off. In such dire circumstances, everyone is competing to gain as much as he can, at the expense of others. With so much at stake, an all-out competition is bound to be very bad for almost everyone. No one is so smart or strong or well-connected as to be free from danger.

There is an escape from the state of nature, and the exit strategy is the same for all prisoner's dilemmas. We need two things: beneficial rules that require cooperation and punish betrayal, and an enforcer who ensures that these rules are obeyed.

The rules are the terms of the social contract. They require us to give up the freedom to attack and to kill others, to cheat them and lie to them, to beat and threaten them and take from them whatever we can. In exchange for giving up these freedoms (and others), we gain the many advantages of cooperation. It is rational to give up some of your freedom, provided that you stand a good chance of getting something even better in return. The peace and stability of a well-ordered society is worth it. That is the promise of the social contract.

But you need more than good rules of cooperation to escape from a prisoner's dilemma. You also need a way to make sure the rules are kept.

The state of nature comes to an end when people agree with one another to give up their unlimited freedoms and to cooperate on terms that are beneficial to all. The problem with agreements, though, is that they can be broken. And without a strong incentive to keep their promises, people in prisoner's dilemmas are going to break them. Just think of Al and Bob in our original example.

What's needed is a powerful person (or group) whose threats give everyone excellent reason to keep their word. The central power doesn't have to be a government—it could be a mob boss, who threatens Al and Bob with death if they were to break their silence. It could be the International Olympic Committee, with the power to suspend or disqualify athletes who test positive for illegal substances. But in the most general case, in which we are faced with anarchy and are trying to escape from utter lawlessness, what we need is a government to enforce basic rules of cooperation. Without a central government, the situation will spiral downhill into a battleground of competing factions and individuals, warlords and gang bosses, each vying for as much power and wealth as possible. A war of all against all won't be far behind.

D. THE ADVANTAGES OF CONTRACTARIANISM

Contractarianism has many advantages. One of these is that contractarianism explains and justifies the content of the basic moral rules. On the contractarian account, the moral rules are ones that are meant to govern social cooperation. When trying to figure out which standards are genuinely moral ones, contractarians ask us to imagine a group of free, equal, and rational people who are seeking terms of cooperation that each could reasonably accept. The rules they select to govern their lives together are the moral rules. These will closely match the central moral rules we have long taken for granted.

John Rawls (1921–2002), the most famous twentieth-century social contract theorist, had a specific test for determining the rules that the ideal social contractors would support. In his *Theory of Justice* (1971), by most accounts the most important work of political philosophy written in the last century, Rawls has us envision contractors behind a **veil of ignorance**. This is an imaginary device that erases all knowledge of your distinctive traits. Those behind the veil know that they have certain basic human needs and wants, but they know nothing of their religious identity, their ethnicity, their social or economic status, their sex, or their moral character. The idea is to put everyone on an equal footing, so that the choices they make are completely fair.

When placed behind a veil of ignorance, or in some other condition of equality and freedom, what social rules will rational people select? These will almost certainly include prohibitions of killing, rape, battery, theft, and fraud, and rules that require keeping one's word, returning what one owes, and being respectful of others. Contractarianism thus easily accounts for why the central moral rules are what they are—rational, self-interested people, free of coercion, would agree to obey them, so long as others are willing to obey them, too.

The rules of cooperation must be designed to benefit everyone, not just a few. Otherwise, only a few would rationally endorse them, while the rest would rationally ignore them. This allows the contractarian to explain why slavery and racial and sexual discrimination are so deeply immoral. Biased policies undermine the primary point of morality—to create fair terms of cooperation that could earn the backing of everyone. Even if oppressed people identify with the interests of their oppressors, and staunchly defend the system of discrimination, that does not make it right. The correct moral rules are those that free people would endorse for their *mutual* benefit—not for the benefit of one group over another.

A second benefit of contractarianism is that it can explain the objectivity of morality. Moral rules, on this view, are objective. Anyone can be mistaken about what morality requires. Personal opinion isn't the final authority in ethics. Neither is the law or conventional wisdom—whole societies can be mistaken about what is right and wrong, because they may be mistaken about what free, equal, and rational people would include in their ideal social code.

Thus contractarians have an answer to a perennial challenge: if morality isn't a human creation, where did it come from? If contractarianism is correct, morality does not come from God. Nor does it come from human opinion. Rather, morality is the set of rules that would be agreed to by people who are very like us, only more rational and wholly free, and who are selecting terms of cooperation that will benefit each and every one of them.

Thus contractarians don't have to picture moral rules as eternally true. And they can deny that moral rules are just like the rules of logic or of natural science—other areas where we acknowledge the existence of objective truths. The moral rules are the outcomes of rational choice, tailored to the specifics of human nature and the typical situations that humans find themselves in. This removes the mystery of objective morality. Even if God doesn't exist, there can still be objective values, so long as there are mutually beneficial rules that people would agree to if they were positioned as equals, fully rational and free.

A third benefit of contractarianism is that it explains why it is sometimes acceptable to break the moral rules. Moral rules are designed for cooperative living. But when cooperation collapses, the entire point of morality disappears. When things become so bad that the state of nature approaches, or has been reached, then the ordinary moral rules lose their force.

One way to put this idea is to say that every moral rule has a built-in escape clause: do not kill, cheat, intimidate, and so on, *so long as*

others are obeying this rule as well. When those around you are saying one thing and doing another, and cannot be counted on to limit the pursuit of their self-interest, then you are freed of your ordinary moral obligations to them.

The basis of morality is cooperation. And that requires trust. When that trust is gone, you are effectively in a state of nature. The moral rules don't apply there, because the basic requirement of moral life—that each person be willing to cooperate on fair terms that benefit everyone—is not met.

This explains why you aren't bound to keep promises made at gunpoint, or to be the only taxpayer in a land of tax cheats. It explains why you don't have to wait patiently in line when many others are cutting in, or to obey a curfew or a handgun law if everyone else is violating it. When you can't rely on others, there is no point in making the sacrifices that cooperative living requires. There is no moral duty to play the sucker.

E. THE ROLE OF CONSENT

Most of us believe that we have a moral duty to honor our commitments. And a contract is a commitment—it is a promise given in exchange for some expected benefit. A social contract differs from other contracts only in the extent of the duties it imposes and the benefits it creates. Since we are morally required to keep our promises, we have a duty to honor the terms of the social contract.

But have we actually promised to live up to any social contract? The Pilgrims did, when they paused before the shores of Massachusetts and together signed the Mayflower Compact in 1620. In ancient Athens, free men were brought to the public forum and directly asked to promise obedience to their city—or leave, without penalty. Naturalized citizens in the United States have long been required to pledge allegiance to the nation's laws. But relatively few adults nowadays have done any such thing. It seems, therefore, that we are not really parties to any such contract, and so are not bound to obey its terms.

Contractarianism would be in deep trouble if it claimed that our moral and legal duties applied only to those who agreed to accept them. *But it makes no such claim.* The social contract that fixes our basic moral duties is not one that any of us has *actually* consented to; rather, it is one that we each *would* agree to were we all free and rational and seeking terms of mutually beneficial cooperation. So the fact that we have never signed a social contract or verbally announced our allegiance to one does not undermine the contractarian project.

Contractarianism does not require you to do whatever the existing laws and social customs tell you to do. Those standards are partly a product of ignorance, past deception and fraud, and imperfect political compromise. We are morally required to live up to the standards that free, rational people would accept as the terms of their cooperative living. It's safe to say that no existing set of laws perfectly lines up with those terms.

Thus contractarianism isn't a simple recipe to do whatever your society says. Rather, it provides a way to evaluate society's actual rules, by seeing how close (or how far) they are to the ideal social code that would be adopted if we were freer, more equal, and more rational than we are. If contractarianism is correct, this ideal social code is the moral law.

F. DISAGREEMENT AMONG THE CONTRACTORS

If the social contract theory is correct, then the moral rules are those that free, equal, and rational people would agree to live by. But what happens if such people disagree with one another? For instance, what if these idealized contractors can't reach a deal about the conditions under which a nation should go to war, or about the kind of aid we owe to the very poor? What happens then?

Rawls solved this problem by making every contractor a clone of every other. Behind the veil of ignorance, all of your distinguishing features go away. No one is any different from anyone

else. And so there is no reason to expect any disagreement.

But Hobbes and other contractarians won't stand for this. They can't see why I should follow the rules of someone who is so completely unlike me—a person who is not only absolutely rational but also stripped of all knowledge of his social status, his friendships and family situation, his desires, interests, and hopes. Hobbes and his followers insist that the moral rules are those that we, *situated as we are*, would rationally agree to, provided of course that others would agree to live by them as well.

It's not easy to know how to solve this disagreement between contractarians. On the one hand, Rawls's view is likely to be fairer, since any information that could prejudice our choices is kept from us as we select rules to live by. But Hobbes also has a point, in that we want to make it rational, if we can, for everyone to live by the moral rules. Why should I live according to the rules set by some person who isn't at all like the real me? That's a pretty good question.

I'm sure that you've already figured out that I am not able to answer every good ethical question. This is another one I am going to leave for your consideration. Instead, let's return to our original problem: what should we say when the people choosing the social rules disagree with one another?

Perhaps Rawls is right, and there won't be any disagreement. But what if he's wrong? If contractors disagree, then the actions or policies they disagree about are morally neutral. They are neither required nor forbidden. That's because the moral rules are ones that *all* contractors would agree to. If there are some matters that they can't agree on, then these are not covered by the moral rules.

This could be pretty bad. Or it might be just fine. It all depends on where the disagreement arises (if it ever does). If there are only small pockets of disagreement, regarding relatively trivial matters, then this is hardly a problem. But what if contractors can't agree about war

policy, about whether executions are just, about how to treat the poorest among us? Then this is really serious, since we do think that morality must weigh in on these issues.

So, how much disagreement will there be? There is no easy way to know. We can provide answers only after we know how to describe the contractors and their position of choice. Will they be clones of one another, situated behind the veil of ignorance? Or will they be aware of their different personalities and life situations? Will they be more or less equally situated, or are some going to have a lot more leverage than others? When we say that they are rational, do we have Kant's conception in mind? Or Hobbes's, according to which rationality amounts to reliably serving your self-interest? Or some other conception?

Answers to these questions will make a big difference in deciding on the specific moral rules that a social contract theory favors. These answers will also determine the amount of agreement we can expect from the contractors. There is no shortcut to discovering these answers. To get them, contractarians must defend their own specific version of the theory against competing versions. That is a major undertaking. Until it is done, we cannot know just what the moral rules are or how much contractual disagreement to expect.

G. CONCLUSION

Contractarianism starts with a very promising idea: morality is essentially a social matter, and it is made up of the rules that we would accept if we were free, equal, and fully rational. The heart of the theory is an ideal social code that serves as the true standard for what is right and wrong.

This theory has a lot going for it, as we've seen. It offers us a procedure for evaluating moral claims, and so offers the promise of being able to justify even our most basic moral views. It has an interesting explanation of the objectivity of morality. It can explain why we are sometimes allowed to break the moral rules. It does not require actual consent to the ideal social rules in order for them to genuinely apply to all people. In

cases in which the contractors disagree with one another, the social contract theory ought to insist that actions are morally required only if all contractors agree. Whether this is a problem for the view is a matter left for your further reflection.

ESSENTIAL CONCEPTS

Prisoner's dilemma: a situation in which the pursuit of self-interest by all parties leads to a worse outcome than if each were to compromise.

State of nature: anarchy; a situation in which there was no government, no central authority, no group with the exclusive power to enforce its will on others.

Veil of ignorance: an imaginary device that erases all knowledge of your distinctive traits in preparation for selecting principles of justice or morality.

DISCUSSION QUESTIONS

1. What makes a situation a "prisoner's dilemma"? What is the rational thing to do in a prisoner's dilemma situation?
2. What is the state of nature, and why does Hobbes think that such a condition would be so bad? How does Hobbes think that people would be able to emerge from the state of nature?
3. How do contractarians justify moral rules against such things as slavery and torture? Do you find their justifications of such rules to be compelling?
4. Explain how a contractarian defends the objectivity of ethics. Do you find this defense plausible?
5. Suppose that the existing laws of a society require something that you regard as unjust. Does the social contract theory automatically support the morality of the existing law? Why or why not?
6. Would a group of free, equal, and rational people necessarily all agree on a set of rules to live by? If not, is this a problem for contractarianism?

READING

Leviathan**Thomas Hobbes**

Thomas Hobbes (1588–1679) was the most brilliant of the modern social contract theorists. His theory, important in both ethics and political philosophy, views the basic moral rules of society as ones that rational people would adopt in order to protect their own interests. Without obedience to such rules, the situation deteriorates into a “war of all against all, in which the life of man is solitary, poor, nasty, brutish and short.”

Hobbes was an ethical egoist—someone who thinks that our fundamental duty is to look after our own interests—as well as a social contract theorist. Many commentators have found a tension in this combination. See for yourself whether Hobbes succeeded in justifying the basic moral rules by reference to self-interest.

Among the many interesting features in this excerpt from Hobbes’s classic *Leviathan* is his discussion of the fool. The fool is someone who allows that breaking one’s promises is unjust, but who thinks that it may sometimes be rational to do so anyway. Hobbes resists this idea. He wants to show that it is always rational to do one’s duty—to live by the laws of cooperation that would be accepted by free and rational people. His overall view is motivated by the thought that moral duties must provide each of us with excellent reasons to obey them, and that these reasons must ultimately stem from self-interest. As a result, Hobbes’s discussion casts fascinating light on the perennial question of why we should be moral.

**OF THE NATURAL CONDITION
OF MANKIND AS CONCERNING
THEIR FELICITY AND MISERY**

Nature hath made men so equal in the faculties of body and mind as that, though there be found one man sometimes manifestly stronger in body or of quicker mind than another, yet when all is reckoned together the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination or by confederacy with others that are in the same danger with himself.

And as to the faculties of the mind, setting aside the arts grounded upon words, and especially that skill of proceeding upon general and infallible rules, called science, which very few have and but in

few things, as being not a native faculty born with us, nor attained, as prudence, while we look after somewhat else, I find yet a greater equality amongst men than that of strength. For prudence is but experience, which equal time equally bestows on all men in those things they equally apply themselves unto. That which may perhaps make such equality incredible is but a vain conceit of one’s own wisdom, which almost all men think they have in a greater degree than the vulgar; that is, than all men but themselves, and a few others, whom by fame, or for concurring with themselves, they approve. For such is the nature of men that howsoever they may acknowledge many others to be more witty, or more eloquent or more learned, yet they will hardly believe there be many so wise as themselves; for they see their own wit at hand, and other men’s at a distance. But this proveth rather that men are in that point equal, than unequal. For there is not

ordinarily a greater sign of the equal distribution of anything than that every man is contented with his share.

From this equality of ability ariseth equality of hope in the attaining of our ends. And therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their end (which is principally their own conservation, and sometimes their delectation only) endeavour to destroy or subdue one another. And from hence it comes to pass that where an invader hath no more to fear than another man's single power, if one plant, sow, build, or possess a convenient seat, others may probably be expected to come prepared with forces united to dispossess and deprive him, not only of the fruit of his labour, but also of his life or liberty. And the invader again is in the like danger of another.

And from this diffidence of one another, there is no way for any man to secure himself so reasonable as anticipation; that is, by force, or wiles, to master the persons of all men he can so long till he see no other power great enough to endanger him: and this is no more than his own conservation requireth, and is generally allowed. Also, because there be some that, taking pleasure in contemplating their own power in the acts of conquest, which they pursue farther than their security requires, if others, that otherwise would be glad to be at ease within modest bounds, should not by invasion increase their power, they would not be able, long time, by standing only on their defence, to subsist. And by consequence, such augmentation of dominion over men being necessary to a man's conservation, it ought to be allowed him.

Again, men have no pleasure (but on the contrary a great deal of grief) in keeping company where there is no power able to overawe them all. For every man looketh that his companion should value him at the same rate he sets upon himself, and upon all signs of contempt or undervaluing naturally endeavours, as far as he dares (which amongst them that have no common power to keep them in quiet is far enough to make them destroy each other), to extort a greater value from his contemners, by damage; and from others, by the example.

So that in the nature of man, we find three principal causes of quarrel. First, competition; secondly, diffidence; thirdly, glory.

The first maketh men invade for gain; the second, for safety; and the third, for reputation. The first use violence, to make themselves masters of other men's persons, wives, children, and cattle; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other sign of undervalue, either direct in their persons or by reflection in their kindred, their friends, their nation, their profession, or their name.

Hereby it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war as is of every man against every man. For war consisteth not in battle only, or the act of fighting, but in a tract of time, wherein the will to contend by battle is sufficiently known: and therefore the notion of time is to be considered in the nature of war, as it is in the nature of weather. For as the nature of foul weather lieth not in a shower or two of rain, but in an inclination thereto of many days together: so the nature of war consisteth not in actual fighting, but in the known disposition thereto during all the time there is no assurance to the contrary. All other time is peace.

Whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withal. In such condition there is no place for industry, because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.

It may seem strange to some man that has not well weighed these things that Nature should thus dissociate and render men apt to invade and

destroy one another: and he may therefore, not trusting to this inference, made from the passions, desire perhaps to have the same confirmed by experience. Let him therefore consider with himself: when taking a journey, he arms himself and seeks to go well accompanied; when going to sleep, he locks his doors; when even in his house he locks his chests; and this when he knows there be laws and public officers, armed, to revenge all injuries shall be done him; what opinion he has of his fellow subjects, when he rides armed; of his fellow citizens, when he locks his doors; and of his children, and servants, when he locks his chests. Does he not there as much accuse mankind by his actions as I do by my words? But neither of us accuse man's nature in it. The desires, and other passions of man, are in themselves no sin. No more are the actions that proceed from those passions till they know a law that forbids them; which till laws be made they cannot know, nor can any law be made till they have agreed upon the person that shall make it.

It may peradventure be thought there was never such a time nor condition of war as this; and I believe it was never generally so, over all the world: but there are many places where they live so now. For the savage people in many places of America, except the government of small families, the concord whereof dependeth on natural lust, have no government at all, and live at this day in that brutish manner, as I said before. Howsoever, it may be perceived what manner of life there would be, where there were no common power to fear, by the manner of life which men that have formerly lived under a peaceful government use to degenerate into a civil war.

But though there had never been any time wherein particular men were in a condition of war one against another, yet in all times kings and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators, having their weapons pointing, and their eyes fixed on one another; that is, their forts, garrisons, and guns upon the frontiers of their kingdoms, and continual spies upon their neighbours, which is a posture of war. But because they uphold thereby

the industry of their subjects, there does not follow from it that misery which accompanies the liberty of particular men.

To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law; where no law, no injustice. Force and fraud are in war the two cardinal virtues. Justice and injustice are none of the faculties neither of the body nor mind. If they were, they might be in a man that were alone in the world, as well as his senses and passions. They are qualities that relate to men in society, not in solitude. It is consequent also to the same condition that there be no propriety, no dominion, no mine and thine distinct; but only that to be every man's that he can get, and for so long as he can keep it. And thus much for the ill condition which man by mere nature is actually placed in; though with a possibility to come out of it, consisting partly in the passions, partly in his reason.

The passions that incline men to peace are: fear of death; desire of such things as are necessary to commodious living; and a hope by their industry to obtain them. And reason suggesteth convenient articles of peace upon which men may be drawn to agreement. These articles are they which otherwise are called the laws of nature, whereof I shall speak more particularly in the two following chapters.

OF THE FIRST AND SECOND NATURAL LAWS, AND OF CONTRACTS

The right of nature, which writers commonly call *jus naturale*, is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgement and reason, he shall conceive to be the aptest means thereunto.

By liberty is understood, according to the proper signification of the word, the absence of external impediments; which impediments may oft take away part of a man's power to do what he would, but cannot hinder him from using the power left him according as his judgement and reason shall dictate to him.

A law of nature, *lex naturalis*, is a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or taketh away the means of preserving the same, and to omit that by which he thinketh it may be best preserved.

And because the condition of man . . . is a condition of war of every one against every one, in which case every one is governed by his own reason, and there is nothing he can make use of that may not be a help unto him in preserving his life against his enemies; it followeth that in such a condition every man has a right to every thing, even to one another's body. And therefore, as long as this natural right of every man to every thing endureth, there can be no security to any man, how strong or wise soever he be, of living out the time which nature ordinarily alloweth men to live. And consequently it is a precept, or general rule of reason: that every man ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek and use all helps and advantages of war. The first branch of which rule containeth the first and fundamental law of nature, which is: to seek peace and follow it. The second, the sum of the right of nature, which is: by all means we can to defend ourselves.

From this fundamental law of nature, by which men are commanded to endeavour peace, is derived this second law: that a man be willing, when others are so too, as far forth as for peace and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men as he would allow other men against himself. For as long as every man holdeth this right, of doing anything he liketh; so long are all men in the condition of war. But if other men will not lay down their right, as well as he, then there is no reason for anyone to divest himself of his: for that were to expose himself to prey, which no man is bound to, rather than to dispose himself to peace. This is that law of the gospel: Whatsoever you require that others should do to you, that do ye to them.

Whensoever a man transferreth his right, or renounceth it, it is either in consideration of some right reciprocally transferred to himself, or for some other good he hopeth for thereby. For it is a

voluntary act: and of the voluntary acts of every man, the object is some good to himself. And therefore there be some rights which no man can be understood by any words, or other signs, to have abandoned or transferred. As first a man cannot lay down the right of resisting them that assault him by force to take away his life, because he cannot be understood to aim thereby at any good to himself. The same may be said of wounds, and chains, and imprisonment, both because there is no benefit consequent to such patience, as there is to the patience of suffering another to be wounded or imprisoned, as also because a man cannot tell when he seeth men proceed against him by violence whether they intend his death or not. And lastly the motive and end for which this renouncing and transferring of right is introduced is nothing else but the security of a man's person, in his life, and in the means of so preserving life as not to be weary of it. And therefore if a man by words, or other signs, seem to despoil himself of the end for which those signs were intended, he is not to be understood as if he meant it, or that it was his will, but that he was ignorant of how such words and actions were to be interpreted.

The mutual transferring of right is that which men call contract. . . .

Signs of contract are either express or by inference. Express are words spoken with understanding of what they signify: and such words are either of the time present or past; as, I give, I grant, I have given, I have granted, I will that this be yours: or of the future; as, I will give, I will grant, which words of the future are called promise.

Signs by inference are sometimes the consequence of words; sometimes the consequence of silence; sometimes the consequence of actions; sometimes the consequence of forbearing an action: and generally a sign by inference, of any contract, is whatsoever sufficiently argues the will of the contractor.

Words alone, if they be of the time to come, and contain a bare promise, are an insufficient sign of a free gift and therefore not obligatory. For if they be of the time to come, as, tomorrow I will give, they are a sign I have not given yet, and consequently that my right is not transferred, but remaineth till I transfer it by some other act. . . .

If a covenant be made wherein neither of the parties perform presently, but trust one another, in the condition of mere nature (which is a condition of war of every man against every man) upon any reasonable suspicion, it is void: but if there be a common power set over them both, with right and force sufficient to compel performance, it is not void. For he that performeth first has no assurance the other will perform after, because the bonds of words are too weak to bridle men's ambition, avarice, anger, and other passions, without the fear of some coercive power; which in the condition of mere nature, where all men are equal, and judges of the justness of their own fears, cannot possibly be supposed. And therefore he which performeth first does but betray himself to his enemy, contrary to the right he can never abandon of defending his life and means of living.

But in a civil estate, where there is a power set up to constrain those that would otherwise violate their faith, that fear is no more reasonable; and for that cause, he which by the covenant is to perform first is obliged so to do.

OF OTHER LAWS OF NATURE

From that law of nature by which we are obliged to transfer to another such rights as, being retained, hinder the peace of mankind, there followeth a third; which is this: that men perform their covenants made; without which covenants are in vain, and but empty words; and the right of all men to all things remaining, we are still in the condition of war.

And in this law of nature consisteth the fountain and original of justice. For where no covenant hath preceded, there hath no right been transferred, and every man has right to everything and consequently, no action can be unjust. But when a covenant is made, then to break it is unjust and the definition of injustice is no other than the not performance of covenant. And whatsoever is not unjust is just.

But because covenants of mutual trust, where there is a fear of not performance on either part (as hath been said in the former chapter), are invalid, though the original of justice be the making of covenants, yet injustice actually there can be none till the cause of such fear be taken away; which, while

men are in the natural condition of war, cannot be done. Therefore before the names of just and unjust can have place, there must be some coercive power to compel men equally to the performance of their covenants, by the terror of some punishment greater than the benefit they expect by the breach of their covenant, and to make good that propriety which by mutual contract men acquire in recompence of the universal right they abandon: and such power there is none before the erection of a Commonwealth. And this is also to be gathered out of the ordinary definition of justice in the Schools, for they say that justice is the constant will of giving to every man his own. And therefore where there is no own, that is, no propriety, there is no injustice; and where there is no coercive power erected, that is, where there is no Commonwealth, there is no propriety, all men having right to all things: therefore where there is no Commonwealth, there nothing is unjust. So that the nature of justice consisteth in keeping of valid covenants, but the validity of covenants begins not but with the constitution of a civil power sufficient to compel men to keep them: and then it is also that propriety begins.

The fool hath said in his heart, there is no such thing as justice, and sometimes also with his tongue, seriously alleging that every man's conservation and contentment being committed to his own care, there could be no reason why every man might not do what he thought conduced thereunto: and therefore also to make, or not make; keep, or not keep, covenants was not against reason when it conduced to one's benefit. He does not therein deny that there be covenants; and that they are sometimes broken, sometimes kept; and that such breach of them may be called injustice, and the observance of them justice: but he questioneth whether injustice, taking away the fear of God (for the same fool hath said in his heart there is no God), may not sometimes stand with that reason which dictateth to every man his own good; and particularly then, when it conduced to such a benefit as shall put a man in a condition to neglect not only the dispraise and revilings, but also the power of other men. The kingdom of God is gotten by violence: but what if it could be gotten by unjust violence? Were it against reason so to get it, when it is impossible to receive hurt by it? And if it

be not against reason, it is not against justice: or else justice is not to be approved for good. From such reasoning as this, successful wickedness hath obtained the name of virtue: and some that in all other things have disallowed the violation of faith, yet have allowed it when it is for the getting of a kingdom. And the heathen that believed that Saturn was deposed by his son Jupiter believed nevertheless the same Jupiter to be the avenger of injustice, somewhat like to a piece of law in Coke's Commentaries on Littleton; where he says if the right heir of the crown be attainted of treason, yet the crown shall descend to him, and *eo instante* the attainer be void: from which instances a man will be very prone to infer that when the heir apparent of a kingdom shall kill him that is in possession, though his father, you may call it injustice, or by what other name you will; yet it can never be against reason, seeing all the voluntary actions of men tend to the benefit of themselves; and those actions are most reasonable that conduce most to their ends. This specious reasoning is nevertheless false.

For the question is not of promises mutual, where there is no security of performance on either side, as when there is no civil power erected over the parties promising; for such promises are no covenants: but either where one of the parties has performed already, or where there is a power to make him perform, there is the question whether it be against reason; that is, against the benefit of the other to perform, or not. And I say it is not against reason. For the manifestation whereof we are to consider; first, that when a man doth a thing, which notwithstanding anything can be foreseen and reckoned on tendeth to his own destruction, howsoever some accident, which he could not expect, arriving may turn it to his benefit; yet such events do not make it reasonably or wisely done. Secondly, that in a condition of war, wherein every man to every man, for want of a common power to keep them all in awe, is an enemy, there is no man can hope by his own strength, or wit, to defend himself from destruction without the help of confederates; where every one expects the same defence by the confederation that any one else does: and therefore he which declares he thinks it reason to deceive those that help him can in reason expect no other means of safety than

what can be had from his own single power. He, therefore, that breaketh his covenant, and consequently declarereth that he thinks he may with reason do so, cannot be received into any society that unite themselves for peace and defence but by the error of them that receive him; nor when he is received be retained in it without seeing the danger of their error; which errors a man cannot reasonably reckon upon as the means of his security: and therefore if he be left, or cast out of society, he perisheth; and if he live in society, it is by the errors of other men, which he could not foresee nor reckon upon, and consequently against the reason of his preservation; and so, as all men that contribute not to his destruction forbear him only out of ignorance of what is good for themselves.

As for the instance of gaining the secure and perpetual felicity of heaven by any way, it is frivolous; there being but one way imaginable, and that is not breaking, but keeping of covenant.

And for the other instance of attaining sovereignty by rebellion; it is manifest that, though the event follow, yet because it cannot reasonably be expected, but rather the contrary, and because by gaining it so, others are taught to gain the same in like manner, the attempt thereof is against reason. Justice therefore, that is to say, keeping of covenant, is a rule of reason by which we are forbidden to do anything destructive to our life, and consequently a law of nature.

Thomas Hobbes: Leviathan

1. At the beginning of the selection, Hobbes argues that all humans are fundamentally equal. In what ways does Hobbes claim that we are equal? Do you agree with him?
2. Hobbes claims that without a government to enforce law and order, we would find ourselves in a “war . . . of every man against every man.” What reasons does he give for believing this? Do you think he is right?
3. According to Hobbes, if there were no governments to establish laws, nothing would be just or unjust. Does this seem plausible? Would some actions be unjust, even if there were no authority around to punish those who committed them?

4. Hobbes says, “Of the voluntary acts of every man, the object is some good to himself.” Is Hobbes correct in thinking that self-interest is what motivates every voluntary action?
5. Hobbes claims that it is always unjust to violate our covenants (or contracts), provided that there is a government with the power to enforce them. He also claims that any action

that does not violate a covenant is just. Can you think of any counterexamples to either of these claims?

6. The “fool” claims that it is rational to unjustly break one’s covenants in cases where doing so promotes one’s self-interest. How does Hobbes respond to this claim? Do you find Hobbes’s replies convincing?

Natural Law

Perhaps the key to morality lies in understanding our place in the natural order of things. Many have thought so.

In trying to discover what makes for a good human life, we might take a cue from the rest of the animal kingdom and ask about why their lives go well, when they do. It seems that there is a common answer: animals live good lives when their nature is fulfilled, and bad lives when it isn't. A racehorse, by nature, is built for speed. Chameleons naturally blend in with their background. When fillies break a leg, or chameleons cannot camouflage themselves, their lives go poorly.

In each of these cases, nature is dictating the terms of appraisal. The things *in* nature *have* a nature. Such things are bad when they are unnatural, and good to the extent that they fulfill their nature. Perhaps we can say the same thing about human beings.

A. THE THEORY AND ITS ATTRACTIONS

That is the guiding thought of the **natural law theory**. By its lights, good human beings are those who fulfill their true nature; bad human beings are those who don't. The moral law is the natural law—the law that requires us to act in accordance with our nature. (As we'll see, this is a different kind of natural law from the one that physicists use to describe the workings of molecules or galaxies.) At its most basic, natural law theory tells us that *actions are right just because they are natural, and wrong just because they are unnatural. And people are good or bad to the extent that they fulfill their true nature—the more they fulfill their true nature, the better they are.*

The natural law theory promises to solve some very serious problems in ethics. Four of these are especially important.

1. *Natural law theory promises to explain how morality could possibly be objective, that is, how moral standards depend on something other than human opinion.*

According to this theory, human nature can serve as the objective standard of morality. We do right when our acts express human nature, and do wrong when they violate it. Since individuals and entire societies can be mistaken about what our true nature is, they can be badly off target about what morality asks of us.

Many natural law theorists are theists, who claim that our nature was given to us by God. Indeed, the most brilliant and influential exponent of natural law theory, St. Thomas Aquinas (1225–1275), melded Aristotelian and Christian views to argue that we are morally bound to fulfill our nature precisely because God endowed us with it. But that is not an essential element of the theory. What is crucial is that human nature is meant to serve as the ultimate moral standard, regardless of whether our nature has arisen from divine origins or in some other way. If this theory is correct, then so long as there is such a thing as human nature, there is an objective source of morality.

2. *Natural law theory easily explains why morality is specially suited for human beings, and not for anything else in the natural world.*

Almost everyone agrees that a distinctive human feature is our sophisticated reasoning abilities.

A few other animals may be able to reason in basic ways, but no species on earth can approach our ability to assess various ways of life, critically analyze the merits of actions and policies, and then govern our behavior on the basis of our reflections. This capacity for rational thought also seems to be the cornerstone of morality. **Moral agents**—those who bear responsibility for their actions, and who are fit for praise or blame—are those who can control their behavior through reasoning. That's why we don't hold animals (or trees or automobiles) morally responsible for the harms they sometimes cause. Only human beings have the sort of nature that enables them to be moral agents. Natural law theory can thus explain why moral duties apply only to human beings (or, if there are any, to other life forms who share our rational powers).

3. Natural law theory has a clear account of the origins of morality.

The theory tells us that morality is only as old as humanity itself, that morality dates to the earliest days of humankind. But that isn't because morality depends on human opinion, as so many people believe. Rather, it is because morality depends on human nature. No humans, no human nature. No human nature, no morality.

4. Natural law theory may solve one of the hardest problems in ethics: how to gain moral knowledge.

According to natural law theory, moral knowledge requires two things: we must know what our human nature is, and know whether various actions fulfill it. Knowledge of human nature may be quite difficult to get—that depends on how we conceive of human nature, which we will consider shortly. In principle, though, we should be able to investigate the matter and come up with some well-informed views. Equipped with this knowledge, we can then look carefully at individuals to see whether their actions line up with human nature.

Suppose, for instance, that we perform a vast study of human infants, across many different

cultures, and discover that they are gentle and nonviolent. Many have thought that this sort of empirical evidence clinches the case for thinking that these traits are part of human nature. If we then see people acting aggressively and violently, we have all the evidence we need to convict them of immorality. That's because they would be acting in conflict with their true nature.

So, on the natural law view, gaining moral knowledge need not be mysterious. Armed solely with descriptions of a person's behavior, and knowledge of our human nature, we *can* determine whether actions are moral, by seeing whether they fulfill our nature.

B. THREE CONCEPTIONS OF HUMAN NATURE

We often approve of actions by declaring them to be perfectly natural, or we excuse someone's harmful conduct by saying that it was the natural thing to do under the circumstances. We also condemn certain actions as unnatural or say of an especially awful act that it was a crime against nature. This all makes excellent sense, on the assumption that natural law theory is true.

In order to apply the natural law theory to real moral problems, we need a sharp understanding of human nature, for it is human nature that, on this theory, will determine the standards of morality. Human nature is what makes us human. It is the set of features that is essential to being human, so that if we were to lose these features, we would also lose our humanity. Natural law theorists are committed to the idea that there is a human essence, a set of traits that define us as human beings.

What is the nature of human nature? Here are three familiar—and problematic—answers.

The first possibility is that we are animals by nature, and so to act according to our nature is just to behave as other animals do. Other animals need protection against predators and enough food to eat, and this explains why it is morally acceptable for us to defend ourselves against attackers and to grow food and feed ourselves. That

certainly sounds plausible. But looking to other animals for moral guidance is actually quite a poor idea. After all, some animals kill their own young; others eat their own young; still others brutalize the weaker members of their own species. That doesn't make it right for us to do any of these things.

So the fact that we share many traits, needs, and interests with other animals is not going to unlock the puzzle of determining our human nature—at least if that nature is supposed to also provide moral standards that we must live by. We need to look elsewhere for an understanding of human nature that might be morally relevant.

The second possibility is that human nature is the set of traits that we have innately. **Innate** traits are ones we have from birth. They are natural in the sense of being inborn, natural as opposed to being learned, or acquired from parents and society. On this line of thinking, our true nature is the one we are born with; traits we acquire through socialization are artificial, and stain the purity of our earliest days. In principle, we can use scientific methods to discover what is innately human, and so solve Hume's challenge to gaining moral knowledge.

If Jean-Jacques Rousseau (1712–1778) was right, we are innately angelic. Before society corrupts us, our noble nature shines through. We are by nature pleasant, cooperative, and considerate. If our nature holds the key to morality, then morality is largely as we think it is. It requires us to be kind, cooperative, and attentive to the needs of others.

That would be a comfort. But what if Thomas Hobbes (1588–1679) had it right? He thought that we are innately selfish, competitive, and distrustful. We are born that way and, for the most part, stay that way. If the natural is the innate, and if we are required to act on our true nature, then the Hobbesian view is going to force us to abandon many of our conventional ethical beliefs.

The view that the natural is what is innate is widely held. This explains why so many people think that studies focused on infants will unlock

the key to human nature. The thought is that society is bound to change our natural state, and so we gain the deepest insight into human nature by discovering what we are like before society changes us in so many ways.

Yet if natural law theory is correct, and if the natural is the very same thing as the innate, then we need to resolve the nature/nurture debate before we can know what is right and wrong. And that seems mistaken. We are *very* confident that morality is not a counsel of selfishness, mistrust, and competition, even if we are uncertain about whether such traits are innate. We can be very sure that killing people because of their skin color is immoral, even if we aren't sure whether we have an innate tendency to harm people who don't look like us.

This raises a general point: *the ultimate origins of our impulses are irrelevant to the morality of our actions*. Rape and robbery are immoral, no matter whether the impulse to commit these crimes is innate or acquired. Cheerfully comforting the sick is a good thing, even if we weren't born with a desire to offer such help. Since the morality of our actions and our character traits does not depend on whether they are innate or acquired, natural law theorists must look elsewhere for an understanding of human nature.

A third conception of human nature says that our nature is whatever traits we all share. These universal human features would make up the essence of humanity. Such a view lets us scientifically determine our human nature. The data wouldn't always be easy to come by. But with a lot of effort, we could discover our human nature just by observing the features that all humans have in common.

There are two problems with such a view. First, there may be no universal human traits. And second, even if there are, they may not provide good moral guidance.

It may seem silly to deny that there are any universal human traits. Doesn't everyone want to have enough food and water to remain alive? Don't all adults have a sex drive? Aren't we all capable, to one degree or another, of complex

thinking about our future? Yet some people want to die, not to live; others are indifferent to the attractions of sex; still others are so mentally impaired as to be unable to think at all about their future. For just about any trait (perhaps every trait) that is said to be part of human nature, we can find exceptions that undermine the rule.

Natural law theorists have a reply to this, which is best appreciated by considering an example. Return to the case of nonhuman animals and think about their nature. For instance, it is part of a buck's nature to be alert to predators, to have four legs, to grow antlers, and to be fawn-colored. Still, there are bucks with only three legs. A few fail to grow antlers; others are deaf to predators; still others are albinos. We might say of such specimens that they aren't really bucks, not fully bucks, or not all that a buck should be.

If that sounds right, then we might adopt the following strategy. Perhaps human nature, like that of nonhuman animals, is determined not by what *every* member of the species shares, but only by what *most* members share. Bucks can have a nature, even if some bucks fail to perfectly live up to it. The same goes for human beings.

This strategy won't work. There is the difficult problem of setting a threshold. Just how many humans need to have a trait before it qualifies as part of human nature? But leave that aside. The real problem is this: the fact that most humans have a certain trait is morally irrelevant.

Suppose, for instance, that most of us are selfish and mean. On this line of thinking, being selfish and mean would then be part of human nature. That would make such behavior morally right, on the natural law view. But that's awfully difficult to accept.

Even if everyone, or most of us, were cruel and malicious, that would not make cruelty and malice morally good. Even if people were usually or typically nasty and petty, these traits would still be vices, not virtues. The fact that many, most, or all people behave a certain way or have certain character traits is not enough to show that such behaviors and traits are morally good.

C. NATURAL PURPOSES

If human nature is not a matter of the (innate) traits that all or most of us have, then what is it? The answer given by most natural law theorists is this: human nature is what we are designed to be and to do. It is some function of ours, some purpose that we are meant to serve, some end that we were designed for.

It may seem that this conception of human nature places us squarely outside the realm of science and in the domain of religion. How could science tell us what our purpose is? Doesn't talk of our being designed for something imply the existence of an Intelligent Designer?

In fact many natural law theorists, following Thomas Aquinas's lead, have made just these assumptions and have developed their views within the context of one religious tradition or another. According to these views, God is our Intelligent Designer. When God created us, He assigned us a specific set of purposes. These are what make up our human nature. Since God is all-good, frustrating God's purpose is immoral. That's what we do when we act unnaturally. That's why it is wrong to act unnaturally.

There is a lot to say about such a view, but most of it has already been said in our earlier discussion (Chapter 1.E) of the divine command theory. On the present account, we must act naturally because that is the way we respect God's plans for us, which are at the heart of morality. Though this isn't quite the same thing as making God's *commands* the basis of morality, it is close enough to have inherited most of the strengths and weaknesses of the divine command theory. Rather than revisit that topic, let's consider a secular interpretation of natural purposes.

The challenge is to make sense of the idea that we have been designed to serve some purpose, without having to invoke an intelligent designer. Strictly speaking, of course, nature has no designs for us. Nature is not an intelligent being with intentions and plans. Still, it *can* make sense to speak of something's natural function or purpose. The mechanisms of evolution and

natural selection, rather than God, can serve as the source of our natural purposes.

For instance, nature designed our brains to enable us to think, our liver to detoxify our blood, and our pancreas to regulate glucose levels. We can say what mitochondria are for, what the heart and kidneys are meant to do. In each case, there is a purpose that these organs serve, even if no one assigned them this purpose.

But that sort of talk doesn't easily translate to human lives. What is a human being *for*? Does the question even make sense?

To answer this question, we need to understand the idea of a natural purpose. Two basic secular accounts might offer some insight. Call the first account the *Efficiency Model*, and the second the *Fitness Model*.

Consider the Efficiency Model. Sticking with the example of a heart, we can say that pumping blood is its natural purpose, because nothing pumps blood as well as a heart. Hearts have a certain structure that enables them to pump blood more efficiently than anything else in the body. That is why the purpose of a heart is to pump blood.

Human beings can have a function or a purpose, then, if we are more efficient than anything else when it comes to certain tasks. Well, we are. But there are so many of them. For instance, we are better than anything else at designing puzzles and writing essays. But on this model, natural law theory cannot be correct, given its claim that unnatural action is immoral, for that would mean that we act immorally whenever we are bad at puzzle design or essay writing. We are also far better at building weapons than any other animal, and far more talented at using instruments of torture. But if acting naturally is always morally acceptable, then these actions, if they really are among our natural purposes, are beyond reproach. Something has gone wrong.

If the Efficiency Model is correct—if human nature is given by our natural purposes, and these purposes are whatever we are best able to accomplish—then natural law theory must fail.

There are too many such purposes, and many have nothing moral about them. Perhaps the Fitness Model will do better.

By this account, our organs have the purposes they do because it is extremely *adaptive* for them to serve these roles. The natural purpose of the heart, brain, liver, and lungs is to do what enhances **fitness**: roughly, our success at survival and reproduction. We are able to survive, and pass on our genes to our offspring, only because these organs function as well as they do. Nature has designed hearts and kidneys and brains (etc.) to improve our chances of survival. This is their natural purpose; it is ours, too. We are meant to survive and to transmit our genes to the next generation. That is what a human life is *for*.

Since our natural purposes are survival and procreation, we can see why so many natural law theorists have thought suicide immoral and have condemned birth control and homosexual activity. We also have a ready explanation of why courage, endurance, and fortitude are true virtues—those who possess them are (in the relevant sense) fitter than those who don't.

Suppose that the natural law theory is true. And suppose that we fulfill our human nature just when we fulfill our natural purposes. Two things follow:

1. Acting naturally—fulfilling our natural purposes—is always moral.
2. Acting unnaturally—frustrating our natural purposes—is always immoral.

But if the Fitness Model is correct, then both claims are false.

To see why claim 1 is false, recall that natural actions are those in which we use our mind and body to satisfy the purposes they were designed for. In the Fitness Model, these purposes are survival and reproduction. So natural actions are those that increase the chances of our survival and reproduction. But men can increase the chances of passing on their genes by raping as many women as they can. That is about as immoral as anything I can think of. And survival?

Consider the words of Primo Levi, an Auschwitz prisoner: “the worst—that is, the fittest—survived. The best all died.” Sometimes those best schooled in violence and treachery are the ones likeliest to live another day. If we understand natural purposes as the Fitness Model advises, then claim 1 is false.

Claim 2 is also false. Not every act that frustrates a natural purpose is immoral. Nature has engineered our ears to be capable of hearing—the better to detect predators, to listen to the advice of our allies, to hear the threats posed by our attackers. But there is nothing immoral about wearing a set of headphones that block out noise. We have eyes so that we can see. But there is nothing wrong with crossing your eyes to make a joke, or closing them to shut out an unwanted sight.

It is worth noting that these examples can be successful even if it is God, and not nature alone, that has endowed us with these various purposes. Suppose that God made eyes to see, ears to hear. Still, isn’t it morally acceptable to put on blindfolds, or wear headphones? Despite being “unnatural,” these actions are perfectly acceptable.

What this shows is that the Fitness Model is as vulnerable as the Efficiency Model. Neither gives us a solid understanding of what human nature is that supports the natural law view that acting naturally is moral and that acting unnaturally is immoral. Until we are given a better method for determining our nature, the natural law theory is in trouble.

The weakness of the various understandings of human nature allows us to see why a classic moral argument fails. That argument goes like this:

The Natural Law Argument

1. If an act is unnatural, then it is immoral.
2. Suicide, contraception, and homosexual activity are unnatural.
3. Therefore suicide, contraception, and homosexual activity are immoral.

1. Primo Levi, *The Drowned and the Saved* (New York: Knopf, 1986), p. 82.

The first premise is false on all of the interpretations we have so far considered. Whether unnatural actions spring from acquired traits rather than innate ones; whether they are rare or unusual rather than typical or even universal; whether they frustrate nature’s purposes rather than conform to them; still, such actions can be morally acceptable.

This does not prove that suicide, contraception, and homosexual activity are morally okay. What it shows, however, is that this popular argument is highly suspect, and it will certainly fail unless we have a better understanding of human nature to rely on.

D. THE DOCTRINE OF DOUBLE EFFECT

Natural law theories have always included supplemental principles to help guide our behavior. One of these—the **doctrine of double effect** (DDE)—has been extremely influential in oral philosophy. It is important in its own right, and also because of the role it plays in many contemporary discussions of ethical issues. The DDE refers to two relevant effects that actions can have: those that we intend to bring about, and those that we foresee but do not aim for. This principle says the following:

Provided that your goal is worthwhile, you are sometimes permitted to act in ways that foreseeably cause certain types of harm, though you must never intend to cause such harms.

The DDE does not say that it is always wrong to intentionally harm others. It allows, for instance, that harmful punishment is sometimes acceptable. The DDE simply tells us that *some* harms may never be aimed for, even though those harms may be permitted as side effects of one’s actions (i.e., as “collateral damage”). This list of such harms can differ from theorist to theorist, but there is at least one that they all agree on: one may never intentionally kill (or otherwise harm) an innocent human being.

There are times in life when, regrettably, we will harm someone no matter what we do. Such situations can be extremely challenging, and just the moments when we look to moral philosophy for guidance. One such guide is the principle of utility (see Chapter 5), which tells us to minimize harm. In a wide variety of cases, this is exactly the right advice. But in others, it seems deeply problematic, and the DDE is often enlisted to explain why that's so.

We could minimize harm if we were secretly to abduct a small number of healthy people, anesthetize them, and cut them up to distribute their vital organs to those who would otherwise die from organ failure. We could minimize misery by "culling" the population of those whose lives are wretchedly unhappy, with little prospect of improvement—even if they didn't want to die. We could dramatically reduce terrorism if we adopted a policy of reliably executing a terrorist's child or spouse in response. But these ways of minimizing harm are deeply offensive.

The DDE can explain why such acts are wrong—in each case, they involve intending to harm an innocent person. Though the offending actions are each done in order to bring about some greater good—the reduction of misery—that does not seem to make those actions morally acceptable. The ends, no matter how good, do not always justify the means. Many believe that certain means are *never* to be utilized, even if employing them will help us minimize harm. The DDE makes this thought concrete by claiming that if the means—the actions one undertakes in the service of a larger goal—involve intending to harm an innocent person, then those actions are immoral. This enables the defender of the DDE to argue, for instance, that terrorist acts that target innocent civilians are always wrong. It delivers the same verdict when it comes to active euthanasia (see Chapter 15); since doctors in such cases are intending the death of their innocent patients, such killing is immoral, even though it is done at the request of the patient and undertaken with the aim of relieving the patient's suffering.

There is a difficulty with the DDE, and it must be solved before we can rely on it with confidence. The difficulty is that we lack a clear basis for distinguishing between intention and foresight. Without clarity on this point, the DDE will either fail to provide guidance about the morality of actions or will give us results that seem deeply mistaken.

Consider this challenge. Those who secretly abduct and carve up innocent people to distribute their organs could say that they intend only to save many innocent lives. They would be delighted if their innocent victims were (miraculously) to remain alive after the operation. Therefore, they *don't* intend to kill their victims. They merely foresee their death. Thus the DDE does not condemn their actions.

It is hard to imagine someone saying this with a straight face. But explaining precisely what is wrong with such a claim is not easy. It requires us to sharply define intention. Further, this definition must clearly distinguish intention from foresight, and also help us to see why intending harm is so much worse than foreseeing it. Can this be done? Have a look at these attempts:

(A) You intend to do X = You want X to occur as a result of your action.

But the surgeon carving up the kidnapped victims may not want them to die. He may want only to save the lives of the many patients who need these organs. So according to (A), the surgeon does not intend to kill the abducted patients. But he surely does, and that makes (A) implausible.

(B) You intend to do X = X is part of your plan of action.

Suppose there is a runaway trolley heading toward five innocent people. The only way to stop the train is by pushing a huge bystander (also innocent) onto the tracks at the last minute. His bulk will stop the train—though he will surely die as a result. Here we save five at the cost of one. But it seems a horrible thing to do. Yet if I were to push this guy, I could deny that his death was part of

my plan of action. My plan was limited, let's say, to pushing this man and to stopping the train. I'd be pleased if the man were to escape with only bruises. According to (B), I didn't intend to kill the man. But I did. So (B) is problematic.

(C) You intend to do X = You would regret it if X didn't occur as a result of your action.

Consider the last trolley case again. It seems clear that I intentionally killed the man I pushed to the tracks. But I would *not* regret it if he survived. Therefore, by (C), I did not intend his death. Again, something has gone wrong.

(D) You intend to do X = X results from your actions in a nonaccidental way.

The problem here is that all merely foreseen results will now become results that we intend to produce. Consider another trolley case: the runaway trolley is speeding toward five innocents, but I can divert the trolley onto another track. Unfortunately, there is (you guessed it) one innocent person on the other track, and he won't be able to escape if the trolley heads his way. If I do divert the trolley, this man will die, and his death will be no accident. So, by (D), I have intended to kill him. But I haven't; I have foreseen that he will die, but I did not intend his death. So (D) is mistaken.

(E) You intend to do X = You must cause X if you are to achieve your goals.

In the initial trolley case, it is false that the huge bystander's death must occur if I am to achieve my goals. All that *must* occur is that he stop the train with his body. And so, with (E), I do not intend his death. And so the DDE does not condemn my action. But I surely did intend his death, and my action is surely condemnable.

These aren't the only possibilities for defining what it is to intend to do something, but it's been a very difficult task for defenders of the DDE to provide a definition of intention that manages to track the moral distinctions that we feel so confident about. So if you are a fan of the DDE, here is your task: clarify the distinction between intended and merely foreseen results

and do so in a way that shows why some intentional harms, just by virtue of being intended, are morally worse than harms that are foreseen. Perhaps it can be done. But it won't be easy.

E. CONCLUSION

The deep appeal of the natural law theory is its promise to base morality on something clear and unmysterious: nature and its workings. Moral laws, on this account, are just natural laws, though ones that regulate human beings rather than planets, molecules, or gravitational forces. Natural law theory promises many advantages. It promises to explain how morality could possibly be objective. It explains why morality is especially suited to human beings, rather than to other animate beings or inanimate objects. It has a clear account of the origins of morality. And it promises a blueprint for how to gain moral knowledge.

But as we have seen, it is difficult to try to glean recommendations for how we ought to act from descriptions of how nature actually operates. And that shouldn't be too surprising. Natural laws describe and predict how things will behave. They summarize the actual behavior of things, and, unless they are statistical laws (of the sort that assign a probability to outcomes, rather than a certainty), they cannot be broken.

Moral laws are different in every respect. They can be broken, and often are. They are not meant to describe how we actually behave, but rather to serve as ideals that we ought to aim for. Nor are they designed to predict our actions, since we so often fall short of meeting the standards they set.

Nature can define the limit of our possibilities. Our nature does not allow us to leap tall buildings in a single bound or to hold our breath for hours at a time. On the assumption that morality does not demand the impossible of us, nature can, in this way, set the outer bounds of what morality can require. But it can do no more. It cannot, in particular, tell us what we *are* required to do. Nor can it tell us what we are forbidden from trying to achieve. Nature has, at best, only a limited role to play in moral theory.

ESSENTIAL CONCEPTS

Doctrine of double effect: the principle that says that if your goal is worthwhile, you are sometimes permitted to act in ways that foreseeably cause certain types of harm, though you must never intend to cause such harms.

Fitness: a being's success at survival and reproduction.

Innate: traits that we have from birth.

Moral agents: those who bear responsibility for their actions, and who are fit for praise or blame, because they can control their behavior through reasoning.

Natural law theory: the view that actions are right just because they are natural and wrong just because they are unnatural. And people are good or bad to the extent that they fulfill their true nature—the more they fulfill their true nature, the better they are.

DISCUSSION QUESTIONS

1. Many people think of *human nature* as consisting of innate traits that all humans share. Is this conception of human nature a suitable basis for morality? Why or why not?
2. Suppose that most animals behaved in a certain way. Would that provide evidence that it is natural for us to follow their lead? If so, what implications would this have for natural law theory?
3. Do human lives have a purpose? Does knowing the purpose of human lives help us to determine what is morally required?
4. Is there a single correct definition of *human nature*? If not, is this a problem for the natural law theory?
5. How are moral laws different from the laws of physics or chemistry? Do these differences undermine the natural law theory?

READING

Natural Law

Thomas Aquinas

This is a short excerpt from St. Thomas Aquinas's magnum opus, *Summa Theologica*, which has served as a central basis of Roman Catholic theology since Aquinas wrote it over seven hundred years ago. Here Aquinas offers some of the essentials of his understanding of natural law. The text is difficult for contemporary readers but repays careful study. In it, Aquinas develops his conception of natural law by considering a series of objections to various aspects of it, then offering three sorts of reply: first, one that cites a biblical text in support of his position; second, a general reply that sets the objection in context; and third, a specific reply to each of the objections he considers.

In this selection Aquinas develops his views on natural law by first asking (and answering) the question of whether there is an unchanging, eternal law. He answers affirmatively, arguing that God (whose existence is presupposed throughout this selection) is himself unchanging and eternal, and that since God governs the entire universe by means of various principles (he calls these "dictates of practical reason"), these laws

themselves are eternal and unchanging. The natural law is a subset of the eternal laws and is therefore itself eternal and in some respects unchanging. Aquinas divides the natural law into first principles—the fundamental ones that are taken as self-evident axioms and are entirely unchanging—and secondary ones, which might sometimes be difficult to discern and in rare cases admit of change.

Aquinas argues that everyone has God-given, innate knowledge of the basic principles of natural law, though our understanding may be clouded by various things. He then argues that virtuous acts are those prescribed by the natural law. He claims that we are naturally inclined to act in accordance with reason; acting in accordance with reason is always virtuous; and so acting naturally is always virtuous. And acting unnaturally—as, he claims, people do when having intercourse with others of the same sex—is invariably immoral. Aquinas then considers whether natural law might be different for those in different societies or for those of different temperaments. He argues that its general principles are universally binding on all human beings at all times, but allows that certain secondary principles might subtly differ depending on circumstances.

WHETHER THERE IS AN ETERNAL LAW?

Objection 1: It would seem that there is no eternal law. Because every law is imposed on someone. But there was not someone from eternity on whom a law could be imposed: since God alone was from eternity. Therefore no law is eternal.

Objection 2: Further, promulgation is essential to law. But promulgation could not be from eternity: because there was no one to whom it could be promulgated from eternity. Therefore no law can be eternal.

On the contrary, Augustine says (De Lib. Arb. i, 6): “That Law which is the Supreme Reason cannot be understood to be otherwise than unchangeable and eternal.”

I answer that a law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community. Now it is evident, granted that the world is ruled by Divine Providence . . . that the whole community of the universe is governed by Divine Reason. Wherefore the very Idea of the government of things in God the Ruler of

Summa Theologica, First Part of the Second Part, Question 91, Articles 1 and 2; Question 94, Articles 2–6. Benziger Brothers edition, 1947. Translated by Fathers of the English Dominican Province.

the universe, has the nature of a law. And since the Divine Reason’s conception of things is not subject to time but is eternal, according to Prov. 8:23, therefore it is that this kind of law must be called eternal.

Reply to Objection 1: Those things that are not in themselves, exist with God, inasmuch as they are foreknown and preordained by Him, according to Rm. 4:17: “Who calls those things that are not, as those that are.” Accordingly the eternal concept of the Divine law bears the character of an eternal law, in so far as it is ordained by God to the government of things foreknown by Him.

Reply to Objection 2: Promulgation is made by word of mouth or in writing; and in both ways the eternal law is promulgated: because both the Divine Word and the writing of the Book of Life are eternal. But the promulgation cannot be from eternity on the part of the creature that hears or reads.

WHETHER THERE IS IN US A NATURAL LAW?

Objection 1: It would seem that there is no natural law in us. Because man is governed sufficiently by the eternal law: for Augustine says (De Lib. Arb. i) that “the eternal law is that by which it is right that all things should be most orderly.” But nature does not abound in superfluities as neither does she fail in necessities. Therefore no law is natural to man.

Objection 2: Further, by the law man is directed, in his acts, to the end. But the directing of human acts to their end is not a function of nature, as is the case in irrational creatures, which act for an end solely by their natural appetite; whereas man acts for an end by his reason and will. Therefore no law is natural to man.

Objection 3: Further, the more a man is free, the less is he under the law. But man is freer than all the animals, on account of his free-will, with which he is endowed above all other animals. Since therefore other animals are not subject to a natural law, neither is man subject to a natural law.

On the contrary, A gloss on Rm. 2:14: "When the Gentiles, who have not the law, do by nature those things that are of the law," comments as follows: "Although they have no written law, yet they have the natural law, whereby each one knows, and is conscious of, what is good and what is evil."

I answer that law, being a rule and measure, can be in a person in two ways: in one way, as in him that rules and measures; in another way, as in that which is ruled and measured, since a thing is ruled and measured, in so far as it partakes of the rule or measure. Wherefore, since all things subject to Divine providence are ruled and measured by the eternal law; it is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law. Hence the Psalmist: "The light of Thy countenance, O Lord, is signed upon us": thus implying that the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law.

Reply to Objection 1: This argument would hold, if the natural law were something different from the

eternal law: whereas it is nothing but a participation thereof.

Reply to Objection 2: Every act of reason and will in us is based on that which is according to nature: for every act of reasoning is based on principles that are known naturally, and every act of appetite in respect of the means is derived from the natural appetite in respect of the last end. Accordingly the first direction of our acts to their end must be in virtue of the natural law.

Reply to Objection 3: Even irrational animals partake in their own way of the Eternal Reason, just as the rational creature does. But because the rational creature partakes thereof in an intellectual and rational manner, therefore the participation of the eternal law in the rational creature is properly called a law, since a law is something pertaining to reason. Irrational creatures, however, do not partake thereof in a rational manner, wherefore there is no participation of the eternal law in them, except by way of similitude.

WHETHER THE NATURAL LAW CONTAINS SEVERAL PRECEPTS, OR ONLY ONE?

Objection 1: It would seem that the natural law contains, not several precepts, but one only. For law is a kind of precept. If therefore there were many precepts of the natural law, it would follow that there are also many natural laws.

Objection 2: Further, the natural law is consequent to human nature. But human nature, as a whole, is one; though, as to its parts, it is manifold. Therefore, either there is but one precept of the law of nature, on account of the unity of nature as a whole; or there are many, by reason of the number of parts of human nature. The result would be that even things relating to the inclination of the concupiscent faculty belong to the natural law.

Objection 3: Further, law is something pertaining to reason. Now reason is but one in man. Therefore there is only one precept of the natural law.

On the contrary, The precepts of the natural law in man stand in relation to practical matters, as the first principles to matters of demonstration. But there are several first indemonstrable principles.

Therefore there are also several precepts of the natural law.

I answer that the precepts of the natural law are to the practical reason, what the first principles of demonstrations are to the speculative reason; because both are self-evident principles. Now a thing is said to be self-evident in two ways: first, in itself; secondly, in relation to us. Any proposition is said to be self-evident in itself, if its predicate is contained in the notion of the subject: although, to one who knows not the definition of the subject, it happens that such a proposition is not self-evident. For instance, this proposition, "Man is a rational being," is, in its very nature, self-evident, since who says "man," says "a rational being": and yet to one who knows not what a man is, this proposition is not self-evident. Hence it is that, as Boethius says (De Hebdom.), certain axioms or propositions are universally self-evident to all; and such are those propositions whose terms are known to all, as, "Every whole is greater than its part," and, "Things equal to one and the same are equal to one another." But some propositions are self-evident only to the wise, who understand the meaning of the terms of such propositions: thus to one who understands that an angel is not a body, it is self-evident that an angel is not circumspectively in a place: but this is not evident to the unlearned, for they cannot grasp it.

Now a certain order is to be found in those things that are apprehended universally. For that which, before aught else, falls under apprehension, is "being," the notion of which is included in all things whatsoever a man apprehends. Wherefore the first indemonstrable principle is that "the same thing cannot be affirmed and denied at the same time," which is based on the notion of "being" and "not-being": and on this principle all others are based. Now as "being" is the first thing that falls under the apprehension simply, so "good" is the first thing that falls under the apprehension of the practical reason, which is directed to action: since every agent acts for an end under the aspect of good. Consequently the first principle of practical reason is one founded on the notion of good, viz. that "good is that which all things seek after." Hence this is the first precept of law, that "good is to be done and pursued, and evil is to be avoided." All other precepts of the natural law

are based upon this: so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided.

Since, however, good has the nature of an end, and evil, the nature of a contrary, hence it is that all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Wherefore according to the order of natural inclinations, is the order of the precepts of the natural law. Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law. Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals: and in virtue of this inclination, those things are said to belong to the natural law, "which nature has taught to all animals" [Pandect. Just. I, tit. i], such as sexual intercourse, education of offspring and so forth. Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination.

Reply to Objection 1: All these precepts of the law of nature have the character of one natural law, inasmuch as they flow from one first precept.

Reply to Objection 2: All the inclinations of any parts whatsoever of human nature, e.g. of the concupiscent and irascible parts, in so far as they are ruled by reason, belong to the natural law, and are reduced to one first precept, as stated above: so that the precepts of the natural law are many in themselves, but are based on one common foundation.

Reply to Objection 3: Although reason is one in itself, yet it directs all things regarding man; so that

whatever can be ruled by reason, is contained under the law of reason.

WHETHER ALL ACTS OF VIRTUE ARE PRESCRIBED BY THE NATURAL LAW?

Objection 1: It would seem that not all acts of virtue are prescribed by the natural law. Because it is essential to a law that it be ordained to the common good. But some acts of virtue are ordained to the private good of the individual, as is evident especially in regards to acts of temperance. Therefore not all acts of virtue are the subject of natural law.

Objection 2: Further, every sin is opposed to some virtuous act. If therefore all acts of virtue are prescribed by the natural law, it seems to follow that all sins are against nature: whereas this applies [only] to certain special sins.

Objection 3: Further, those things which are according to nature are common to all. But acts of virtue are not common to all, since a thing is virtuous in one, and vicious in another. Therefore not all acts of virtue are prescribed by the natural law.

On the contrary, Damascene says (De Fide Orth. iii, 4) that "virtues are natural." Therefore virtuous acts also are a subject of the natural law.

I answer that, We may speak of virtuous acts in two ways: first, under the aspect of virtuous; secondly, as such and such acts considered in their proper species. If then we speak of acts of virtue, considered as virtuous, thus all virtuous acts belong to the natural law. For to the natural law belongs everything to which a man is inclined according to his nature. Now each thing is inclined naturally to an operation that is suitable to it according to its form: thus fire is inclined to give heat. Wherefore, since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason: and this is to act according to virtue. Consequently, considered thus, all acts of virtue are prescribed by the natural law: since each one's reason naturally dictates to him to act virtuously. But if we speak of virtuous acts, considered in themselves, i.e. in their proper species, then not all virtuous acts are prescribed by the natural law: for many things are done virtuously, to which nature does not incline at first; but which, through the inquiry of reason, have been found by men to be conducive to well-living.

Reply to Objection 1: Temperance is about the natural concupiscences of food, drink and sexual matters, which are indeed ordained to the natural common good, just as other matters of law are ordained to the moral common good.

Reply to Objection 2: By human nature we may mean either that which is proper to man—and in this sense all sins, as being against reason, are also against nature: or we may mean that nature which is common to man and other animals; and in this sense, certain special sins are said to be against nature; thus contrary to sexual intercourse, which is natural to all animals, is unisexual lust, which has received the special name of the unnatural crime.

Reply to Objection 3: This argument considers acts in themselves. For it is owing to the various conditions of men, that certain acts are virtuous for some, as being proportionate and becoming to them, while they are vicious for others, as being out of proportion to them.

WHETHER THE NATURAL LAW IS THE SAME IN ALL MEN?

Objection 1: It would seem that the natural law is not the same in all. For it is stated in the Decretals (Dist. i) that "the natural law is that which is contained in the Law and the Gospel." But this is not common to all men; because, as it is written (Rm. 10:16), "not all obey the gospel." Therefore the natural law is not the same in all men.

Objection 2: Further, "Things which are according to the law are said to be just," as stated in [Aristotle's] Ethic. v. But it is stated in the same book that nothing is so universally just as not to be subject to change in regard to some men. Therefore even the natural law is not the same in all men.

Objection 3: Further, to the natural law belongs everything to which a man is inclined according to his nature. Now different men are naturally inclined to different things; some to the desire of pleasures, others to the desire of honors, and other men to other things. Therefore there is not one natural law for all.

On the contrary, Isidore says (Etym. v, 4): "The natural law is common to all nations."

I answer that, to the natural law belongs those things to which a man is inclined naturally: and among these it is proper to man to be inclined to

act according to reason. Now the process of reason is from the common to the proper, as stated in [Aristotle's] *Phys. i*. The speculative reason, however, is differently situated in this matter, from the practical reason. For, since the speculative reason is busied chiefly with the necessary things, which cannot be otherwise than they are, its proper conclusions, like the universal principles, contain the truth without fail. The practical reason, on the other hand, is busied with contingent matters, about which human actions are concerned: and consequently, although there is necessity in the general principles, the more we descend to matters of detail, the more frequently we encounter defects. Accordingly then in speculative matters truth is the same in all men, both as to principles and as to conclusions: although the truth is not known to all as regards the conclusions, but only as regards the principles which are called common notions. But in matters of action, truth or practical rectitude is not the same for all, as to matters of detail, but only as to the general principles: and where there is the same rectitude in matters of detail, it is not equally known to all.

It is therefore evident that, as regards the general principles whether of speculative or of practical reason, truth or rectitude is the same for all, and is equally known by all. As to the proper conclusions of the speculative reason, the truth is the same for all, but is not equally known to all: thus it is true for all that the three angles of a triangle are together equal to two right angles, although it is not known to all. But as to the proper conclusions of the practical reason, neither is the truth or rectitude the same for all, nor, where it is the same, is it equally known by all. Thus it is right and true for all to act according to reason: and from this principle it follows as a proper conclusion, that goods entrusted to another should be restored to their owner. Now this is true for the majority of cases: but it may happen in a particular case that it would be injurious, and therefore unreasonable, to restore goods held in trust; for instance, if they are claimed for the purpose of fighting against one's country. And this principle will be found to fail the more, according as we descend further into detail, e.g. if one were to say that goods held in trust should be restored with such and such a guarantee, or in such and such a way; because the

greater the number of conditions added, the greater the number of ways in which the principle may fail, so that it be not right to restore or not to restore.

Consequently we must say that the natural law, as to general principles, is the same for all, both as to rectitude and as to knowledge. But as to certain matters of detail, which are conclusions, as it were, of those general principles, it is the same for all in the majority of cases, both as to rectitude and as to knowledge; and yet in some few cases it may fail, both as to rectitude, by reason of certain obstacles (just as natures subject to generation and corruption fail in some few cases on account of some obstacle), and as to knowledge, since in some the reason is perverted by passion, or evil habit, or an evil disposition of nature; thus formerly, theft, although it is expressly contrary to the natural law, was not considered wrong among the Germans, as Julius Caesar relates (*De Bello Gall. vi*).

Reply to Objection 1: The meaning of the sentence quoted is not that whatever is contained in the Law and the Gospel belongs to the natural law, since they contain many things that are above nature; but that whatever belongs to the natural law is fully contained in them. Wherefore Gratian, after saying that "the natural law is what is contained in the Law and the Gospel," adds at once, by way of example, "by which everyone is commanded to do to others as he would be done by."

Reply to Objection 2: The saying of the Philosopher [Aristotle] is to be understood of things that are naturally just, not as general principles, but as conclusions drawn from them, having rectitude in the majority of cases, but failing in a few.

Reply to Objection 3: As, in man, reason rules and commands the other powers, so all the natural inclinations belonging to the other powers must needs be directed according to reason. Wherefore it is universally right for all men, that all their inclinations should be directed according to reason.

WHETHER THE NATURAL LAW CAN BE CHANGED?

Objection 1: It would seem that the natural law can be changed. Because on Eccl. 17:9, "He gave them instructions, and the law of life," the gloss says: "He wished the law of the letter to be written, in order

to correct the law of nature." But that which is corrected is changed. Therefore the natural law can be changed.

Objection 2: Further, the slaying of the innocent, adultery, and theft are against the natural law. But we find these things changed by God: as when God commanded Abraham to slay his innocent son (Gen. 22:2); and when he ordered the Jews to borrow and purloin the vessels of the Egyptians (Ex. 12:35); and when He commanded Osee to take to himself "a wife of fornications" (Osee 1:2). Therefore the natural law can be changed.

Objection 3: Further, Isidore says (Etym. 5:4) that "the possession of all things in common, and universal freedom, are matters of natural law." But these things are seen to be changed by human laws. Therefore it seems that the natural law is subject to change.

On the contrary, It is said in the Decretals (Dist. v): "The natural law dates from the creation of the rational creature. It does not vary according to time, but remains unchangeable."

I answer that, A change in the natural law may be understood in two ways. First, by way of addition. In this sense nothing hinders the natural law from being changed: since many things for the benefit of human life have been added over and above the natural law, both by the Divine law and by human laws.

Secondly, a change in the natural law may be understood by way of subtraction, so that what previously was according to the natural law, ceases to be so. In this sense, the natural law is altogether unchangeable in its first principles: but in its secondary principles, which are certain detailed proximate conclusions drawn from the first principles, the natural law is not changed so that what it prescribes be not right in most cases. But it may be changed in some particular cases of rare occurrence, through some special causes hindering the observance of such precepts.

Reply to Objection 1: The written law is said to be given for the correction of the natural law, either because it supplies what was wanting to the natural law; or because the natural law was perverted in the hearts of some men, as to certain matters, so that they esteemed those things good which are naturally evil; which perversion stood in need of correction.

Reply to Objection 2: All men alike, both guilty and innocent, die the death of nature: which death of nature is inflicted by the power of God on account of original sin, according to 1 Kgs. 2:6: "The Lord killeth and maketh alive." Consequently, by the command of God, death can be inflicted on any man, guilty or innocent, without any injustice whatever. In like manner adultery is intercourse with another's wife; who is allotted to him by the law emanating from God. Consequently intercourse with any woman, by the command of God, is neither adultery nor fornication. The same applies to theft, which is the taking of another's property. For whatever is taken by the command of God, to Whom all things belong, is not taken against the will of its owner, whereas it is in this that theft consists. Nor is it only in human things, that whatever is commanded by God is right; but also in natural things, whatever is done by God, is, in some way, natural.

Reply to Objection 3: A thing is said to belong to the natural law in two ways. First, because nature inclines thereto: e.g. that one should not do harm to another. Secondly, because nature did not bring in the contrary: thus we might say that for man to be naked is of the natural law, because nature did not give him clothes, but art invented them. In this sense, "the possession of all things in common and universal freedom" are said to be of the natural law, because, to wit, the distinction of possessions and slavery were not brought in by nature, but devised by human reason for the benefit of human life. Accordingly the law of nature was not changed in this respect, except by addition.

WHETHER THE LAW OF NATURE CAN BE ABOLISHED FROM THE HEART OF MAN?

Objection 1: It would seem that the natural law can be abolished from the heart of man. Because on Rm. 2:14, "When the Gentiles who have not the law," etc. a gloss says that "the law of righteousness, which sin had blotted out, is graven on the heart of man when he is restored by grace." But the law of righteousness is the law of nature. Therefore the law of nature can be blotted out.

Objection 2: Further, the law of grace is more efficacious than the law of nature. But the law of grace

is blotted out by sin. Much more therefore can the law of nature be blotted out.

Objection 3: Further, that which is established by law is made just. But many things are enacted by men, which are contrary to the law of nature. Therefore the law of nature can be abolished from the heart of man.

On the contrary, Augustine says (Confessions ii): "Thy law is written in the hearts of men, which iniquity itself effaces not." But the law which is written in men's hearts is the natural law. Therefore the natural law cannot be blotted out.

I answer that there belong to the natural law, first, certain most general precepts, that are known to all; and secondly, certain secondary and more detailed precepts, which are, as it were, conclusions following closely from first principles. As to those general principles, the natural law, in the abstract, can nowise be blotted out from men's hearts. But it is blotted out in the case of a particular action, in so far as reason is hindered from applying the general principle to a particular point of practice, on account of concupiscence or some other passion. But as to the other, i.e. the secondary precepts, the natural law can be blotted out from the human heart, either by evil persuasions, just as in speculative matters errors occur in respect of necessary conclusions; or by vicious customs and corrupt habits, as among some men, theft, and even unnatural vices, as the Apostle states (Rm. i), were not esteemed sinful.

Reply to Objection 1: Sin blots out the law of nature in particular cases, not universally, except

perchance in regard to the secondary precepts of the natural law, in the way stated above.

Reply to Objection 2: Although grace is more efficacious than nature, yet nature is more essential to man, and therefore more enduring.

Reply to Objection 3: This argument is true of the secondary precepts of the natural law, against which some legislators have framed certain enactments which are unjust.

Thomas Aquinas: Natural Law

1. Aquinas believes that acting in accordance with one's natural inclinations is virtuous and that acting contrary to those inclinations is vicious (i.e., exemplifies a vice). What sense of 'natural' is required in order to make these claims as plausible as they can be?
2. Aquinas says that the natural law is a "dictate of practical reason." What do you think he means by this?
3. Aquinas's version of natural law clearly depends on its having been authored by God. Can you think of a way to defend a version of natural law theory that does not depend on divine authorship?
4. Aquinas believes that the general principles of the natural law apply to all human beings at all times. Do you find this view of the fundamental moral principles appealing? Why or why not?
5. What can be said on behalf of Aquinas's claim that the first principles of morality are known by everyone?

The Ethic of Prima Facie Duties

Most moral theories are both **absolutist** and **monistic**. To be absolutist is to insist that moral rules are absolute: never permissibly broken. If a moral rule is absolute, then it is *always* wrong to break it, no matter how much good is achieved or how much harm is prevented from doing so. To be monistic is to insist that there is just one ultimate, fundamental moral rule. Act utilitarianism, for instance, is a moral theory that is both absolutist and monistic. It is monistic, because it identifies just a single moral rule as the ultimate one: maximize the greatest balance of happiness over unhappiness. And it is absolutist because it says that breaking that rule is always wrong.

After reviewing different moral theories, you might have the following thought: each one seems to get something right, but its exclusive focus on one moral element is too restrictive. Perhaps we ought to abandon the monistic assumption and acknowledge that **ethical pluralism** might be right. Ethical pluralism is the view that there is more than one ultimate, fundamental moral principle.

A. ETHICAL PLURALISM AND PRIMA FACIE DUTIES

There are two basic ways to be an ethical pluralist. First, you might keep the absolutism and regard all fundamental moral rules as absolute. But there is a big potential problem with this: what if those rules ever conflict? If they do, then the theory yields contradiction, and so must be false. For if those rules are absolute, then it is always morally required to obey them. But if they conflict, they can't both be obeyed. Thus in any case of conflict, you will respect one rule,

and so do what is morally required, while violating another rule, and so do what is morally wrong. But no action can be morally right and wrong at the same time—that is a contradiction. It might be possible to construct a pluralistic moral theory such that all of its basic rules are guaranteed never, ever to conflict. But it won't be easy.

Here's another way to be an ethical pluralist: reject not only monism, but absolutism, too. Such theories are pluralistic; they endorse the existence of at least two fundamental moral rules. And each of these rules is nonabsolute; in some cases, it is morally acceptable to break them. The Oxford professor W. D. Ross (1877–1971) was the philosopher who first developed this version of pluralism. He had a special term for these nonabsolute rules. He called them principles of **prima facie duty**, and we will stick with that label in what follows.

A *prima facie* (Latin, “at first view”) duty is an excellent, nonabsolute, permanent reason to do (or refrain from) something—to keep one's word, be grateful for kindnesses, avoid hurting others, and so on. As Ross saw it, each *prima facie* duty is of fundamental importance. None of these duties can be derived from one another, or from any more basic principle. Crucially, each *prima facie* duty may sometimes be overridden by other such duties. Though there is always good reason, say, to keep a promise or prevent harm to others, morality sometimes requires that we break a promise or do harm. Likewise for each of the other *prima facie* duties.

Ross was convinced that absolutism in all of its forms is implausible. As he saw it, those

theories that endorse more than one absolute rule are bound to yield contradiction. Those that endorse only a single absolute moral rule are too narrow, and fail to recognize that there are a number of independently important moral considerations. For instance, while Ross accepted the utilitarian emphasis on doing good and preventing harm to others, he also agreed with Kant that justice was morally important in its own right.

Ross identified seven *prima facie* duties, each of which is meant to represent a distinct basis of our moral requirements:

1. *Fidelity*: keeping our promises, being faithful to our word.
2. *Reparations*: repairing harm that we have done.
3. *Gratitude*: appropriately acknowledging benefits that others have given us.
4. *Justice*: ensuring that virtue is rewarded and vice punished.
5. *Beneficence*: enhancing the intelligence, virtue, or pleasure of others.
6. *Self-improvement*: making oneself more intelligent or virtuous.
7. *Nonmaleficence*: preventing harm to others.

Ross did not claim that this list was complete. He allowed that there might be other *prima facie* duties. But each of these seven duties, he thought, definitely did belong on the list.

The term *prima facie duty* can be misleading. That's because these things are not really duties, but rather permanent moral reasons that partly determine whether an action truly is, in the end, morally required. To say, for instance, that there is a *prima facie* duty of beneficence is to say the following:

1. There is *always* a strong reason to benefit others.
2. This reason may sometimes be outweighed by competing reasons.
3. If this reason is the only moral reason that applies in a given situation, then

benefiting others becomes our all-things-considered duty—in other words, what we are really, finally morally required to do in that situation.

Focus for a moment on the first item. It provides us with a way to test Ross's specific roster of *prima facie* duties. Suppose that there are situations in which there is *no reason at all* to benefit others. If that were so, there would be no *prima facie* duty of beneficence.

I will let you do the testing yourself, because I am most interested in the general theory of *prima facie* duties, rather than in any specific version of it. Even if Ross's group of seven rules includes too much, or too little, this would not undermine the ethic of *prima facie* duties. What it would show (and this would certainly be important) is that Ross's own list was off-base. But a better list might make the cut.

B. THE ADVANTAGES OF ROSS'S VIEW

The greatest attraction of the ethic of *prima facie* duties is its ability to accommodate our sense that there is, indeed, more than just a single fundamental moral consideration. To Ross, and to most of the rest of us, it does seem that the very fact of our having promised to do something generates *some* reason to follow through, even if keeping our promise fails to bring happiness, reward virtue, prevent misery, or do anything else. That we have given our word is reason enough to do what we have promised.

But no one believes that promising is the only thing like this. There does seem to be something immoral, for instance, when someone repays a kindness with ingratitude—even if, in unusual circumstances, being ungrateful is the right way to go.

Whether or not you agree with the whole of Ross's list, you may well sign on to the idea that fidelity and gratitude, at the very least, each possess moral importance in their own right. If you do, that is enough to force a shift away from monism.

Ross's position also easily explains the widespread belief that the moral rules may sometimes acceptably be broken. There is always something to be said in favor of keeping a promise—but I should break my promise to meet a student for coffee if my daughter has a medical emergency and needs to be taken to the hospital. We all accept that there are circumstances in which it is morally acceptable to break a promise, allow harm to others, pass up a chance at self-improvement, and so on. Ross's theory straightforwardly explains this.

The ethic of prima facie duties also appears to make good sense of our experience of moral conflict. Duties conflict when they can't all be fulfilled. On absolutist views, such conflict yields contradiction. But Ross's theory easily avoids this.

Consider the case of a poor single mother whose child is too sick to go to school. The mother has a duty to report to work. By taking the job, she has promised to reliably show up as scheduled. But suppose that she has just moved to town, has no friends or family there, and isn't allowed to bring her child to work. She also has a duty to care for her child, especially if no one else is available to do so. What should she do?

The Rossian can say of such a case that there is a conflict of prima facie duties. There is a strong case for showing up to work. There is a strong reason to care for one's child. Sometimes we can't do both. But no contradiction occurs, because we can distinguish between a standing reason (a prima facie duty) to do something and an all-things-considered, final duty to do it. When these final duties conflict—when we say, *in the end*, that you are absolutely required to show up at work and are also absolutely required to care for your child—then there is contradiction. Ross's view avoids this problem entirely.

I'm not intent on defending a specific verdict in this example. If Ross is correct, the key thing is that context will determine just how important a prima facie duty is. The consideration at the heart of such a duty (promise keeping,

preventing harm, righting one's wrongs, etc.) is always morally *important*. But it is not always morally *decisive*. That is precisely what distinguishes a prima facie duty from an absolute one.

Another benefit of Ross's theory is its view of moral regret. When moral claims conflict and we can't honor them all, we think that it is right to feel regret at having to give up something important. Regret is evidence that something of value has been sacrificed. When prima facie duties conflict and one takes priority over the other, the lesser duty doesn't just disappear. It still has some weight, even though in the circumstances it is not as morally powerful as the conflicting duty. Regret is our way of acknowledging this forsaken duty, our way of recognizing that something of value was lost in the conflict.

Indeed, this provides us with a reasonable test for knowing what our prima facie duties are. The test is simple: there is a prima facie duty to act in a certain way only if it would always be appropriate to regret our failure to act that way. If there were nothing valuable about gratitude, for instance, then missing a chance to express it would not be a cause for regret. But it is. And that shows that there is *something* important about gratitude, even if it isn't *all-important*. That's just what Ross believed.

C. A PROBLEM FOR ROSS'S VIEW

In Ross's view, preventing harm is always morally important. Sometimes it is the most important thing you can do. But not always. Seeing that the guilty get their just deserts is also, and always, very important. If Kant is right, it always takes priority over preventing harm. If utilitarians are right, it never takes priority. If Ross is right, it sometimes does, and sometimes doesn't.

This leads us naturally to what may be the hardest problem for Ross's view. Ross denies that there are any absolute moral rules. So each moral rule may sometimes be broken. *But when?*

The easiest way to answer that question would be to create a permanent ranking of the

rules, by placing them in order from least to most morally important. Whenever a lower ranked rule conflicts with a higher ranked one, the higher rule wins out and determines our moral duty.

Ross rejects this strategy. He thinks that there is no fixed ranking of the various *prima facie* rules, no permanent ordering in terms of importance. And he is not alone in this. Though a ranking system is possible in principle, in practice no one has ever made it work. Sometimes it is morally more important to be grateful than to prevent harm. But not always. Sometimes it is more important to be honest with people than to spare them the hurt feelings that honesty may cause. And sometimes not. You get the picture.

The problem is that if we can't provide a fixed ranking of moral principles, then it isn't clear how we are to decide what to do when they conflict. That is because none of the *prima facie* duties has any kind of built-in moral weight. They are always important. But just how important? That depends on the specifics of the situation. Yet there are no guidelines that we can use from case to case to help us to know when a *prima facie* duty takes precedence over a competing duty. If a duty is sometimes, but not always, more important than another, then how do we know which one to obey when we cannot obey them both? This is an extremely hard question.

D. PRIMA FACIE DUTIES AND THE TESTING OF MORAL THEORIES

Ross thinks that his theory of *prima facie* duties is in deep harmony with common sense. And as he sees it, this is a great benefit of his theory. We should not overturn the biddings of common sense just because it conflicts with a pet theory.

Ross used the example of beauty to establish this point. Many of us feel sure that the *Mona Lisa* is a beautiful work. We should not abandon our belief in its beauty just because some theory of art declares that only Impressionist paintings or medieval altarpieces are really beautiful. We

should give up the theory before tossing aside our deepest, most secure beliefs.

What is true of our artistic judgments is also true of our moral ones. We can see how this plays out by considering Ross's rejection of consequentialism. Ross was quite clear-eyed about how tempting consequentialism can be. But he insisted that it was fatally flawed because it failed to appreciate the variety of fundamental moral concerns. Consequentialism imposes order, system, and a unifying principle onto our moral thinking. But he argued that we must resist such charms, because they conflict with our deepest beliefs about what is truly morally important. Our confidence in the independent value of promise keeping—or justice, or repairing our wrongs—should not be held hostage to a theory's demands.

If Ross is right, we use our deepest common-sense beliefs to test moral theories. These beliefs have a kind of priority in moral thinking. It isn't as if each moral belief we have is beyond scrutiny. Far from it. Some of our moral views, perhaps even our most cherished ones, may have to go, once we see that they conflict with beliefs that are even better justified. Still, the data of ethical thought, as Ross puts it, are those moral beliefs that have survived very careful reflection. Such beliefs are what moral theories must account for. These basic beliefs are to be given up only if we can show that they can't all be true.

To the extent that a moral theory cannot make room for such beliefs, it is the theory that must go. This was Ross's diagnosis of both consequentialism and Kantianism, for instance. They both understood morality too narrowly, as limited to a single fundamental moral rule. He thought that careful reflection would show us that there are at least seven such rules—none of them absolute.

Ross realized that his view offered little comfort to those who did not agree with his seven principles. But he was unapologetic. To someone who thought about justice, for instance,

and failed to see its moral importance, Ross could do only one thing. He would invite that person to think more carefully about what justice really is. This can be done in many ways. We can offer the person examples to consider; draw analogies to cases that reveal the importance of justice; distinguish justice from other, possibly related, notions; ensure that particular beliefs opposing the importance of justice are not based on error. But suppose that the person remains unconvinced even after all of this further reflection. According to Ross, moral discussion now comes to an end, and the only verdict to render is that this person is mistaken. Nothing you can say will show him that he is wrong.

That may strike you as closed-minded, but two things can be said in Ross's defense. First, what are the alternatives? Why must it always be possible to offer something more in support of one's beliefs? If the process of offering justification for one's beliefs (whether ethical or non-ethical) ever does stop somewhere, then once we have reached that stopping point, all that could possibly be done is to invite the doubters to reconsider.

Second, we should consider the possibility, in *nonmoral* contexts, of finding ourselves without any support for a claim that we rightly continue to believe. For instance, there may be nothing you can say that will convince a member of the Flat Earth Society of his mistake; no way to convince someone who believes in vampires that he is wrong; no clear path to showing a stubborn person that creating a square circle is impossible. You may be justified in your beliefs even if you can't always convince those who disagree with you. That holds for moral as well as for nonmoral beliefs.

E. KNOWING THE RIGHT THING TO DO

Even if our *prima facie* duties are obvious, we are still faced with the problem of knowing what to do when they conflict. And Ross has very little to say here, except that we can never be certain that the balance we strike is the correct one.

Ross acknowledged that our actual, all-things-considered moral duty on any given occasion is often anything but clear. We may feel very strongly about certain cases; indeed, most moral situations are easy and straightforward, ones we never give a second thought to. Still, there is no definite method for guiding us from an understanding of the *prima facie* duties to a correct moral verdict in any given case.

We must start our moral thinking about specific situations by understanding the kinds of things that can be morally important. This is a matter of clearly grasping the *prima facie* duties. These tell us what to look out for. Has a promise been made? A wrong been done? Is there an opportunity for self-improvement here? And so on. But once you answer such questions, you're on your own. You must bring your experience and insight to bear on the details of a given case. The bad news is that there is no fixed or mechanical procedure that tells us how to do this.

This can be very dissatisfying. There are several aims of moral theory, and one of them, surely, is to offer advice on deciding how to live. Ross denies that there is any general rule to follow in order to provide answers here. What a letdown.

But again, there are a few things we might say in order to make this a bit easier to swallow. First, the idea of a comprehensive moral decision procedure, one that can be consulted to provide definite answers to all moral questions, may not be so plausible. When faced with puzzling ethical questions, we may *want* a concrete set of guidelines to help us along. But do we really believe that there is such a thing? Each of the familiar options (e.g., the principle of utility, the Golden Rule, the *what if everyone did that?* test) has its problems. Perhaps the best explanation of this is that we are looking for something that does not exist.

Second, the absence of a decision procedure for arriving at conclusions is actually the *default* situation across all areas of thinking (except

mathematics and its associated disciplines). For instance, scientists faced with a conflict between their data and some favored theory have no uniform method for determining whether to modify the theory or rethink their data. Further, even when the data are uncontroversial, selecting the best theory to account for it is anything but a rote, mechanical undertaking. Scientists must rely on good sense, too, since choosing which theory to believe is a matter of balancing the virtues of the competing theories. There is no precise rule to tell a scientist how to do this.

There are many theoretical virtues: parsimony (employing fewer assumptions than competing theories); conservatism (preserving as much as possible of what we already believe); generality (explaining the broadest range of things); testability (being open to experimental challenge and confirmation); and others. Suppose that one theory is more parsimonious and also more conservative, but another theory is more general and more testable. Or suppose that one theory is far more conservative than any competitor, but is also somewhat less general, and a fair bit less parsimonious. Science does not offer us a definite procedure for identifying the better theory. Sometimes it is just obvious that one theory is better or worse than another. But in close cases, scientists have no alternative but to use their judgment.

And that is precisely our situation when it comes to morality. There are many easy cases where the moral verdict is just obvious. These rarely get our attention, since they don't call for any hard thinking. It's the difficult cases—where different options each respect some *prima facie* duties but violate others—that require judgment. We can never be sure that we've exercised good judgment. We may be unable to convince ourselves, much less our opponents, that we have landed on the right answer to a hard ethical question. The lack of guidance we get from Ross's view of ethics can leave us feeling insecure and unsettled. That is regrettable. But it may also be inescapable.

F. CONCLUSION

The ethic of *prima facie* duties has a lot of things going for it. It is pluralistic, and so rejects the idea that the whole of morality can ultimately be explained by a single moral rule. It rejects absolutism, and so explains why it is sometimes permissible to break legitimate moral rules. It easily handles moral conflict without falling into contradictions. It offers an interesting role for regret in thinking about what is morally important.

Yet like all of the moral theories we have discussed, Ross's view is not without its problems. Perhaps the hardest of these concerns the question of how we can know what to do in particular situations. Since there is no permanent ranking of the *prima facie* rules, and no precise method for knowing how to strike a balance when the *prima facie* rules conflict, this leaves us with very little guidance for discovering what morality actually requires of us.

ESSENTIAL CONCEPTS

Absolutist theories: those that endorse the idea that there are absolute moral rules (those that are never permissibly broken).

Ethical pluralism: the view that there is more than one ultimate, fundamental moral principle.

Monistic theories: those that endorse the idea that there is just a single ultimate moral rule.

Prima facie duty: an excellent, nonabsolute, permanent reason to do (or refrain from) something.

DISCUSSION QUESTIONS

1. What exactly is a *prima facie* duty? How does an ethic of *prima facie* duties differ from monistic and absolutist ethical theories?
2. Do you think that Ross's list of *prima facie* duties is accurate and complete? If not, either explain why some of those on the list do not qualify as *prima facie* duties or provide examples of other *prima facie* duties that should have been included in his list.

3. Does the phenomenon of regret lend any support to Ross's theory? Why or why not?
4. To what extent does Ross's theory provide us with a method for deciding what the right thing to do is in particular situations? Is this a strength or a weakness of the theory?
5. Do you think that there is a formula for determining in every case what our moral duty is? If so, what is it?
6. How does Ross suggest that we test the plausibility of moral theories? Do you find his suggestion plausible? Why or why not?

READING

What Makes Right Acts Right?

W. D. Ross

W. D. Ross (1877–1971) developed a truly novel moral theory in his book *The Right and the Good* (1930), from which this selection is taken. He found something attractive about both utilitarianism and Kantianism, the major theoretical competitors of his day, but found that each had a major flaw. Ross applauded utilitarianism's emphasis on benevolence, but rejected its idea that maximizing goodness is our sole moral duty. Kantianism, on the other hand, preserved the attractive idea that justice is independently important, but erred in claiming that the moral rules that specify such duties are absolute (never to be broken).

Ross created a kind of compromise theory, in which he identified a number of distinct grounds for moral duty (benevolence, fidelity to promises, truth-telling, avoiding harm, gratitude, justice, reparation). Each of these is a basis for a *prima facie duty*—an always-important reason that generates an “all-things-considered” duty, provided that no other reason or set of reasons is weightier in the situation. In other words, it is sometimes acceptable to violate a *prima facie duty*.

But when? We cannot offer a permanent ranking of these *prima facie duties*. Sometimes, for instance, it is right to promote the general happiness even if we have to commit an injustice to do so. But at other times, the balance should be struck in the opposite way.

Ross insisted that these *prima facie duties* are self-evident. Here he offers some very influential (and controversial) remarks on how we can gain moral knowledge, both of the moral principles themselves and of the correct verdicts to reach in particular cases.

The point at issue is that to which we now pass, viz. whether there is any general character which

From W. D. Ross, *The Right and the Good* (1930), pp. 16–32. By permission of Oxford University Press.

makes right acts right, and if so, what it is. Among the main historical attempts to state a single characteristic of all right actions which is the foundation of their rightness are those made by egoism and utilitarianism. But I do not propose to discuss

these, not because the subject is unimportant, but because it has been dealt with so often and so well already, and because there has come to be so much agreement among moral philosophers that neither of these theories is satisfactory. A much more attractive theory has been put forward by Professor Moore: that what makes actions right is that they are productive of more *good* than could have been produced by any other action open to the agent.

This theory is in fact the culmination of all the attempts to base rightness on productivity of some sort of result. The first form this attempt takes is the attempt to base rightness on conduciveness to the advantage or pleasure of the agent. This theory comes to grief over the fact, which stares us in the face, that a great part of duty consists in an observance of the rights and a furtherance of the interests of others, whatever the cost to ourselves may be. Plato and others may be right in holding that a regard for the rights of others never in the long run involves a loss of happiness for the agent, that 'the just life profits a man.' But this, even if true, is irrelevant to the rightness of the act. As soon as a man does an action *because* he thinks he will promote his own interests thereby, he is acting not from a sense of its rightness but from self-interest.

To the egoistic theory hedonistic utilitarianism supplies a much-needed amendment. It points out correctly that the fact that a certain pleasure will be enjoyed by the agent is no reason why he ought to bring it into being rather than an equal or greater pleasure to be enjoyed by another, though, human nature being what it is, it makes it not unlikely that he will try to bring it into being. But hedonistic utilitarianism in its turn needs a correction. On reflection it seems clear that pleasure is not the only thing in life that we think good in itself, that for instance we think the possession of a good character, or an intelligent understanding of the world, as good or better. A great advance is made by the substitution of 'productive of the greatest good' for 'productive of the greatest pleasure.'

Not only is this theory more attractive than hedonistic utilitarianism, but its logical relation to that theory is such that the latter could not be true unless it were true, while it might be true though hedonistic utilitarianism were not. It is in fact one of the logical bases of hedonistic utilitarianism. For

the view that what produces the maximum pleasure is right has for its bases the views (1) that what produces the maximum good is right, and (2) that pleasure is the only thing good in itself. If, therefore, it can be shown that productivity of the maximum good is not what makes all right actions right, we shall *a fortiori* have refuted hedonistic utilitarianism.

When a plain man fulfils a promise because he thinks he ought to do so, it seems clear that he does so with no thought of its total consequences, still less with any opinion that these are likely to be the best possible. He thinks in fact much more of the past than of the future. What makes him think it right to act in a certain way is the fact that he has promised to do so—that and, usually, nothing more. That his act will produce the best possible consequences is not his reason for calling it right. What lends colour to the theory we are examining, then, is not the actions (which form probably a great majority of our actions) in which some such reflection as 'I have promised' is the only reason we give ourselves for thinking a certain action right, but the exceptional cases in which the consequences of fulfilling a promise (for instance) would be so disastrous to others that we judge it right not to do so. It must of course be admitted that such cases exist. If I have promised to meet a friend at a particular time for some trivial purpose, I should certainly think myself justified in breaking my engagement if by doing so I could prevent a serious accident or bring relief to the victims of one. And the supporters of the view we are examining hold that my thinking so is due to my thinking that I shall bring more good into existence by the one action than by the other. A different account may, however, be given of the matter, an account which will, I believe, show itself to be the true one. It may be said that besides the duty of fulfilling promises I have and recognize a duty of relieving distress, and that when I think it right to do the latter at the cost of not doing the former, it is not because I think I shall produce more good thereby but because I think it the duty which is in the circumstances more of a duty. This account surely corresponds much more closely with what we really think in such a situation. If, so far as I can see, I could bring equal amounts of good into being by fulfilling

my promise and by helping some one to whom I had made no promise, I should not hesitate to regard the former as my duty. Yet on the view that what is right is right because it is productive of the most good I should not so regard it.

There are two theories, each in its way simple, that offer a solution of such cases of conscience. One is the view of Kant, that there are certain duties of perfect obligation, such as those of fulfilling promises, of paying debts, of telling the truth, which admit of no exception whatever in favour of duties of imperfect obligation, such as that of relieving distress. The other is the view of, for instance, Professor Moore and Dr. Rashdall, that there is only the duty of producing good, and that all 'conflicts of duties' should be resolved by asking 'by which action will most good be produced?' But it is more important that our theory fit the facts than that it be simple, and the account we have given above corresponds (it seems to me) better than either of the simpler theories with what we really think, viz. that normally promise-keeping, for example, should come before benevolence, but that when and only when the good to be produced by the benevolent act is very great and the promise comparatively trivial, the act of benevolence becomes our duty.

In fact the theory of 'ideal utilitarianism,' if I may for brevity refer so to the theory of Professor Moore, seems to simplify unduly our relations to our fellows. It says, in effect, that the only morally significant relation in which my neighbours stand to me is that of being possible beneficiaries by my action. They do stand in this relation to me, and this relation is morally significant. But they may also stand to me in the relation of promisee to promiser, of creditor to debtor, of wife to husband, of child to parent, of friend to friend, of fellow countryman to fellow countryman, and the like; and each of these relations is the foundation of a *prima facie* duty, which is more or less incumbent on me according to the circumstances of the case. When I am in a situation, as perhaps I always am, in which more than one of these *prima facie* duties is incumbent on me, what I have to do is to study the situation as fully as I can until I form the considered opinion (it is never more) that in the circumstances one of them is more incumbent than any other; then I am bound

to think that to do this *prima facie* duty is my duty *sans phrase* in the situation.

I suggest '*prima facie* duty' or 'conditional duty' as a brief way of referring to the characteristic (quite distinct from that of being a duty proper) which an act has, in virtue of being of a certain kind (e.g. the keeping of a promise), of being an act which would be a duty proper if it were not at the same time of another kind which is morally significant. Whether an act is a duty proper or actual duty depends on *all* the morally significant kinds it is an instance of.

The phrase '*prima facie* duty' must be apologized for, since (1) it suggests that what we are speaking of is a certain kind of duty, whereas it is in fact not a duty, but something related in a special way to duty. Strictly speaking, we want not a phrase in which duty is qualified by an adjective, but a separate noun. (2) '*Prima*' *facie* suggests that one is speaking only of an appearance which a moral situation presents at first sight, and which may turn out to be illusory; whereas what I am speaking of is an objective fact involved in the nature of the situation, or more strictly in an element of its nature, though not, as duty proper does, arising from its whole nature.

There is nothing arbitrary about these *prima facie* duties. Each rests on a definite circumstance which cannot seriously be held to be without moral significance. Of *prima facie* duties I suggest, without claiming completeness or finality for it, the following division.

1. Some duties rest on previous acts of my own. These duties seem to include two kinds.
 - A. Those resting on a promise or what may fairly be called an implicit promise, such as the implicit undertaking not to tell lies which seems to be implied in the act of entering into conversation (at any rate by civilized men), or of writing books that purport to be history and not fiction. These may be called the duties of fidelity.
 - B. Those resting on a previous wrongful act. These may be called the duties of reparation.
2. Some rest on previous acts of other men, i.e. services done by them to me. These may be loosely described as the duties of gratitude.

3. Some rest on the fact or possibility of a distribution of pleasure or happiness (or of the means thereto) which is not in accordance with the merit of the persons concerned; in such cases there arises a duty to upset or prevent such a distribution. These are the duties of justice.
4. Some rest on the mere fact that there are beings in the world whose condition we can make better in respect of virtue, or of intelligence, or of pleasure. These are the duties of beneficence.
5. Some rest on the fact that we can improve our own condition in respect of virtue or of intelligence. These are the duties of self-improvement.
6. I think that we should distinguish from (4) the duties that may be summed up under the title of 'not injuring others.' No doubt to injure others is incidentally to fail to do them good; but it seems to me clear that non-maleficence is apprehended as a duty distinct from that of beneficence, and as a duty of a more stringent character.

The essential defect of the 'ideal utilitarian' theory is that it ignores, or at least does not do full justice to, the highly personal character of duty. If the only duty is to produce the maximum of good, the question who is to have the good—whether it is myself, or my benefactor, or a person to whom I have made a promise to confer that good on him, or a mere fellow man to whom I stand in no such special relation—should make no difference to my having a duty to produce that good. But we are all in fact sure that it makes a vast difference.

If the objection be made, that this catalogue of the main types of duty is an unsystematic one resting on no logical principle, it may be replied, first, that it makes no claim to being ultimate. It is a *prima facie* classification of the duties which reflection on our moral convictions seems actually to reveal. And if these convictions are, as I would claim that they are, of the nature of knowledge, and if I have not misstated them, the list will be a list of authentic conditional duties, correct as far as it goes though not necessarily complete. The list of

goods put forward by the rival theory is reached by exactly the same method—the only sound one in the circumstances—viz. that of direct reflection on what we really think. Loyalty to the facts is worth more than a symmetrical architectonic or a hastily reached simplicity. If further reflection discovers a perfect logical basis for this or for a better classification, so much the better.

It may, again, be objected that our theory that there are these various and often conflicting types of *prima facie* duty leaves us with no principle upon which to discern what is our actual duty in particular circumstances. But this objection is not one which the rival theory is in a position to bring forward. For when we have to choose between the production of two heterogeneous goods, say knowledge and pleasure, the 'ideal utilitarian' theory can only fall back on an opinion, for which no logical basis can be offered, that one of the goods is the greater; and this is no better than a similar opinion that one of two duties is the more urgent. And again, when we consider the infinite variety of the effects of our actions in the way of pleasure, it must surely be admitted that the claim which *hedonism* sometimes makes, that it offers a readily applicable criterion of right conduct, is quite illusory.

I am unwilling, however, to content myself with an *argumentum ad hominem*, and I would contend that in principle there is no reason to anticipate that every act that is our duty is so for one and the same reason. Why should two sets of circumstances, or one set of circumstances, not possess different characteristics, any one of which makes a certain act our *prima facie* duty? When I ask what it is that makes me in certain cases sure that I have a *prima facie* duty to do so and so, I find that it lies in the fact that I have made a promise; when I ask the same question in another case, I find the answer lies in the fact that I have done a wrong. And if on reflection I find (as I think I do) that neither of these reasons is reducible to the other, I must not on any *a priori* ground assume that such a reduction is possible.

It is necessary to say something by way of clearing up the relation between *prima facie* duties and the actual or absolute duty to do one particular act in particular circumstances. If, as almost all moralists except Kant are agreed, and as most plain

men think, it is sometimes right to tell a lie or to break a promise, it must be maintained that there is a difference between *prima facie* duty and actual or absolute duty. When we think ourselves justified in breaking, and indeed morally obliged to break, a promise in order to relieve some one's distress, we do not for a moment cease to recognize a *prima facie* duty to keep our promise, and this leads us to feel, not indeed shame or repentance, but certainly compunction, for behaving as we do; we recognize, further, that it is our duty to make up somehow to the promisee for the breaking of the promise. We have to distinguish from the characteristic of being our duty that of tending to be our duty. Any act that we do contains various elements in virtue of which it falls under various categories. In virtue of being the breaking of a promise, for instance, it tends to be wrong; in virtue of being an instance of relieving distress it tends to be right.

Something should be said of the relation between our apprehension of the *prima facie* rightness of certain types of act and our mental attitude towards particular acts. It is proper to use the word 'apprehension' in the former case and not in the latter. That an act, *qua* fulfilling a promise, or *qua* effecting a just distribution of good, or *qua* returning services rendered, or *qua* promoting the good of others, or *qua* promoting the virtue or insight of the agent, is *prima facie* right, is self-evident; not in the sense that it is evident from the beginning of our lives, or as soon as we attend to the proposition for the first time, but in the sense that when we have reached sufficient mental maturity and have given sufficient attention to the proposition it is evident without any need of proof, or of evidence beyond itself. It is self-evident just as a mathematical axiom, or the validity of a form of inference, is evident. The moral order expressed in these propositions is just as much part of the fundamental nature of the universe (and, we may add, of any possible universe in which there were moral agents at all) as is the spatial or numerical structure expressed in the axioms of geometry or arithmetic. In our confidence that these propositions are true there is involved the same trust in our reason that is involved in our confidence in mathematics; and we should have no justification

for trusting it in the latter sphere and distrusting it in the former. In both cases we are dealing with propositions that cannot be proved, but that just as certainly need no proof.

Our judgements about our actual duty in concrete situations have none of the certainty that attaches to our recognition of the general principles of duty. A statement is certain, i.e. is an expression of knowledge, only in one or other of two cases: when it is either self-evident, or a valid conclusion from self-evident premisses. And our judgements about our particular duties have neither of these characters. (1) They are not self-evident. Where a possible act is seen to have two characteristics, in virtue of one of which it is *prima facie* right, and in virtue of the other *prima facie* wrong, we are (I think) well aware that we are not certain whether we ought or ought not to do it; that whether we do it or not, we are taking a moral risk. We come in the long run, after consideration, to think one duty more pressing than the other, but we do not feel certain that it is so. And though we do not always recognize that a possible act has two such characteristics, and though there may be cases in which it has not, we are never certain that any particular possible act has not, and therefore never certain that it is right, nor certain that it is wrong. For, to go no further in the analysis, it is enough to point out that any particular act will in all probability in the course of time contribute to the bringing about of good or of evil for many human beings, and thus have a *prima facie* rightness or wrongness of which we know nothing. (2) Again, our judgements about our particular duties are not logical conclusions from self-evident premisses. The only possible premisses would be the general principles stating their *prima facie* rightness or wrongness *qua* having the different characteristics they do have; and even if we could (as we cannot) apprehend the extent to which an act will tend on the one hand, for example, to bring about advantages for our benefactors, and on the other hand to bring about disadvantages for fellow men who are not our benefactors, there is no principle by which we can draw the conclusion that it is on the whole right or on the whole wrong. In this respect the judgement as to the rightness of

a particular act is just like the judgement as to the beauty of a particular natural object or work of art. A poem is, for instance, in respect of certain qualities beautiful and in respect of certain others not beautiful; and our judgement as to the degree of beauty it possesses on the whole is never reached by logical reasoning from the apprehension of its particular beauties or particular defects. Both in this and in the moral case we have more or less probable opinions which are not logically justified conclusions from the general principles that are recognized as self-evident.

There is therefore much truth in the description of the right act as a fortunate act. If we cannot be certain that it is right, it is our good fortune if the act we do is the right act. This consideration does not, however, make the doing of our duty a mere matter of chance. There is a parallel here between the doing of duty and the doing of what will be to our personal advantage. We never *know* what act will in the long run be to our advantage. Yet it is certain that we are more likely in general to secure our advantage if we estimate to the best of our ability the probable tendencies of our actions in this respect, than if we act on caprice. And similarly we are more likely to do our duty if we reflect to the best of our ability on the *prima facie* rightness or wrongness of various possible acts in virtue of the characteristics we perceive them to have, than if we act without reflection. With this greater likelihood we must be content.

The general principles of duty are obviously not self-evident from the beginning of our lives. How do they come to be so? The answer is, that they come to be self-evident to us just as mathematical axioms do. We find by experience that this couple of matches and that couple make four matches, that this couple of balls on a wire and that couple make four balls: and by reflection on these and similar discoveries we come to see that it is of the nature of two and two to make four. In a precisely similar way, we see the *prima facie* rightness of an act which would be the fulfilment of a particular promise, and of another which would be the fulfilment of another promise, and when we have reached sufficient maturity to think in general terms, we apprehend *prima facie* rightness to belong to the nature of any fulfilment of

promise. What comes first in time is the apprehension of the self-evident *prima facie* rightness of an individual act of a particular type. From this we come by reflection to apprehend the self-evident general principle of *prima facie* duty. From this, too, perhaps along with the apprehension of the self-evident *prima facie* rightness of the same act in virtue of its having another characteristic as well, and perhaps in spite of the apprehension of its *prima facie* wrongness in virtue of its having some third characteristic, we come to believe something not self-evident at all, but an object of probable opinion, viz. that this particular act is (not *prima facie* but) actually right.

In what has preceded, a good deal of use has been made of 'what we really think' about moral questions; a certain theory has been rejected because it does not agree with what we really think. It might be said that this is in principle wrong; that we should not be content to expound what our present moral consciousness tells us but should aim at a criticism of our existing moral consciousness in the light of theory. Now I do not doubt that the moral consciousness of men has in detail undergone a good deal of modification as regards the things we think right, at the hands of moral theory. But if we are told, for instance, that we should give up our view that there is a special obligatoriness attaching to the keeping of promises because it is self-evident that the only duty is to produce as much good as possible, we have to ask ourselves whether we really, when we reflect, are convinced that this is self-evident, and whether we really can get rid of our view that promise-keeping has a bindingness independent of productiveness of maximum good. In my own experience I find that I cannot, in spite of a very genuine attempt to do so; and I venture to think that most people will find the same.

I would maintain, in fact, that what we are apt to describe as 'what we think' about moral questions contains a considerable amount that we do not think but know, and that this forms the standard by reference to which the truth of any moral theory has to be tested, instead of having itself to be tested by reference to any theory. I hope that I have in what precedes indicated what in my view these elements of knowledge are that are involved in our ordinary moral consciousness.

It would be a mistake to found a natural science on ‘what we really think,’ i.e. on what reasonably thoughtful and well-educated people think about the subjects of the science before they have studied them scientifically. For such opinions are interpretations, and often misinterpretations, of sense-experience; and the man of science must appeal from these to sense-experience itself, which furnishes his real data. In ethics no such appeal is possible. We have no more direct way of access to the facts about rightness and goodness and about what things are right or good, than by thinking about them; the moral convictions of thoughtful and well-educated people are the data of ethics just as sense-perceptions are the data of a natural science. Just as some of the latter have to be rejected as illusory, so have some of the former; but as the latter are rejected only when they are in conflict with other more accurate sense-perceptions, the former are rejected only when they are in conflict with other convictions which stand better the test of reflection. The existing body of moral convictions of the best people is the cumulative product of the moral reflection of many generations, which has developed an extremely delicate power of appreciation of moral distinctions; and this the theorist cannot afford to treat with anything other than the greatest respect. The verdicts of the moral consciousness of the best people are the foundation on which he must build; though he must first compare them with one another and eliminate any contradictions they may contain.

W. D. Ross: What Makes Right Acts Right?

1. Ross begins by considering the view that the right action is the one that is “productive of more *good* than could have been produced by any other action open to the agent.” What objections does he offer to this view? Do you think they are good ones?
2. Ross also considers Kant’s view, according to which there are certain moral rules that must be followed without exception. What does Ross think is wrong with this theory? Do you agree with his criticism?
3. What does Ross mean by “*prima facie* duties,” and how do these differ from “duty proper”? How does he think we should use our knowledge of *prima facie* duties to determine what our duty is in a particular situation?
4. How does Ross think we come to know *prima facie* duties? Do you find his view plausible?
5. What reasons does Ross give for his claim that we can never be certain about what the right thing to do is in a particular situation? Do you agree with him about this?
6. Ross claims that “the moral convictions of thoughtful and well-educated people are the data of ethics just as sense-perceptions are the data of a natural science.” Is beginning with our own moral convictions the best way of doing ethics, or do you think there is a better way?

Virtue Ethics

All of the moral theories we have reviewed thus far share a common assumption: that the moral philosopher's primary task is to define the nature of our moral duty. On this view, *What should I do?* is the crucial moral question. Once we have an answer to that, I can know what sort of person I should be—namely, the sort who will do my duty as reliably as possible.

But what if we approached ethics from a different starting point? What if we began by considering what makes for a desirable human life, examining the conditions and the character traits needed to flourish? Rather than begin with a theory of moral duty, we would start with a picture of the good life and the good person, and define our duty by reference to these ideals. That is precisely what virtue ethics recommends.¹

Virtue ethics is not a single theory, but rather a family of theories that can trace its history (in the West) to the philosophy of the ancient Greeks. Aristotle's *Nicomachean Ethics*, written about 2,400 years ago, has had the greatest influence in this tradition and remains a primary inspiration for most who work in it. Aristotle's book develops most of the major themes that even today define the virtue ethical approach to the moral life. Let's consider some of the most important of these themes.

1. Actually, there is a strand of virtue ethics that abandons talk of moral duties and moral requirements altogether and instead suggests that we restrict our assessments to what is good and bad, virtuous and vicious. I invite you to reflect on whether it would be a gain or loss to give up on the concepts of moral duty and requirement, but for the remainder of the chapter, I will assume that virtue ethicists will allow a place for these notions.

A. THE STANDARD OF RIGHT ACTION

Virtue ethics insists that we understand right action by reference to what a virtuous person would characteristically do. To put it a bit more formally,

(VE) An act is morally right just because it is one that a virtuous person, acting in character, would do in that situation.

According to virtue ethicists, actions aren't right because of their results, or because they follow from some hard-and-fast rule. Rather, they are right because they would be done by someone of true virtue. This person is a **moral exemplar**—someone who sets a fine example and serves as a role model for the rest of us. The ideal of the wholly virtuous person provides the goal that we ought to aim for, even if, in reality, each of us will fall short of it in one way or another.

Virtue ethics is actually a form of **ethical pluralism**. Though there is a single ultimate standard—do what the virtuous person would do—there are many cases where this advice is too general to be of use. At such times we need a set of more specific moral rules. Virtue ethics can provide these, too. For each virtue, there is a rule that tells us to act accordingly; for each vice, a rule that tells us to avoid it. So we will have a large set of moral rules—do what is honest; act loyally; display courage; deal justly with others; show wisdom; be temperate; avoid gluttony; refrain from infidelity; don't be timid, lazy, stingy, or careless; free yourself of prejudice; and so on.

When these rules conflict, how do we know what to do? We should follow the lead of the virtuous person. True, there will inevitably be disagreement about who counts as virtuous, and about the actions such a person would pursue. But this needn't hinder us. There is lots of room for critical discussion about who is virtuous and why. In the end, we may have to agree to disagree, since there may be no way to convince someone whose moral outlook is fundamentally opposed to our own. Those who have been raised to idolize Hitler or Stalin are going to have a skewed moral vision, and there may be no way to convince them of their error. Virtue ethicists deny that this undermines the existence of correct moral standards. It just shows that some people may always be blind to them.

B. MORAL COMPLEXITY

Many moral philosophers have hoped to identify a simple rule, or a precise method, that could tell us exactly what our moral duty is in each situation. What's more, this rule or method could be reliably used by anyone, so long as he or she is minimally intelligent. A classic example of this is the Golden Rule. Even a five-year-old can apply this test.

Virtue ethicists reject the idea that there is any simple formula for determining how to act. At the beginning of the *Nicomachean Ethics*, Aristotle cautions that we must not expect the same degree of precision in all areas of study, and implies that morality lacks rules and methods of thinking that are as precise as those, say, in mathematics. When it comes to morality, we must be content with general principles that allow for exceptions.

Virtue ethicists have followed Aristotle in this thought. To them, ethics is a complex, messy area of decision making, one that requires emotional maturity and sound judgment. One of the *problems* of the Golden Rule, for instance, is that even a child can use it with authority. Aristotle

thought it obvious that even the most perceptive children are far short of true moral wisdom.

Virtue ethicists sometimes invite us to appreciate the complexity of morality by having us imagine a moral rule book. The book would contain all the true rules of ethics and all of the precise methods for applying them. It would state when exceptions were called for and when they were forbidden. It could be applied in a mechanical way, without any need of judgment.

Is this a real possibility? Not likely, according to virtue ethicists. Morality is not like geometry or civil engineering. We have moral rules of thumb that can help us in most situations. But strict obedience to such rules is bound to lead us into error. And the rules, of course, will sometimes conflict. What we need in all cases is a kind of sensitivity. It is something very different from a rote application of preset rules.

C. MORAL UNDERSTANDING

As virtue ethicists see things, moral understanding is not just a matter of knowing a bunch of moral facts. If it were, then a child prodigy might be one of the morally wisest among us. As we have seen, virtue ethicists deny this possibility. Imagine turning to such a child for advice about dealing with difficult coworkers, or helping a drug-addicted friend through recovery, or determining the best way to break off a relationship.

Moral understanding is a species of practical wisdom. Think of some familiar kinds of practical wisdom—knowing how to fix a car engine, how to skillfully play an instrument, or how to inspire teammates to come together behind an important project. Such knowledge does require an understanding of certain facts, but it is much more than that. We all know people with plenty of book smarts and very little in the way of good sense. Moral wisdom is a kind of know-how that requires a lot of training and experience. What it doesn't require is a superior IQ or a vast reading list.

Moral wisdom is an extremely complicated kind of skill. It does require knowledge of the way the world works, but it demands more than that. We must have a great deal of emotional intelligence as well. The moral virtues, which all require moral wisdom, therefore also require a combination of intellectual and emotional maturity. A person with only a crude appreciation for life's complexities, or a blank emotional life, is bound to be morally blind. Virtue ethics perfectly explains why that is so.

D. THE NATURE OF VIRTUE

The ultimate goal of a moral education is to make ourselves better people. A better person is a more virtuous person—someone who is more courageous, just, temperate, and wise (among other things).

A *virtue* is an admirable character trait. It's not a mere habit, or a tendency to act in certain ways. Habits don't define a person; character traits do. Some people are habitually loyal or generous. Yet they may lack virtue, because they don't really understand why it is appropriate to act this way. Virtues require wisdom about what is important, and why. While habits are defined as certain patterns of behavior, virtues require much more. In addition to routinely acting well, the virtuous person also has a distinctive set of perceptions, thoughts, and motives.

Let's make this concrete. Consider first the virtue of generosity. A generous person will often have different *perceptions* from a stingy person. Generous people will see the homeless person on the street, will take note of the shy child in the classroom, will realize that an injured person is having trouble with the door. Stingy people tend to look the other way.

A generous person has different *thoughts* from those of an ungenerous person. A generous person will think about how to be helpful, will not think only of his own needs, will value being of service, and will believe in the goodness of caring for the less fortunate.

A generous person's *motives* will differ from those of a stingy person. Generous people are not begrudging of their time, they are moved by the distress of others, and they take pleasure in freely giving what they can to those in need.

We can offer similar accounts of all of the other virtues. Courage, for instance, requires that we correctly perceive various threats or dangers, control our fear in a reasonable way, be moved by a noble end, and act accordingly. Though Aristotle considered courage primarily in the context of the battlefield, this virtue, like all virtues, has its place in any number of more ordinary situations. The new kid in school displays courage when taking an unpopular stand among those whose approval and companionship he hopes for. Gandhi displayed courage in peacefully resisting the nightsticks and attack dogs of the British colonial police. A whistle-blower is courageous in revealing the corruption of her employers, knowing that she may be fired or sued for telling the truth.

Virtuous people are therefore defined not just by their deeds, but also by their inner life. They see, believe, and feel things differently from vicious people. They see what's important, know what is right and why it is right, and want to do things because they are right.

People are virtuous only when their understanding and their emotions are well integrated. A virtuous person who understands the right thing to do will also be strongly motivated to do it, without regret or reluctance, for all the right reasons. In Aristotle's view, and in the virtue ethical tradition, this is what distinguishes the truly virtuous from the merely *continent*—those who can keep it together, manage to do the right thing, but with little or no pleasure, and only by suppressing very strong contrary desires. As Aristotle insists, "Virtuous conduct gives pleasure to the lover of virtue."² This is one way to distinguish the truly virtuous from the merely continent.

2. Nicomachean Ethics 1099a12.

E. DOES VIRTUE ETHICS OFFER ADEQUATE MORAL GUIDANCE?

The virtue ethical approach to life has a number of attractive features. I've tried to sketch some of the more important of them here. But given its unorthodox approach to morality, it is hardly surprising that virtue ethics has come in for its share of criticisms.

Moral philosophers sometimes accuse virtue ethics of failing to provide enough help in solving moral puzzles. When we are trying to figure out how to behave, we'd like to have something more than this advice: do what a virtuous person would do.

But virtue ethics *can* provide more advice. It will tell us to act according to a large number of moral rules, each based on doing what is virtuous or avoiding what is vicious: do what is temperate, loyal, modest, generous, compassionate, courageous, and so on. Avoid acting in a manner that is greedy, deceitful, malicious, unfair, short-tempered, and so on. The list of virtues and vices is a long one, and this may really be of some help in figuring out what to do.

Still, the virtue ethicist has to face the familiar problem of moral conflict. What happens when these virtue rules conflict with one another? Suppose, for instance, that you are on vacation and happen to see your best friend's husband intimately cozying up to another woman. Would a virtuous person reveal what she has seen? Well, there is a virtue of honesty, and that points to telling your friend. But being a busybody and rushing to judgment are vices; it's their marriage, not yours, and poking your nose into other people's business isn't a morally attractive thing to do.

That's all well and good. But you must do something. How to resolve this conflict (and countless others)? There *is* a right answer here, because there is something that a virtuous person would do. But virtue ethicists have offered very little instruction for deciding what that is. Once you appreciate which virtues and vices are involved in the situation, it is up to you to sort out how to balance them against one another.

This, of course, will be deeply unsatisfying to many people. They want their ethical theory to provide a clear rule that can tell them exactly what is required for each new situation. With expectations set this high, virtue ethics is bound to disappoint.

Unsurprisingly, however, virtue ethicists think that such expectations are implausible and far too demanding. They deny that ethics is meant to provide us with a precise rule or mechanical decision procedure that can crank out the right answer for each morally complex case. There is no uniform moral guidebook, no formula or master rule that can tell us how to behave. We must figure it out for ourselves, through reflection, discussion, and experience.

Virtue ethicists can also argue that their theoretical competitors face similar problems. Most ethical theories incorporate a rule requiring promise keeping. But isn't it sometimes okay to break this rule? If so, is there any *other* rule that could tell us precisely when we may break our promises? Try it out. "You are allowed to break a promise if and only if _____." I don't know how to fill in that blank. That, of course, doesn't show that it can't be done. But anyone who can do it will also be able to know, in difficult situations, how to balance the virtue of fidelity against other considerations.

The bottom line is that almost every moral theory will require us to exercise good judgment in applying its rules. Virtue ethics requires more of us in this regard than some other theories, but that is a drawback only if morality can be made more precise than virtue ethicists believe. Whether that is so remains to be seen.

F. WHO ARE THE MORAL ROLE MODELS?

If virtue ethics is correct, then we can solve moral puzzles only by knowing how a virtuous person would act in our situation. Yet who are the moral exemplars? How do we decide who our role models should be, especially if different people endorse different candidates?

This is a very hard problem. After all, we pick our role models in large part by seeing how well they live up to our preexisting beliefs about what is right and wrong. Some people exalt suicide bombers as role models; others get sick just knowing that's so.

People can be truly virtuous even if we don't realize that they are. When we fail to choose the right role models, this is often explained by our own failure of virtue. Winston Churchill, for instance, though possessed of a great many virtues himself, was nevertheless so committed to maintaining British rule over India that he never saw past his racist attitudes toward Indians. Churchill once announced, "I hate Indians. They are a beastly people with a beastly religion." His racism prevented him from seeing Gandhi as a moral exemplar; indeed, Churchill was fully prepared to let Gandhi die in one of his hunger strikes. Churchill declared that Gandhi "ought to be lain bound hand and foot at the gates of Delhi and then trampled on by an enormous elephant with the new Viceroy [the British ruler of India] seated on its back."³ Churchill's failure of virtue clouded his judgment so badly that he regarded Gandhi as deserving to die because of his threat to British imperial ambitions.

We become more insightful in selecting moral exemplars only by becoming morally wiser in general. And as we have seen, there is no fixed recipe for doing this. Moral education is a lifelong affair, and we are never fully wise. So we may indeed be off target in selecting our role models.

This isn't the whole story, of course. The whole story would involve a much more detailed account of how we gain moral knowledge, including knowledge of how to correctly identify our role models and how to resolve disputes about this matter. But in this respect, the virtue ethicist is in the same boat as everyone else.

3. These quotes appear in Johann Hari, "The Two Churchills," *New York Times Book Review* (August 15, 2010), p. 11. Hari was reviewing Richard Toye's book *Churchill's Empire* (New York: Henry Holt, 2010).

Every moral theorist has to answer hard problems about how to gain moral wisdom, and how to resolve disagreements about fundamental moral issues.

G. CONFLICT AND CONTRADICTION

Contradictions are a fatal flaw in any theory. A contradiction occurs when one and the same claim is said to be both true and false. For instance, if an action is said to be both right and wrong at the same time, then it is true that it is right and false that it is right. That is a contradiction. Virtue ethics may be saddled with contradictions, and if that is so, then it is sunk.

The problem is simple. If there are many virtuous people, then what happens if they disagree about what to do in a given situation? If, in my shoes, some good people would act one way, and others would behave differently, then it seems that the same action would be both right (because some role models would do it) and not right (because others would not do it). This is a contradiction.

The very wise people I have known do not all think alike. They don't see every case in the same light. They temper justice with mercy to varying degrees. They disagree about the role and form that discipline should take in good parenting. Some are more optimistic than others; some are more willing to demand more personal sacrifice than others. It thus seems possible that virtuous role models, acting in character, would do different things in the same situation. And that would yield contradiction.

There are a few ways out of this problem. The first is to insist that there is really only a single truly virtuous person, and so the differences that cause the contradictions would disappear. The second is to insist that every virtuous person, acting in character, would do exactly the same thing in every situation. I don't find either of these replies very plausible, but perhaps there is more to be said for them than I am imagining.

The better option, I think, is to slightly modify the virtue ethical view of right action,

given earlier in this chapter by the thesis labeled (VE). Assuming that virtuous people, acting in character, will sometimes do different things in the same situation, we should say the following:

1. An act in a given situation is morally required just because *all* virtuous people, acting in character, would perform it.
2. An act in a given situation is morally permitted just because *some but not all* virtuous people, acting in character, would perform it.
3. An act in a given situation is morally forbidden just because *no* virtuous person would perform it.

This really will solve the contradiction problem. If different virtuous people would act differently in the same situation, then we are no longer forced to say that an act is both right and wrong. Rather, we say that it is simply permitted, neither required nor forbidden. If different virtuous people would act differently were they in our shoes, then we are permitted to act as any one of them does. In that case, the theory will not tell us which role model to follow—it will be, morally speaking, up to us.

H. THE PRIORITY PROBLEM

How do we get a handle on the nature of virtue? Here is the standard way. We first get clear about our duty, and then define a virtue as a character trait that reliably moves us to do our duty for the right reasons. So, for instance, to understand the virtue of generosity, we first note that we are duty-bound to help the needy, and then define generosity as the character trait of giving to others in need, for the right reasons.

Virtue ethicists reject this strategy, because they deny that we can know our duty before knowing how virtuous people characteristically behave. For them, virtue has a kind of priority over duty—we must know what virtue is, and how the virtuous would behave, before knowing what we must do.

The issue is about which concept is morally fundamental—virtue, or right action. To help see the stakes here, consider this question: are people virtuous because they perform right actions, or are actions right because virtuous people perform them? Other moral theories go with the first option. Virtue ethics takes the second. And this raises a number of concerns.

Consider the evil of rape. The virtue ethicist explains its wrongness by claiming that virtuous people would never rape other people. But that seems backward. It is true, of course, that virtuous people are not rapists. But their rejection of rape is not what explains its wrongness. Rape is wrong because it expresses contempt for the victim, sends a false message of the rapist's superiority, violates the victim's rights, and imposes terrible harm without consent. We explain why virtuous people don't rape others by showing why rape is wrong. We don't explain why rape is wrong by showing that good people will not rape others.

The same goes for right actions. A bystander who sees a toddler about to walk into traffic should rush over to prevent the accident. Why? Not because a virtuous person would do such a thing (though of course she would). The real reason is to save a child's life, or at least to prevent her from being seriously injured. It's not that intervention is right because virtuous people would do it; rather, they would do it because it is right.

We can still look to virtuous role models for reliable guidance on how to act. But their choices do not turn otherwise neutral actions into ones that are right (or wrong). They are not so powerful as that. Virtuous people have keen insight into the reasons that make actions moral or immoral. They feel the compelling force of these reasons and act accordingly. That is what makes them virtuous.

If this line of thinking is on target, then we need to explain virtue in terms of duty, and not the other way around. But if that is so, then

virtue ethics is in trouble, since one of its fundamental points is that rightness is defined in terms of the choices of the virtuous.

I. CONCLUSION

Virtue ethics represents an exciting continuation of an ancient tradition. It has a variety of attractions, not least of which is its emphasis on the importance of moral character. It represents a pluralistic approach to morality, and has interesting things to say about ethical complexity, moral education, and the importance of moral wisdom. Many of the criticisms that have been leveled at it can be met once we dig a bit deeper or introduce small changes to the theory.

But no ethical theory, at least in its present state, is immune to all real difficulties, and virtue ethics, too, has its vulnerable points. The greatest of these takes aim at one of its central claims: that right action must be understood by reference to virtue, rather than the other way around. Perhaps virtue can really enjoy this sort of priority. But it will take a great deal of further work to show it so.

ESSENTIAL CONCEPTS

Continence: the ability to manage to do the right thing, but with little or no

pleasure, and only by suppressing very strong contrary desires.

Contradiction: when one and the same claim is said to be both true and false.

Ethical pluralism: the view that there is more than one ultimate, fundamental moral principle.

Moral exemplar: a moral role model; someone who exhibits the moral virtues to a great degree.

Virtue: an admirable character trait that helps to define a person.

DISCUSSION QUESTIONS

1. How might a person do the right thing but still fail to be morally admirable? How does virtue ethics account for this?
2. How do we come to know what the right thing to do is in a particular situation, according to virtue ethics?
3. Does virtue ethics demand too much of us? Why or why not?
4. Virtuous people sometimes disagree with one another about which actions are right. Is this a problem for virtue ethics? Why or why not?
5. What is the priority problem for virtue ethics? Do you think the virtue ethicist has an adequate reply to this problem?

READING

Nicomachean Ethics

Aristotle

Aristotle (384–322 BCE) was perhaps the greatest philosopher who ever lived. He worked in a variety of philosophical areas (logic, metaphysics, philosophy of mind, epistemology, ethics, rhetoric), and in each field produced work that exerted an influence across many centuries.

His seminal work in moral philosophy is *Nicomachean Ethics*, believed to be a set of carefully recorded lecture notes taken down by Aristotle's students. In this excerpt, from book 2 of the *Nicomachean Ethics*, Aristotle discusses the nature of virtue, its role in a good human life, and its relation to happiness and to "the golden mean." Aristotle's thoughts on the virtues have served as the basis of almost every version of virtue ethics developed in Western philosophy over the past two millennia.

MORAL VIRTUE

Moral Virtue, How Produced, in What Medium and in What Manner Exhibited

Moral virtue, like the arts, is acquired by repetition of the corresponding acts

VIRTUE, . . . being of two kinds, intellectual and moral, intellectual virtue in the main owes both its birth and its growth to teaching (for which reason it requires experience and time), while moral virtue comes about as a result of habit, whence also its name (*ἡθική*) is one that is formed by a slight variation from the word *ἔθος* (habit). From this it is also plain that none of the moral virtues arises in us by nature; for nothing that exists by nature can form a habit contrary to its nature. For instance the stone which by nature moves downwards cannot be habituated to move upwards, not even if one tries to train it by throwing it up ten thousand times; nor can fire be habituated to move downwards, nor can anything else that by nature behaves in one way be trained to behave in another. Neither by nature, then, nor contrary to nature do the virtues arise in us; rather we are adapted by nature to receive them, and are made perfect by habit.

Again, of all the things that come to us by nature we first acquire the potentiality and later exhibit the activity (this is plain in the case of the senses; for it was not by often seeing or often hearing that we got these senses, but on the contrary we had them before we used them, and did not come to have them by using them); but the virtues we get by first exercising them, as also happens in the case of the arts as well. For the things we have to learn before we can do them,

we learn by doing them, e.g. men become builders by building and lyre-players by playing the lyre; so too we become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts.

These acts cannot be prescribed exactly, but must avoid excess and defect

Since, then, the present inquiry does not aim at theoretical knowledge like the others (for we are inquiring not in order to know what virtue is, but in order to become good, since otherwise our inquiry would have been of no use), we must examine the nature of actions, namely how we ought to do them; for these determine also the nature of the states of character that are produced, as we have said. Now, that we must act according to the right rule is a common principle and must be assumed—it will be discussed later, i.e. both what the right rule is, and how it is related to the other virtues. But this must be agreed upon beforehand, that the whole account of matters of conduct must be given in outline and not precisely, . . . that the accounts we demand must be in accordance with the subject-matter; matters concerned with conduct and questions of what is good for us have no fixity, any more than matters of health. The general account being of this nature, the account of particular cases is yet more lacking in exactness; for they do not fall under any art or precept, but the agents themselves must in each case consider what is appropriate to the occasion, as happens also in the art of medicine or of navigation.

But though our present account is of this nature we must give what help we can. First, then, let us consider this, that it is the nature of such things to be destroyed by defect and excess, as we see in the case of strength and of health (for to gain light on things imperceptible we must use the evidence of sensible things); exercise either excessive or

defective destroys the strength, and similarly drink or food which is above or below a certain amount destroys the health, while that which is proportionate both produces and increases and preserves it. So too is it, then, in the case of temperance and courage and the other virtues. For the man who flies from and fears everything and does not stand his ground against anything becomes a coward, and the man who fears nothing at all but goes to meet every danger becomes rash; and similarly the man who indulges in every pleasure and abstains from none becomes self-indulgent, while the man who shuns every pleasure, as boors do, becomes in a way insensible; temperance and courage, then, are destroyed by excess and defect, and preserved by the mean.

But not only are the sources and causes of their origination and growth the same as those of their destruction, but also the sphere of their actualization will be the same; for this is also true of the things which are more evident to sense, e.g. of strength; it is produced by taking much food and undergoing much exertion, and it is the strong man that will be most able to do these things. So too is it with the virtues; by abstaining from pleasures we become temperate, and it is when we have become so that we are most able to abstain from them; and similarly too in the case of courage; for by being habituated to despise things that are fearful and to stand our ground against them we become brave, and it is when we have become so that we shall be most able to stand our ground against them.

Pleasure in doing virtuous acts is a sign that the virtuous disposition has been acquired: a variety of considerations show the essential connexion of moral virtue with pleasure and pain

We must take as a sign of states of character the pleasure or pain that supervenes upon acts; for the man who abstains from bodily pleasures and delights in this very fact is temperate, while the man who is annoyed at it is self-indulgent, and he who stands his ground against things that are terrible and delights in this or at least is not pained is brave, while the man who is pained is a coward. For moral excellence is concerned with pleasures

and pains; it is on account of the pleasure that we do bad things, and on account of the pain that we abstain from noble ones. Hence we ought to have been brought up in a particular way from our very youth, as Plato says, so as both to delight in and to be pained by the things that we ought; this is the right education.

We assume, then, that this kind of excellence tends to do what is best with regard to pleasures and pains, and vice does the contrary.

That virtue, then, is concerned with pleasures and pains, and that by the acts from which it arises it is both increased and, if they are done differently, destroyed, and that the acts from which it arose are those in which it actualizes itself—let this be taken as said.

The actions that produce moral virtue are not good in the same sense as those that flow from it: the latter must fulfil certain conditions not necessary in the case of the arts

The question might be asked, what we mean by saying that we must become just by doing just acts, and temperate by doing temperate acts; for if men do just and temperate acts, they are already just and temperate, exactly as, if they do what is in accordance with the laws of grammar and of music, they are grammarians and musicians.

Or is this not true even of the arts? It is possible to do something that is in accordance with the laws of grammar, either by chance or under the guidance of another. A man will be a grammarian, then, only when he has both said something grammatical and said it grammatically; and this means doing it in accordance with the grammatical knowledge in himself.

Again, the case of the arts and that of the virtues are not similar; for the products of the arts have their goodness in themselves, so that it is enough that they should have a certain character, but if the acts that are in accordance with the virtues have themselves a certain character it does not follow that they are done justly or temperately. The agent also must be in a certain condition when he does them; in the first place he must have knowledge, secondly he must choose the acts, and choose them for their own sakes, and thirdly his action must proceed from a firm and

unchangeable character. These are not reckoned in as conditions of the possession of the arts except the bare knowledge; but as a condition of the possession of the virtues knowledge has little or no weight, while the other conditions count not for a little but for everything, i.e. the very conditions which result from often doing just and temperate acts.

Actions, then, are called just and temperate when they are such as the just or the temperate man would do; but it is not the man who does these that is just and temperate, but the man who also does them *as* just and temperate men do them. It is well said, then, that it is by doing just acts that the just man is produced, and by doing temperate acts the temperate man; without doing these no one would have even a prospect of becoming good.

Definition of Moral Virtue

The genus of moral virtue: it is a state of character, not a passion, nor a faculty

Next we must consider what virtue is. Since things that are found in the soul are of three kinds—passions, faculties, states of character—virtue must be one of these. By passions I mean appetite, anger, fear, confidence, envy, joy, friendly feeling, hatred, longing, emulation, pity, and in general the feelings that are accompanied by pleasure or pain; by faculties the things in virtue of which we are said to be capable of feeling these, e.g. of becoming angry or being pained or feeling pity; by states of character the things in virtue of which we stand well or badly with reference to the passions, e.g. with reference to anger we stand badly if we feel it violently or too weakly, and well if we feel it moderately; and similarly with reference to the other passions.

Now neither the virtues nor the vices are *passions*, because we are not called good or bad on the ground of our passions, but are so called on the ground of our virtues and our vices, and because we are neither praised nor blamed for our passions (for the man who feels fear or anger is not praised, nor is the man who simply feels anger blamed, but the man who feels it in a certain way), but for our virtues and our vices we *are* praised or blamed.

Again, we feel anger and fear without choice, but the virtues are modes of choice or involve choice.

Further, in respect of the passions we are said to be moved, but in respect of the virtues and the vices we are said not to be moved but to be disposed in a particular way.

For these reasons also they are not *faculties*; for we are neither called good or bad, nor praised or blamed, for the simple capacity of feeling the passions; again, we have the faculties by nature, but we are not made good or bad by nature; we have spoken of this before.

If, then, the virtues are neither passions nor faculties, all that remains is that they should be *states of character*.

Thus we have stated what virtue is in respect of its genus.

The differentia of moral virtue: it is a disposition to choose the mean

We must, however, not only describe virtue as a state of character, but also say what sort of state it is. We may remark, then, that every virtue or excellence both brings into good condition the thing of which it is the excellence and makes the work of that thing be done well; e.g. the excellence of the eye makes both the eye and its work good; for it is by the excellence of the eye that we see well. Similarly the excellence of the horse makes a horse both good in itself and good at running and at carrying its rider and at awaiting the attack of the enemy. Therefore, if this is true in every case, the virtue of man also will be the state of character which makes a man good and which makes him do his own work well.

How this is to happen we have stated already, but it will be made plain also by the following consideration of the specific nature of virtue. In everything that is continuous and divisible it is possible to take more, less, or an equal amount, and that either in terms of the thing itself or relatively to us; and the equal is an intermediate between excess and defect. By the intermediate in the object I mean that which is equidistant from each of the extremes, which is one and the same for all men; by the intermediate relatively to us that which is neither too much nor too little—and this is not one, nor the same for all. For instance, if ten is many and two is few, six is the intermediate,

taken in terms of the object; for it exceeds and is exceeded by an equal amount; this is intermediate according to arithmetical proportion. But the intermediate relatively to us is not to be taken so; if ten pounds are too much for a particular person to eat and two too little, it does not follow that the trainer will order six pounds; for this also is perhaps too much for the person who is to take it, or too little—too little for Milo, too much for the beginner in athletic exercises. The same is true of running and wrestling. Thus a master of any art avoids excess and defect, but seeks the intermediate and chooses this—the intermediate not in the object but relatively to us.

If it is thus, then, that every art does its work well—by looking to the intermediate and judging its works by this standard (so that we often say of good works of art that it is not possible either to take away or to add anything, implying that excess and defect destroy the goodness of works of art, while the mean preserves it; and good artists, as we say, look to this in their work), and if, further, virtue is more exact and better than any art, as nature also is, then virtue must have the quality of aiming at the intermediate. I mean moral virtue; for it is this that is concerned with passions and actions, and in these there is excess, defect, and the intermediate. For instance, both fear and confidence and appetite and anger and pity and in general pleasure and pain may be felt both too much and too little, and in both cases not well; but to feel them at the right times, with reference to the right objects, towards the right people, with the right motive, and in the right way, is what is both intermediate and best, and this is characteristic of virtue. Similarly with regard to actions also there is excess, defect, and the intermediate. Now virtue is concerned with passions and actions, in which excess is a form of failure, and so is defect, while the intermediate is praised and is a form of success; and being praised and being successful are both characteristics of virtue. Therefore virtue is a kind of mean, since, as we have seen, it aims at what is intermediate.

Again, it is possible to fail in many ways (for evil belongs to the class of the unlimited, as the Pythagoreans conjectured, and good to that of the

limited), while to succeed is possible only in one way (for which reason also one is easy and the other difficult—to miss the mark easy, to hit it difficult); for these reasons also, then, excess and defect are characteristic of vice, and the mean of virtue;

For men are good in but one way, but bad in many.

Virtue, then, is a state of character concerned with choice, lying in a mean, i.e. the mean relative to us, this being determined by a rational principle, and by that principle by which the man of practical wisdom would determine it. Now it is a mean between two vices, that which depends on excess and that which depends on defect; and again it is a mean because the vices respectively fall short of or exceed what is right in both passions and actions, while virtue both finds and chooses that which is intermediate. Hence in respect of what it is, i.e. the definition which states its essence, virtue is a mean, with regard to what is best and right an extreme.

But not every action nor every passion admits of a mean; for some have names that already imply badness, e.g. spite, shamelessness, envy, and in the case of actions adultery, theft, murder; for all of these and suchlike things imply by their names that they are themselves bad, and not the excesses or deficiencies of them. It is not possible, then, ever to be right with regard to them; one must always be wrong. Nor does goodness or badness with regard to such things depend on committing adultery with the right woman, at the right time, and in the right way, but simply to do any of them is to go wrong. It would be equally absurd, then, to expect that in unjust, cowardly, and voluptuous action there should be a mean, an excess, and a deficiency; for at that rate there would be a mean of excess and of deficiency, an excess of excess, and a deficiency of deficiency. But as there is no excess and deficiency of temperance and courage because what is intermediate is in a sense an extreme, so too of the actions we have mentioned there is no mean nor any excess and deficiency, but however they are done they are wrong; for in general there is neither a mean of excess and deficiency, nor excess and deficiency of a mean.

The above proposition illustrated by reference to particular virtues

We must, however, not only make this general statement, but also apply it to the individual facts. For among statements about conduct those which are general apply more widely, but those which are particular are more true, since conduct has to do with individual cases, and our statements must harmonize with the facts in these cases. We may take these cases from our table. With regard to feelings of fear and confidence courage is the mean; of the people who exceed, he who exceeds in fearlessness has no name (many of the states have no name), while the man who exceeds in confidence is rash, and he who exceeds in fear and falls short in confidence is a coward. With regard to pleasures and pains—not all of them, and not so much with regard to the pains—the mean is temperance, the excess self-indulgence. Persons deficient with regard to the pleasures are not often found; hence such persons also have received no name. But let us call them 'insensible.'

With regard to giving and taking of money the mean is liberality, the excess and the defect prodigality and meanness. In these actions people exceed and fall short in contrary ways; the prodigal exceeds in spending and falls short in taking, while the mean man exceeds in taking and falls short in spending. (At present we are giving a mere outline or summary, and are satisfied with this; later these states will be more exactly determined.) With regard to money there are also other dispositions—a mean, magnificence (for the magnificent man differs from the liberal man; the former deals with large sums, the latter with small ones), an excess, tastelessness and vulgarity, and a deficiency, niggardliness; these differ from the states opposed to liberality, and the mode of their difference will be stated later.

With regard to honour and dishonour the mean is proper pride, the excess is known as a sort of 'empty vanity,' and the deficiency is undue humility; and as we said liberality was related to magnificence, differing from it by dealing with small sums, so there is a state similarly related to proper pride, being concerned with small honours while that is concerned with great. For it is possible to desire honour as one ought, and more than one ought, and less, and the man who exceeds in his desires is called ambitious,

the man who falls short unambitious, while the intermediate person has no name. The dispositions also are nameless, except that that of the ambitious man is called ambition. Hence the people who are at the extremes lay claim to the middle place; and we ourselves sometimes call the intermediate person ambitious and sometimes unambitious, and sometimes praise the ambitious man and sometimes the unambitious. The reason of our doing this will be stated in what follows; but now let us speak of the remaining states according to the method which has been indicated.

With regard to anger also there is an excess, a deficiency, and a mean. Although they can scarcely be said to have names, yet since we call the intermediate person good-tempered let us call the mean good temper; of the persons at the extremes let the one who exceeds be called irascible, and his vice irascibility, and the man who falls short an unirascible sort of person, and the deficiency unirascibility.

Characteristics of the Extreme and Mean States: Practical Corollaries

The extremes are opposed to each other and to the mean

There are three kinds of disposition, then, two of them vices, involving excess and deficiency respectively, and one a virtue, viz. the mean, and all are in a sense opposed to all; for the extreme states are contrary both to the intermediate state and to each other, and the intermediate to the extremes; as the equal is greater relatively to the less, less relatively to the greater, so the middle states are excessive relatively to the deficiencies, deficient relatively to the excesses, both in passions and in actions. For the brave man appears rash relatively to the coward, and cowardly relatively to the rash man; and similarly the temperate man appears self-indulgent relatively to the insensible man, insensible relatively to the self-indulgent, and the liberal man prodigal relatively to the mean man, mean relatively to the prodigal. Hence also the people at the extremes push the intermediate man each over to the other, and the brave man is called rash by the coward, cowardly by the rash man, and correspondingly in the other cases.

These states being thus opposed to one another, the greatest contrariety is that of the extremes to each other, rather than to the intermediate; for these are further from each other than from the intermediate, as the great is further from the small and the small from the great than both are from the equal. Again, to the intermediate some extremes show a certain likeness, as that of rashness to courage and that of prodigality to liberality; but the extremes show the greatest unlikeness to each other; now contraries are defined as the things that are furthest from each other, so that things that are further apart are more contrary.

To the mean in some cases the deficiency, in some the excess, is more opposed; e.g. it is not rashness, which is an excess, but cowardice, which is a deficiency, that is more opposed to courage, and not insensibility, which is a deficiency, but self-indulgence, which is an excess, that is more opposed to temperance. This happens from two reasons, one being drawn from the thing itself; for because one extreme is nearer and liker to the intermediate, we oppose not this but rather its contrary to the intermediate. E.g., since rashness is thought liker and nearer to courage, and cowardice more unlike, we oppose rather the latter to courage; for things that are further from the intermediate are thought more contrary to it. This, then, is one cause, drawn from the thing itself; another is drawn from ourselves; for the things to which we ourselves more naturally tend seem more contrary to the intermediate. For instance, we ourselves tend more naturally to pleasures, and hence are more easily carried away towards self-indulgence than towards propriety. We describe as contrary to the mean, then, rather the directions in which we more often go to great lengths; and therefore self-indulgence, which is an excess, is the more contrary to temperance.

The mean is hard to attain, and is grasped by perception, not by reasoning

That moral virtue is a mean, then, and in what sense it is so, and that it is a mean between two vices, the one involving excess, the other deficiency, and that it is such because its character is to aim at what is intermediate in passions and in actions, has been

sufficiently stated. Hence also it is no easy task to be good. For in everything it is no easy task to find the middle, e.g. to find the middle of a circle is not for everyone but for him who knows; so, too, anyone can get angry—that is easy—or give or spend money; but to do this to the right person, to the right extent, at the right time, with the right motive, and in the right way, *that* is not for everyone, nor is it easy; wherefore goodness is both rare and laudable and noble.

Hence he who aims at the intermediate must first depart from what is the more contrary to it, as Calypso advises—

Hold the ship out beyond that surf and spray.

For of the extremes one is more erroneous, one less so; therefore, since to hit the mean is hard in the extreme, we must as a second best, as people say, take the least of the evils; and this will be done best in the way we describe.

But we must consider the things towards which we ourselves also are easily carried away; for some of us tend to one thing, some to another; and this will be recognizable from the pleasure and the pain we feel. We must drag ourselves away to the contrary extreme; for we shall get into the intermediate state by drawing well away from error, as people do in straightening sticks that are bent.

Now in everything the pleasant or pleasure is most to be guarded against; for we do not judge it impartially. We ought, then, to feel towards pleasure as the elders of the people felt towards Helen, and in all circumstances repeat their saying; for if we dismiss pleasure thus we are less likely to go astray. It is by doing this, then, (to sum the matter up) that we shall best be able to hit the mean.

But this is no doubt difficult, and especially in individual cases; for it is not easy to determine both how and with whom and on what provocation and how long one should be angry; for we too sometimes praise those who fall short and call them good-tempered, but sometimes we praise those who get angry and call them manly. The man, however, who deviates little from goodness is not blamed, whether he do so in the direction of the more or of the less, but only the man who deviates more widely; for *he* does not fail to be noticed.

But up to what point and to what extent a man must deviate before he becomes blameworthy it is not easy to determine by reasoning, any more than anything else that is perceived by the senses; such things depend on particular facts, and the decision rests with perception. So much, then, is plain, that the intermediate state is in all things to be praised, but that we must incline sometimes towards the excess, sometimes towards the deficiency; for so shall we most easily hit the mean and what is right.

Aristotle: Nicomachean Ethics

1. Some philosophers have maintained that people are naturally morally good, while others have held that people are naturally wicked. Aristotle takes a middle ground, saying, “Neither by nature, then, nor contrary to nature do the virtues arise in us.” Which view do you think is correct, and why?

2. What do you think Aristotle means when he says that “matters concerned with conduct and questions of what is good for us have no fixity”? Do you agree with this statement?
3. What is the difference, according to Aristotle, between performing virtuous actions and being a virtuous person? Do you agree with him that the latter is more valuable?
4. Aristotle says that virtue is a “mean” between extremes. For instance, the virtue of courage consists of the disposition to feel neither too much nor too little fear, but rather some appropriate amount in between. Is this consistent with his claim that some actions (such as stealing or adultery) are always wrong in all circumstances?
5. What advice does Aristotle give regarding how we should go about seeking the mean between extremes? Do you think this is good advice?

Feminist Ethics and the Ethics of Care

The most prominent authors and supporters of the ethical theories that we have considered so far have one thing in common. They are all men. Most of them lived in societies that systematically discriminated against women. Since even the most high-minded thinkers are bound to reflect some of the common assumptions of their times, it should come as no surprise that many important philosophers held views about women that nowadays make us cringe.

Aristotle said that “the male is by nature superior, and the female inferior; the one rules, and the other is ruled.”¹ Aquinas claimed, “As regards her individual nature, each woman is defective and misbegotten.”² Kant wrote that “laborious learning or painful pondering, even if a woman should greatly succeed in it, destroy the merits that are proper to her sex . . . [and] they will weaken the charms with which she exercises her great power over the other sex. . . . Her philosophy is not to reason, but to sense.”³ Rousseau said, “Women do wrong to complain of the inequality of man-made laws; this inequality is not of man’s making, or at any rate it is not the result of mere prejudice, but of reason. . . . [Women] must be trained to bear the yoke from the first, so that they may not feel

it, to master their own caprices and to submit themselves to the will of others.”⁴

We might be tempted to downplay these slights by claiming that they did not influence the main lines of argument of these thinkers. And there is a sense in which this is correct—almost none of the major male philosophers of past centuries wrote very much about women. But there is also a sense in which it is incorrect, for there are two ways in which philosophers have shortchanged the lives of women. The first is to make false and damaging claims about them. The second is to ignore female experiences and perspectives. Both have been the norm in ethical thinking for centuries. **Feminist ethics** seeks to remedy both of these flaws.

A. THE ELEMENTS OF FEMINIST ETHICS

Feminist ethics is not a single theory, but rather a general approach to ethics that is defined by four central claims:

1. Women are the moral equals of men; views that justify the subordination of women or downplay their interests are thus mistaken on that account.
2. The experiences of women deserve our respect and are vital to a full and accurate understanding of morality. To the extent that philosophers ignore such experiences, their theories are bound to be

1. Aristotle, *Politics* 1254 b13.

2. Thomas Aquinas, *Summa Theologica*, Question 92, First article.

3. Immanuel Kant, *Observations on the Feeling of the Beautiful and the Sublime*, section 3.

4. Jean-Jacques Rousseau, *Emile: On Education*.

incomplete, and likely to be biased and inaccurate.

3. Traits that have traditionally been associated with women—empathy, sympathy, caring, altruism, mercy, compassion—are at least as morally important as traditionally masculine traits, such as competitiveness, independence, demanding one's fair share, a readiness to resort to violence, and the insistence on personal honor.
4. Traditionally feminine ways of moral reasoning, ones that emphasize cooperation, flexibility, openness to competing ideas, and a connectedness to family and friends, are often superior to traditionally masculine ways of reasoning that emphasize impartiality, abstraction, and strict adherence to rules.

Two cautionary notes. First, no one believes that every woman is compassionate and caring, or that every man is aggressive and competitive. These are generalizations that hold only to some extent, and allow for many exceptions. Second, when I speak of *traditionally* masculine and feminine traits, I mean just that. These are features that our cultures have long associated with men and with women, respectively. But there is no claim that such traits are innate. Many characteristics we associate with certain groups are a by-product of social influences. Stereotypes often fail to have any basis in fact. But even when they do, these facts are often a result of difficult circumstances and limited opportunities, rather than the expression of some inborn character.

The major moral theories we have discussed thus far are not designed with home and family life in mind. But since so many of our most important moments are spent with those we love, and since so many moral choices are made within the context of close relationships, why not imagine what an ethic would look like that took these as its starting points? Where standard ethical theories see morality as primarily about doing justice (Kantianism), seeking mutual benefit (contractarianism), or impartial

benevolence (utilitarianism), many feminists point to care—especially a mother's care—as the model of moral relations and the basis of ethics. This maternal model has generated what feminist philosophers now call an *ethic of care*.

B. THE ETHICS OF CARE

We can better understand an **ethics of care** by first seeing what it is not. Unlike ethical egoism, care ethics does not insist that we always look out for number one. Mothers often rightly sacrifice their own interests in order to advance those of their children. Unlike Kantianism, an ethics of care does not place supreme importance on justice. Matters of justice are not entirely absent from parent-child relations, but they are certainly not the primary focus here. It is important that a parent not try to swindle her children, and that children show respect for their parents. But standing on one's rights, insisting on a fair share, and ensuring that the guilty are given their just deserts are not at the heart of loving relationships.

Contractarian theories see the authors of the moral law as indifferent to the needs of others, willing to make sacrifices for them only if there is a reasonable chance of being compensated in return. Good parents don't see things that way. A mother's care is not conditional on her child's obedience to a set of mutually beneficial rules. The rational pursuit of self-interest is not the ultimate goal; if the only way to help your child is to take a serious hit yourself, a good parent will often do just that.

And contrary to utilitarian demands for impartial benevolence, loving parents are much more concerned about their own children than about other people's kids. There is no thought of being impartial here; a good mother will demonstrate **partiality** toward her children, will give them more care and attention than she does anyone else's children. Love and care cannot be parceled out to everyone equally.

In addition to these specific differences, the ethics of care incorporates the following

features. Most of these represent a point of departure from most traditional ethical theories, though as we'll see, there are some points of similarity between the ethics of care and both virtue ethics and Ross's ethical pluralism.

C. THE IMPORTANCE OF EMOTIONS

Care is an emotion, or a network of reinforcing emotions that involve some combination of sympathy, empathy, sensitivity, and love. Like all emotions, care has elements that involve thinking and feeling. The relevant thoughts are focused on the wants and needs of the one being cared for. The feelings are positive, friendly, helpful, nurturing, and often loving. Care helps us know what others need—parents often understand what their own child needs much better than anyone else. And care helps to motivate us to tend to those needs, even when we are exhausted, grudging, or angry. How many mothers and fathers have roused themselves from a sound sleep to soothe their crying infant? Care helps ease those parents out from under the covers.

Utilitarians don't place much importance on the emotions in knowing what's right and wrong. Calculating amounts of happiness and misery isn't an emotional task. Kant was quite dismissive of the emotions, claiming that reason alone could both tell us where our duty lay and get us to do it. Kant was surely right in thinking that our emotions cannot go unchecked—we need an ethic of care, and not just care itself. But feminist philosophers argue that care and its associated emotions are central to moral motivation and moral discovery, even if they are not the whole story.

Those who defend an ethics of care sometimes see themselves as working within a virtue ethics tradition. And this makes sense, given the emphasis not only on what we do, but on how we do it. The manner in which we do things is often as important as what we do.

Suppose, for instance, that my mother calls me up and asks that I spend the afternoon

helping my aged father with some household chores. I do as she asks, but only grudgingly, and make it clear with my body language and my brusqueness that I resent being there. I've done the right thing, but in the wrong manner. I am not acting virtuously and am not displaying an appropriate level of care.

D. AGAINST UNIFICATION

Most of the traditional ethical theories offer us one **supreme moral rule**—one that is both absolute and fundamental—that determines the morality of all actions. Along with the ethic of *prima facie* duties and virtue ethics, care ethics rejects this picture. On this view, there is no surefire test for knowing what morality demands of us. Morality is complicated and messy. The drive to try to unify all of morality under a single supreme rule is an understandable one. Such a rule would lend clarity and structure to ethics. But care ethicists argue that this is a pipe dream.

We can see this as it plays out in the lives of many women (and men) faced with conflicting demands from children, work, spouses, and other sources. Suppose your parents call you up and proceed to criticize your boyfriend. He later asks you what you and your parents talked about. Do you tell him what they've said, knowing that he'll be hurt and that this is going to make a good relationship between him and your parents even harder to achieve? Or suppose your husband believes in disciplining children with a very firm hand. You disagree. He spanks his son—your son—after some minor misbehavior. Then he does it again. What do you do?

These aren't life-or-death cases. Rather, these are ordinary situations that arise in homes all the time. Feminist philosophers say of such examples that while there is often a right thing to do, we can't read off a recommendation from some simple rule. Rather, we have to appreciate the different sources of our moral duties. These stem primarily from relationships we have with other people. And they can conflict with one

another. When they do, it can be very hard to know what to do. At such times, we may wish for some easy formula that could give us instant advice about how to behave. But if feminist philosophers are right, there is no such thing. Part of gaining moral maturity is recognizing this, facing life's difficult choices, and not pretending that overly simple answers will solve our problems.

E. PARTIALITY AND CONCRETENESS

There are many reasons why philosophers have been so attracted to the idea of a supreme moral rule. Here is one of them. The more general and abstract the rule, the less likely it is to include bias. A rule that applies only to certain people or to certain situations may reflect only a limited perspective. Philosophers have long sought an outlook that is free of prejudice and distortion, one that takes into account all people at all times.

But why is this so important? The traditional answer is that it gives us a way to ensure impartiality. We must think of everyone as moral equals, and that means giving each person equal weight when we determine what is right and wrong. But as we have seen, feminists reject the idea that we must proceed in this way. It is right that we give priority to those we care about. It is good to be partial to our loved ones.

Feminist ethicists resist the push to abstraction that we see so strongly in philosophy. Moral reasoning should not be centered on a single, very general rule, but rather should be guided by a more complicated understanding of the specifics of situations.

F. DOWNPLAYING RIGHTS

Feminists often argue that moral theories have placed too much emphasis on justice. Demanding our rights, insisting that others honor our claims, and making sure we get what we are entitled to—these are ways of asserting our independence from one another, rather than our connectedness. Talk of rights can divide

us more quickly. This is a common complaint about the abortion debates, for instance. Once we start speaking of the rights of a fetus and of a woman, the debate becomes bogged down, making it very difficult to find common ground with those on the other side of the fence.

Imagine that we instead emphasized our responsibilities to one another, based on the model of a caring parent toward her children. Society would be seen not as a venue for the pursuit of rational self-interest, but rather as a stage for co-operation where we took responsibility for one another, and especially for the most vulnerable among us. In the area of social policy, for instance, this would lead to placing much greater importance on education, on support for poor families, and on making sure that everyone had access to excellent medical care.

The emphasis on rights has often meant giving priority to our being free from coercion and unwanted interference. Rights protect autonomy and independence. And so we have rights, for instance, to say and to read what we want, or to do what we like within the privacy of our own homes.

But many (though not all) feminists have launched pointed criticisms of such priorities. They argue that rights tend to place us in opposition to others, creating a barrier beyond which no one may pass without permission. Individual rights often allow people to pursue their own paths at the expense of the community. Rights emphasize the ways in which we are separate from one another, rather than the ways in which we might be brought together.

After all, loving parents do not stand on their rights when their child needs them. They do not want to assert their independence from their son or daughter. Feminists argue that rather than finding ways to insulate ourselves from others, we should be looking to create more opportunities for people to help one another. We should emphasize our responsibilities to others, rather than our rights against them. To the extent that rights stand in the way of building community

and forging close ties with others, most feminists regard them with suspicion.

G. CHALLENGES FOR FEMINIST ETHICS

Feminist ethics is an approach to morality, rather than a single unified theory with specific claims that all feminists endorse. As a result, a presentation of this family of views must settle for highlighting general lines of thought, rather than particular arguments and views that all feminists will accept.

Feminist ethicists currently deal with several challenges. And this is unsurprising, given that extensive work in the area is only a generation old. Here are some of the most important of these challenges.

1. *The feminist ethics of care threatens to restrict the scope of the moral community too greatly.* Indeed, early care ethicists argued that we have moral duties only to those we care about. This view is no longer argued for, as it leaves us without any moral duties to strangers or to those we thoroughly dislike. But if we are to model our moral behavior on the mother-child relation, then we need extensive advice about how this is supposed to work in the case of those we don't know or care about. After all, one way in which we seem to have made moral progress is by extending the scope of the moral community beyond those who are near and dear to us.
2. *The role of the emotions in helping us to know the right thing to do, and in moving us to do it, needs further exploration.* Moral clarity sometimes requires that we overcome our indifference and become more emotionally invested in an issue. But in other cases, emotions can cloud our judgment. We need a view of which emotions are appropriate, and when they are appropriate, since the very same emotion can sometimes be enlightening and at other times anything but. An emotion such as anger often blinds us to the truth and prevents us from doing right. And so it needs to be regulated. But anger can also correctly alert us to serious immorality and will sometimes move us to overcome our fear and to do the right thing. We need a much fuller story about the role of the emotions in the moral life.
3. *Downgrading impartiality has its costs.* There is a great deal to be said for the importance of impartiality. It is a definite virtue of judges and others who hold positions of civic responsibility. It is an important corrective for prejudice and bias. It is one of the best reasons for taking the interests of women as seriously as those of men. Impartiality may not always be the right way to go, but it is, at least sometimes and perhaps usually, the best perspective from which to make important moral decisions.
4. *Rejecting any supreme moral rule leaves it hard to know how to solve moral conflicts.* A virtue of the principle of universalizability, or the principle of utility, is that we have a definite standard to appeal to in trying to decide how to act in puzzling cases. Without such a standard, we may be left largely in the dark about what morality allows or requires of us.
5. *While cooperation is often an excellent thing, we also need to have strategies for dealing with uncooperative people or governments.* The world would be a much better place if we were all able to get along and put our differences behind us. But as we all know, good faith and flexibility are sometimes met with a sneer and an iron fist, and we need to plan for such occasions. Caring for our enemies will sometimes mean that they kill us or those we are entrusted to protect. Further, competition is sometimes a good thing. It can enhance efficiency in business. It can make

for inspiring athletic events. It can spur us to personal excellence. So we shouldn't give up on competition entirely. And that means developing a sophisticated view of when it is and isn't appropriate to prefer cooperation over competition.

6. *While justice and rights are not the whole of morality, they are nonetheless a very important part of it.* We can explain what is so immoral about the oppression of women by citing the rights that are violated by sexist actions and policies. Women have rights to be free of physical abuse; they have a moral right to be paid the same amount of money for doing the same work; it is a gross injustice to forcibly circumcise a teenage girl (or a grown woman, for that matter). Rights are a form of moral protection, and women are often the ones in need of the strongest protections. A plausible feminist ethic must therefore make room for the importance of moral rights and the demands of justice that they support.

H. CONCLUSION

Feminists have often been described as those who think that women ought to be treated exactly as we treat men. But this is a mistake. Feminists argue not for equal *treatment*—after all, many of the ways that men typically get treated are morally questionable. Rather, feminists argue for *equal consideration*. The interests of women are to be given the same importance as those of men. When setting social policies, when evaluating traditions, or when trying to settle conflicts between men and women, it is immoral to downgrade the interests of women just because they are women. Women are the moral equals of men. This simple idea, if taken seriously, would lead to radical change in most areas of the world.

Many of us, men as well as women, are more vulnerable and dependent than traditional moral theory allows. In the real world, there are severe

inequalities of wealth and power, and it pays to be sensitive to such things when deciding on our moral ideals. Making care the centerpiece of our moral life, and allowing emotions and our loving relations a larger role in moral thinking, can make a substantial difference in our ethical outlooks.

Feminist ethics is not just for women. Its recommendations are intended for men and women alike. The importance of care, and emotions generally; the emphasis on cooperation; the attractions of flexibility and compromise; the need for more than justice—each of these is as morally important for men as it is for women.

Feminist ethics is best seen as a general approach to morality, rather than as a well-developed theory that can at this point compete directly with the traditional moral theories. But this is not necessarily a weakness. Rather, it is evidence of the wide variety of views that can be developed by those who take the interests of women just as seriously as we have long taken those of men.

ESSENTIAL CONCEPTS

Ethics of care: a moral perspective that emphasizes the centrality of care as the model of admirable moral relations.

Feminist ethics: a family of moral theories committed to four central claims; (1) women are the moral equals of men; (2) the experiences of women deserve our respect and are vital to a full and accurate understanding of morality; (3) traits that have traditionally been associated with women are at least as morally important as traditionally masculine traits; (4) traditionally feminine ways of moral reasoning are often superior to traditionally masculine ways of reasoning.

Partiality: showing greater concern for, or assigning greater importance to, some beings rather than others.

Supreme moral rule: a moral rule that is both absolute and fundamental.

DISCUSSION QUESTIONS

1. What distinctively “female” experiences do feminists claim are neglected by traditional

ethical theories? Do you agree that moral philosophy should be more attentive to these experiences? If so, how should our ethical theories incorporate them?

2. Most ethical theories stress that impartiality is important to acting ethically. Why do care ethicists deny this? Do you think they are correct to do so?
3. Like Ross's pluralism, feminist ethics rejects the notion of a single supreme principle of morality. What are the advantages of this approach? What are the disadvantages?

4. How plausible do you think it is to model the moral relations between people on that of a caring mother to her child?
5. How is feminist ethics similar to virtue ethics? How do the two approaches differ?
6. Given that feminism is often associated with the idea of women's rights, it might seem strange that feminist ethics downplays the importance of rights. What are the reasons feminist ethicists give for doing so? Do you find this an attractive feature of the feminist approach to ethics?

READING

What Is Feminist Ethics?

Hilde Lindemann

Hilde Lindemann offers us a brief overview of feminist ethics in this selection. She first discusses the nature of feminism and identifies some of the various ways that people have defined it. Lindemann argues against thinking of feminism as focused primarily on equality, women, or the differences between the sexes. She instead invites us to think of feminism as based on considerations of gender—specifically, considerations to do with the lesser degree of power that women have, largely the world over, as compared with men.

Lindemann proceeds to discuss the sex/gender distinction and to identify the central tasks of feminist ethics: to understand, criticize, and correct the inaccurate gender assumptions that underlie our moral thinking and behavior. An important approach of most feminists is a kind of skepticism about the ability to distinguish political commitments from intellectual ones. Lindemann concludes by discussing this skepticism and its implications for feminist thought.

A few years ago, a dentist in Ohio was convicted of having sex with his female patients while they

From Hilde Lindemann, "What Is a Feminist Ethics?" from *An Invitation to Feminist Ethics* (New York: McGraw-Hill, 2006), pp. 2–3, 6–16.

were under anesthesia. I haven't been able to discover whether he had to pay a fine or do jail time, but I do remember that the judge ordered him to take a course in ethics. And I recall thinking how odd that order was. Let's suppose, as the judge apparently did, that the dentist really and truly

didn't know it was wrong to have sex with anesthetized patients (this will tax your imagination, but try to suppose it anyway). Can we expect—again, as the judge apparently did—that on completing the ethics course, the dentist would be a better, finer man?

Hardly. If studying ethics could make you good, then the people who have advanced academic degrees in the subject would be paragons of moral uprightness. I can't speak for all of them, of course, but though the ones I know are nice enough, they're no more moral than anyone else. Ethics doesn't improve your character. Its *subject* is morality, but its relationship to morality is that of a scholarly study to the thing being studied. In that respect, the relationship is a little like the relationship between grammar and language.

Let's explore that analogy. People who speak fluent English don't have to stop and think about the correctness of the sentence "He gave it to *her*." But here's a harder one. Should you say, "He gave it to *her* who must be obeyed?" or "He gave it to *she* who must be obeyed?" To sort this out, it helps to know a little grammar—the systematic, scholarly description of the structure of the language and the rules for speaking and writing in it. According to those rules, the object of the preposition "to" is the entire clause that comes after it, and the subject of that clause is "she." So, even though it sounds peculiar, the correct answer is "He gave it to *she* who must be obeyed."

In a roughly similar vein, morally competent adults don't have to stop and think about whether it's wrong to have sex with one's anesthetized patients. But if you want to understand whether it's wrong to have large signs in bars telling pregnant women not to drink, or to sort out the conditions under which it's all right to tell a lie, it helps to know a little ethics. The analogy between grammar and ethics isn't exact, of course. For one thing, there's considerably more agreement about what language is than about what morality is. For another, grammarians are concerned only with the structure of language, not with the meaning or usage of particular words. In both cases, however, the same point can be made: You already have to know quite a lot about how to behave—linguistically or

morally—before there's much point in studying either grammar or ethics. . . .

WHAT IS FEMINISM?

What, then, is feminism? As a social and political movement with a long, intermittent history, feminism has repeatedly come into public awareness, generated change, and then disappeared again. As an eclectic body of theory, feminism entered colleges and universities in the early 1970s as a part of the women's studies movement, contributing to scholarship in every academic discipline, though probably most heavily in the arts, social sciences, literature, and the humanities in general. Feminist ethics is a part of the body of theory that is being developed primarily in colleges and universities.

Many people in the United States think of feminism as a movement that aims to make women the social equals of men, and this impression has been reinforced by references to feminism and feminists in the newspapers, on television, and in the movies. But bell hooks has pointed out in *Feminist Theory from Margin to Center* (1984, 18–19) that this way of defining feminism raises some serious problems. Which men do women want to be equal to? Women who are socially well off wouldn't get much advantage from being the equals of the men who are poor and lower class, particularly if they aren't white. hooks's point is that there are no women and men in the abstract. They are poor, black, young, Latino/a, old, gay, able-bodied, upper class, down on their luck, Native American, straight, and all the rest of it. When a woman doesn't think about this, it's probably because she doesn't have to. And that's usually a sign that her own social position is privileged. In fact, privilege often means that there's something uncomfortable going on that others have to pay attention to but you don't. So, when hooks asks which men women want to be equal to, she's reminding us that there's an unconscious presumption of privilege built right in to this sort of demand for equality.

There's a second problem with the equality definition. Even if we could figure out which men are the ones to whom women should be equal, that way of putting it suggests that the point of feminism is somehow to get women to measure up to what (at least some) men already are. Men remain the point

of reference; theirs are the lives that women would naturally want. If the first problem with the equality definition is “Equal to *which* men?” the second problem could be put as “Why equal to *any* men?” Reforming a system in which men are the point of reference by allowing women to perform as their equals “forces women to focus on men and address men’s conceptions of women rather than creating and developing women’s values about themselves,” as Sarah Lucia Hoagland puts it in *Lesbian Ethics* (1988, 57). For that reason, Hoagland and some other feminists believe that feminism is first and foremost about women.

But characterizing feminism as about women has its problems too. What, after all, is a woman? In her 1949 book, *The Second Sex*, the French feminist philosopher Simone de Beauvoir famously observed, “One is not born, but becomes a woman. No biological, psychological, or economic fate determines the figure that the human female presents in society: it is civilization as a whole that produces this creature, intermediate between male and eunuch, which is described as feminine” (Beauvoir 1949, 301). Her point is that while plenty of human beings are born female, ‘woman’ is not a natural fact about them—it’s a social invention. According to that invention, which is widespread in “civilization as a whole,” man represents the positive, typical human being, while woman represents only the negative, the not-man. She is the Other against whom man defines himself—he is all the things that she is not. And she exists only in relation to him. In a later essay called “One Is Not Born a Woman,” the lesbian author and theorist Monique Wittig (1981, 49) adds that because women belong to men sexually as well as in every other way, women are necessarily heterosexual. For that reason, she argued, lesbians aren’t women.

But, you are probably thinking, everybody knows what a woman is, and lesbians certainly *are* women. And you’re right. These French feminists aren’t denying that there’s a perfectly ordinary use of the word *woman* by which it means exactly what you think it means. But they’re explaining what this comes down to, if you look at it from a particular point of view. Their answer to the question “What is a woman?” is that women are different from men. But they don’t

mean this as a trite observation. They’re saying that ‘woman’ refers to *nothing but* difference from men, so that apart from men, women aren’t anything. ‘Man’ is the positive term, ‘woman’ is the negative one, just like ‘light’ is the positive term and ‘dark’ is nothing but the absence of light.

A later generation of feminists have agreed with Beauvoir and Wittig that women are different from men, but rather than seeing that difference as simply negative, they put it in positive terms, affirming feminine qualities as a source of personal strength and pride. For example, the philosopher Virginia Held thinks that women’s moral experience as mothers, attentively nurturing their children, may serve as a better model for social relations than the contract model that the free market provides. The poet Adrienne Rich celebrated women’s passionate nature (as opposed, in stereotype, to the rational nature of men), regarding the emotions as morally valuable rather than as signs of weakness.

But defining feminism as about the positive differences between men and women creates yet another set of problems. In her 1987 *Feminism Unmodified*, the feminist legal theorist Catharine A. MacKinnon points out that this kind of difference, as such, is a symmetrical relationship: If I am different from you, then you are different from me in exactly the same respects and to exactly the same degree. “Men’s differences from women are equal to women’s differences from men,” she writes. “There is an *equality* there. Yet the sexes are not socially *equal*” (MacKinnon 1987, 37). No amount of attention to the differences between men and women explains why men, as a group, are more socially powerful, valued, advantaged, or free than women. For that, you have to see differences as counting in certain ways, and certain differences being created precisely because they give men *power* over women.

Although feminists disagree about this, my own view is that feminism isn’t—at least not directly—about equality, and it isn’t about women, and it isn’t about difference. It’s about power. Specifically, it’s about the social pattern, widespread across cultures and history, that distributes power asymmetrically to favor men over women. This asymmetry has been given many names, including the subjugation

of women, sexism, male dominance, patriarchy, systemic misogyny, phallocracy, and the oppression of women. A number of feminist theorists simply call it gender, and throughout this book, I will too.

WHAT IS GENDER?

Most people think their gender is a natural fact about them, like their hair and eye color: “Jones is 5 foot 8, has red hair, and is a man.” But gender is a *norm*, not a fact. It’s a prescription for how people are supposed to act; what they must or must not wear; how they’re supposed to sit, walk, or stand; what kind of person they’re supposed to marry; what sorts of things they’re supposed to be interested in or good at; and what they’re entitled to. And because it’s an *effective norm*, it creates the differences between men and women in these areas.

Gender doesn’t just tell women to behave one way and men another, though. It’s a *power* relation, so it tells men that they’re entitled to things that women aren’t supposed to have, and it tells women that they are supposed to defer to men and serve them. It says, for example, that men are supposed to occupy positions of religious authority and women are supposed to run the church suppers. It says that mothers are supposed to take care of their children but fathers have more important things to do. And it says that the things associated with femininity are supposed to take a back seat to the things that are coded masculine. Think of the many tax dollars allocated to the military as compared with the few tax dollars allocated to the arts. Think about how kindergarten teachers are paid as compared to how stockbrokers are paid. And think about how many presidents of the United States have been women. Gender operates through social institutions (like marriage and the law) and practices (like education and medicine) by disproportionately conferring entitlements and the control of resources on men, while disproportionately assigning women to subordinate positions in the service of men’s interests.

To make this power relation seem perfectly natural—like the fact that plants grow up instead of down, or that human beings grow old and die—gender constructs its norms for behavior around what is supposed to be the natural biological distinction between the sexes. According to this

distinction, people who have penises and testicles, XY chromosomes, and beards as adults belong to the male sex, while people who have clitorises and ovaries, XX chromosomes, and breasts as adults belong to the female sex, and those are the only sexes there are. Gender, then, is the complicated set of cultural meanings that are constructed around the two sexes. Your sex is either male or female, and your gender—either masculine, or feminine—corresponds socially to your sex.

As a matter of fact, though, sex isn’t quite so simple. Some people with XY chromosomes don’t have penises and never develop beards, because they don’t have the receptors that allow them to make use of the male hormones that their testicles produce. Are they male or female? Other people have ambiguous genitals or internal reproductive structures that don’t correspond in the usual manner to their external genitalia. How should we classify them? People with Turner’s syndrome have XO chromosomes instead of XX. People with Klinefelter’s syndrome have three sex chromosomes: XXY. Nature is a good bit looser in its categories than the simple male/female distinction acknowledges. Most human beings can certainly be classified as one sex or the other, but a considerable number of them fall somewhere in between.

The powerful norm of gender doesn’t acknowledge the existence of the in-betweens, though. When, for example, have you ever filled out an application for a job or a driver’s license or a passport that gave you a choice other than M or F? Instead, by basing its distinction between masculine and feminine on the existence of two and only two sexes, gender makes the inequality of power between men and women appear natural and therefore legitimate.

Gender, then, is about power. But it’s not about the power of just one group over another. Gender always interacts with other social markers—such as race, class, level of education, sexual orientation, age, religion, physical and mental health, and ethnicity—to distribute power unevenly among women positioned differently in the various social orders, and it does the same to men. A man’s social status, for example, can have a great deal to do with

the extent to which he's even perceived as a man. There's a wonderful passage in the English travel writer Frances Trollope's *Domestic Manners of the Americans* (1831), in which she describes the exaggerated delicacy of middle-class young ladies she met in Kentucky and Ohio. They wouldn't dream of sitting in a chair that was still warm from contact with a gentleman's bottom, but thought nothing of getting laced into their corsets in front of a male house slave. The slave, it's clear, didn't count as a man—not in the relevant sense, anyway. Gender is the force that makes it matter whether you are male or female, but it always works hand in glove with all the other things about you that matter at the same time. It's one power relation intertwined with others in a complex social system that distinguishes your betters from your inferiors in all kinds of ways and for all kinds of purposes.

POWER AND MORALITY

If feminism is about gender, and gender is the name for a social system that distributes power unequally between men and women, then you'd expect feminist ethicists to try to *understand, criticize, and correct* how gender operates within our moral beliefs and practices. And they do just that. In the first place, they challenge, on moral grounds, the powers men have over women, and they claim for women, again on moral grounds, the powers that gender denies them. As the moral reasons for opposing gender are similar to the moral reasons for opposing power systems based on social markers other than gender, feminist ethicists also offer moral arguments against systems based on class, race, physical or mental ability, sexuality, and age. And because all these systems, including gender, are powerful enough to *conceal* many of the forces that keep them in place, it's often necessary to make the forces visible by explicitly identifying—and condemning—the various ugly ways they allow some people to treat others. This is a central task for feminist ethics.

Feminist ethicists also produce theory about the moral meaning of various kinds of *legitimate* relations of unequal power, including relationships of dependency and vulnerability, relationships of trust, and relationships based on something other than choice. Parent-child relationships, for

example, are necessarily unequal and for the most part unchosen. Parents can't help having power over their children, and while they may have chosen to have children, most don't choose to have the particular children they do, nor do children choose their parents. This raises questions about the responsible use of parental power and the nature of involuntary obligations, and these are topics for feminist ethics. Similarly, when you trust someone, that person has power over you. Whom should you trust, for what purposes, and when is trust not warranted? What's involved in being trustworthy, and what must be done to repair breaches of trust? These too are questions for feminist ethics.

Third, feminist ethicists look at the various forms of power that are required for morality to operate properly at all. How do we learn right from wrong in the first place? We usually learn it from our parents, whose power to permit and forbid, praise and punish, is essential to our moral training. For whom or what are we ethically responsible? Often this depends on the kind of power we have over the person or thing in question. If, for instance, someone is particularly vulnerable to harm because of something I've done, I might well have special duties toward that person. Powerful social institutions—medicine, religion, government, and the market, to take just a few examples—typically dictate what is morally required of us and to whom we are morally answerable. Relations of power set the terms for who must answer to whom, who has authority over whom, and who gets excused from certain kinds of accountability to whom. But because so many of these power relations are illegitimate, in that they're instances of gender, racism, or other kinds of bigotry, figuring out which ones are morally justified is a task for feminist ethics.

DESCRIPTION AND PRESCRIPTION

So far it sounds as if feminist ethics devotes considerable attention to *description*—as if feminist ethicists were like poets or painters who want to show you something about reality that you might otherwise have missed. And indeed, many feminist ethicists emphasize the importance of understanding how social power actually works, rather than concentrating solely on how it ought to work. But why, you

might ask, should ethicists worry about how power operates within societies? Isn't it up to sociologists and political scientists to describe how things *are*, while ethicists concentrate on how things *ought* to be?

As the philosopher Margaret Urban Walker has pointed out in *Moral Contexts*, there is a tradition in Western philosophy, going all the way back to Plato, to the effect that morality is something ideal and that ethics, being the study of morality, properly examines only that ideal. According to this tradition, notions of right and wrong as they are found in the world are unreliable and shadowy manifestations of something lying outside of human experience—something to which we ought to aspire but can't hope to reach. Plato's Idea of the Good, in fact, is precisely not of this earth, and only the gods could truly know it. Christian ethics incorporates Platonism into its insistence that earthly existence is fraught with sin and error and that heaven is our real home. Kant too insists that moral judgments transcend the histories and circumstances of people's actual lives, and most moral philosophers of the twentieth century have likewise shown little interest in how people really live and what it's like for them to live that way. "They think," remarks Walker (2001), "that there is little to be learned from what is about what ought to be" (3).

In Chapter Four [omitted here—ed.] we'll take a closer look at what goes wrong when ethics is done that way, but let me just point out here that if you don't know how things are, your prescriptions for how things ought to be won't have much practical effect. Imagine trying to sail a ship without knowing anything about the tides or where the hidden rocks and shoals lie. You might have a very fine idea of where you are trying to go, but if you don't know the waters, at best you are likely to go off course, and at worst you'll end up going down with all your shipmates. If, as many feminists have noted, a crucial fact about human selves is that they are always embedded in a vast web of relationships, then the forces at play within those relationships must be understood. It's knowing how people are situated with respect to these forces, what they are going through as they are subjected to them, and what life is like in the face of them, that lets us decide which of the forces are morally justified. Careful description of

how things are is a crucial part of feminist methodology, because the power that puts certain groups of people at risk of physical harm, denies them full access to the good things their society has to offer, or treats them as if they were useful only for other people's purposes is often hidden and hard to see. If this power isn't seen, it's likely to remain in place, doing untold amounts of damage to great numbers of people.

All the same, feminist ethics is *normative* as well as descriptive. It's fundamentally about how things ought to be, while description plays the crucial but secondary role of helping us to figure that out. Normative language is the language of "ought" instead of "is," the language of "worth" and "value," "right" and "wrong," "good" and "bad." Feminist ethicists differ on a number of normative issues, but as the philosopher Alison Jaggar (1991) has famously put it, they all share two moral commitments: "that the subordination of women is morally wrong and that the moral experience of women is worthy of respect" (95). The first commitment—that women's interests ought not systematically to be set in the service of men's—can be understood as a moral challenge to power under the guise of gender. The second commitment—that women's experience must be taken seriously—can be understood as a call to acknowledge how that power operates. These twin commitments are the two normative legs on which any feminist ethics stands. . . .

MORALITY AND POLITICS

If the idealization of morality goes back over two thousand years in Western thought, a newer tradition, only a couple of centuries old, has split off morality from politics. According to this tradition, which can be traced to Kant and some other Enlightenment philosophers, morality concerns the relations between persons, whereas politics concerns the relations among nation-states, or between a state and its citizens. So, as Iris Marion Young (1990) puts it, ethicists have tended to focus on intentional actions by individual persons, conceiving of moral life as "conscious, deliberate, a rational weighing of alternatives," whereas political philosophers have focused on impersonal governmental systems, studying "laws, policies, the large-scale

distribution of social goods, countable quantities like votes and taxes" (149).

For feminists, though, the line between ethics and political theory isn't quite so bright as this tradition makes out. It's not always easy to tell where feminist ethics leaves off and feminist political theory begins. There are two reasons for this. In the first place, while ethics certainly concerns personal behavior, there is a long-standing insistence on the part of feminists that the personal *is* political. In a 1970 essay called "The Personal Is Political," the political activist Carol Hanisch observed that "personal problems are political problems. There are no personal solutions at this time" (204–205). What Hanisch meant is that even the most private areas of everyday life, including such intensely personal areas as sex, can function to maintain abusive power systems like gender. If a heterosexual woman believes, for example, that contraception is primarily her responsibility because she'll have to take care of the baby if she gets pregnant, she is propping up a system that lets men evade responsibility not only for pregnancy, but for their own offspring as well. Conversely, while unjust social arrangements such as gender and race invade every aspect of people's personal lives, "there are no personal solutions," either when Hanisch wrote those words or now, because to shift dominant understandings of how certain groups may be treated, and what other groups are entitled to expect of them, requires concerted political action, not just personal good intentions.

The second reason why it's hard to separate feminist ethics from feminist politics is that feminists typically subject the ethical theory they produce to critical political scrutiny, not only to keep untoward political biases out, but also to make sure that the work accurately reflects their feminist politics. Many nonfeminist ethicists, on the other hand, don't acknowledge that their work reflects their politics, because they don't think it should. Their aim, by and large, has been to develop ideal moral theory that applies to all people, regardless of their social position or experience of life, and to do that objectively, without favoritism, requires them to leave their own personal politics behind. The trouble, though, is that they aren't really leaving their own personal politics behind. They're merely refusing to notice that their

politics is inevitably built right in to their theories. (This is an instance of Lindemann's ad hoc rule Number 22: Just because you think you are doing something doesn't mean you're actually doing it.) Feminists, by contrast, are generally skeptical of the idealism nonfeminists favor, and they're equally doubtful that objectivity can be achieved by stripping away what's distinctive about people's experiences or commitments. Believing that it's no wiser to shed one's political allegiances in the service of ethics than it would be to shed one's moral allegiances, feminists prefer to be transparent about their politics as a way of keeping their ethics intellectually honest. . . .

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Hilde Lindemann: What Is Feminist Ethics?

1. Near the beginning of her piece, Lindemann claims that studying ethics “doesn’t improve your character.” Do you think she is right about this? If so, what is the point of studying ethics?
2. What problems does Lindemann raise for the view that feminism is fundamentally about equality between men and women? Can these problems be overcome, or must we admit that feminism is concerned with equality?
3. What is the difference between sex and gender? Why does Lindemann think that gender is essentially about power? Do you think she is right about this?
4. Lindemann claims that feminist ethics is “*normative* as well as descriptive.” What does she mean by this? In what ways is feminist ethics more descriptive than other approaches to ethics? Do you see this as a strength or a weakness?
5. What is meant by the slogan “The personal is political”? Do you agree with the slogan?
6. Lindemann claims that one should not set aside one’s political views when thinking about ethical issues. What reasons does she give for thinking this? Do you agree with her?

2

Moral Problems

Abortion

JUST THE FACTS

An **abortion** is the deliberate termination of a pregnancy. Depending on the point at which an abortion is performed, this procedure will result in the death of a **zygote**, **embryo**, or **fetus**.

At **conception**, a sperm enters and fertilizes an egg; together, they form a zygote, which (in humans) consists of a single cell with twenty-three chromosomes from the mother and twenty-three from the father. The zygote rapidly divides, from one to two cells, from two to four, and so on. After just a few days, and under normal conditions, it will lodge itself in the woman's uterus, where, at around a week and a half, it will be known as an embryo. The embryonic stage of development lasts for seven more weeks, at the end of which time the growing organism is known as a fetus.

Zygotes are invisible to the naked eye, as are embryos during the earliest stages of their development. At about a month an embryo is a bit smaller than a grain of rice; at two months (the beginning of the fetal stage), the fetus is about an inch in length and weighs about one-thirtieth of an ounce. At this point it has begun to develop bones and limbs and has a heartbeat. By the conclusion of the first **trimester** (a stage of three months), all of a healthy fetus's organs are present. The fetus is now about four inches long and weighs about an ounce.

Viability is the point at which a fetus can survive outside of the mother's womb. Medical consensus is that twenty weeks after conception marks the earliest point at which a fetus can do this—and even then, most fetuses born this early will die, and most who survive will do so with severe impairments.

There is also broad medical and scientific consensus that fetuses are incapable of experiencing pain until twenty-four or twenty-five weeks after conception. The studies that bear on this question are not decisive—after all, the fetus cannot tell us whether it is in pain or not. So scientists have had to make inferences based on other things they know, such as which elements of the brain and nervous system are responsible for the experience of pain in infants and young children. These elements are not sufficiently developed in a human fetus until the start of the third trimester, give or take a week.

Abortions can be performed either surgically or medically. The most common form is a surgical abortion, which involves inserting a thin, plastic tube into a woman's uterus and suctioning the embryo or fetus out of the uterine lining with a vacuum pump. Medical (i.e., non-surgical) abortions occur when a woman takes a prescribed drug or mix of drugs that operate to expel the embryo or fetus from the uterus.

Both forms of abortion are extremely safe. The vast majority of abortions require only outpatient visits to a medical facility and involve either no anesthesia or only local anesthetics. The risk of dying from a medically supervised abortion in the United States is less than 1 in 100,000; the odds of a woman dying from giving birth are 14 times greater (i.e., about 1 in 7,000). Studies have shown no general long-term medical or psychological harms from having had an abortion. Those who oppose abortion often point to cases of women who have come to regret their decision. There is no denying that such cases exist. But, on the other side, there are many millions of women who have experienced

no regret from having had an abortion. Studies do not show a higher incidence of lasting psychological (or physical) harm on the part of women who have had abortions as compared with those who have not.

In 2012, about 700,000 abortions were performed in the United States. (This figure, taken from the Centers for Disease Control, excludes data from three states, so the exact number must be somewhat higher). Ninety-two percent of those abortions occurred during the first trimester; a bit more than 7 percent occurred during the second trimester; fewer than 1 percent took place during the third. The number of abortions in the United States has decreased steadily over the past three decades. There are many factors cited to explain this decrease, but there is broad consensus that better education about and access to birth control has had a substantial impact in reducing the number of unwanted pregnancies.

Before discussing some of the moral arguments that surround abortion, we must take note of the legal situation. Prior to 1973, each state was able to decide for itself whether to permit abortions and, if so, under what conditions. Many states simply outlawed it; others were more permissive. That all changed in 1973, when the US Supreme Court ruled in *Roe v. Wade* that a woman had a largely unlimited constitutional right to have an abortion during the first two trimesters of her pregnancy. The justices regarded viability as the crucial point at which the state may intervene to enact restrictions on abortion access, and saw the end of the second trimester as roughly the point at which a fetus might survive outside the womb.

Abortion is never mentioned in the US Constitution, but seven justices (with two dissenting) offered a two-step argument for the conclusion that women have a constitutional right to secure an abortion. The first step argued that the Constitution includes a right to privacy. This right is also unmentioned in the document itself, but Supreme Court justices had, in a series

of prior cases, reasoned that many of the protections explicitly offered in the Constitution made sense only by assuming that there was an implied right to privacy. For instance, in 1965 the Court ruled (in *Griswold v. Connecticut*) that a state law prohibiting the sale of contraceptives was unconstitutional, because it violated the right of married couples to determine for themselves the intimate details of their private life together. The word *contraceptive* never appears in the Constitution, but this was not decisive in the eyes of the justices. Indeed, there are a great many rights that Supreme Court justices have located in the Constitution—rights, for example, to use a textbook of one's choosing when educating one's children, to marry a person of a different race, to be notified of one's rights when taken into custody—even though the Constitution never explicitly says anything about these legal protections.

The second step claimed that the right to privacy extended to a woman's choice of whether to terminate her pregnancy—at least until the fetus becomes viable. The Court was influenced by a case it had decided just a year earlier, when it ruled that unmarried couples also had a constitutional right to privacy that entitled them to the use of contraception. In that ruling, Justice William Brennan wrote that “[i]f the right to privacy means anything, it is the right of the individual, married or single, to be free from unwarranted government intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”¹ This set the stage for the *Roe* decision in 1973, which extended the quoted principle to include a right to an abortion.

Since federal law always takes priority over state law, and Supreme Court rulings are the final word on what counts as federal law, the abortion rights extended in *Roe v. Wade* became the law of the land. Any state that had previously had more restrictive abortion policies was

1. *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

required to permit abortions during the first two trimesters. *Roe* allowed states to regulate abortion during the third trimester, but this has had little practical impact on the number of abortions performed in any given year. That's because less than 1 percent of all abortions occur during the last trimester; further, states allow abortions when the life of the mother or fetus is threatened by a continued pregnancy, and a great many of these late abortions fall into this class.

ARGUMENT ANALYSIS

Much of the debate about the morality of abortion has focused on whether a fetus is a human being. (From now on, I'll follow philosophical custom and use the term *fetus* to refer also to a zygote and embryo.) The thought seems to be that if we could just settle the status of the fetus, then the moral verdict about abortion will follow directly. Here is perhaps the classic anti-abortion attempt to capture the idea:

The Argument from Humanity

1. If the fetus is an innocent human being, then abortion is always (or perhaps almost always) immoral.
2. The fetus is an innocent human being.

Therefore,

3. Abortion is always (or perhaps almost always) immoral.

In support of premise 2, one might simply say that the fetus is a *human* fetus—after all, we are not talking about unborn dogs or monkeys. Further, the human fetus is a living, growing organism—although it is implanted in the mother's womb, connected via an umbilical cord, the fetus is its own individual, with its own genetic makeup. So, it seems, the fetus is a human being. Further, it is innocent of any wrongdoing. Because the fetus is not a **moral agent**—a being capable of understanding right and wrong, and then acting on the basis of that understanding—a fetus cannot act immorally, even if it can, in some cases, cause harm. (If this

sounds odd, compare: cars and lions and trees can sometimes cause harm, but they cannot act immorally. The explanation is that such things are not moral agents.)

Premise 1 can be supported by a very plausible general moral principle: it is wrong to deliberately kill innocent human beings. Now, there *might* be some rare exceptions to this principle—I leave it to you to decide this matter. Still, those rare cases aside, targeting innocent human beings for death certainly seems to be the height of immorality. If, as premise 2 says, a fetus is indeed an innocent human being, then it follows that abortion is always, or perhaps almost always, immoral.

This is probably the most popular line of argument against abortion. But it is not without its problems. These stem from the fact that the term *human being* is **ambiguous**—it has more than one meaning. There are at least two senses of the term used in these debates, and members of each camp tend to use their preferred meaning. The result is that a lot of the discussions about the morality of abortion end up going nowhere.

For our purposes, the important question is whether a fetus is an innocent human being. And that depends on how we define humanity. On a *biological* account, a human being is any member of the species *Homo sapiens*. If being human is a biological concept, then premise 2 is clearly true, since fetuses of our species are certainly innocent of any wrongdoing.

But if we give a purely biological definition of humanity, then premise 1 **begs the question** against pro-choice opponents. In other words, premise 1 assumes the truth of the conclusion it is meant to support. It does not provide an independent reason for rejecting the pro-choice position. Those who advance premise 1 without any supporting argument for it are preaching to the choir, since only those who already oppose abortion will accept this first premise. If humanity is defined in purely biological terms, then the first premise needs a lot of defense—indeed, as much defense as the argument's conclusion.

To see this, imagine pro-choice advocates who admit that, on a biological reading of *human being*, premise 2 is true. Yes, they'd say, the fetus is a member of our species and hasn't done anything wrong. So it's an innocent human being. But in that case, premise 1 is problematic. Pro-choicers could say that the moral rule against killing innocents is not directed at all members of our species. Rather, that moral rule is intended to protect **persons**: beings who are (at a minimum) rational, self-aware, possessed of emotions, able to reflect on the value of their experiences, and capable of communicating in original, sophisticated ways with one another. Science fiction tales aside, all the persons we know are in fact biological human beings. So it's easy to slide from a moral rule against killing persons to a moral rule against killing humans. Still, according to this pro-choice critic of the Argument from Humanity, all that means is that it is easy to make moral mistakes!

Pro-choicers might go on to say that what makes us special is not the fact that we are a member of a certain species, or the fact that we have a certain set of chromosomes in our cells, but rather the features that make us persons. We can't even see a zygote or an early embryo with the naked eye. More than 90 percent of abortions are performed on fetuses that are less than an inch long, that can't think, can't communicate, and have no emotions. A woman's interests in determining how her life is going to be lived are *very* important. Given the significance of these interests, and given that a human fetus is not a person, there is nothing immoral about abortion.

The point here isn't to assess this pro-choice reply—we'll do that soon enough. The point is rather to show how the Argument from Humanity involves an ambiguity about what it means to be a human being, and how that ambiguity makes real trouble for the argument. If we go with a biological understanding of humanity, then premise 2 is secure—but premise 1 needs a lot of further support, especially in light of the criticisms just aired by pro-choicers.

Alternatively, we might think of humanity not as a biological category, but rather as a *psychological* one. On such a view, being human is the same thing as being a person. We often use 'human' and 'person' interchangeably, so this is totally fine. But remember that in this context, 'person' is a technical term—it denotes a being who can think rationally, feel emotions, communicate in sophisticated ways, and so on. On this reading, premise 1 of the Argument from Humanity is very plausible—it is (almost) always wrong to kill innocent persons. But premise 2 is false—fetuses are not persons in the sense currently under discussion. They possess none of the laundry list of features that make someone a person. So, if 'human' = 'person,' the Argument from Humanity is unsound, since its second premise is false.

So the term *humanity* is ambiguous. This isn't any kind of problem, so long as we are very clear about which meaning we are relying on. But once we *are* clear about its different meanings, and make sure that the same meaning is being used in both premises, we can see that the Argument from Humanity is bound to land in trouble.

Now this hardly signals the downfall of the anti-abortion position. After all, those who oppose abortion have offered other arguments to support their views. Another familiar one is

The Argument from Potential

1. If the fetus has the potential to be a person, then it has the same moral status as a person.
2. Most fetuses have the potential to be a person.

Therefore,

3. Most fetuses have the same moral status as a person.
4. A person's moral status includes having a broad set of fundamental rights—including the **right to life** (the right not to be killed).

Therefore,

5. Most fetuses have a broad set of fundamental rights—including the right to life.
6. If a fetus has a right to life, then aborting it is immoral.

Therefore,

7. In most cases, abortion is immoral.

This argument has just four premises: 1, 2, 4, and 6. Premise 2 is uncontroversial: though some fetuses are lost due to miscarriage, most fetuses will grow to be healthy infants, who in turn will become persons like you and me. So most fetuses have the potential to become persons, which is what premise 2 says. Premise 4 is also highly plausible—though there are a lot of controversial details about how precisely to specify the moral status that you and I enjoy, it is widely accepted that we have a set of basic moral rights that protect our interests and choices. These rights include the right to life.

So the argument really hinges on premise 1 and premise 6. Now premise 6 may also seem obviously true: if the fetus has a right to life, then abortion is wrong, since a right to life is a protection against being killed, and abortion involves killing the fetus. As we'll soon see, things are a little trickier than they may seem. But before we investigate the trickiness, let us consider premise 1: the claim that if the fetus has the potential to be a person, then it has the same moral status as a person.

The best defense of this premise seems to be this general principle:

(P) If X has the potential to be Y, then X has the same moral status as Y.

But this principle is false. Just before the election in November 2016, Hillary Clinton had as much potential to become the president as a normal fetus does to become a person. Still, that potential did not entitle her to the moral status of the president—after all, she did not emerge victorious.

There are lots of other counterexamples to (P). A talented young actor may have the potential to become a star—that doesn't by itself give him celebrity status. A promising law student has the potential to become a judge—but she isn't yet qualified to send people to jail. I might buy up 80 percent of the lottery tickets this month, and so have great potential to win, but that does not yet entitle me to the jackpot. For a very close parallel to the abortion case, think, for example, of a dog embryo. It has just as much potential to become a dog as a human embryo has to become a person. But a dog embryo lacks the moral status of a puppy or a dog—we have various moral duties to dogs that we do not have to their embryos.

Now this doesn't show that premise 1 is false. But it does show that what is probably its best support, principle (P), is mistaken. So unless some other, better support for premise 1 can be found, we should not regard the Argument from Potential as sound.

Here is another familiar argument against abortion:

The Argument from Ensoulment

1. It is immoral to kill any innocent being who has a soul.
2. All human fetuses are both innocent and have a soul.

Therefore,

3. It is always immoral to kill a human fetus.

To assess the premises of this argument, we need to know what it is to have a soul. On most views, a soul is what makes you you—it is what makes you the unique individual you are. Most views also share the idea that the soul is immaterial—you can't touch it or see it; you can't pinpoint its exact location in space. I think that these are the two essential elements of being a soul.

Now one can have either a religious or a nonreligious view of the soul. On a nonreligious view, it seems to me that the soul is the equivalent of a personality. My personality is what makes

me *me*. Further, you can't touch my personality or locate it at any particular point in space. But on this view, premise 2 is false, since fetuses, perhaps through an entire pregnancy, but certainly for the first couple of trimesters, lack personalities. They aren't funny or demanding or fastidious or moody or . . . anything, really.

If one holds to a religious view, and denies that a soul is a personality but rather something given by God to each zygote at conception, then lots of questions arise. If the soul is something other than a personality, what is it? How is it related to the cells of a zygote or embryo or fetus? Why think that God has, in fact, endowed each of us with a soul (or that God exists in the first place)? If God has given each human zygote a soul, does every other living thing have a God-given soul? If not, why not? Even if God endows all human zygotes with a soul, why think that God prohibits abortion, rather than giving priority to the important interests of a woman who wants to end her pregnancy? (After all, neither the Hebrew nor the Christian scriptures ever mention abortion.) It's true that some religious traditions believe that God has forbidden abortion—but many others reject this view. What evidence can be used to settle such a dispute?

Lots of questions here—and there are many others we could ask. But since this is not a book of theology, we will move on, noting only that if one hopes to utilize the Argument from Ensoulment, one needs answers to these (and other) questions.

Another argument opposing abortion is what we might call

The Infanticide Argument

1. If infanticide is immoral, so too is abortion.
2. Infanticide is immoral.

Therefore,

3. Abortion is immoral.

Some people might resist premise 2—many cultures have thought it perfectly fine to kill

newborns. But most of us recoil at such a thought, and let us suppose that we are right to do so. (If we are wrong, then the argument collapses, because its second premise would be false.) So let's take premise 2 for granted.

But what is the thinking behind premise 1? It is a form of **sorites** reasoning. **Sorites** is the ancient Greek word for “heap,” and it has given rise to a conundrum about how to draw a principled line between two things that exist along a spectrum. I know that sounds pretty vague, so let's make it concrete. In the ancient riddle, one starts with a grain of sand. Is this a heap? No. Now consider this principle: if X grains of sand is not a heap, then $X + 1$ grains is not a heap. That seems perfectly plausible—one grain of sand cannot make the difference between a heap and something that is not a heap. But note that if you start with a single grain of sand, and add one at a time, then, by this reasoning, you will *never* get a heap of sand—even if you took the time, say, to add 50 trillion grains of sand to the original one! So something has gone wrong. But it's puzzling, right? There are only two premises to a sorites argument: the status premise (one grain isn't a heap), and the arithmetic premise (adding a grain doesn't change something from a nonheap to a heap). And they both seem totally plausible.

Now what does this have to do with abortion? Well, consider this: suppose infanticide is wrong—it's wrong to deliberately kill infants. It seems that an hour should not make a difference in the moral status of a being. If it's wrong to kill a newborn, then, it seems, it would have been wrong to kill the fetus one hour prior to birth. After all, the fetus at that point has all of the same features as the newborn—except for its location. And one's location doesn't seem to be a morally important feature. But if it's wrong to kill a fetus one hour prior to birth, it's wrong to kill a fetus two hours prior to birth. And if it's wrong to kill a fetus two hours before birth, then it's wrong to kill it three hours before birth. You see where this is going. By continually applying the arithmetic premise that says that an

hour cannot make a difference in the moral status of a human being, we will eventually be forced to say that if it is wrong to kill a newborn, then it is wrong to kill a fetus, embryo, or zygote. This is the support for premise 1.

It's very hard to know where this line of reasoning goes wrong, since its initial assumption (that infanticide is immoral) and its arithmetic premise both seem very appealing. Still, this argument for premise 1 does go wrong somewhere, as we can see from its original version. There is a difference between a grain of sand and a heap of sand, even if we can't point to a precise moment when adding a single grain turns a small collection of sand into a heap. There is a difference between an acorn and an oak, between day and night, between a dog zygote and a puppy, even if we are unable to identify a precise moment when one transforms into the other.

As a result, we don't yet have good reason to accept premise 1 of the Argument from Infanticide. The best argument we've seen for it depends on sorites reasoning, which, as we've just seen, generates lots of false conclusions (e.g., that a pile of 50 trillion grains of sand is not a heap). Ironically, though, some opponents of abortion have sought support for premise 1 by considering the implications of a standard *pro-choice* argument:

The Argument from Personhood

1. If a being is not a person, then it lacks any moral rights.
2. Fetuses aren't persons.

Therefore,

3. Fetuses lack moral rights.
4. If a being lacks moral rights, then it is morally acceptable to treat it in any way we like—including killing it.

Therefore,

5. It is morally acceptable to kill fetuses.

We'll assess the premises of this argument in a moment. But before we do, you might have picked up on a problem, one that is directly related to the

Infanticide Argument. The problem is simple: infants aren't persons, either. They aren't rational; they aren't self-aware; they can't evaluate the attractions of various options. So if the Argument from Personhood is sound, and abortion is morally OK, then so too is infanticide. (Exercise: just replace "fetuses" with "infants" in the argument and see what happens.) That is just what premise 1 of the Infanticide Argument says.² And premise 2 of that argument is true, as we've seen. This puts the pro-choicer in a nice pickle—if she accepts the Argument from Personhood, which permits abortion, then it seems she must accept the Infanticide Argument, which forbids it! That is a contradiction.

The best route to take here is to reject the Argument from Personhood. As we have seen, its second premise is true: persons are individuals who have a set of pretty sophisticated cognitive abilities, which fetuses (and infants) lack. But there is an issue with premises 1 and 4. It is not easy to know whether premise 1 is true—that depends on some hard questions about the nature of moral rights and the conditions under which we possess them. We can't undertake that analysis here, so let's consider our options.

Perhaps premise 1 is false. In that case, this argument fails. Now suppose premise 1 is true. Then, because premise 2 is true, premise 3 would have to be true as well: fetuses lack moral rights. But that's not enough to show that abortion is morally OK: the argument also requires premise

2. Actually, this is the contrapositive of premise 1 of the Infanticide Argument. Here is a reminder from the logic lesson in Chapter 2. A conditional is an 'if P, then Q' claim. Its contrapositive is: 'If Q is false, then P is false.' A conditional and its contrapositive are logically equivalent. That means that if one is true, the other must be true; if one is false, then the other must be false as well. If the Personhood Argument is sound, then the following conditional is true: "if abortion is morally OK, then so too is infanticide." Its contrapositive is: "If infanticide is immoral, then so too is abortion." And that is premise 1 of the Infanticide Argument. So, if the Personhood Argument is sound, then premise 1 of the Infanticide Argument is true.

4 to be true. But premise 4 is totally implausible. Dogs aren't persons; neither are monkeys, apes, or elephants. On this line of reasoning, premise 4 would tell us that we are morally allowed to treat them in any way we like—for example, starving them for the sadistic pleasure it affords us or torturing them just for sport. That's grossly immoral, which reflects the larger truth that there *are* moral limits to what we can do to nonpersons. It's not always easy to determine what those limits are—see Chapter 13 for in-depth discussion—but so long as there are limits, premise 4 is false. And so the Argument from Personhood is unsound.

The good news for pro-choicers is that once they abandon this argument, they are no longer forced to accept premise 1 of the Infanticide Argument. The bad news for pro-choicers is that they are now in need of a better argument that can justify their position. A famous possibility comes from Judith Jarvis Thomson, whose article on abortion, first published in 1971 and reprinted here, nearly single-handedly sparked widespread interest in the philosophical questions surrounding the morality of abortion.

Thomson did what few pro-choicers have been willing to do—namely, to grant, for purposes of argument, that fetuses have a moral right to life. You might think that once that's in place, it's game over for the pro-choicer. Look back at premise 6 of the Argument from Potential—it says that if a fetus has a right to life, then abortion is immoral. Isn't that just obviously true?

In Thomson's remarkable article, she directly challenged that view with an argument from analogy. She invited us to imagine a talented violinist in need of a life-saving blood transfusion—and only you have the right blood type. The Society of Music Lovers kidnaps you while you're asleep and hooks you up to a machine that will help transfuse him, with the result that if you were to unplug, you'd kill him. Luckily, say the kidnappers, the transfusion takes only nine months, at the end of which time he'll be completely cured. Now the violinist is a person with a right to life. Further, he's innocent of any wrongdoing—he

didn't put the Society members up to this task. So he has a right to life. And that means it would be wrong to kill him. And if you unplug, then you kill him. So you are morally forbidden to unplug.

Thomson thinks that this verdict is obviously mistaken: while it would be very nice of you to remain plugged to the violinist, it is not morally required. You are morally permitted to unplug if you want. In this situation, you are morally permitted to kill an innocent person with a right to life.

Now this is an obviously absurd tale, but Thomson offers it in the service of

Thomson's Argument from Analogy

1. If it is morally permitted to unplug from the violinist, then it is morally permitted to "unplug" from one's fetus, that is, to terminate one's pregnancy.
2. It is morally permitted to unplug from the violinist.

Therefore,

3. It is morally permitted to terminate one's pregnancy.

Thomson doesn't do much to argue for premise 2—it seems to her obviously correct. In my experience (having taught this paper many times), I've found that most readers agree with her.

But there is usually a lot of pushback regarding premise 1. The clearest parallel with the violinist case is one in which a woman becomes pregnant from having been raped. Just as you did not consent to be attached to the violinist, a rape victim did not consent to the actions that led to the fetus being dependent on her for its life. The principle that explains why you are free to unplug, or a rape victim is free to seek an abortion, seems to be this:

(R) If you bear no moral responsibility for putting others in a life-threatening situation, then you are not morally required to undertake a significant sacrifice in order to keep them alive.

In the violinist case, like a case of pregnancy from rape, sustaining another's life would be **supererogatory**: praiseworthy action that is above and beyond the call of duty.

The worry for Thomson's argument is that the parallel between the violinist case and pregnancy appears to diminish once we are talking about pregnancy that arises from consensual sex. In all such cases, principle (R) no longer seems to apply; even if a woman has used a reliable form of birth control, it has seemed to many that she bears at least some moral responsibility for becoming pregnant, because she knew, or should have known, that no form of birth control is guaranteed to work. Thomson rejects this reasoning—she claims that a person is not required to take *every possible* precaution to avoid creating a situation that makes someone else vulnerable to harm. She is only required to take all *reasonable* precautions. It's not reasonable to ask a woman who does not want children to remain celibate for her entire life—that is asking too much. If that is right, then if a woman uses a reliable form of contraception, she has done all that is reasonable to do in order to prevent a pregnancy. In that case, says Thomson, she is not morally responsible for her pregnancy, and so, by principle (R), not morally required to carry her pregnancy to term.

This argument by Thomson has attracted a lot of critical attention—you be the judge of whether her argument works. But whatever the verdict, it cannot justify permitting abortion in a case in which a woman does bear some moral responsibility for her pregnancy—as, for instance, where she engages in consensual sex without birth control. For those who want to justify abortions in those cases, they will need another argument.

Perhaps the best option takes inspiration from the Argument from Personhood, while trying to correct its problems. It is wrong to suppose that we are morally permitted to treat nonpersons in just any way we like. Still, it *is* sometimes morally acceptable to give the interests of persons priority over those of nonpersons. More strongly, there do seem to be cases where I am allowed to

kill nonpersons for my own benefit. For example, if I am walking in a forest and am attacked by a bear—it's him or me—then I may kill it. If I live in an inhospitable area and have to choose between starving or fishing for my food, then I may kill some of the local salmon in order to survive.

Reflecting on these cases, it seems that we might be able to locate a different basis for the pro-choice position:

The Protection of Interests Argument

1. If the only way to protect a person's very important, morally legitimate interests is by killing a nonperson, then it is permissible to do so.
2. In almost all cases of unwanted pregnancies, the only way to protect a woman's very important, morally legitimate interests is by killing a nonperson—the fetus.

Therefore,

3. In almost all cases of unwanted pregnancies, it is permissible to kill the fetus.

Premise 2 is true. A woman's interest in living a life as she chooses and plans, according to her own conception of what is valuable and significant, is both very important and morally legitimate. For women who want to terminate their pregnancies prior to viability—in other words, 99 percent of the women in the United States who do seek an abortion—the only way to protect this interest is to allow them the abortion they seek.

Note that things are different once a fetus is viable. If a fetus can remain alive outside the womb, then a woman whose interests require her pregnancy to be terminated can undergo a **Cesarean section** (an operation that involves a surgical incision through the abdomen and uterus to remove the fetus from the womb, while seeking to preserve its life). The Protection of Interests Argument does not license a woman to abort her fetus once it is viable, so long as killing the fetus is not necessary to protecting the woman's interests.

That leaves premise 1 of the argument to consider. The earlier examples of defending oneself

in the face of a bear attack, or avoiding starvation by fishing, help to support that premise. But all it takes to falsify a moral claim is one counterexample. Premise 1 is false if there is even a single case in which the only way to protect a person's very important, morally legitimate interests is to kill a nonperson, but doing so would be immoral anyway. Can you think of any such cases?

CONCLUSION

Abortion remains a politically contentious issue, but public discussions rarely reflect an appreciation of the complexities of the moral arguments on offer. Opponents of abortion are often content to cite the fetus's humanity as grounds for restricting abortion, failing to acknowledge the ambiguity of the notion of "humanity" and the difficulties that beset the Argument from Humanity. Citing a fetus's potential to develop into a person is also a precarious basis for defending opposition to abortion. In a selection reproduced in this chapter, Don Marquis offers a critique of abortion that, he claims, is different from an appeal to potential. Have a look and see whether you agree. Opponents of abortion have also sometimes relied on a line-drawing argument that cites the difficulties of identifying a point that distinguishes the newborn, who is assumed to enjoy a right to life, from a fetus at increasingly earlier stages of development. It's difficult to pinpoint exactly what goes wrong with this argument, but since it is structurally identical to other sorites arguments that are unsound, there is reason to think that this one is, too.

On the other side, those who defend a pro-choice position have often assumed that the fetus is a nonperson and so is eligible for any treatment we care to give it. As we have seen, this would give us too much license to treat nonpersons in immoral ways. The work of Judith Thomson has cast into doubt the idea that the morality of abortion hinges on whether the fetus possesses a right to life, but as we have seen, her argument is strongest only where defending the permissibility of abortion in cases of rape. The Protection

of Interests argument seems to have the best chance of justifying a broader range of morally permitted abortion, but its success depends on whether persons, in order to defend their very important and morally legitimate interests, are allowed to kill nonpersons.

ESSENTIAL CONCEPTS

Abortion: the deliberate termination of a pregnancy.

Ambiguous: having more than one meaning.

Cesarean section: an operation that involves a surgical incision through the abdomen and uterus to remove the fetus from the womb, while seeking to preserve its life.

Conception: the point at which a sperm fertilizes an egg and a zygote is formed.

Embryo: the growing offspring that was once a zygote; the embryonic period of gestation lasts from roughly two weeks to eight weeks after conception.

Fetus: the growing offspring that was once an embryo; the fetal period begins at about the eighth week and lasts for the duration of the pregnancy.

Moral agent: a being capable of understanding right and wrong, and then conforming its behavior to that understanding.

Persons: beings who are rational, can think, feel emotions, feel pain and pleasure, reflect on the value of their experiences, and communicate in original, sophisticated ways with one another.

Right to life: the right not to be killed.

Sorites: a form of argument that relies on the difficulty of drawing a principled line between two things that exist along a spectrum.

Supererogatory: praiseworthy action that is above and beyond the call of duty.

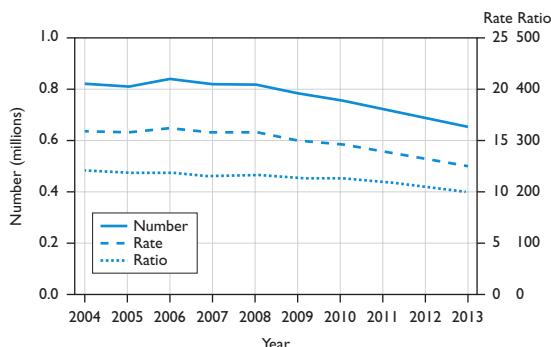
Trimester: one of three three-month stages of a full-term pregnancy.

Viability: the point at which a fetus can survive outside of the mother's womb.

Zygote: the fertilized egg that marks conception and begins pregnancy.

STAT SHOT

1. In 2011, nearly half (45 percent) of all pregnancies among US women were unintended. That same year, about 40 percent of unintended pregnancies in the United States were terminated by abortion.¹
2. From 2004 to 2013, the number of reported abortions in the United States decreased by 20 percent (Figure 12.1).



* Number of abortions per 1,000 women aged 15–44 years.

† Number of abortions per 1,000 live births.

‡ Data are for 47 reporting areas: excludes California, Louisiana, Maryland, New Hampshire, and West Virginia.

Figure 12.1. Number, rate,* and ratio† of abortions performed, by year—selected reporting areas,‡ United States, 2004–2013.

Source: https://www.cdc.gov/reproductivehealth/data_stats/abortion.htm

3. In 2000, the FDA first approved a drug (RU-486, also known as mifepristone)

for nonsurgical abortion. Nowadays this is used in combination with the drug misoprostol.

4. In 2013, 22 percent of all US abortions were medical (i.e., nonsurgical).²
5. Eighty-seven percent of all US counties have no abortion clinic.³
6. Estimates of the number of illegal abortions in the United States during the 1950s and 1960s range from 200,000 to 1.2 million per year. Prior to *Roe v. Wade*, as many as 5,000 American women died annually as a direct result of illegal abortions.⁴
7. Approximately 47,000 women die around the world from complications of unsafe abortion each year. Deaths due to illegal abortion constitute nearly 13 percent of all maternal deaths.⁵

1. <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>

2. https://www.cdc.gov/reproductivehealth/data_stats/abortion.htm

3. *Perspectives on Sexual and Reproductive Health* 43, no. 1 (2011), pp. 41–50, doi:10.1363/4304111

4. <http://www.ourbodiesourselves.org/health-info/impact-of-illegal-abortion>

5. <https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide>

Cases for Critical Thinking

Sex-Selection Abortions

Ever since the late 1950s, medical professionals have used ultrasound technology to provide an

image of the fetus within the womb. If conditions are favorable, it is possible by the middle of the second trimester to determine the sex of the fetus. Recently, however, a highly reliable blood test has been developed that can enable doctors

to determine the sex of the fetus as early as week seven.¹

These tests have been developed to provide vital information to parents about the well-being of their fetuses. But the tests have also been used by millions of potential parents to select fetuses for abortion just because they are one sex or the other. These are known as sex-selection abortions. In principle, male fetuses can be subject to sex-selection abortion, and doubtless some of them are. But in practice, female fetuses are overwhelmingly the ones selected on the basis of their sex to be aborted.

According to the Population Research Institute, 24 million sex-selection abortions have occurred since 2000.² Almost all have targeted female fetuses. There are often cultural and economic pressures that explain this. In India, for instance, parents of young women are expected to provide a dowry, which is an expensive proposition that many cannot afford. In China, a prolonged one-child policy, combined with elements of sexism within the predominant culture, provided incentive for many parents to terminate pregnancies when they discovered that it was to be a girl.

In areas where maternal health is generally good, the natural ratio of boys to girls at birth is 105:100—for every 100 girls born, there will be 105 boys. India's ratio is 112:100. China's is 116:100. In several regions of China, the ratio is 130:100.³ This differential adds up quickly in the world's most populous countries. In China, for instance, there are 33 million more men than women in the population.⁴

This has serious implications for a society. On average, men are far more likely than women to perpetrate violent crimes. The entrenched sexism in many of the societies where sex-selection abortions are widespread is likely to become harder to combat with the numbers tilting as they are. With many more men than women in society, the marital hopes of many men are bound to be frustrated.

1. Stephanie A. Devaney, Glenn E. Palomaki, Joan A. Scott, "Noninvasive Fetal Sex Determination Using Cell-Free Fetal DNA: Systematic Review and Meta-analysis."

Journal of the American Medical Association (2011) 306, no. 6 (2011):627–636. doi:10.1001/jama.2011.1114

2. <https://www.pop.org/project/protect-girls-sex-selective-abortion>.
3. Tania Branigan, "China's Great Gender Crisis." *The Guardian*, November 2, 2011.
4. <http://www.rfa.org/english/news/china/gender-01222015125826.html>.

Questions

1. Are there any circumstances in which a sex-selection abortion is morally justified? If so, what are they?
2. Various laws have been enacted to oppose sex-selection abortions. Is it feasible or otherwise good policy to criminalize abortions on the basis of the parents' motivations?
3. Many pro-choice feminists have been conflicted about the moral and legal status of sex-selection abortions. On the one hand, they support a right to choose. On the other, such abortions reinforce the status of girls and women as second-class citizens. How should pro-choice feminists think about sex-selection abortion?
4. In addition to those mentioned earlier, what sorts of harmful results can you anticipate from the practice of allowing sex-selection abortions? Are these sufficiently bad to justify outlawing the practice?

Abortion and Rape

In 2012, Todd Aiken, a Missouri Republican, was involved in a close race for a seat in the US Senate. During his campaign, he gave a televised interview during which he stated that pregnancy after rape "is really rare. If it's a legitimate [sic] rape, the female body has ways to try and shut that whole thing down."¹ James Leon Holmes, a federal judge in Arkansas, has written that "concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami."²

It is unclear how widespread such views are, but there is no medical support for them and much

medical evidence against them. A widely cited study³ reports that there is a 5 percent chance that a rape victim will become pregnant as a result of having been raped. The study also reported that over 32,000 women in the United States each year become pregnant as a result of rape.

Some opponents of abortion argue that no abortions are morally permissible. They support their view by claiming that the fetus is possessed of a right to life from the moment of conception, and that the way in which a woman becomes pregnant has no bearing on the moral status of a fetus. As they see it, whatever endows us with a right to life is possessed by the zygote at conception, and this is sufficient to show that abortion is immoral. However, even many who are otherwise opposed to abortion are willing to allow for exceptions not only in cases of rape but also of incest.

1. <http://usatoday30.usatoday.com/news/washington/story/2012-08-19/todd-akin-rape/57146944/1>.
2. <http://www.nytimes.com/2003/04/11/us/attack-on-judicial-nominee-leads-panel-to-delay-vote.html>.
3. <https://www.ncbi.nlm.nih.gov/pubmed/8765248>.

Questions

1. Though most cases of incest are also cases of rape, some are not. For those cases of consensual incest, what basis would there be for opponents of abortion to grant an exception to their position?
2. Judith Jarvis Thomson argues that even if the fetus has a right to life, abortion may be permissible, especially in cases of pregnancies arising from rape. Do you find her line of reasoning plausible? Why or why not?
3. Other standard exceptions to prohibitions on abortion include allowing abortions in order to save a woman's life or to prevent the birth of a child whose medical status is bound to yield a terrible quality of life. Is either of these exceptions plausible? For those who oppose abortion, are there any legitimate exceptions to a general prohibition on abortion? If so, what are they, and what justifies these exceptions?

Defunding Planned Parenthood

Planned Parenthood is a nonprofit organization designed to aid women and men in making informed choices about becoming parents. It is the largest provider of prenatal and preventative women's health care in the country. According to its 2014–2015 annual report, Planned Parenthood and its affiliates provided over 4 million tests for sexually transmitted diseases, nearly 3 million contraception services, over 680,000 cancer screenings and prevention services, and over a million pregnancy tests.¹

Planned Parenthood is also the largest abortion provider in the United States, performing about 327,000 abortions in a twelve-month period across 2013–2014. This has led to repeated calls from some legislators to withdraw all federal funding from the organization. It has long been the case that federal funds have been forbidden from being used for abortions, except in cases of rape, incest, or those in which a woman's life or health is endangered by carrying her pregnancy to term. Planned Parenthood receives about \$500 million per year from the federal government—not as a direct grant, but rather indirectly, via Medicaid and Title X reimbursements for services provided to lower income patients. These funds are used to provide basic health care, contraceptives, and prenatal care for those who cannot otherwise afford it.

In the period between 2011 and 2016, at least 162 abortion clinics closed their doors across the country.² Many (though far from all) of these closures resulted from so-called TRAP (Targeted Regulation of Abortion Providers) laws, which are designed to effectively shut down abortion clinics under the guise of ensuring women's health. These laws require clinics to secure and maintain a level of staff or equipment that is so expensive as to make it impossible, practically speaking, for many to keep their doors open. The American Medical Association and the American College of Obstetricians and Gynecologists, among other medical organizations,

have judged these requirements to be unnecessary to protect women's or fetal health.³ Though some of the most extreme TRAP measures were struck down by the US Supreme Court in 2016, twenty-five states still have such laws.⁴

Clinics that provide abortions rarely do only that—as noted earlier, Planned Parenthood clinics also provide an important variety of other services. If laws are enacted to prevent Medicaid and Title X reimbursement to Planned Parenthood for its services, this will certainly result in the closing of many of its clinics. This will surely result in fewer legal abortions being performed in the United States. But it will also mean that fewer girls and women will have access to basic medical and contraceptive services across the country, leading to an overall decrease in the quality of medical care for women and girls and an increase in the number of unwanted pregnancies.

1. Planned Parenthood Federation of America Annual 2014-15 Report: https://www.plannedparenthood.org/files/2114/5089/0863/2014-2015_PPFA_Annual_Report_.pdf.
2. <https://www.bloomberg.com/news/articles/2016-02-24/abortion-clinics-are-closing-at-a-record-pace>.
3. <http://www.acog.org/About-ACOG/News-Room/News-Releases/2013/ACOG-and-AMA-File-Amicus-Brief>.

4. Details of the TRAP regulations can be found at <https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers>.

Questions

1. How would a consequentialist (see Chapter 5) assess the question of whether to defund Planned Parenthood?
2. Because Planned Parenthood provides so many contraceptive services, it does a great deal to prevent unwanted pregnancies, and so reduce the demand for abortions in the first place. Might a law to prevent federal reimbursements for all Planned Parenthood services therefore increase the number of unwanted pregnancies, and so the demand for abortion?
3. If abortion is, in most cases, morally acceptable, then defunding Planned Parenthood would be a very bad thing. But suppose that abortion is immoral in most cases. On this assumption, Planned Parenthood is engaged in a lot of wrongful conduct. But it is also engaged in a lot of good conduct, by providing essential medical and contraceptive services. How should the government treat organizations that do a lot of good if those organizations also (per the assumption here) do a lot of harm?

READINGS

An Almost Absolute Value in History

John Noonan

John Noonan presents a variety of now-classic arguments against the moral permissibility of abortion. One of these is an argument from potential: since the fetus has the potential to be a mature human being, then it has the same moral status as you or I. Another is an argument from humanity: it is always wrong to kill an innocent human being, except perhaps in self-defense; a fetus is an innocent human being; therefore,

it is wrong to kill a fetus except, perhaps, in self-defense. Yet another argument is a line-drawing one: there is no moment prior to birth where one can identify the point at which the fetus acquires a right to life; since newborns have a right to life, so too do embryos.

Noonan devotes some time to critiquing alternative points that might mark the division between fetuses that do, and those that do not, have a right to life. Viability is one such point; having sense experiences (sentience) is another; being the object of emotional attachment is yet another; being socially recognized one more. Noonan criticizes each of these criteria of independent moral importance; the result, he says, is that there is no point, other than conception, that marks the acquisition of such importance.

The most fundamental question involved in the long history of thought on abortion is: How do you determine the humanity of a being? To phrase the question that way is to put in comprehensive humanistic terms what the theologians either dealt with as an explicitly theological question under the heading of "ensoulment" or dealt with implicitly in their treatment of abortion. The Christian position as it originated did not depend on a narrow theological or philosophical concept. It had no relation to theories of infant baptism. It appealed to no special theory of instantaneous ensoulment. It took the world's view on ensoulment as that view changed from Aristotle to Zaccaria. There was, indeed, theological influence affecting the theory of ensoulment finally adopted, and, of course, ensoulment itself was a theological concept, so that the position was always explained in theological terms. But the theological notion of ensoulment could easily be translated into humanistic language by substituting "human" for "rational soul"; the problem of knowing when a man is a man is common to theology and humanism.

If one steps outside the specific categories used by the theologians, the answer they gave can be analyzed as a refusal to discriminate among human beings on the basis of their varying potentialities.

Once conceived, the being was recognized as man because he had man's potential. The criterion for humanity, thus, was simple and all-embracing: if you are conceived by human parents, you are human.

The strength of this position may be tested by a review of some of the other distinctions offered in the contemporary controversy over legalizing abortion. Perhaps the most popular distinction is in terms of viability. Before an age of so many months, the fetus is not viable, that is, it cannot be removed from the mother's womb and live apart from her. To that extent, the life of the fetus is absolutely dependent on the life of the mother. This dependence is made the basis of denying recognition to its humanity.

There are difficulties with this distinction. One is that the perfection of artificial incubation may make the fetus viable at any time: it may be removed and artificially sustained. Experiments with animals already show that such a procedure is possible. This hypothetical extreme case relates to an actual difficulty: there is considerable elasticity to the idea of viability. Mere length of life is not an exact measure. The viability of the fetus depends on the extent of its anatomical and functional development. The weight and length of the fetus are better guides to the state of its development than age, but weight and length vary. Moreover, different racial groups have different ages at which their fetuses are viable. Some evidence, for example, suggests that Negro fetuses mature more quickly than white fetuses. If viability is the norm, the standard would vary with race and with many individual circumstances.

The most important objection to this approach is that dependence is not ended by viability. The fetus is still absolutely dependent on someone's care in order to continue existence; indeed a child of one or three or even five years of age is absolutely dependent on another's care for existence; uncared for, the older fetus or the younger child will die as surely as the early fetus detached from the mother. The unsubstantial lessening in dependence at viability does not seem to signify any special acquisition of humanity.

A second distinction has been attempted in terms of experience. A being who has had experience, has lived and suffered, who possesses memories, is more human than one who has not. Humanity depends on formation by experience. The fetus is thus "unformed" in the most basic human sense.

This distinction is not serviceable for the embryo which is already experiencing and reacting. The embryo is responsive to touch after eight weeks and at least at that point is experiencing. At an earlier stage the zygote is certainly alive and responding to its environment. The distinction may also be challenged by the rare case where aphasia has erased adult memory: has it erased humanity? More fundamentally, this distinction leaves even the older fetus or the younger child to be treated as an unformed inhuman thing. Finally, it is not clear why experience as such confers humanity. It could be argued that certain central experiences such as loving or learning are necessary to make a man human. But then human beings who have failed to love or to learn might be excluded from the class called man.

A third distinction is made by appeal to the sentiments of adults. If a fetus dies, the grief of the parents is not the grief they would have for a living child. The fetus is an unnamed "it" till birth, and is not perceived as personality until at least the fourth month of existence when movements in the womb manifest a vigorous presence demanding joyful recognition by the parents.

Yet feeling is notoriously an unsure guide to the humanity of others. Many groups of humans have had difficulty in feeling that persons of another tongue, color, religion, sex, are as human as they. Apart from reactions to alien groups, we mourn the

loss of a ten-year-old boy more than the loss of his one-day-old brother or his 90-year-old grandfather. The difference felt and the grief expressed vary with the potentialities extinguished, or the experience wiped out; they do not seem to point to any substantial difference in the humanity of baby, boy, or grandfather.

Distinctions are also made in terms of sensation by the parents. The embryo is felt within the womb only after about the fourth month. The embryo is seen only at birth. What can be neither seen nor felt is different from what is tangible. If the fetus cannot be seen or touched at all, it cannot be perceived as man.

Yet experience shows that sight is even more untrustworthy than feeling in determining humanity. By sight, color became an appropriate index for saying who was a man, and the evil of racial discrimination was given foundation. Nor can touch provide the test; a being confined by sickness, "out of touch" with others, does not thereby seem to lose his humanity. To the extent that touch still has appeal as a criterion, it appears to be a survival of the old English idea of "quickening"—a possible mistranslation of the Latin *animatus* used in the canon law. To that extent touch as a criterion seems to be dependent on the Aristotelian notion of ensoulment, and to fall when this notion is discarded.

Finally, a distinction is sought in social visibility. The fetus is not socially perceived as human. It cannot communicate with others. Thus, both subjectively and objectively, it is not a member of society. As moral rules are rules for the behavior of members of society to each other, they cannot be made for behavior toward what is not yet a member. Excluded from the society of men, the fetus is excluded from the humanity of men.

By force of the argument from the consequences, this distinction is to be rejected. It is more subtle than that founded on an appeal to physical sensation, but it is equally dangerous in its implications. If humanity depends on social recognition, individuals or whole groups may be dehumanized by being denied any status in their society. Such a fate is fictionally portrayed in 1984 and has actually been the lot of many men in many societies. In the Roman empire, for example, condemnation to slavery

meant the practical denial of most human rights; in the Chinese Communist world, landlords have been classified as enemies of the people and so treated as nonpersons by the state. Humanity does not depend on social recognition, though often the failure of society to recognize the prisoner, the alien, the heterodox as human has led to the destruction of human beings. Anyone conceived by a man and a woman is human. Recognition of this condition by society follows a real event in the objective order, however imperfect and halting the recognition. Any attempt to limit humanity to exclude some group runs the risk of furnishing authority and precedent for excluding other groups in the name of the consciousness or perception of the controlling group in the society.

A philosopher may reject the appeal to the humanity of the fetus because he views humanity as a secular view of the soul and because he doubts the existence of anything real and objective which can be identified as humanity. One answer to such a philosopher is to ask how he reasons about moral questions without supposing that there is a sense in which he and the others of whom he speaks are human. Whatever group is taken as the society which determines who may be killed is thereby taken as human. A second answer is to ask if he does not believe that there is a right and wrong way of deciding moral questions. If there is such a difference, experience may be appealed to: to decide who is human on the basis of the sentiment of a given society has led to consequences which rational men would characterize as monstrous.

The rejection of the attempted distinctions based on viability and visibility, experience and feeling, may be buttressed by the following considerations: Moral judgments often rest on distinctions, but if the distinctions are not to appear arbitrary *fiat*, they should relate to some real difference in probabilities. There is a kind of continuity in all life, but the earlier stages of the elements of human life possess tiny probabilities of development. Consider, for example, the spermatozoa in any normal ejaculate: There are about 200,000,000 in any single ejaculate, of which one has a chance of developing into a zygote. Consider the oocytes which may become ova: there are 100,000 to 1,000,000 oocytes in a female infant,

of which a maximum of 390 are ovulated. But once spermatozoon and ovum meet and the conceptus is formed, such studies as have been made show that roughly in only 20 percent of the cases will spontaneous abortion occur. In other words, the chances are about 4 out of 5 that this new being will develop. At this stage in the life of the being there is a sharp shift in probabilities, an immense jump in potentialities. To make a distinction between the rights of spermatozoa and the rights of the fertilized ovum is to respond to an enormous shift in possibilities. For about twenty days after conception the egg may split to form twins or combine with another egg to form a chimera, but the probability of either event happening is very small.

It may be asked, What does a change in biological probabilities have to do with establishing humanity? The argument from probabilities is not aimed at establishing humanity but at establishing an objective discontinuity which may be taken into account in moral discourse. As life itself is a matter of probabilities, as most moral reasoning is an estimate of probabilities, so it seems in accord with the structure of reality and the nature of moral thought to found a moral judgment on the change in probabilities at conception. The appeal to probabilities is the most commonsensical of arguments; to a greater or smaller degree all of us base our actions on probabilities, and in morals, as in law, prudence and negligence are often measured by the account one has taken of the probabilities. If the chance is 200,000,000 to 1 that the movement in the bushes into which you shoot is a man's, I doubt if many persons would hold you careless in shooting; but if the chances are 4 out of 5 that the movement is a human being's, few would acquit you of blame. Would the argument be different if only one out of ten children conceived came to term? Of course this argument would be different. This argument is an appeal to probabilities that actually exist, not to any and all states of affairs which may be imagined.

The probabilities as they do exist do not show the humanity of the embryo in the sense of a demonstration in logic any more than the probabilities of the movement in the bush being a man demonstrate beyond all doubt that the being is a man. The appeal is a "buttressing" consideration, showing the

plausibility of the standard adopted. The argument focuses on the decisional factor in any moral judgment and assumes that part of the business of a moralist is drawing lines. One evidence of the nonarbitrary character of the line drawn is the difference of probabilities on either side of it. If a spermatozoon is destroyed, one destroys a being which had a chance of far less than 1 in 200 million of developing into a reasoning being, possessed of the genetic code, a heart and other organs, and capable of pain. If a fetus is destroyed, one destroys a being already possessed of the genetic code, organs, and sensitivity to pain, and one which had an 80 percent chance of developing further into a baby outside the womb who, in time, would reason.

The positive argument for conception as the decisive moment of humanization is that at conception the new being receives the genetic code. It is this genetic information which determines his characteristics, which is the biological carrier of the possibility of human wisdom, which makes him a self-evolving being. A being with a human genetic code is man.

This review of current controversy over the humanity of the fetus emphasizes what a fundamental question the theologians resolved in asserting the inviolability of the fetus. To regard the fetus as possessed of equal rights with other humans was not, however, to decide every case where abortion might be employed. It did decide the case where the argument was that the fetus should be aborted for its own good. To say a being was human was to say it had a destiny to decide for itself which could not be taken from it by another man's decision. But human beings with equal rights often come in conflict with each other, and some decision must be made as to whose claims are to prevail. Cases of conflict involving the fetus are different only in two respects: the total inability of the fetus to speak for itself and the fact that the right of the fetus regularly at stake is the right to life itself.

The approach taken by the theologians to these conflicts was articulated in terms of "direct" and "indirect." Again, to look at what they were doing from outside their categories, they may be said to have been drawing lines or "balancing values." "Direct" and "indirect" are spatial metaphors; "line-drawing" is another. "To weigh" or "to balance"

values is a metaphor of a more complicated mathematical sort hinting at the process which goes on in moral judgments. All the metaphors suggest that, in the moral judgments made, comparisons were necessary, that no value completely controlled. The principle of double effect was no doctrine fallen from heaven, but a method of analysis appropriate where two relative values were being compared. In Catholic moral theology, as it developed, life even of the innocent was not taken as an absolute. Judgments on acts affecting life issued from a process of weighing. In the weighing, the fetus was always given a value greater than zero, always a value separate and independent from its parents. This valuation was crucial and fundamental in all Christian thought on the subject and marked it off from any approach which considered that only the parents' interests needed to be considered.

Even with the fetus weighed as human, one interest could be weighed as equal or superior: that of the mother in her own life. The casuists between 1450 and 1895 were willing to weigh this interest as superior. Since 1895, that interest was given decisive weight only in the two special cases of the cancerous uterus and the ectopic pregnancy. In both of these cases the fetus itself had little chance of survival even if the abortion were not performed. As the balance was once struck in favor of the mother whenever her life was endangered, it could be so struck again. The balance reached between 1895 and 1930 attempted prudentially and pastorally to forestall a multitude of exceptions for interests less than life.

The perception of the humanity of the fetus and the weighing of fetal rights against other human rights constituted the work of the moral analysts. But what spirit animated their abstract judgments? For the Christian community it was the injunction of Scripture to love your neighbor as yourself. The fetus as human was a neighbor; his life had parity with one's own. The commandment gave life to what otherwise would have been only rational calculation.

The commandment could be put in humanistic as well as theological terms: Do not injure your fellow man without reason. In these terms, once the humanity of the fetus is perceived, abortion is never right except in self-defense. When life must be taken to save life, reason alone cannot say that a mother

must prefer a child's life to her own. With this exception, now of great rarity, abortion violates the rational humanist tenet of the equality of human lives.

For Christians the commandment to love had received a special imprint in that the exemplar proposed of love was the love of the Lord for his disciples. In the light given by this example, self-sacrifice carried to the point of death seemed in the extreme situations not without meaning. In the less extreme cases, preference for one's own interests to the life of another seemed to express cruelty or selfishness irreconcilable with the demands of love.

John Noonan: An Almost Absolute Value in History

1. Noonan claims that if we can't point to a precise moment during gestation when the fetus acquires a right to life, then the fetus has that right from conception. How plausible is this claim?

2. Conception is the point at which a fetus acquires its genetic makeup. Is Noonan right to think that this supports his claim that conception is the point at which a fetus acquires a right to life?
3. How important is the *potential* of a fetus to acquire the traits of a mature human being? In answering this question, consider how important potential is in other contexts besides abortion.
4. How does Noonan define what it is to be a human being? Is his definition plausible for the purposes he uses it for?
5. Noonan rejects the idea that sentience (the ability to have sense experiences and to feel pleasure or pain) marks the point that separates a fetus who lacks moral rights from a fetus that possesses them. Is his rejection plausible? Why or why not?

A Defense of Abortion

Judith Jarvis Thomson

In this article, Judith Thomson does what very few pro-choice advocates have been willing to do—namely, to grant, for the purposes of argument, that the fetus is as much a moral person as you or I. Still, she argues, being a person does not, by itself, entitle you to use someone else's resources, even if those resources are needed in order to preserve your life. Thus even if we grant that the fetus is a person, that is not enough to show that the fetus is entitled to the continued use of the mother's "resources" (her body). A pregnant woman has a right to bodily autonomy, and that right, in many cases, morally prevails over any rights possessed by a fetus.

Thomson uses a number of thought experiments to defend this claim. The most famous of these involves a world-class violinist. Suppose that you wake up one morning and find yourself connected to a transfusion machine that is providing life support for this musician. He surely has a right to life. But Thomson says that you would be within your rights to remove yourself from the apparatus—even knowing that, by doing this, he will die. The violinist, of course, is meant to be a stand-in for the fetus. According to Thomson, although it would be awfully nice of pregnant women to continue carrying their fetuses to term, they are not usually morally required to do so.

Thomson anticipates a variety of objections to this example, and provides further examples to support her view that women usually have a moral right to seek and obtain an abortion.

Most opposition to abortion relies on the premise that the fetus is a human being, a person, from the moment of conception. The premise is argued for, but, as I think, not well. Take, for example, the most common argument. We are asked to notice that the development of a human being from conception through birth into childhood is continuous; then it is said that to draw a line, to choose a point in this development and say “before this point the thing is not a person, after this point it is a person” is to make an arbitrary choice, a choice for which in the nature of things no good reason can be given. It is concluded that the fetus is, or anyway that we had better say it is, a person from the moment of conception. But this conclusion does not follow. Similar things might be said about the development of an acorn into an oak tree, and it does not follow that acorns are oak trees, or that we had better say they are. Arguments of this form are sometimes called “slippery slope arguments”—the phrase is perhaps self-explanatory—and it is dismaying that opponents of abortion rely on them so heavily and uncritically.

I am inclined to agree, however, that the prospects for “drawing a line” in the development of the fetus look dim. I am inclined to think also that we shall probably have to agree that the fetus has already become a human person well before birth. Indeed, it comes as a surprise when one first learns how early in its life it begins to acquire human characteristics. By the tenth week, for example, it already has a face, arms and legs, fingers and toes; it has internal organs, and brain activity is detectable. On the other hand, I think that the premise is false, that the fetus is not a person from the moment of conception. A newly fertilized ovum, a newly implanted clump of cells, is no more a person than an acorn is an oak tree. But I shall not discuss any

of this. For it seems to me to be of great interest to ask what happens if, for the sake of argument, we allow the premise. How, precisely, are we supposed to get from there to the conclusion that abortion is morally impermissible? Opponents of abortion commonly spend most of their time establishing that the fetus is a person, and hardly any time explaining the step from there to the impermissibility of abortion. Perhaps they think the step too simple and obvious to require much comment. Or perhaps instead they are simply being economical in argument. Many of those who defend abortion rely on the premise that the fetus is not a person, but only a bit of tissue that will become a person at birth; and why pay out more arguments than you have to? Whatever the explanation, I suggest that the step they take is neither easy nor obvious, that it calls for closer examination than it is commonly given, and that when we do give it this closer examination we shall feel inclined to reject it.

I propose, then, that we grant that the fetus is a person from the moment of conception. How does the argument go from here? Something like this, I take it. Every person has a right to life. So the fetus has a right to life. No doubt the mother has a right to decide what shall happen in and to her body; everyone would grant that. But surely a person’s right to life is stronger and more stringent than the mother’s right to decide what happens in and to her body, and so outweighs it. So the fetus may not be killed; an abortion may not be performed.

It sounds plausible. But now let me ask you to imagine this. You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist’s circulatory system was plugged into yours, so that your kidneys

can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look, we're sorry the Society of Music Lovers did this to you—we would never have permitted it if we had known. But still, they did it, and the violinist now is plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you." Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you *have* to accede to it? What if it were not nine months, but nine years? Or longer still? What if the director of the hospital says, "Tough luck, I agree, but you've now got to stay in bed, with the violinist plugged into you, for the rest of your life. Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine you would regard this as outrageous, which suggests that something really is wrong with that plausible-sounding argument I mentioned a moment ago.

In this case, of course, you were kidnapped; you didn't volunteer for the operation that plugged the violinist into your kidneys. Can those who oppose abortion on the ground I mentioned make an exception for a pregnancy due to rape? Certainly. They can say that persons have a right to life only if they didn't come into existence because of rape; or they can say that all persons have a right to life, but that some have less of a right to life than others, in particular, that those who came into existence because of rape have less. But these statements have a rather unpleasant sound. Surely the question of whether you have a right to life at all, or how much of it you have, shouldn't turn on the question of whether or not you are the product of a rape. And in fact the people who oppose abortion on the ground I mentioned do not make this distinction, and hence do not make an exception in case of rape.

Nor do they make an exception for a case in which the mother has to spend the nine months of her pregnancy in bed. They would agree that would be a great pity, and hard on the mother; but all the same, all

persons have a right to life, the fetus is a person, and so on. I suspect, in fact, that they would not make an exception for a case in which, miraculously enough, the pregnancy went on for nine years, or even the rest of the mother's life.

Some won't even make an exception for a case in which continuation of the pregnancy is likely to shorten the mother's life; they regard abortion as impermissible even to save the mother's life. Such cases are nowadays very rare, and many opponents of abortion do not accept this extreme view. All the same, it is a good place to begin: a number of points of interest come out in respect to it.

1. Let us call the view that abortion is impermissible even to save the mother's life "the extreme view." I want to suggest first that it does not issue from the argument I mentioned earlier without the addition of some fairly powerful premises. Suppose a woman has become pregnant, and now learns that she has a cardiac condition such that she will die if she carries the baby to term. What may be done for her? The fetus, being a person, has a right to life, but as the mother is a person too, so has she a right to life. Presumably they have an equal right to life. How is it supposed to come out that an abortion may not be performed? If mother and child have an equal right to life, shouldn't we perhaps flip a coin? Or should we add to the mother's right to life her right to decide what happens in and to her body, which everybody seems to be ready to grant—the sum of her rights now outweighing the fetus' right to life?

The most familiar argument here is the following. We are told that performing the abortion would be directly killing¹ the child, whereas doing nothing would not be killing the mother, but only letting her die. Moreover, in killing the child, one would be killing an innocent person, for the child has committed no crime, and is not aiming at his mother's death. And then there are a variety of ways in which this might be continued. (1) But as directly killing an innocent person is always and absolutely impermissible, an abortion may not be performed. Or, (2) as directly killing an innocent person is murder, and murder is always and

absolutely impermissible, an abortion may not be performed. Or, (3) as one's duty to refrain from directly killing an innocent person is more stringent than one's duty to keep a person from dying, an abortion may not be performed. Or, (4) if one's only options are directly killing an innocent person or letting a person die, one must prefer letting the person die, and thus an abortion may not be performed.

Some people seem to have thought that these are not further premises which must be added if the conclusion is to be reached, but that they follow from the very fact that an innocent person has a right to life. But this seems to me to be a mistake, and perhaps the simplest way to show this is to bring out that while we must certainly grant that innocent persons have a right to life, the theses in (1) through (4) are all false. Take (2), for example. If directly killing an innocent person is murder, and thus is impermissible, then the mother's directly killing the innocent person inside her is murder, and thus is impermissible. But it cannot seriously be thought to be murder if the mother performs an abortion on herself to save her life. It cannot seriously be said that she *must* refrain, that she *must* sit passively by and wait for her death. Let us look again at the case of you and the violinist. There you are, in bed with the violinist, and the director of the hospital says to you, "It's all most distressing, and I deeply sympathize, but you see this is putting an additional strain on your kidneys, and you'll be dead within the month. But you *have* to stay where you are all the same. Because unplugging you would be directly killing an innocent violinist, and that's murder, and that's impermissible." If anything in the world is true, it is that you do not commit murder, you do not do what is impermissible, if you reach around to your back and unplug yourself from that violinist to save your life.

The main focus of attention in writings on abortion has been on what a third party may or may not do in answer to a request from a woman for an abortion. This is in a way understandable. Things being as they are, there isn't much

a woman can safely do to abort herself. So the question asked is what a third party may do, and what the mother may do, if it is mentioned at all, is deduced, almost as an afterthought, from what it is concluded that third parties may do. But it seems to me that to treat the matter in this way is to refuse to grant to the mother that very status of person which is so firmly insisted on for the fetus. For we cannot simply read off what a person may do from what a third party may do. Suppose you find yourself trapped in a tiny house with a growing child. I mean a very tiny house, and a rapidly growing child—you are already up against the wall of the house and in a few minutes you'll be crushed to death. The child on the other hand won't be crushed to death; if nothing is done to stop him from growing he'll be hurt, but in the end he'll simply burst open the house and walk out a free man. Now I could well understand it if a bystander were to say, "There's nothing we can do for you. We cannot choose between your life and his, we cannot be the ones to decide who is to live, we cannot intervene." But it cannot be concluded that you too can do nothing, that you cannot attack it to save your life. However innocent the child may be, you do not have to wait passively while it crushes you to death. Perhaps a pregnant woman is vaguely felt to have the status of house, to which we don't allow the right of self-defense. But if the woman houses the child, it should be remembered that she is a person who houses it.

I should perhaps stop to say explicitly that I am not claiming that people have a right to do anything whatever to save their lives. I think, rather, that there are drastic limits to the right of self-defense. If someone threatens you with death unless you torture someone else to death, I think you have not the right, even to save your life, to do so. But the case under consideration here is very different. In our case there are only two people involved, one whose life is threatened, and one who threatens it. Both are innocent: the one who is threatened is not threatened because of any fault, the one who threatens does not threaten because of any fault. For this

reason we may feel that we bystanders cannot intervene. But the person threatened can.

In sum, a woman surely can defend her life against the threat to it posed by the unborn child, even if doing so involves its death. And this shows not merely that the theses in (1) through (4) are false; it shows also that the extreme view of abortion is false, and so we need not canvass any other possible ways of arriving at it from the argument I mentioned at the outset.

2. The extreme view could of course be weakened to say that while abortion is permissible to save the mother's life, it may not be performed by a third party, but only by the mother herself. But this cannot be right either. For what we have to keep in mind is that the mother and the unborn child are not like two tenants in a small house which has, by an unfortunate mistake, been rented to both: the mother *owns* the house. The fact that she does adds to the offensiveness of deducing that the mother can do nothing from the supposition that third parties can do nothing. But it does more than this: it casts a bright light on the supposition that third parties can do nothing. Certainly it lets us see that a third party who says "I cannot choose between you" is fooling himself if he thinks this is impartiality. If Jones has found and fastened on a certain coat, which he needs to keep him from freezing, but which Smith also needs to keep him from freezing, then it is not impartiality that says "I cannot choose between you" when Smith owns the coat. Women have said again and again "This body is *my* body!" and they have reason to feel angry, reason to feel that it has been like shouting into the wind. . . .

3. Where the mother's life is not at stake, the argument I mentioned at the outset seems to have a much stronger pull. "Everyone has a right to life, so the unborn person has a right to life." And isn't the child's right to life weightier than anything other than the mother's own right to life, which she might put forward as ground for an abortion?

This argument treats the right to life as if it were unproblematic. It is not, and this seems to me to be precisely the source of the mistake.

For we should now, at long last, ask what it comes to, to have a right to life. In some views having a right to life includes having a right to be given at least the bare minimum one needs for continued life. But suppose that what in fact *is* the bare minimum a man needs for continued life is something he has no right at all to be given? If I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda's cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonda's cool hand on my fevered brow. It would be frightfully nice of him to fly in from the West Coast to provide it. It would be less nice, though no doubt well meant, if my friends flew out to the West Coast and carried Henry Fonda back with them. But I have no right at all against anybody that he should do this for me. Or again, to return to the story I told earlier, the fact that for continued life that violinist needs the continued use of your kidneys does not establish that he has a right to be given the continued use of your kidneys. He certainly has no right against you that *you* should give him continued use of your kidneys. For nobody has any right to use your kidneys unless you give him such a right; and nobody has the right against you that you shall give him this right—if you do allow him to go on using your kidneys, this is a kindness on your part, and not something he can claim from you as his due. Nor has he any right against anybody else that *they* should give him continued use of your kidneys. Certainly he had no right against the Society of Music Lovers that they should plug him into you in the first place. And if you now start to unplug yourself, having learned that you will otherwise have to spend nine years in bed with him, there is nobody in the world who must try to prevent you, in order to see to it that he is given something he has a right to be given.

Some people are rather stricter about the right to life. In their view, it does not include the right to be given anything, but amounts to, and only to, the right not to be killed by anybody.

But here a related difficulty arises. If everybody is to refrain from killing that violinist, then everybody must refrain from doing a great many different sorts of things. Everybody must refrain from slitting his throat, everybody must refrain from shooting him—and everybody must refrain from unplugging you from him. But does he have a right against everybody that they shall refrain from unplugging you from him? To refrain from doing this is to allow him to continue to use your kidneys. It could be argued that he has a right against us that *we* should allow him to continue to use your kidneys. That is, while he had no right against us that we should give him the use of your kidneys, it might be argued that he anyway has a right against us that we shall not now intervene and deprive him of the use of your kidneys. I shall come back to third-party interventions later. But certainly the violinist has no right against you that *you* shall allow him to continue to use your kidneys. As I said, if you do allow him to use them, it is a kindness on your part, and not something you owe him.

The difficulty I point to here is not peculiar to the right to life. It reappears in connection with all the other natural rights; and it is something which an adequate account of rights must deal with. For present purposes it is enough just to draw attention to it. But I would stress that I am not arguing that people do not have a right to life—quite to the contrary, it seems to me that the primary control we must place on the acceptability of an account of rights is that it should turn out in that account to be a truth that all persons have a right to life. I am arguing only that having a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person's body—even if one needs it for life itself. So the right to life will not serve the opponents of abortion in the very simple and clear way in which they seem to have thought it would.

4. There is another way to bring out the difficulty. In the most ordinary sort of case, to

deprive someone of what he has a right to is to treat him unjustly. Suppose a boy and his small brother are jointly given a box of chocolates for Christmas. If the older boy takes the box and refuses to give his brother any of the chocolates, he is unjust to him, for the brother has been given a right to half of them. But suppose that, having learned that otherwise it means nine years in bed with that violinist, you unplug yourself from him. You surely are not being unjust to him, for you gave him no right to use your kidneys, and no one else can have given him any such right. But we have to notice that in unplugging yourself, you are killing him; and violinists, like everybody else, have a right to life, and thus in the view we were considering just now, the right not to be killed. So here you do what he supposedly has a right you shall not do, but you do not act unjustly to him in doing it.

The emendation which may be made at this point is this: the right to life consists not in the right not to be killed, but rather in the right not to be killed unjustly. This runs a risk of circularity, but never mind: it would enable us to square the fact that the violinist has a right to life with the fact that you do not act unjustly toward him in unplugging yourself, thereby killing him. For if you do not kill him unjustly, you do not violate his right to life, and so it is no wonder you do him no injustice.

But if this emendation is accepted, the gap in the argument against abortion stares us plainly in the face: it is by no means enough to show that the fetus is a person, and to remind us that all persons have a right to life—we need to be shown also that killing the fetus violates its right to life, i.e., that abortion is unjust killing. And is it?

I suppose we may take it as a datum that in a case of pregnancy due to rape the mother has not given the unborn person a right to the use of her body for food and shelter. Indeed, in what pregnancy could it be supposed that the mother has given the unborn person such a right? It is not as if there were unborn persons drifting about the

world, to whom a woman who wants a child says "I invite you in."

But it might be argued that there are other ways one can have acquired a right to the use of another person's body than by having been invited to use it by that person. Suppose a woman voluntarily indulges in intercourse, knowing of the chance it will issue in pregnancy, and then she does become pregnant; is she not in part responsible for the presence, in fact the very existence, of the unborn person inside her? No doubt she did not invite it in. But doesn't her partial responsibility for its being there itself give it a right to the use of her body? If so, then her aborting it would be more like the boy's taking away the chocolates, and less like your unplugging yourself from the violinist—doing so would be depriving it of what it does have a right to, and thus would be doing it an injustice.

And then, too, it might be asked whether or not she can kill it even to save her own life: If she voluntarily called it into existence, how can she now kill it, even in self-defense?

The first thing to be said about this is that it is something new. Opponents of abortion have been so concerned to make out the independence of the fetus, in order to establish that it has a right to life, just as its mother does, that they have tended to overlook the possible support they might gain from making out that the fetus is *dependent* on the mother, in order to establish that she has a special kind of responsibility for it, a responsibility that gives it rights against her which are not possessed by any independent person—such as an ailing violinist who is a stranger to her.

On the other hand, this argument would give the unborn person a right to its mother's body only if her pregnancy resulted from a voluntary act, undertaken in full knowledge of the chance a pregnancy might result from it. It would leave out entirely the unborn person whose existence is due to rape. Pending the availability of some further argument, then, we would be left with the conclusion that unborn persons whose existence is due to rape have no

right to the use of their mothers' bodies, and thus that aborting them is not depriving them of anything they have a right to and hence is not unjust killing.

And we should also notice that it is not at all plain that this argument really does go even as far as it purports to. For there are cases and cases, and the details make a difference. If the room is stuffy, and I therefore open a window to air it, and a burglar climbs in, it would be absurd to say, "Ah, now he can stay, she's given him a right to the use of her house—for she is partially responsible for his presence there, having voluntarily done what enabled him to get in, in full knowledge that there are such things as burglars, and that burglars burgle." It would be still more absurd to say this if I had had bars installed outside my windows, precisely to prevent burglars from getting in, and a burglar got in only because of a defect in the bars. It remains equally absurd if we imagine it is not a burglar who climbs in, but an innocent person who blunders or falls in. Again, suppose it were like this: people-seeds drift about in the air like pollen, and if you open your windows, one may drift in and take root in your carpets or upholstery. You don't want children, so you fix up your windows with fine mesh screens, the very best you can buy. As can happen, however, and on very, very rare occasions does happen, one of the screens is defective; and a seed drifts in and takes root. Does the person-plant who now develops have a right to the use of your house? Surely not—despite the fact that you voluntarily opened your windows, you knowingly kept carpets and upholstered furniture, and you knew that screens were sometimes defective. Someone may argue that you are responsible for its rooting, that it does have a right to your house, because after all you *could* have lived out your life with bare floors and furniture, or with sealed windows and doors. But this won't do—for by the same token anyone can avoid a pregnancy due to rape by having a hysterectomy, or anyway by never leaving home without a (reliable!) army.

It seems to me that the argument we are looking at can establish at most that there are *some* cases in which the unborn person has a right to the use of its mother's body, and therefore *some* cases in which abortion is unjust killing. There is room for much discussion and argument as to precisely which, if any. But I think we should sidestep this issue and leave it open, for at any rate the argument certainly does not establish that all abortion is unjust killing.

5. There is room for yet another argument here, however. We surely must all grant that there may be cases in which it would be morally indecent to detach a person from your body at the cost of his life. Suppose you learn that what the violinist needs is not nine years of your life, but only one hour: all you need do to save his life is to spend one hour in that bed with him. Suppose also that letting him use your kidneys for that one hour would not affect your health in the slightest. Admittedly you were kidnapped. Admittedly you did not give anyone permission to plug him into you. Nevertheless it seems to me plain you *ought* to allow him to use your kidneys for that hour—it would be indecent to refuse.

Again, suppose pregnancy lasted only an hour, and constituted no threat to life or health. And suppose that a woman becomes pregnant as a result of rape. Admittedly she did not voluntarily do anything to bring about the existence of a child. Admittedly she did nothing at all which would give the unborn person a right to the use of her body. All the same it might well be said, as in the newly emended violinist story, that she *ought* to allow it to remain for that hour—that it would be indecent in her to refuse. . . .

6. My argument will be found unsatisfactory on two counts by many of those who want to regard abortion as morally permissible. First, while I do argue that abortion is not impermissible, I do not argue that it is always permissible. There may well be cases in which carrying the child to term requires only Minimally Decent

Samaritanism² of the mother, and this is a standard we must not fall below. I am inclined to think it a merit of my account precisely that it does *not* give a general yes or a general no. It allows for and supports our sense that, for example, a sick and desperately frightened fourteen-year-old schoolgirl, pregnant due to rape, may *of course* choose abortion, and that any law which rules this out is an insane law. And it also allows for and supports our sense that in other cases resort to abortion is even positively indecent. It would be indecent in the woman to request an abortion, and indecent in a doctor to perform it, if she is in her seventh month, and wants the abortion just to avoid the nuisance of postponing a trip abroad. The very fact that the arguments I have been drawing attention to treat all cases of abortion, or even all cases of abortion in which the mother's life is not at stake, as morally on a par ought to have made them suspect at the outset.

Secondly, while I am arguing for the permissibility of abortion in some cases, I am not arguing for the right to secure the death of the unborn child. It is easy to confuse these two things in that up to a certain point in the life of the fetus it is not able to survive outside the mother's body; hence removing it from her body guarantees its death. But they are importantly different. I have argued that you are not morally required to spend nine months in bed, sustaining the life of that violinist; but to say this is by no means to say that if, when you unplug yourself, there is a miracle and he survives, you then have a right to turn round and slit his throat. You may detach yourself even if this costs him his life; you have no right to be guaranteed his death, by some other means, if unplugging yourself does not kill him. There are some people who will feel dissatisfied by this feature of my argument. A woman may be utterly devastated by the thought of a child, a bit of herself, put out for adoption and never seen or heard of again. She may therefore want not merely that the child be detached from her, but more, that it die. Some opponents of abortion are inclined to regard

this as beneath contempt—thereby showing insensitivity to what is surely a powerful source of despair. All the same, I agree that the desire for the child's death is not one which anybody may gratify, should it turn out to be possible to detach the child alive.

At this place, however, it should be remembered that we have only been pretending throughout that the fetus is a human being from the moment of conception. A very early abortion is surely not the killing of a person, and so is not dealt with by anything I have said here.

NOTES

1. The term “direct” in the arguments I refer to is a technical one. Roughly, what is meant by “direct killing” is either killing as an end in itself, or killing as a means to some end, for example, the end of saving someone else’s life.
2. Meeting a standard of minimally decent treatment towards those in need.—Ed.

Judith Jarvis Thomson: A Defense of Abortion

1. Thomson’s first thought experiment is the case of the violinist. Do you agree that it would be permissible to unplug yourself from the violinist? What conclusions about abortion should we draw from this thought experiment?
2. What is the “extreme view”? What are Thomson’s objections to the view? Do you find her objections compelling?
3. Thomson claims that the notion of a “right to life” cannot be interpreted as a right to “the bare minimum one needs for continued life.” Why does she claim this? What, according to Thomson, does having a right to life amount to? Do you agree with her about this?
4. Why doesn’t Thomson think that abortion always involves unjust killing? What does the justice of abortion depend on, according to Thomson?
5. Under what conditions (if any) do you think a woman grants a fetus the right to use her body?

On the Moral and Legal Status of Abortion

Mary Anne Warren

Mary Anne Warren argues for a pro-choice position according to which abortion is always morally permissible. The following argument presents the core of her view: persons have rights; fetuses are not persons, but only potential persons; the rights of persons always morally outweigh the rights of merely potential persons; so the rights of a woman always outweigh those of a fetus. Since one of the most important rights we have is to bodily autonomy or self-determination, it follows that a pregnant woman who wants to exercise that right is morally permitted to do so, even if it means the death of her fetus.

Warren begins by critiquing both Judith Thomson’s and John Noonan’s views on abortion. In the process, she introduces a crucial distinction between two conceptions of a human being—one of these is biological, according to which humans are members of the species *Homo sapiens*, and the other is moral, according to which humans are persons: beings possessed of full moral rights and independent moral importance. You and I are persons. Warren believes, however, that fetuses are not. She defends this position by identifying five criteria of personhood: consciousness, the ability to reason,

self-motivated activity, the capacity to communicate, and self-awareness. She claims that a being who lacks all five of these traits cannot qualify as a person, and that fetuses lack all five. She concludes that fetuses are not persons.

We will be concerned with both the moral status of abortion, which for our purposes we may define as the act which a woman performs in voluntarily terminating, or allowing another person to terminate, her pregnancy, and the legal status which is appropriate for this act. I will argue that, while it is not possible to produce a satisfactory defense of a woman's right to obtain an abortion without showing that a fetus is not a human being, in the morally relevant sense of that term, we ought not to conclude that the difficulties involved in determining whether or not a fetus is human make it impossible to produce any satisfactory solution to the problem of the moral status of abortion. For it is possible to show that, on the basis of intuitions which we may expect even the opponents of abortion to share, a fetus is not a person, and hence not the sort of entity to which it is proper to ascribe full moral rights.

Of course, while some philosophers would deny the possibility of any such proof, others will deny that there is any need for it, since the moral permissibility of abortion appears to them to be too obvious to require proof. But the inadequacy of this attitude should be evident from the fact that both the friends and the foes of abortion consider their position to be morally self-evident. Because proabortionists have never adequately come to grips with the conceptual issues surrounding abortion, most if not all, of the arguments which they advance in opposition to laws restricting access to abortion fail to refute or even weaken the traditional antiabortion argument, i.e., that a fetus is a human being, and therefore abortion is murder.

These arguments are typically of one of two sorts. Either they point to the terrible side effects of the restrictive laws, e.g., the deaths due to illegal abortions, and the fact that it is poor women who

suffer the most as a result of these laws, or else they state that to deny a woman access to abortion is to deprive her of her right to control her own body. Unfortunately, however, the fact that restricting access to abortion has tragic side effects does not, in itself, show that the restrictions are unjustified, since murder is wrong regardless of the consequences of prohibiting it; and the appeal to the right to control one's body, which is generally construed as a property right, is at best a rather feeble argument for the permissibility of abortion. Mere ownership does not give me the right to kill innocent people whom I find on my property, and indeed I am apt to be held responsible if such people injure themselves while on my property. It is equally unclear that I have any moral right to expel an innocent person from my property when I know that doing so will result in his death.

Furthermore, it is probably inappropriate to describe a woman's body as her property, since it seems natural to hold that a person is something distinct from her property, but not from her body. Even those who would object to the identification of a person with his body, or with the conjunction of his body and his mind, must admit that it would be very odd to describe, say, breaking a leg, as damaging one's property, and much more appropriate to describe it as injuring oneself. Thus it is probably a mistake to argue that the right to obtain an abortion is in any way derived from the right to own and regulate property.

But however we wish to construe the right to abortion, we cannot hope to convince those who consider abortion a form of murder of the existence of any such right unless we are able to produce a clear and convincing refutation of the traditional antiabortion argument, and this has not, to my knowledge, been done. With respect to the two most vital issues which that argument involves, i.e., the humanity of the fetus and its implication for the

moral status of abortion, confusion has prevailed on both sides of the dispute. . . .

Our own inquiry will have two stages. In Section I, we will consider whether or not it is possible to establish that abortion is morally permissible even on the assumption that a fetus is an entity with a full-fledged right to life. I will argue that in fact this cannot be established, at least not with the conclusiveness which is essential to our hopes of convincing those who are skeptical about the morality of abortion, and that we therefore cannot avoid dealing with the question of whether or not a fetus really does have the same right to life as a (more fully developed) human being.

In Section II, I will propose an answer to this question, namely, that a fetus cannot be considered a member of the moral community, the set of beings with full and equal moral rights, for the simple reason that it is not a person, and that it is personhood, and not genetic humanity, i.e., humanity as defined by Noonan, which is the basis for membership in this community. I will argue that a fetus, whatever its stage of development, satisfies none of the basic criteria of personhood, and is not even enough *like* a person to be accorded even some of the same rights on the basis of this resemblance. Nor, as we will see, is a fetus's *potential* personhood a threat to the morality of abortion, since, whatever the rights of potential people may be, they are invariably overridden in any conflict with the moral rights of actual people.

We turn now to Professor [Judith] Thomson's case¹ for the claim that even if a fetus has full moral rights, abortion is still morally permissible, at least sometimes, and for some reasons other than to save the woman's life. Her argument is based upon a clever, but I think faulty, analogy. She asks us to picture ourselves waking up one day, in bed with a famous violinist. Imagine that you have been kidnapped, and your bloodstream hooked up to that of the violinist, who happens to have an ailment which will certainly kill him unless he is permitted to share your kidneys for a period of nine months. No one else can save him, since you alone have the right type of blood. He will be unconscious all that time, and you will have

to stay in bed with him, but after the nine months are over he may be unplugged, completely cured, that is provided that you have cooperated.

Now then, she continues, what are your obligations in this situation? The antiabortionist, if he is consistent, will have to say that you are obligated to stay in bed with the violinist: for all people have a right to life, and violinists are people, and therefore it would be murder for you to disconnect yourself from him and let him die (p. 49). But this is outrageous, and so there must be something wrong with the same argument when it is applied to abortion. It would certainly be commendable of you to agree to save the violinist, but it is absurd to suggest that your refusal to do so would be murder. His right to life does not obligate you to do whatever is required to keep him alive; nor does it justify anyone else in forcing you to do so. A law which required you to stay in bed with the violinist would clearly be an unjust law, since it is no proper function of the law to force unwilling people to make huge sacrifices for the sake of other people toward whom they have no such prior obligation.

Thomson concludes that, if this analogy is an apt one, then we can grant the antiabortionist his claim that a fetus is a human being, and still hold that it is at least sometimes the case that a pregnant woman has the right to refuse to be a Good Samaritan towards the fetus, i.e., to obtain an abortion. For there is a great gap between the claim that *x* has a right to life, and the claim that *y* is obligated to do whatever is necessary to keep *x* alive, let alone that he ought to be forced to do so. It is *y*'s duty to keep *x* alive only if he has somehow contracted a *special* obligation to do so; and a woman who is unwillingly pregnant, e.g., who was raped, has done nothing which obligates her to make the enormous sacrifice which is necessary to preserve the conceptus.

This argument is initially quite plausible, and in the extreme case of pregnancy due to rape it is probably conclusive. Difficulties arise, however, when we try to specify more exactly the range of cases in which abortion is clearly justifiable even on the assumption that the fetus is human. Professor Thomson considers it a virtue of her argument that it does not enable us to conclude that abortion is *always* permissible. It would, she says, be "indecent" for a

woman in her seventh month to obtain an abortion just to avoid having to postpone a trip to Europe. On the other hand, her argument enables us to see that “a sick and desperately frightened schoolgirl pregnant due to rape may *of course* choose abortion, and that any law which rules this out is an insane law” (p. 65). So far, so good; but what are we to say about the woman who becomes pregnant not through rape but as a result of her own carelessness, or because of contraceptive failure, or who gets pregnant intentionally and then changes her mind about wanting a child? With respect to such cases, the violinist analogy is of much less use to the defender of the woman’s right to obtain an abortion.

Indeed, the choice of a pregnancy due to rape, as an example of a case in which abortion is permissible even if a fetus is considered a human being, is extremely significant; for it is only in the case of pregnancy due to rape that the woman’s situation is adequately analogous to the violinist case for our intuitions about the latter to transfer convincingly. The crucial difference between a pregnancy due to rape and the *normal* case of an unwanted pregnancy is that in the normal case we cannot claim that the woman is in no way responsible for her predicament; she could have remained chaste, or taken her pills more faithfully, or abstained on dangerous days, and so on. If, on the other hand, you are kidnapped by strangers, and hooked up to a strange violinist, then you are free of any shred of responsibility for the situation, on the basis of which it could be argued that you are obligated to keep the violinist alive. Only when her pregnancy is due to rape is a woman clearly just as nonresponsible.

Consequently, there is room for the antiabortionist to argue that in the normal case of unwanted pregnancy a woman has, by her own actions, assumed responsibility for the fetus. For if x behaves in a way which he could have avoided, and which he knows involves, let us say, a 1 percent chance of bringing into existence a human being, with a right to life, and does so knowing that if this should happen then that human being will perish unless x does certain things to keep him alive, then it is by no means clear that when it does happen x is free of any obligation to what he knew in advance would be required to keep that human being alive.

The plausibility of such an argument is enough to show that the Thomson analogy can provide a clear and persuasive defense of a woman’s right to obtain an abortion only with respect to those cases in which the woman is in no way responsible for her pregnancy, e.g., where it is due to rape. In all other cases, we would almost certainly conclude that it was necessary to look carefully at the particular circumstances in order to determine the extent of the woman’s responsibility, and hence the extent of her obligation. This is an extremely unsatisfactory outcome, from the viewpoint of the opponents of restrictive abortion laws, most of whom are convinced that a woman has a right to obtain an abortion regardless of how and why she got pregnant.

Of course a supporter of the violinist analogy might point out that it is absurd to suggest that forgetting her pill one day might be sufficient to oblige a woman to complete an unwanted pregnancy. And indeed it *is* absurd to suggest this. As we will see, the moral right to obtain an abortion is not in the least dependent upon the extent to which the woman is responsible for her pregnancy. But unfortunately, once we allow the assumption that a fetus has full moral rights, we cannot avoid taking this absurd suggestion seriously. Perhaps we can make this point more clear by altering the violinist story just enough to make it more analogous to a normal unwanted pregnancy and less to a pregnancy due to rape, and then seeing whether it is still obvious that you are not obligated to stay in bed with the fellow.

Suppose, then, that violinists are peculiarly prone to the sort of illness the only cure for which is the use of someone else’s bloodstream for nine months, and that because of this there has been formed a society of music lovers who agree that whenever a violinist is stricken they will draw lots and the loser will, by some means, be made the one and only person capable of saving him. Now then, would you be obligated to cooperate in curing the violinist if you had voluntarily joined this society, knowing the possible consequences, and then your name had been drawn and you had been kidnapped? Admittedly, you did not promise ahead of time that you would, but you did deliberately place yourself in a position in which it might happen that a human life would be lost if you did not. Surely this is at least

a *prima facie* reason for supposing that you have an obligation to stay in bed with the violinist. Suppose that you had gotten your name drawn deliberately; surely *that* would be quite a strong reason for thinking that you had such an obligation.

It might be suggested that there is one important disanalogy between the modified violinist case and the case of an unwanted pregnancy, which makes the woman's responsibility significantly less, namely, the fact that the fetus *comes into existence* as the result of the result of the woman's actions. This fact might give her a right to refuse to keep it alive, whereas she would not have had this right had it existed previously, independently, and then as a result of her actions become dependent upon her for its survival.

My own intuition, however, is that *x* has no more right to bring into existence, either deliberately or as a foreseeable result of actions he could have avoided, a being with full moral rights (*y*), and then refuse to do what he knew beforehand would be required to keep that being alive, than he has to enter into an agreement with an existing person, whereby he may be called upon to save that person's life, and then refuse to do so when so called upon. Thus, *x*'s responsibility for *y*'s existence does not seem to lessen his obligation to keep *y* alive, if he is also responsible for *y*'s being in a situation in which only he can save him.

Whether or not this intuition is entirely correct, it brings us back once again to the conclusion that once we allow the assumption that a fetus has full moral rights it becomes an extremely complex and difficult question whether and when abortion is justifiable. Thus the Thomson analogy cannot help us produce a clear and persuasive proof of the moral permissibility of abortion. Nor will the opponents of the restrictive laws thank us for anything less; for their conviction (for the most part) is that abortion is obviously *not* a morally serious and extremely unfortunate, even though sometimes justified act, comparable to killing in self-defense or to letting the violinist die, but rather is closer to being a morally neutral act, like cutting one's hair.

The basis of this conviction, I believe, is the realization that a fetus is not a person, and thus does not have a full-fledged right to life. Perhaps the reason

why this claim has been so inadequately defended is that it seems self-evident to those who accept it. And so it is, insofar as it follows from what I take to be perfectly obvious claims about the nature of personhood, and about the proper grounds for ascribing moral rights, claims which ought, indeed, to be obvious to both the friends and foes of abortion. Nevertheless, it is worth examining these claims, and showing how they demonstrate the moral innocuousness of abortion, since this apparently has not been adequately done before.

II

The question which we must answer in order to produce a satisfactory solution to the problem of the moral status of abortion is this: How are we to define the moral community, the set of beings with full and equal moral rights, such that we can decide whether a human fetus is a member of this community or not? What sort of entity, exactly, has the inalienable rights to life, liberty, and the pursuit of happiness? Jefferson attributed these rights to all *men*, and it may or may not be fair to suggest that he intended to attribute them *only* to men. Perhaps he ought to have attributed them to all human beings. If so, then we arrive, first, at Noonan's problem of defining what makes a being human, and, second, at the equally vital question which Noonan does not consider, namely, What reason is there for identifying the moral community with the set of all human beings, in whatever way we have chosen to define that term?

I. On the Definition of 'Human'

One reason why this vital second question is so frequently overlooked in the debate over the moral status of abortion is that the term 'human' has two distinct, but not often distinguished, senses. This fact results in a slide of meaning, which serves to conceal the fallaciousness of the traditional argument that since (1) it is wrong to kill innocent human beings, and (2) fetuses are innocent human beings, then (3) it is wrong to kill fetuses. For if 'human' is used in the same sense in both (1) and (2) then, whichever of the two senses is meant, one of these premises is question-begging. And if it is used in two different senses then of course the conclusion doesn't follow.

Thus (1) is a self-evident moral truth,² and avoids begging the question about abortion, only if 'human being' is used to mean something like "a full-fledged member of the moral community." (It may or may not also be meant to refer exclusively to members of the species *Homo sapiens*.) We may call this the *moral* sense of 'human'. It is not to be confused with what we will call the *genetic* sense, i.e., the sense in which *any* member of the species is a human being, and no member of any other species could be. If (1) is acceptable only if the moral sense is intended, (2) is non-question-begging only if what is intended is the genetic sense.

In "Deciding Who is Human,"³ Noonan argues for the classification of fetuses with human beings by pointing to the presence of the full genetic code, and the potential capacity for rational thought (p. 135). It is clear that what he needs to show, for his version of the traditional argument to be valid, is that fetuses are human in the moral sense, the sense in which it is analytically true that all human beings have full moral rights. But, in the absence of any argument showing that whatever is genetically human is also morally human, and he gives none, nothing more than genetic humanity can be demonstrated by the presence of the human genetic code. And, as we will see, the *potential* capacity for rational thought can at most show that an entity has the potential for *becoming* human in the moral sense.

2. Defining the Moral Community

Can it be established that genetic humanity is sufficient for moral humanity? I think that there are very good reasons for not defining the moral community in this way. I would like to suggest an alternative way of defining the moral community, which I will argue for only to the extent of explaining why it is, or should be, self-evident. The suggestion is simply that the moral community consists of all and only *people*, rather than all and only human beings;⁴ and probably the best way of demonstrating its self-evidence is by considering the concept of personhood, to see what sorts of entity are and are not persons, and what the decision that a being is or is not a person implies about its moral rights.

What characteristics entitle an entity to be considered a person? This is obviously not the place to

attempt a complete analysis of the concept of personhood, but we do not need such a fully adequate analysis just to determine whether and why a fetus is or isn't a person. All we need is a rough and approximate list of the most basic criteria of personhood, and some idea of which, or how many, of these an entity must satisfy in order to properly be considered a person.

In searching for such criteria, it is useful to look beyond the set of people with whom we are acquainted, and ask how we would decide whether a totally alien being was a person or not. (For we have no right to assume that genetic humanity is necessary for personhood.) Imagine a space traveler who lands on an unknown planet and encounters a race of beings utterly unlike any he has ever seen or heard of. If he wants to be sure of behaving morally toward these beings, he has to somehow decide whether they are people, and hence have full moral rights, or whether they are the sort of thing which he need not feel guilty about treating as, for example, a source of food.

How should he go about making this decision? If he has some anthropological background, he might look for such things as religion, art, and the manufacturing of tools, weapons, or shelters, since these factors have been used to distinguish our human from our prehuman ancestors, in what seems to be closer to the moral than the genetic sense of 'human'. And no doubt he would be right to consider the presence of such factors as good evidence that the alien beings were people, and morally human. It would, however, be overly anthropocentric of him to take the absence of these things as adequate evidence that they were not, since we can imagine people who have progressed beyond, or evolved without ever developing, these cultural characteristics.

I suggest that the traits which are most central to the concept of personhood, or humanity in the moral sense, are, very roughly, the following:

1. consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain;
2. reasoning (the *developed* capacity to solve new and relatively complex problems);

3. self-motivated activity (activity which is relatively independent of either genetic or direct external control);
4. the capacity to communicate, by whatever means, messages of an indefinite variety of types, that is, not just with an indefinite number of possible contents, but on indefinitely many possible topics;
5. the presence of self-concepts, and self-awareness, either individual or racial, or both.

Admittedly, there are apt to be a great many problems involved in formulating precise definitions of these criteria, let alone in developing universally valid behavioral criteria for deciding when they apply. But I will assume that both we and our explorer know approximately what (1)-(5) mean, and that he is also able to determine whether or not they apply. How, then, should he use his findings to decide whether or not the alien beings are people? We needn't suppose that an entity must have *all* of these attributes to be properly considered a person; (1) and (2) alone may well be sufficient for personhood, and quite probably (1)-(3) are sufficient. Neither do we need to insist that any one of these criteria is *necessary* for personhood, although once again (1) and (2) look like fairly good candidates for necessary conditions, as does (3), if activity is construed so as to include the activity of reasoning.

All we need to claim, to demonstrate that a fetus is not a person, is that any being which satisfies *none* of (1)-(5) is certainly not a person. I consider this claim to be so obvious that I think anyone who denied it, and claimed that a being which satisfied none of (1)-(5) was a person all the same, would thereby demonstrate that he had no notion at all of what a person is—perhaps because he had confused the concept of a person with that of genetic humanity. If the opponents of abortion were to deny the appropriateness of these five criteria, I do not know what further arguments would convince them. We would probably have to admit that our conceptual schemes were indeed irreconcilably different, and that our dispute could not be settled objectively.

I do not expect this to happen, however, since I think that the concept of a person is one which is very nearly universal (to people), and that it is

common to both proabortionists and antiabortionists, even though neither group has fully realized the relevance of this concept to the resolution of their dispute. Furthermore, I think that on reflection even the antiabortionists ought to agree not only that (1)-(5) are central to the concept of personhood, but also that it is a part of this concept that all and only people have full moral rights. The concept of a person is in part a moral concept; once we have admitted that *x* is a person we have recognized, even if we have not agreed to respect, *x*'s right to be treated as a member of the moral community. It is true that the claim that *x* is a *human being* is more commonly voiced as part of an appeal to treat *x* decently than is the claim that *x* is a person, but this is either because 'human being' is here used in the sense which implies personhood, or because the genetic and moral senses of 'human' have been confused.

Now if (1)-(5) are indeed the primary criteria of personhood, then it is clear that genetic humanity is neither necessary nor sufficient for establishing that an entity is a person. Some human beings are not people, and there may well be people who are not human beings. A man or woman whose consciousness has been permanently obliterated but who remains alive is a human being which is no longer a person; defective human beings, with no appreciable mental capacity, are not and presumably never will be people; and a fetus is a human being which is not yet a person, and which therefore cannot coherently be said to have full moral rights. Citizens of the next century should be prepared to recognize highly advanced, self-aware robots or computers, should such be developed, and intelligent inhabitants of other worlds, should such be found, as people in the fullest sense, and to respect their moral rights. But to ascribe full moral rights to an entity which is not a person is as absurd as to ascribe moral obligations and responsibilities to such an entity.

3. **Fetal Development and the Right to Life**

Two problems arise in the application of these suggestions for the definition of the moral community to the determination of the precise moral status of a human fetus. Given that the paradigm example of

a person is a normal adult human being, then (1) How like this paradigm, in particular how far advanced since conception, does a human being need to be before it begins to have a right to life by virtue, not of being fully a person as of yet, but of being *like* a person? and (2) To what extent, if any, does the fact that a fetus has the *potential* for becoming a person endow it with some of the same rights? Each of these questions requires some comment.

In answering the first question, we need not attempt a detailed consideration of the moral rights of organisms which are not developed enough, aware enough, intelligent enough, etc., to be considered people, but which resemble people in some respects. It does seem reasonable to suggest that the more like a person, in the relevant respects, a being is, the stronger is the case for regarding it as having a right to life, and indeed the stronger its right to life is. Thus we ought to take seriously the suggestion that, insofar as "the human individual develops biologically in a continuous fashion the rights of a human person might develop in the same way." But we must keep in mind that the attributes which are relevant in determining whether or not an entity is enough like a person to be regarded as having some of the same moral rights are no different from those which are relevant to determining whether or not it is fully a person—i.e., are no different from (1)-(5)—and that being genetically human, or having recognizably human facial and other physical features, or detectable brain activity, or the capacity to survive outside the uterus, are simply not among these relevant attributes.

Thus it is clear that even though a seven- or eight-month fetus has features which make it apt to arouse in us almost the same powerful protective instinct as is commonly aroused by a small infant, nevertheless it is not significantly more personlike than is a very small embryo. It is *somewhat* more personlike; it can apparently feel and respond to pain, and it may even have a rudimentary form of consciousness, insofar as its brain is quite active. Nevertheless, it seems safe to say that it is not fully conscious, in the way that an infant of a few months is, and that it cannot reason, or communicate messages of indefinitely many sorts, does not engage in self-motivated activity, and has no self-awareness.

Thus, in the *relevant* respects, a fetus, even a fully developed one, is considerably less personlike than is the average mature mammal, indeed the average fish. And I think that a rational person must conclude that if the right to life of a fetus is to be based upon its resemblance to a person, then it cannot be said to have any more right to life than, let us say, a newborn guppy (which also seems to be capable of feeling pain), and that a right of that magnitude could never override a woman's right to obtain an abortion, at any stage of her pregnancy.

There may, of course, be other arguments in favor of placing legal limits upon the stage of pregnancy in which an abortion may be performed. Given the relative safety of the new techniques of artificially inducing labor during the third trimester, the danger to the woman's life or health is no longer such an argument. Neither is the fact that people tend to respond to the thought of abortion in the later stages of pregnancy with emotional repulsion, since mere emotional responses cannot take the place of moral reasoning in determining what ought to be permitted. Nor, finally, is the frequently heard argument that legalizing abortion, especially late in the pregnancy, may erode the level of respect for human life, leading, perhaps, to an increase in unjustified euthanasia and other crimes. For this threat, if it is a threat, can be better met by educating people to the kinds of moral distinctions which we are making here than by limiting access to abortion (which limitation may, in its disregard for the rights of women, be just as damaging to the level of respect for human rights).

Thus, since the fact that even a fully developed fetus is not personlike enough to have any significant right to life on the basis of its personlikeness shows that no legal restrictions upon the stage of pregnancy in which an abortion may be performed can be justified on the grounds that we should protect the rights of the older fetus; and since there is no other apparent justification for such restrictions, we may conclude that they are entirely unjustified. Whether or not it would be *indecent* (whatever that means) for a woman in her seventh month to obtain an abortion just to avoid having to postpone a trip to Europe, it would not, in itself, be *immoral*, and therefore it ought to be permitted.

4. Potential Personhood and the Right to Life

We have seen that a fetus does not resemble a person in any way which can support the claim that it has even some of the same rights. But what about its *potential*, the fact that if nurtured and allowed to develop naturally it will very probably become a person? Doesn't that alone give it at least some right to life? It is hard to deny that the fact that an entity is a potential person is a strong *prima facie* reason for not destroying it; but we need not conclude from this that a potential person has a right to life, by virtue of that potential. It may be that our feeling that it is better, other things being equal, not to destroy a potential person is better explained by the fact that potential people are still (felt to be) an invaluable resource, not to be lightly squandered. Surely, if every speck of dust were a potential person, we would be much less apt to conclude that every potential person has a right to become actual.

Still, we do not need to insist that a potential person has no right to life whatever. There may well be something immoral, and not just imprudent, about wantonly destroying potential people, when doing so isn't necessary to protect anyone's rights. But even if a potential person does have some *prima facie* right to life, such a right could not possibly outweigh the right of a woman to obtain an abortion, since the rights of any actual person invariably outweigh those of any potential person, whenever the two conflict. Since this may not be immediately obvious in the case of a human fetus, let us look at another case.

Suppose that our space explorer falls into the hands of an alien culture, whose scientists decide to create a few hundred thousand or more human beings, by breaking his body into its component cells, and using these to create fully developed human beings, with, of course, his genetic code. We may imagine that each of these newly created men will have all of the original man's abilities, skills, knowledge, and so on, and also have an individual self-concept, in short that each of them will be a *bona fide* (though hardly unique) person. Imagine that the whole project will take only seconds, and that its chances of success are extremely high, and that our explorer knows all of this, and also knows that these people will be treated fairly. I maintain that in such a situation he would

have every right to escape if he could, and thus to deprive all of these potential people of their potential lives; for his right to life outweighs all of theirs together, in spite of the fact that they are all genetically human, all innocent, and all have a very high probability of becoming people very soon, if only he refrains from acting.

Indeed, I think he would have a right to escape even if it were not his life which the alien scientists planned to take, but only a year of his freedom, or, indeed, only a day. Nor would he be obligated to stay if he had gotten captured (thus bringing all these people-potentials into existence) because of his own carelessness, or even if he had done so deliberately, knowing the consequences. Regardless of how he got captured, he is not morally obligated to remain in captivity for *any* period of time for the sake of permitting any number of potential people to come into actuality, so great is the margin by which one actual person's right to liberty outweighs whatever right to life even a hundred thousand potential people have. And it seems reasonable to conclude that the rights of a woman will outweigh by a similar margin whatever right to life a fetus may have by virtue of its potential personhood.

Thus, neither a fetus's resemblance to a person, nor its potential for becoming a person provides any basis whatever for the claim that it has any significant right to life. Consequently, a woman's right to protect her health, happiness, freedom, and even her life by terminating an unwanted pregnancy, will always override whatever right to life it may be appropriate to ascribe to a fetus, even a fully developed one. And thus, in the absence of any overwhelming social need for every possible child, the laws which restrict the right to obtain an abortion, or limit the period of pregnancy during which an abortion may be performed, are a wholly unjustified violation of a woman's most basic moral and constitutional rights.

NOTES

1. Judith Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1 (1971), pp. 47–66.
2. Of course, the principle that it is (always) wrong to kill innocent human beings is in need of many other modifications, e.g., that it may be

permissible to do so to save a greater number of other innocent human beings, but we may safely ignore these complications here.

3. John Noonan, "Deciding Who Is Human," *Natural Law Review* 13 (1968), p. 134.
4. From here on, we will use 'human' to mean genetically human, since the moral sense seems closely connected to, and perhaps derived from, the assumption that genetic humanity is sufficient for membership in the moral community.

Mary Anne Warren: On the Moral and Legal Status of Abortion

1. Warren claims that if we allow that the fetus is a person, then the pro-choice case collapses. Do you agree with her assessment? Why or why not?

2. Warren identifies five criteria of personhood. Do you think the fetus lacks each of these traits? If so, might there be a sixth criterion of personhood that the fetus does fulfill?
3. If even third-trimester fetuses are not persons—because they fail to fulfill any of the five criteria Warren associates with personhood—then newborn infants also fail to be persons. Is this correct? If so, would Warren's position also morally permit infanticide?
4. Warren argues that the rights of persons always outweigh the potential rights of potential persons by means of her astronaut example. Does this example establish what she thinks it does? Why or why not?
5. How important is a being's potential in determining its moral status?

Why Abortion Is Immoral

Don Marquis

In this article, Don Marquis argues, from entirely secular premises, to the conclusion that abortion is, in most circumstances, a form of murder. He does this by first trying to explain why it is immoral to kill people like you and me. After canvassing a few popular but mistaken options, he arrives at his answer: Such killing is immoral because it deprives us of a future of value.

Human fetuses—most of them, at least—also share this feature. And therefore it is ordinarily wrong to kill human fetuses. And so abortion is usually immoral. Marquis considers a variety of objections to his view, and concludes his article by trying to show how each of them can be met.

The view that abortion is, with rare exceptions, seriously immoral has received little support in the recent philosophical literature. No doubt most philosophers affiliated with secular institutions

of higher education believe that the anti-abortion position is either a symptom of irrational religious dogma or a conclusion generated by seriously confused philosophical argument. The purpose of this essay is to undermine this general belief. This essay sets out an argument that purports to show, as well as any argument in ethics can show, that abortion is, except possibly in rare cases, seriously

From Don Marquis, "Why Abortion Is Immoral," *Journal of Philosophy* 86 (1989), pp. 183–185, 189–192, 194, 198–199, 201.

immoral, that it is in the same moral category as killing an innocent adult human being. . . .

I.

A sketch of standard anti-abortion and pro-choice arguments exhibits how those arguments possess certain symmetries that explain why partisans of those positions are so convinced of the correctness of their own positions, why they are not successful in convincing their opponents, and why, to others, this issue seems to be unresolvable. An analysis of the nature of this standoff suggests a strategy for surmounting it.

Consider the way a typical anti-abortionist argues. She will argue or assert that life is present from the moment of conception or that fetuses look like babies or that fetuses possess a characteristic such as a genetic code that is both necessary and sufficient for being human. Anti-abortionists seem to believe that (1) the truth of all of these claims is quite obvious, and (2) establishing any of these claims is sufficient to show that abortion is morally akin to murder.

A standard pro-choice strategy exhibits similarities. The pro-choicer will argue or assert that fetuses are not persons or that fetuses are not rational agents or that fetuses are not social beings. Pro-choicers seem to believe that (1) the truth of any of these claims is quite obvious, and (2) establishing any of these claims is sufficient to show that an abortion is not a wrongful killing.

In fact, both the pro-choice and the anti-abortion claims do seem to be true, although the “it looks like a baby” claim is more difficult to establish the earlier the pregnancy. We seem to have a standoff. How can it be resolved?

As everyone who has taken a bit of logic knows, if any of these arguments concerning abortion is a good argument, it requires not only some claim characterizing fetuses, but also some general moral principle that ties a characteristic of fetuses to having or not having the right to life or to some other moral characteristic that will generate the obligation or the lack of obligation not to end the life of a fetus. Accordingly, the arguments of the anti-abortionist and the pro-choicer need a bit of filling in to be regarded as adequate.

Note what each partisan will say. The anti-abortionist will claim that her position is supported by such generally accepted moral principles as “It is always *prima facie* seriously wrong to take a human life” or “It is always *prima facie* seriously wrong to end the life of a baby.” Since these are generally accepted moral principles, her position is certainly not obviously wrong. The pro-choicer will claim that her position is supported by such plausible moral principles as “Being a person is what gives an individual intrinsic moral worth” or “It is only seriously *prima facie* wrong to take the life of a member of the human community.” Since these are generally accepted moral principles, the pro-choice position is certainly not obviously wrong. Unfortunately, we have again arrived at a standoff.

Now, how might one deal with this standoff? The standard approach is to try to show how the moral principles of one’s opponent lose their plausibility under analysis. It is easy to see how this is possible. On the one hand, the anti-abortionist will defend a moral principle concerning the wrongness of killing which tends to be broad in scope in order that even fetuses at an early stage of pregnancy will fall under it. The problem with broad principles is that they often embrace too much. In this particular instance, the principle “It is always *prima facie* wrong to take a human life” seems to entail that it is wrong to end the existence of a living human cancer-cell culture, on the grounds that the culture is both living and human. Therefore, it seems that the anti-abortionist’s favored principle is too broad.

On the other hand, the pro-choicer wants to find a moral principle concerning the wrongness of killing which tends to be narrow in scope in order that fetuses will *not* fall under it. The problem with narrow principles is that they often do *not* embrace enough. Hence, the needed principles such as “It is *prima facie* seriously wrong to kill only persons” or “It is *prima facie* wrong to kill only rational agents” do not explain why it is wrong to kill infants or young children or the severely retarded or even perhaps the severely mentally ill. Therefore, we seem again to have a standoff. The anti-abortionist charges, not unreasonably, that pro-choice principles

concerning killing are too narrow to be acceptable; the pro-choicer charges, not unreasonably, that anti-abortionist principles concerning killing are too broad to be acceptable. . . .

All this suggests that a necessary condition of resolving the abortion controversy is a more theoretical account of the wrongness of killing. After all, if we merely believe, but do not understand, why killing adult human beings such as ourselves is wrong, how could we conceivably show that abortion is either immoral or permissible?

II.

In order to develop such an account, we can start from the following unproblematic assumption concerning our own case: it is wrong to kill *us*. Why is it wrong? Some answers can be easily eliminated. It might be said that what makes killing us wrong is that a killing brutalizes the one who kills. But the brutalization consists of being inured to the performance of an act that is hideously immoral; hence, the brutalization does not explain the immorality. It might be said that what makes killing us wrong is the great loss others would experience due to our absence. Although such hubris is understandable, such an explanation does not account for the wrongness of killing hermits, or those whose lives are relatively independent and whose friends find it easy to make new friends.

A more obvious answer is better. What primarily makes killing wrong is neither its effect on the murderer nor its effect on the victim's friends and relatives, but its effect on the victim. The loss of one's life is one of the greatest losses one can suffer. The loss of one's life deprives one of all the experiences, activities, projects, and enjoyments that would otherwise have constituted one's future. Therefore, killing someone is wrong, primarily because the killing inflicts (one of) the greatest possible losses on the victim. To describe this as the loss of life can be misleading, however. The change in my biological state does not by itself make killing me wrong. The effect of the loss of my biological life is the loss to me of all those activities, projects, experiences, and enjoyments which would otherwise have constituted my future personal life. These activities, projects, experiences,

and enjoyments are either valuable for their own sakes or are means to something else that is valuable for its own sake. Some parts of my future are not valued by me now, but will come to be valued by me as I grow older and as my values and capacities change. When I am killed, I am deprived both of what I now value which would have been part of my future personal life, but also what I would come to value. Therefore, when I die, I am deprived of all of the value of my future. Inflicting this loss on me is ultimately what makes killing me wrong. This being the case, it would seem that what makes killing *any* adult human being *prima facie* seriously wrong is the loss of his or her future.¹

How should this rudimentary theory of the wrongness of killing be evaluated? It cannot be faulted for deriving an 'ought' from an 'is,' for it does not. The analysis assumes that killing me (or you, reader) is *prima facie* seriously wrong. The point of the analysis is to establish which natural property ultimately explains the wrongness of the killing, given that it is wrong. A natural property will ultimately explain the wrongness of killing, only if (1) the explanation fits with our intuitions about the matter and (2) there is no other natural property that provides the basis for a better explanation of the wrongness of killing. This analysis rests on the intuition that what makes killing a particular human or animal wrong is what it does to that particular human or animal. What makes killing wrong is some natural effect or other of the killing. Some would deny this. For instance, a divine-command theorist in ethics would deny it. Surely this denial is, however, one of those features of divine-command theory which renders it so implausible.

The claim that what makes killing wrong is the loss of the victim's future is directly supported by two considerations. In the first place, this theory explains why we regard killing as one of the worst of crimes. Killing is especially wrong, because it deprives the victim of more than perhaps any other crime. In the second place, people with AIDS or cancer who know they are dying believe, of course, that dying is a very bad thing for them. They believe that the loss of a future to them that they would otherwise have experienced is what makes their premature death a very bad thing for them. A better

theory of the wrongness of killing would require a different natural property associated with killing which better fits with the attitudes of the dying. What could it be?

The view that what makes killing wrong is the loss to the victim of the value of the victim's future gains additional support when some of its implications are examined. In the first place, it is incompatible with the view that it is wrong to kill only beings who are biologically human. It is possible that there exists a different species from another planet whose members have a future like ours. Since having a future like that is what makes killing someone wrong, this theory entails that it would be wrong to kill members of such a species. Hence, this theory is opposed to the claim that only life that is biologically human has great moral worth, a claim which many anti-abortionists have seemed to adopt. This opposition, which this theory has in common with personhood theories, seems to be a merit of the theory.

In the second place, the claim that the loss of one's future is the wrong-making feature of one's being killed entails the possibility that the futures of some actual nonhuman mammals on our own planet are sufficiently like ours that it is seriously wrong to kill them also. Whether some animals do have the same right to life as human beings depends on adding to the account of the wrongness of killing some additional account of just what it is about my future or the futures of other adult human beings which makes it wrong to kill us. No such additional account will be offered in this essay. Undoubtedly, the provision of such an account would be a very difficult matter. Undoubtedly, any such account would be quite controversial. Hence, it surely should not reflect badly on this sketch of an elementary theory of the wrongness of killing that it is indeterminate with respect to some very difficult issues regarding animal rights.

In the third place, the claim that the loss of one's future is the wrong-making feature of one's being killed does not entail, as sanctity of human life theories do, that active euthanasia is wrong. Persons who are severely and incurably ill, who face a future of pain and despair, and who wish to die will not have suffered a loss if they are killed. It is, strictly speaking, the value of a human's future which

makes killing wrong in this theory. This being so, killing does not necessarily wrong some persons who are sick and dying. Of course, there may be other reasons for a prohibition of active euthanasia, but that is another matter. Sanctity-of-human-life theories seem to hold that active euthanasia is seriously wrong even in an individual case where there seems to be good reason for it independently of public policy considerations. This consequence is most implausible, and it is a plus for the claim that the loss of a future of value is what makes killing wrong that it does not share this consequence.

In the fourth place, the account of the wrongness of killing defended in this essay does straightforwardly entail that it is *prima facie* seriously wrong to kill children and infants, for we do presume that they have futures of value. Since we do believe that it is wrong to kill defenseless little babies, it is important that a theory of the wrongness of killing easily account for this. Personhood theories of the wrongness of killing, on the other hand, cannot straightforwardly account for the wrongness of killing infants and young children. Hence, such theories must add special *ad hoc* accounts of the wrongness of killing the young. The plausibility of such *ad hoc* theories seems to be a function of how desperately one wants such theories to work. The claim that the primary wrong-making feature of a killing is the loss to the victim of the value of its future accounts for the wrongness of killing young children and infants directly; it makes the wrongness of such acts as obvious as we actually think it is. This is a further merit of this theory. Accordingly, it seems that this value of a future-like-ours theory of the wrongness of killing shares strengths of both sanctity-of-life and personhood accounts while avoiding weaknesses of both. In addition, it meshes with a central intuition concerning what makes killing wrong.

The claim that the primary wrong-making feature of a killing is the loss to the victim of the value of its future has obvious consequences for the ethics of abortion. The future of a standard fetus includes a set of experiences, projects, activities, and such which are identical with the futures of adult human beings and are identical with the futures of young children. Since the reason that is sufficient to explain why it is wrong to kill

human beings after the time of birth is a reason that also applies to fetuses, it follows that abortion is *prima facie* seriously morally wrong.

This argument does not rely on the invalid inference that, since it is wrong to kill persons, it is wrong to kill potential persons also. The category that is morally central to this analysis is the category of having a valuable future like ours; it is not the category of personhood. The argument to the conclusion that abortion is *prima facie* seriously morally wrong proceeded independently of the notion of person or potential person or any equivalent. Someone may wish to start with this analysis in terms of the value of a human future, conclude that abortion is, except perhaps in rare circumstances, seriously morally wrong, infer that fetuses have the right to life, and then call fetuses “persons” as a result of their having the right to life. Clearly, in this case, the category of person is being used to state the *conclusion* of the analysis rather than to generate the *argument* of the analysis. . . .

Of course, this value of a future-like-ours argument, if sound, shows only that abortion is *prima facie* wrong, not that it is wrong in any and all circumstances. Since the loss of the future to a standard fetus, if killed, is, however, at least as great a loss as the loss of the future to a standard adult human being who is killed, abortion, like ordinary killing, could be justified only by the most compelling reasons. The loss of one’s life is almost the greatest misfortune that can happen to one. Presumably abortion could be justified in some circumstances, only if the loss consequent on failing to abort would be at least as great. Accordingly, morally permissible abortions will be rare indeed unless, perhaps, they occur so early in pregnancy that a fetus is not yet definitely an individual. Hence, this argument should be taken as showing that abortion is presumptively very seriously wrong, where the presumption is very strong—as strong as the presumption that killing another adult human being is wrong.

III.

How complete an account of the wrongness of killing does the value of a future-like-ours account have to be in order that the wrongness of abortion is

a consequence? This account does not have to be an account of the necessary conditions for the wrongness of killing. Some persons in nursing homes may lack valuable human futures, yet it may be wrong to kill them for other reasons. Furthermore, this account does not obviously have to be the sole reason killing is wrong where the victim did have a valuable future. This analysis claims only that, for any killing where the victim did have a valuable future like ours, having that future by itself is sufficient to create the strong presumption that the killing is seriously wrong.

One way to overturn the value of a future-like-ours argument would be to find some account of the wrongness of killing which is at least as intelligible and which has different implications for the ethics of abortion. . . .

One move of this sort is based upon the claim that a necessary condition of one’s future being valuable is that one values it. Value implies a valuer. Given this one might argue that, since fetuses cannot value their futures, their futures are not valuable to them. Hence, it does not seriously wrong them deliberately to end their lives.

This move fails, however, because of some ambiguities. Let us assume that something cannot be of value unless it is valued by someone. This does not entail that my life is of no value unless it is valued by me. I may think, in a period of despair, that my future is of no worth whatsoever, but I may be wrong because others rightly see value—even great value—in it. Furthermore, my future can be valuable to me even if I do not value it. This is the case when a young person attempts suicide, but is rescued and goes on to significant human achievements. Such young people’s futures are ultimately valuable to them, even though such futures do not seem to be valuable to them at the moment of attempted suicide. A fetus’s future can be valuable to it in the same way. Accordingly, this attempt to limit the anti-abortion argument fails.

Another similar attempt to reject the anti-abortion position is based on Tooley’s claim that an entity cannot possess the right to life unless it has the capacity to desire its continued existence. It follows that, since fetuses lack the conceptual capacity to desire to continue to live, they lack the right to

life. Accordingly, Tooley concludes that abortion cannot be seriously *prima facie* wrong.² . . .

One might attempt to defend Tooley's basic claim on the grounds that, because a fetus cannot apprehend continued life as a benefit, its continued life cannot be a benefit or cannot be something it has a right to or cannot be something that is in its interest. This might be defended in terms of the general proposition that, if an individual is literally incapable of caring about or taking an interest in some X, then one does not have a right to X or X is not a benefit or X is not something that is in one's interest.

Each member of this family of claims seems to be open to objections. As John C. Stevens³ has pointed out, one may have a right to be treated with a certain medical procedure (because of a health insurance policy one has purchased), even though one cannot conceive of the nature of the procedure. And, as Tooley himself has pointed out, persons who have been indoctrinated, or drugged, or rendered temporarily unconscious may be literally incapable of caring about or taking an interest in something that is in their interest or is something to which they have a right, or is something that benefits them. Hence, the Tooley claim that would restrict the scope of the value of a future-like-ours argument is undermined by counterexamples. . . .⁴

IV.

In this essay, it has been argued that the correct ethic of the wrongness of killing can be extended to fetal life and used to show that there is a strong presumption that any abortion is morally impermissible. If the ethic of killing adopted here entails, however, that contraception is also seriously immoral, then there would appear to be a difficulty with the analysis of this essay.

But this analysis does not entail that contraception is wrong. Of course, contraception prevents the actualization of a possible future of value. Hence, it follows from the claim that futures of value should be maximized that contraception is *prima facie* immoral. This obligation to maximize does not exist, however; furthermore, nothing in the ethics of killing in this paper entails that it

does. The ethics of killing in this essay would entail that contraception is wrong only if something were denied a human future of value by contraception. Nothing at all is denied such a future by contraception, however.

Candidates for a subject of harm by contraception fall into four categories: (1) some sperm or other, (2) some ovum or other, (3) a sperm and an ovum separately, and (4) a sperm and an ovum together. Assigning the harm to some sperm is utterly arbitrary, for no reason can be given for making a sperm the subject of harm rather than an ovum. Assigning the harm to some ovum is utterly arbitrary, for no reason can be given for making an ovum the subject of harm rather than a sperm. One might attempt to avoid these problems by insisting that contraception deprives both the sperm and the ovum separately of a valuable future like ours. On this alternative, too many futures are lost. Contraception was supposed to be wrong, because it deprived us of one future of value, not two. One might attempt to avoid this problem by holding that contraception deprives the combination of sperm and ovum of a valuable future like ours. But here the definite article misleads. At the time of contraception, there are hundreds of millions of sperm, one (released) ovum and millions of possible combinations of all of these. There is no actual combination at all. Is the subject of the loss to be a merely possible combination? Which one? This alternative does not yield an actual subject of harm either. Accordingly, the immorality of contraception is not entailed by the loss of a future-like-ours argument simply because there is no nonarbitrarily identifiable subject of the loss in the case of contraception.

NOTES

1. I have been most influenced on this matter by Jonathan Glover, *Causing Death and Saving Lives* (New York: Penguin, 1977), ch. 3; and Robert Young, "What Is So Wrong with Killing People?" *Philosophy*, LIV, 210 (1979): 515–528.
2. Michael Tooley, *Abortion and Infanticide* (New York: Oxford University Press, 1984), pp. 46–47.
3. "Must the Bearer of a Right Have the Concept of That to Which He Has a Right?" *Ethics*, xcv, 1 (1984): 68–74.

4. See Tooley again in *Abortion and Infanticide*, pp. 47–49.

Don Marquis: Why Abortion Is Immoral

1. Marquis begins by criticizing some common arguments on both sides of the abortion issue. Do his criticisms succeed in refuting the common arguments? Why or why not?
2. What, according to Marquis, is wrong with killing adult humans? Is his theory the best account of what is wrong with such killing?
3. Marquis claims that abortion is wrong for the same reason that killing adult humans is

wrong. Are there any differences between the two that would justify abortion?

4. One might object to Marquis's claim that fetuses have a valuable future by pointing out that fetuses do not have the cognitive capacities to value anything. How does Marquis respond to this objection? Do you find his response convincing?
5. Marquis admits that his theory would be problematic if it led to the view that contraception is seriously morally wrong. How does he argue that his theory does not do this? Do you think he succeeds?

Animals

JUST THE FACTS

If you slam a rock against a tree, or throw it in a fire, or put it in a freezer, it feels nothing. If you do the same to a person, he or she will feel it. That's because human beings are **sentient**—we are able to have sense experiences and, as a result, can feel pleasure and pain. What about nonhuman animals ("animals," from now on): are they like rocks or like us? There's little doubt that almost all animals are sentient like us. There might be exceptions (maybe clams or corals, for instance), but we won't be concerned with them here. Though no animal has ever rated its pain on a scale of 1 to 10 for an experimenter, we have excellent reason to believe that animals experience pleasures and pains as we do. First, animals frequently exhibit the same sort of behavior that humans do when they receive the kind of treatment that would ordinarily cause humans to experience pain (e.g., being cut, struck, or subjected to extreme temperatures). Under these circumstances, animals kick, moan, squirm, squeal, and so on, just like we do. While it's possible that animals are merely exhibiting the behaviors we associate with being in pain without having the corresponding **subjective experiences**, this seems highly unlikely when you consider that many animals have complex brains and nervous systems very similar to ours. And we know that, for humans, the brain and the nervous system—that network of nerves and cells that carries messages to and from the brain—is the crucial biological structure that allows us to experience pleasure and pain. It would be quite surprising, then, if the brain and nervous system that serves as the biological basis for our subjective experiences played no role whatsoever in generating

conscious experiences for animals. So, though we must admit that we're not (and likely never will be) *certain* that animals are sentient, we can be extraordinarily confident that they are.

Humans use animals in a variety of ways. The first, and perhaps most obvious, is as a food source. Across the globe, humans eat enormous amounts of beef, chicken, pork, lamb, turkey, duck, fish, and many other kinds of meat. In 2015, 9.2 billion animals were slaughtered for food in the United States alone.¹ US citizens eat, on average, about 200 pounds of meat per person per year.² With a population of 320 million, that comes out to an annual overall consumption of about 64 billion pounds of meat.

Most animals used for food in the United States are raised on intensive animal farms, or **factory farms**. These are industrial complexes where large numbers of animals are raised in a relatively small and tightly controlled space so that farmers can maximize meat production while minimizing their costs. Animals often find life in these conditions very uncomfortable.

For example, many chickens used for meat and egg production are put in **battery cages**, wire cages roughly the size of a piece of computer paper. In these cages, chickens are unable to fully spread their wings and can barely move. Due to the stress of these conditions, chickens (especially egg-laying hens) have a tendency to peck at one another, sometimes to death. To

1. http://www.humanesociety.org/news/resources/research/stats_slaughter_totals.html?referrer=https://www.google.com/

2. <https://www.forbes.com/sites/niallmcCarthy/2015/08/05/which-countries-eat-the-most-meat-each-year-infographic/#6988e5fb4f95>

prevent this, farmers often cut off the tips of their beaks with a hot blade, a process called debeaking. This is quite painful for the birds, but farmers argue that it's better than the alternative, which is to leave their beaks unclipped, resulting in their mutilating or killing one another. Publicity surrounding these practices has led some large corporations to pledge to abandon these practices.³

Pigs don't have it much better. The natural life of a domestic pig is somewhere between ten and fifteen years. Pigs raised to be slaughtered for meat live for anywhere between six months to two years. Breeding pigs spend most of their lives in a cycle of pregnancy, birth, nursing, and pregnancy again until they're eventually slaughtered for food. During most of their life, they are confined to **gestation crates**, small cages only slightly larger than the pigs themselves. The tight space makes it impossible for the pigs to turn around and nearly impossible for them to sleep comfortably on the ground. The crates contain only slats and no solid floor, so as to make it easier to dispose of the waste. These crates have been banned in Canada and in nine US states, though many pork producers argue that such crates are needed to prevent sows from harming one another in more open, common spaces. As for nonbreeding pigs, they nurse for several weeks after birth. They're then separated from their mothers, castrated (if male), and placed in a pen with many other pigs where they live the majority of their lives. As soon as they are large enough, they're packed tightly into a truck and taken off to be slaughtered. In the summer, many pigs die on the way to the slaughterhouse, due to the intense heat inside the packed truck. In the winter, many freeze to death. Around a million pigs die each year en route to the slaughterhouse.⁴

3. http://www.humanesociety.org/issues/confinement_farm/facts/battery_cages.html?credit=web_id96878129

4. <https://www.peta.org/issues/animals-used-for-food/factory-farming/pigs/pig-transport-slaughter/>

In response to what many regard as cruel practices by the meat industry, millions of people across the world have chosen to adopt a **vegetarian** or **vegan** lifestyle. A vegetarian is someone who refrains from eating any meat products, while a vegan is someone who refrains from using any animal products at all (e.g., milk, cheese, eggs, leather belts, fur coats, animal skin shoes). In 2016, 9 percent of US citizens claimed to be strictly or mostly vegan or vegetarian—about 29 million people.⁵

Another way that humans use animals is by experimenting on them for research purposes. Though precise figures are hard to come by, the best estimates indicate that more than 100 million animals—for example, mice, guinea pigs, frogs, dogs, cats, rabbits, monkeys, fish, and birds—are killed annually in research labs.⁶ The majority of those are rodents (e.g., mice, rats, hamsters). Pharmaceutical companies and medical researchers test vaccines, medications, and surgery techniques on animals before using them on humans. Similarly, many companies that sell cosmetics and want to be sure that their products are safe for human consumption begin by testing their products on animals. Some animals are forced to inhale toxic fumes; others are restrained while they have harmful chemicals dripped in their eyes; some have their skin repeatedly burned so that it never grows back. Anesthesia is used very rarely. As a result of these practices, the United Kingdom banned such experiments in 1998; the European Union did so in 2007. Though such experimentation is legal in the United States, greater knowledge of these experimental conditions has led some cosmetic companies to abandon such practices and to tout the “cruelty-free” origins of their products.

While animal experimentation can cause tremendous suffering for animals, it can also

5. http://www.pewinternet.org/2016/12/01/the-new-food-fights/ps_2016-12-01_food-science_1-07/

6. <http://lushprize.org/many-animals-used-experiments-around-world/>

result in great benefits. For example, in 1921, an Ontario doctor experimented on dozens of dogs by severing the connection between their pancreas and digestive systems in an effort to understand diabetes. These experiments allowed him to isolate insulin, which eventually made it possible for millions of people with diabetes to be treated. More recently, Parkinson's disease was deliberately introduced to macaque monkeys in order to study ways to reduce the tremors that beset humans with the disease. Electrodes were implanted into the monkey's brains that managed to control the tremors; this procedure is now commonly used to help human victims of Parkinson's. Indeed, virtually any risky medical procedure now in use has been tested extensively on animals before it is ever attempted on humans. For example, the techniques for organ transplants and major organ surgeries (e.g., heart, brain, liver, kidney surgery) were developed by first attempting these procedures on animals. Vaccines are tested repeatedly on animals before they're introduced to humans on a large scale.

Advocates of animal testing point out that animals benefit from animal testing, too. Without animal research, millions of dogs, cats, birds, and farm animals would be dead (and continue to die) from more than two hundred diseases, including anthrax, rabies, distemper, feline leukemia, and canine parvo virus. Today, these diseases are largely preventable due to vaccines and treatments developed in animal research.

In the United States, there are laws in place to protect animals used for research purposes. The Animal Welfare Act (AWA) of 1966 requires all federally funded research facilities that conduct animal research to have an Institutional Animal Care and Use Committee (IACUC). These committees review research proposals from scientists who intend to use animals for research purposes. IACUCs try to ensure that no unnecessary harm is done to the animals, and they allow research on animals to proceed only if, in their judgment, there are no alternatives to animal testing. This doesn't mean, however,

that IACUCs never permit harm to animals. On the contrary, often the only way to achieve the desired scientific result is to subject animals to intense suffering. If the expected benefits are great enough, an IACUC may still permit the research. The AWA does not apply to animals involved in meat production.

ARGUMENT ANALYSIS

If faced with the choice of having to toss a human or an animal overboard in order to keep a life-boat afloat, few of us would send the human to a watery death. (Let's assume the human isn't a moral monster, but an everyday person like you or me.) This is a pretty plausible prediction. But most people also take it as wise moral advice—if we can't save them both, then we *ought* to spare the human, because humans are morally more important than animals. Is such a thought defensible, or is it perhaps just a prejudice that reflects our preference for those of our own kind?

Arguments designed to justify meat-eating and animal experimentation almost always proceed from the assumption that humans are morally more important than nonhuman animals. Almost no one would allow human beings to treat one another as we treat animals. But if you think that it is morally OK to kill animals for sport or for food, or to perform painful experiments on them, while also thinking that it isn't OK to do such things to your fellow humans, then you need some way to justify this differential treatment.

Such justifications are easy to find. Here is a popular one:

The Animals Kill Other Animals
Argument

1. If animals kill other animals, then it is morally OK for humans to kill animals.
2. Animals do kill other animals.

Therefore,

3. It is morally OK for humans to kill animals.

There are several problems with premise 1. First, animals that eat other animals have no choice in the matter. We do. Second, a carnivore's survival depends on its eating other animals. Ours does not. With rare exceptions, human beings can survive perfectly well without eating animal flesh. Third, it is implausible to look to animals for moral guidance. Animals are not moral agents—they can't control their behavior through moral reasoning. That explains why they have no moral duties, and why they are immune from moral criticism. But we, obviously, are moral agents, and we can guide our behavior by the moral decisions we make. There is also a crucial problem for premise 2: none of the animals we routinely eat (chickens, cows, pigs, sheep, ducks, rabbits) are carnivores. They *don't* kill other animals. So if their behavior is supposed to guide our own, then we should eat only plants.

Rather than looking to animals as the models for our own moral behavior, some have suggested that we look to our power over animals as the basis for justifying their second-class status. Consider, then,

The Power Argument

1. If we are powerful enough to control an animal's behavior and the conditions under which it lives, then we are morally allowed to exercise that control.
2. We are powerful enough to control an animal's behavior and the conditions under which it lives.

Therefore,

3. We are morally allowed to control an animal's behavior and the conditions under which it lives.

Premise 2 of this argument is true for almost all animals. But premise 1 is deeply troubling. Might does not make right. That we are able to bend an animal to our will does not give us moral license to do so, any more than a slave-owner's power to control the life of his slaves gives him moral

authority to treat them that way. Our coercive power is one thing; the morality of exercising it is another.

Consider, instead, the claim that since animals are dependent on farmers or lab researchers, those animals are rightly at the mercy of the humans who care for them. This dependence is of two sorts. Sometimes it is true that, were a farmer not in the business of breeding animals, certain animals would never have been born, and so they owe their lives to the farmers. In other cases, though farmers or lab researchers don't play a crucial role in seeing their animals into the world, these humans nevertheless maintain the animals under their care; the animals are in this sense dependent on humans for being able to remain alive. This gives rise to

The Dependency Argument

1. If animals depend for their existence or their sustenance on humans, then humans have a right to treat those animals in any way that best suits human interests.
2. Farm and lab animals depend for their existence or their sustenance on humans.

Therefore,

3. Humans have a right to treat farm and lab animals in any way that best suits human interests.

Though premise 2 is true in most cases, premise 1 is problematic. Regardless of which way the dependence relation is understood, dependence alone does not provide grounds for justifying anything like current farm or lab practices. Suppose a baby is dependent on her mother for her life. This certainly doesn't entitle the mother to kill or experiment upon the baby. Nor would an adoptive parent—one who exemplifies the second sort of dependence relation—be justified in treating a human baby this way. Dependence does not give free rein to the provider; we do not get license to kill or experiment on animals just because they owe their lives or sustenance to their keepers.

Here is another popular argument, not really in defense of the status quo with respect to our treatment of animals, but rather a critique of those who question it. It takes the form of

The Hypocrisy Argument

1. People who act in morally inconsistent ways are hypocrites, and so have flawed characters.
2. **Ethical vegetarians** and vegans act in morally inconsistent ways.

Therefore,

3. Ethical vegetarians and vegans are hypocrites.

Premise 1 is true, though it is important to note that hypocrisy is not the gravest moral flaw. (After all, some people are highly principled and act with perfect integrity—and yet their principles are terrible.) Consider one of literature’s great hypocrites—the fictional character Huck Finn, as depicted in Mark Twain’s 1884 novel *The Adventures of Huckleberry Finn*. Huck, like most whites of the day, has deeply racist attitudes. But his behavior doesn’t always match up with his principles. For example, Huck shelters his runaway slave friend Jim, rather than turning him over to the slave catchers. Huck’s compassion led him to hypocrisy, which in his case is to be applauded, rather than condemned—we think Huck’s character is better than that of someone who would never sacrifice his racist principles to compassion.

Premise 2 refers to ethical vegetarians (those who are prompted by a concern for the rights or welfare of animals to refrain from eating them) and vegans (those who refuse to purchase or use any animal products). The thought behind the premise is simple: ethical vegetarians and vegans refuse to eat meat because of their moral objections to the ways in which animals are treated prior to and during slaughter. But these same people fail to protest other, more important injustices that target human beings. Their actions are thus inconsistent with their avowed opposition to cruelty and injustice.

There are three difficulties with this line of reasoning. First, there is simply no good evidence that most ethical vegetarians and vegans are as indifferent as this charge makes them out to be. Second, one cannot fight every injustice, and there is nothing wrong with selecting one’s own particular area of concern for displaying extra effort. Failing to protest against every injustice does not amount to hypocrisy—or, if it does, then we are all hypocrites, in which case this criticism has no special force against ethical vegetarians and vegans. Third, this argument is, at its strongest, an *ad hominem* attack against ethical vegetarians and vegans. It says that they, as people, exhibit some sort of moral failing; they aren’t active enough in protesting against human suffering. But even if this were true—and once again, there is no evidence to support this charge—it would do nothing to undermine the moral principles behind ethical vegetarianism or veganism. The charge of hypocrisy does not tell you which moral principles are correct. It just tells you that some people are not living up to the principles they endorse. You may know folks who talk a good game about the importance of giving generously to charity, while giving almost nothing. So they are hypocrites. That doesn’t show that the principle of giving generously is mistaken. Likewise, even if ethical vegetarians and vegans did fail to live up to their principles, that doesn’t show that those principles are mistaken.

Another familiar argument invites us to reflect on our emotional attachments to our fellow human beings and to compare them to those we have to other animals. Our bonds with our fellow humans are typically much stronger than those we have toward nonhuman animals. We love our pets, for sure, but we love our parents and our siblings and our friends even more. This greater emotional investment in members of our own species may give rise to

The Emotional Attachment Argument

1. If we feel greater emotional attachment to fellow human beings than to nonhuman

animals, then we are morally allowed to harm animals in order to promote human interests.

2. We do feel greater emotional attachment to fellow human beings than to nonhuman animals.

Therefore,

3. We are morally allowed to harm animals in order to promote human interests.

Premise 2 is true in most cases. That said, there are some misanthropes (those who dislike or hate their fellow humans) who prefer the company of their pets to that of other humans. The billionaire Leona Helmsley, a notorious misanthrope who earned the nicknamed ‘The Queen of Mean,’ left \$12 million in her will to her dog while disinheriting two grandchildren.

As this example shows, it may not be a good idea (as premise 1 suggests) to make our moral relations with others depend on how much we happen to care about them. After all, white supremacists care more about whites than blacks; this doesn’t license their treating blacks as inferiors. Many wealthy citizens feel distaste for the poor; this doesn’t morally permit the rich to harm the poor. Similarly, though most of us care more about our fellow human beings than about animals, this greater emotional investment does not by itself allow us to harm animals.

Some justify eating and experimenting on animals by claiming that animals lack moral rights. Humans have such rights; animals don’t; therefore we are allowed to confine, kill, and experiment upon animals, even if we are forbidden from treating our fellow human beings in these ways. These considerations combine to form

The Rights Argument

1. Humans have moral rights.
2. Animals lack moral rights.
3. Those with moral rights are morally permitted to treat beings without moral rights in whatever way the rights-holder thinks is best.

Therefore,

4. We humans are morally permitted to treat animals in any way we think best.

Premise 1 is true. But why think that premise 2 is true? Some argue that moral rights require an ability to (1) enter into reciprocal agreements, or (2) stand up for oneself, or (3) think about one’s future in complex ways, or (4) conform one’s behavior to principles one freely and rationally endorses. Animals lack all of these abilities.

Now it is a very difficult matter to determine whether any of these four abilities really is a necessary condition of having moral rights. But suppose they are, and premise 2 is true because of that. This raises a problem, though, since many human beings—newborn babies, young children, some adults who are severely mentally impaired—also lack these abilities. And that would mean that these humans also lack moral rights.

Now you might think—fine, not all human beings do have moral rights, after all. But now look at premise 3. If that premise is true, then the Rights Argument would morally allow us to treat babies, infants, toddlers, and the severely mentally incapacitated in any way we thought best. If we decided it was best to kill them, or keep them alive only to harvest their organs for our benefit, then it would be OK to do so. But (I am assuming) it’s obviously wrong to do such things!

If you want to avoid this unhappy result, you have three choices. First, you could reject premise 2 and argue that animals do have moral rights after all. Second, you could reject premise 3 and argue that there are limits to the treatment we extend to those who lack rights. Or, third, you could accept all premises of the Rights Argument but challenge the assumption I’ve been using in my analysis of the argument. That assumption is that possessing moral rights depends on satisfying one of the conditions (1)–(4). The idea here is that there is a fifth source of moral rights, one that even human babies or

late-stage Alzheimer's patients possess, but that animals lack. The project in that case is to identify it.

Let's consider this third strategy in more detail. You might believe that there is something special about humans—any human, no matter his or her abilities, talents, intelligence, or virtue. You might think that every human being is morally more important than any non-human animal. If you believe this—and most people seem to—the challenge is to defend it in the face of

The Argument from Marginal Cases

1. If it is immoral to kill and eat “marginal” human beings, and to painfully experiment on them, then it is immoral to treat nonhuman animals this way.
2. It is (almost) always immoral to kill and eat “marginal” human beings, and to painfully experiment on them.

Therefore,

3. It is (almost) always immoral to kill and eat animals, and to painfully experiment on them.

I dislike the name of this argument, because I think it distasteful to refer to any human being as “marginal.” But its name is so familiar in philosophical circles that we will stick with it here.

“Marginal” human beings are those whose mental lives are no more developed than those of the nonhuman animals we routinely eat and experiment on. There are many causes of such developmental limitations: severe brain trauma, extreme intellectual disability, and so on. The basic idea behind the Argument from Marginal Cases is that such human beings are no more morally important than the animals we harm in our labs or factory farms. Since they are of equal importance, we must treat them equally. If we are not prepared to eat or experiment upon such human beings, then we shouldn't be willing to treat animals that way, either.

Almost no one rejects premise 2 of the Argument from Marginal Cases. You've got to be awfully hard-hearted to be willing to subject marginal human beings to the sort of treatment we apply to animals in our labs and farms. True, there *might* be rare exceptions where such treatment is acceptable—that's the point of saying that it is *almost* always wrong to do such things to human beings. But these would have to be extremely unusual cases.

So the real action occurs in premise 1. Its defenders support it in this way. They say that marginal human beings, and farm and lab animals, are moral equals. They are moral equals because they have the same capacity to experience pain or pleasure, and they also possess the same kind and degree of mental powers. Of course, different marginal human beings have diverse mental lives. But so, too, do animals—pigs are extremely smart, as are many of the primates that are kept caged in university and pharmaceutical labs, while other animals, such as chickens and turkeys, are far less intelligent. The idea behind premise 1, though, is that when an animal and a human being exhibit the same capacity for pleasure or pain and possess the same mental powers, then they are moral equals, and so morally ought to be given equal respect. Equal respect in this case cannot mean nurturing and caring for the “marginal” human being while killing, eating, or experimenting on the nonhuman animal.

The obvious place to attack this reasoning is with the claim that animals and marginal humans are moral equals. If you don't like that claim, then it is up to you to find a better test for moral importance than reference to mental powers and a capacity for experiencing pleasure and pain.

Here are some familiar alternatives: the ability (1) to communicate, (2) to have emotions, (3) to be self-aware, (4) to be self-governing, (5) to assert claims on one's behalf, (6) to plan for one's future, or (7) to figure out how to get what one wants.

The problem is that marginal human beings and many animals fare equally well on each of these tests. Many animals possess these abilities to the same degree as marginal human beings. In some cases, animals will pass these tests more readily than their human counterparts.

In my experience, most people at this point try to argue in one of three ways. First, some say that every human is more important than any animal, because God created each of us as an exalted being whose life has more value than that of any animal. That's a possibility, but defending it is a task for theologians, as the defense will ultimately rest on claims about God's existence and His purposes and intentions. So we are going to leave this aside.

Second, people often say that marginal human beings, *just because they are human*, are more important than animals. On this view, the test of whether you are morally important is whether you are human. No matter how "marginal" someone is, he or she is still a human being, and so more important than any animal.

But this is a bad argument. It clearly begs the question against the Argument from Marginal Cases. What we need to know is *why* all human beings are morally more important than all nonhuman animals. We don't answer that question by asserting that they are.

Third, some say that every human is especially morally important because human beings, *as a species*, are the most intelligent and powerful beings on the planet. Even though "marginal" human beings themselves are no different from many animals in terms of their mental powers and their capacity for pleasure and pain, still, marginal human beings belong to a group that, on the whole, exhibits greater mental powers than any other group of animals.

This is a popular line of argument, but it, too, is problematic. Suppose all members of your family—except you!—are criminals. It's wrong to treat you as a criminal, just because

you are a member of a group whose typical members, or most of whose members, are criminals. We should treat you in a way that responds to your own individual traits. The same thing is true when it comes to benefiting others. Suppose a teacher decides to give a student a better grade than she deserves because all of her older siblings were academic overachievers. It would be wrong to give her a benefit just on the basis of her group membership (i.e., her family). The teacher should give her the grade she deserves, which depends on her specific effort, aptitude, and performance, rather than the achievements that are typical of her family members as a whole.

One of our authors, Peter Singer, popularized the term **speciesism** to refer to the view that humans, just by virtue of their species membership, are morally more important than nonhuman animals. He likened speciesism to racism and sexism, in that, as he sees it, all three give moral priority to one group over another on the basis of a morally irrelevant trait. Skin color doesn't make you morally superior to someone else; neither does your sex. Neither, according to Singer, does your species membership.

For those who disagree, let us ask why species membership is supposed to be the all-important test of moral status. Your genetic code, or the species of your parents, doesn't seem to be what establishes your moral importance. To see this, imagine a time, perhaps not so far in the future, in which we encounter (or create) beings who are like us in every way—except that they are made of silicon. They think like us. They feel emotions as we do. They are self-aware. They feel pain. They look exactly like us. The *only* difference between them and us is which species we belong to.

I don't know how to argue for this, and perhaps you disagree, but it seems to me that this difference doesn't justify treating these beings as second-class citizens. In fact, it seems that they

are just as morally important as we are—after all, without cutting them open, we couldn't tell them apart from a human being, because they are identical to us in every way except the internal circuitry.

If you share my view about this case, then you should reject the idea that species membership is, in itself, a morally important trait. And if that is so, then we can't resist the Argument from Marginal Cases by claiming that marginal human beings, just by virtue of their humanity, are more important than animals.

Thus if you do think that every "marginal" human being is more important than every non-human animal, then you have to identify a litmus test of moral importance that is better than the one that makes it depend on a capacity for pleasure and pain and on one's mental powers. This test has to be defensible in its own right, and also give humans an edge, no matter how mentally developed they happen to be. It won't be easy to do this. Exercise: see for yourself.

CONCLUSION

There is a widespread feeling that humans, no matter their abilities, are morally more important than any nonhuman animal. Our current factory farming practices, and those in a great many research labs, reflect this outlook, insofar as they treat animals in ways that we would not allow any of our fellow human beings to be treated.

But perhaps these practices reflect a prejudice, rather than a defensible moral position. A number of the most popular arguments for assigning all humans moral priority over all other animals are quite weak, as we have seen. And the Argument from Marginal Cases poses a strong challenge to those who would invariably favor the interests of humans over those of nonhumans.

Suppose that the Argument from Marginal Cases is sound. What follows? It is important to see that we could still assign greater importance

to the lives of *most* human beings over those of animals. The Argument requires that we give equal moral respect to those who are moral equals. It does not say that every animal is the moral equal of every human being—indeed, for all it says, most humans, who possess far greater mental powers than any nonhuman animal, may have a more exalted moral status as a result of these greater powers (of imagination, empathy, intelligence, comprehension, etc.). So the Argument does not force us to the conclusion that we must regard every human and every animal as morally on a par. Still, it does force us to think hard about why beings—humans and nonhumans alike—are morally important in the first place.

ESSENTIAL CONCEPTS

Battery cages: small wire cages housing chickens that can be lined up and stacked in a barn so that thousands of chickens can be stored in a very small space.

Ethical vegetarians: those who refrain from eating animals out of a moral concern for the rights or welfare of animals.

Factory farm: a large industrial complex where large volumes of animals are packed into a small space to make raising and slaughtering them (or collecting their eggs) maximally efficient.

Gestation crates: strong metal cages, barely larger than a pig, used to house breeding pigs.

Sentience: the capacity to have sense experiences (e.g., feelings of pleasure or pain).

Speciesism: the view that humans, just by virtue of their species membership, are morally more important than nonhuman animals.

Subjective experience: the sort of experience one has when one is conscious and occupying a perspective on the world.

Vegans: those who refrain from the purchase and consumption of all animal products.

Vegetarian: a person who refrains from eating meat.

STAT SHOT

- In 2013,¹ the meat and poultry industry processed:
 - 8.6 billion chickens
 - 33.2 million cattle
 - 239.4 million turkeys
 - 2.3 million sheep and lambs
 - 112 million hogs
- Among the top meat-consuming countries are developed countries and developing countries in South America (Figure 13.1).

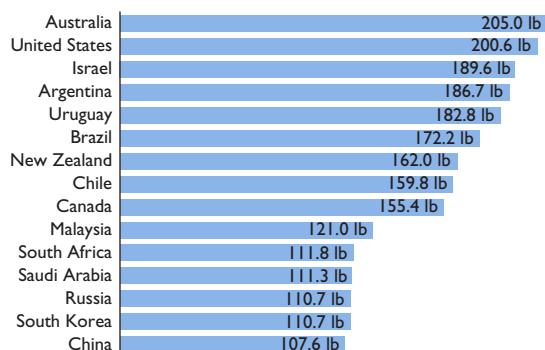


Figure 13.1. Annual meat consumption per capita worldwide in 2013.

Source: <https://www.forbes.com/sites/niallmcCarthy/2015/08/05/which-countries-eat-the-most-meat-each-year-infographic/#4d7331064f95>

- The size and number of pigs slaughtered in the United States have risen steadily since the early 1990s. The increase in average

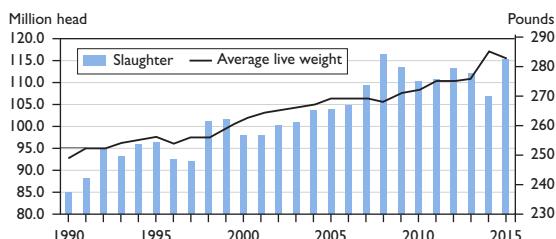


Figure 13.2. Commercial hog slaughter, number of head, and average live weight—United States.

Source: <http://usda.mannlib.cornell.edu/usda/current/SlauOverview/SlauOverview-10-27-2016.pdf>

live weight is due, in part, to a steady dose of antibiotics, which allow pigs to devote energy to growing, rather than fighting disease.

- Nine percent of US adults claim to be strictly or mostly vegetarian or vegan.²
- In 2014, a slight majority of US adults (who didn't answer “don't know”) opposed the use of animals in research (Figure 13.3). A significant majority of men favored research on animals, while a significant majority of women opposed it.

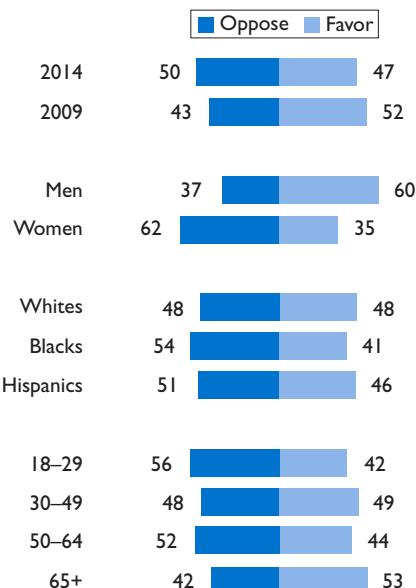


Figure 13.3. Percentage of US adults surveyed in 2014 saying they favor/oppose the use of animals in scientific research.

Source: http://www.pewinternet.org/2015/07/01/americans-politics-and-science-issues/pi_2015-07-01_science-and-politics_7-01/

1. <https://www.meatinstitute.org/index.php?ht=d/sp/i/47465/pid/47465>

2. http://www.pewinternet.org/2016/12/01/the-new-food-fights/ps_2016-12-01_food-science_1-07/

Cases for Critical Thinking

Exposé Videos

With the rise of YouTube and high-quality video cameras on cell phones, factory farm exposé videos have become increasingly numerous. These are videos taken by people, often animal rights activists, who go undercover to record farm workers abusing animals. These videos have been enormously successful tools at mobilizing large numbers of people to oppose the practices of the meat industry. In order to get the desired footage, though, activists must interview with, and be hired as employees by, factory farm managers. Once they've been hired and gain access to the farm, the videos they capture are deeply disturbing—even for supporters of factory farming. The worst of these show extreme abuses that are already illegal. In other cases, though, the films depict practices that are legally permitted but very unsettling to witness. Videos depicting illegal abuse have led to criminal prosecution in some cases, though they have been barred (because they were obtained through deception) in others.

Questions

1. To gain entrance to the factory farms, activists must deceive their employers by acting as though they're sincerely interested in working for the farm. Do you think it's morally permissible to deceive farm managers in this way? Why or why not? Suppose a condition of employment on the farm is that you sign a document promising never to take undercover video. Would it be morally permissible for an activist to sign that document and take undercover video anyway? Why or why not?
2. Usually, those who shoot exposé footage gain employment at a farm, take their video, and then immediately quit the job. But suppose an animal rights activist reasoned as follows: "Look, if I quit this job,

the company will hire someone else to take my place and that person will likely not care about animal welfare. They might even be terribly cruel. If I continue working for this farm, however, I know that I will be kind to the animals. Now, to keep my job, I'll have to get my hands dirty by leading thousands of animals to their death. They won't keep me employed if I don't do the job they hired me for. So I'll certainly have to act in a way that I very much despise. But keeping this job is better for the animals than having someone else take the job. So, I'm going to keep working for this farm." Do you find this line of reasoning morally objectionable in any way, or does it sound like a pretty good idea? Why do you think that?

3. Imagine you work for a factory farm where employees are cruel to animals on a regular basis. The management is aware of the abuse, but they don't care. In fact, being compassionate to animals makes the work slower, so the management encourages the cruelty. Assuming you're certain you won't be caught, would it be permissible for you to set many of the animals free by opening up their cages so they can get away? If not, do you think it's ever permissible to take illegal means to alleviate the suffering of animals? Why or why not?

Experimenting on Chimpanzees

In the United States, 18 percent of adults suffer from anxiety or depression—about 40 million people.¹ Anxiety and depression can cause substance abuse, suicide, and other problems, especially in people who are not helped by today's medications and therapies. So, in 2014, researchers at the University of Wisconsin² interested in the neurobiology of anxiety and depression proposed the following experiment. They would take twenty rhesus macaque monkeys from their mothers in infancy. Periodically, they would expose the monkeys to stimuli intended to cause fear, stress, and anxiety. For

example, they would put a strange monkey in the test monkey's cage, or put a strange human just outside of their cage, or expose the monkeys to a large snake. Shortly after, they would euthanize the monkeys and study their brains. Researchers hoped that, by conducting these experiments, they would be able to come up with new medication and psychotherapy strategies. Many on UW's campus opposed the study, claiming that the payoff didn't justify terrorizing the monkeys in the way the researchers proposed.

1. <https://www.adaa.org/about-adaa/press-room/facts-statistics>

2. <http://wisconsinwatch.org/2014/07/university-of-wisconsin-to-reprise-controversial-monkey-studies/>

Questions

1. What do you think: Was this study morally justified? Why or why not?
2. Researchers would never dream of doing this kind of experiment to an infant human being. Are we justified in treating non-human subjects differently than human subjects who are, cognitively speaking, relatively similar? Why or why not?
3. The UW study on monkeys was controversial, and even the researchers, though they ultimately supported the study, could see that there were powerful moral reasons to oppose it. But few researchers would think twice about doing painful research on rabbits, or frogs, or mice. Are we justified in treating some nonhuman subjects, such as primates, differently from others, such as mice? Why or why not?

Uplift: Cognitive Enhancement for Animals

In 2013, researchers at the University of Rochester and UCLA announced that they had made rodents smarter by injecting human brain cells into the forebrains of newborn mice. Scientists have also succeeded in dramatically improving

the memories of rats and rhesus monkeys by using electronic brain implants.¹ These are the early stages of what many scientists believe is in our future: cognitive enhancement for animals, or, as science fiction novelists have called it for decades, "uplift." The benefits of uplift for animals could be tremendous. As one researcher said, uplifted animals could benefit by "find[ing] food more easily, being able to create a comfortable and secure environment, being able to avoid danger, and enjoying social interaction."² Though we are in the early stages, it can be instructive to think about the ethical implications of the fully developed animal uplift technology. Suppose, for example, that we were able to give animals a relatively cheap and easy treatment that would boost their intelligence to the level of a typical human adult.

1. <https://www.bostonglobe.com/ideas/2013/03/30/should-make-animals-smarter/zbW4LTWkP8TZgB93Mqw7QJ/story.html>

2. <https://www.bostonglobe.com/ideas/2013/03/30/should-make-animals-smarter/zbW4LTWkP8TZgB93Mqw7QJ/story.html>

Questions

1. Would this kind of cognitive enhancement be a benefit for animals? Why or why not?
2. Supposing that cognitively enhancing animals would be a benefit to them, would it be morally *permissible* to give this treatment to an animal? Why or why not? Would it be morally *required* that we give (at least some of) them the treatment? Why or why not?
3. If we get to the point that we can cognitively enhance animals to a significant degree, it will almost certainly be thanks to insights learned from extensive experimentation on animals. Assuming that cognitively enhancing animals would be to their benefit, would we have an obligation to enhance at least some animals as a way of compensating them for our extensive experimentation on them? Why or why not?

READINGS

All Animals Are Equal

Peter Singer

Peter Singer argues for a radical kind of equality among all animals—human and nonhuman alike. He knows that this is highly controversial, and seeks to protect against misunderstanding by distinguishing between a moral principle that requires equal treatment of all and a principle that requires equal consideration of interests. It is morally acceptable to treat different beings differently on many occasions. What we must not do, according to Singer, is to give the interests of humans greater importance than the same interests of nonhuman animals. His principle of equal consideration requires that identical interests be given identical moral weight, no matter whose interests they are. In many cases we share interests with nonhuman animals—interests, for instance, in avoiding hunger, staying warm, and avoiding pain. In cases where we have common interests, those interests are equally morally important, whether they belong to a human or to a nonhuman animal.

Singer believes that his equal consideration principle explains what is wrong with racism and sexism. It also explains what is immoral about speciesism—the view that one's species membership gives one greater moral importance than members of other species. For Singer, what confers moral importance on humans and nonhumans alike is the ability to experience pleasure and pain. He regards all other criteria—rationality, intelligence, or linguistic ability, for example—as arbitrary.

Singer presents the so-called Argument from Marginal Cases in defense of his claim that animal and human interests must be given equal weight. He argues that if it is wrong to kill or experiment on a “marginal” human—one whose mental life is no more developed than an animal’s—then it is equally wrong to kill or experiment on an animal. After all, if their mental life is basically the same, then what else could morally distinguish them? They belong to different species, but Singer denies that species membership has any independent moral importance. They look different—but appearance is not itself morally important, either. We may care more about the human than the animal, but the emotional attachment of others is not a reliable basis for determining moral importance. Singer argues that animal experimentation may sometimes be morally justified, if it promises to yield great benefits. But then experimentation on “marginal” humans is also sometimes justified. Indeed, in some cases, we ought to experiment on humans rather than on animals, since human experimentation will be more reliable than animal experimentation.

In recent years a number of oppressed groups have campaigned vigorously for equality. The classic

From Peter Singer, “All Animals Are Equal,” in Tom Regan and Peter Singer, eds., *Animal Rights and Human Obligations* (Prentice-Hall, 1989), pp. 148–162.

instance is the Black Liberation movement, which demands an end to the prejudice and discrimination that has made blacks second-class citizens. The immediate appeal of the black liberation movement and its initial, if limited, success made it a model for other oppressed groups to follow. We became

familiar with liberation movements for Spanish-Americans, gay people, and a variety of other minorities. When a majority group—women—began their campaign, some thought we had come to the end of the road. Discrimination on the basis of sex, it has been said, is the last universally accepted form of discrimination, practiced without secrecy or pretense even in those liberal circles that have long prided themselves on their freedom from prejudice against racial minorities.

One should always be wary of talking of “the last remaining form of discrimination.” If we have learnt anything from the liberation movements, we should have learnt how difficult it is to be aware of latent prejudice in our attitudes to particular groups until this prejudice is forcefully pointed out.

A liberation movement demands an expansion of our moral horizons and an extension or reinterpretation of the basic moral principle of equality. Practices that were previously regarded as natural and inevitable come to be seen as the result of an unjustifiable prejudice. Who can say with confidence that all his or her attitudes and practices are beyond criticism? If we wish to avoid being numbered amongst the oppressors, we must be prepared to re-think even our most fundamental attitudes. We need to consider them from the point of view of those most disadvantaged by our attitudes, and the practices that follow from these attitudes. If we can make this unaccustomed mental switch we may discover a pattern in our attitudes and practices that consistently operates so as to benefit one group—usually the one to which we ourselves belong—at the expense of another. In this way we may come to see that there is a case for a new liberation movement. My aim is to advocate that we make this mental switch in respect of our attitudes and practices towards a very large group of beings: members of species other than our own—or, as we popularly though misleadingly call them, animals. In other words, I am urging that we extend to other species the basic principle of equality that most of us recognize should be extended to all members of our own species.

All this may sound a little far-fetched, more like a parody of other liberation movements than a serious objective. In fact, in the past the idea of

“The Rights of Animals” really has been used to parody the case for women’s rights. When Mary Wollstonecraft, a forerunner of later feminists, published her *Vindication of the Rights of Women* in 1792, her ideas were widely regarded as absurd, and they were satirized in an anonymous publication entitled *A Vindication of the Rights of Brutes*. The author of this satire (actually Thomas Taylor, a distinguished Cambridge philosopher) tried to refute Wollstonecraft’s reasonings by showing that they could be carried one stage further. If sound when applied to women, why should the arguments not be applied to dogs, cats, and horses? They seemed to hold equally well for these “brutes”; yet to hold that brutes had rights was manifestly absurd; therefore the reasoning by which this conclusion had been reached must be unsound, and if unsound when applied to brutes, it must also be unsound when applied to women, since the very same arguments had been used in each case.

One way in which we might reply to this argument is by saying that the case for equality between men and women cannot validly be extended to nonhuman animals. Women have a right to vote, for instance, because they are just as capable of making rational decisions as men are; dogs, on the other hand, are incapable of understanding the significance of voting, so they cannot have the right to vote. There are many other obvious ways in which men and women resemble each other closely, while humans and other animals differ greatly. So, it might be said, men and women are similar beings and should have equal rights, while humans and nonhumans are different and should not have equal rights.

The thought behind this reply to Taylor’s analogy is correct up to a point, but it does not go far enough. There are important differences between humans and other animals, and these differences must give rise to some differences in the rights that each have. Recognizing this obvious fact, however, is no barrier to the case for extending the basic principle of equality to nonhuman animals. The differences that exist between men and women are equally undeniable, and the supporters of Women’s Liberation are aware that these differences may give rise to different rights. Many feminists hold that

women have the right to an abortion on request. It does not follow that since these same people are campaigning for equality between men and women they must support the right of men to have abortions too. Since a man cannot have an abortion, it is meaningless to talk of his right to have one. Since a pig can't vote, it is meaningless to talk of its right to vote. There is no reason why either Women's Liberation or Animal Liberation should get involved in such nonsense. The extension of the basic principle of equality from one group to another does not imply that we must treat both groups in exactly the same way, or grant exactly the same rights to both groups. Whether we should do so will depend on the nature of the members of the two groups. The basic principle of equality, I shall argue, is equality of consideration; and equal consideration for different beings may lead to different treatment and different rights.

So there is a different way of replying to Taylor's attempt to parody Wollstonecraft's arguments, a way which does not deny the differences between humans and nonhumans, but goes more deeply into the question of equality and concludes by finding nothing absurd in the idea that the basic principle of equality applies to so-called "brutes." I believe that we reach this conclusion if we examine the basis on which our opposition to discrimination on grounds of race or sex ultimately rests. We will then see that we would be on shaky ground if we were to demand equality for blacks, women, and other groups of oppressed humans while denying equal consideration to nonhumans.

When we say that all human beings, whatever their race, creed, or sex, are equal, what is it that we are asserting? Those who wish to defend a hierarchical, inegalitarian society have often pointed out that by whatever test we choose, it simply is not true that all humans are equal. Like it or not, we must face the fact that humans come in different shapes and sizes; they come with differing moral capacities, differing intellectual abilities, differing amounts of benevolent feeling and sensitivity to the needs of others, differing abilities to communicate effectively, and differing capacities to experience pleasure and pain. In short, if the demand for equality were based on the actual equality of all

human beings, we would have to stop demanding equality. It would be an unjustifiable demand.

Still, one might cling to the view that the demand for equality among human beings is based on the actual equality of the different races and sexes. Although humans differ as individuals in various ways, there are no differences between the races and sexes as such. From the mere fact that a person is black, or a woman, we cannot infer anything else about that person. This, it may be said, is what is wrong with racism and sexism. The white racist claims that whites are superior to blacks, but this is false—although there are differences between individuals, some blacks are superior to some whites in all of the capacities and abilities that could conceivably be relevant. The opponent of sexism would say the same: a person's sex is no guide to his or her abilities, and this is why it is unjustifiable to discriminate on the basis of sex.

This is a possible line of objection to racial and sexual discrimination. It is not, however, the way that someone really concerned about equality would choose, because taking this line could, in some circumstances, force one to accept a most inegalitarian society. The fact that humans differ as individuals, rather than as races or sexes, is a valid reply to someone who defends a hierarchical society like, say, South Africa, in which all whites are superior in status to all blacks. The existence of individual variations that cut across the lines of race or sex, however, provides us with no defense at all against a more sophisticated opponent of equality, one who proposes that, say, the interests of those with I.Q. ratings above 100 be preferred to the interests of those with I.Q.s below 100. Would a hierarchical society of this sort really be so much better than one based on race or sex? I think not. But if we tie the moral principle of equality to the factual equality of the different races or sexes, taken as a whole, our opposition to racism and sexism does not provide us with any basis for objecting to this kind of inegalitarianism.

There is a second important reason why we ought not to base our opposition to racism and sexism on any kind of factual equality, even the limited kind which asserts that variations in capacities and abilities are spread evenly between the different races and sexes: we can have no absolute guarantee that these abilities and capacities really

are distributed evenly, without regard to race or sex, among human beings. So far as actual abilities are concerned, there do seem to be certain measurable differences between both races and sexes. These differences do not, of course, appear in each case, but only when averages are taken. More important still, we do not yet know how much of these differences is really due to the different genetic endowments of the various races and sexes, and how much is due to environmental differences that are the result of past and continuing discrimination. Perhaps all of the important differences will eventually prove to be environmental rather than genetic. Anyone opposed to racism and sexism will certainly hope that this will be so, for it will make the task of ending discrimination a lot easier; nevertheless it would be dangerous to rest the case against racism and sexism on the belief that all significant differences are environmental in origin. The opponent of, say, racism who takes this line will be unable to avoid conceding that if differences in ability did after all prove to have some genetic connection with race, racism would in some way be defensible.

It would be folly for the opponent of racism to stake his whole case on a dogmatic commitment to one particular outcome of a difficult scientific issue which is still a long way from being settled. While attempts to prove that differences in certain selected abilities between races and sexes are primarily genetic in origin have certainly not been conclusive, the same must be said of attempts to prove that these differences are largely the result of environment. At this stage of the investigation we cannot be certain which view is correct, however much we may hope it is the latter.

Fortunately, there is no need to pin the case for equality to one particular outcome of this scientific investigation. The appropriate response to those who claim to have found evidence of genetically-based differences in ability between the races or sexes is not to stick to the belief that the genetic explanation must be wrong, whatever evidence to the contrary may turn up; instead we should make it quite clear that the claim to equality does not depend on intelligence, moral capacity, physical strength, or similar matters of fact. Equality is a moral ideal, not a simple assertion of fact. There is no logically

compelling reason for assuming that a factual difference in ability between two people justifies any difference in the amount of consideration we give to satisfying their needs and interests. The principle of the equality of human beings is not a description of an alleged actual equality among humans: it is a prescription of how we should treat humans.

Jeremy Bentham incorporated the essential basis of moral equality into his utilitarian system of ethics in the formula: "Each to count for one and none for more than one." In other words, the interests of every being affected by an action are to be taken into account and given the same weight as the like interests of any other being. A later utilitarian, Henry Sidgwick, put the point in this way: "The good of any one individual is of no more importance, from the point of view (if I may say so) of the Universe, than the good of any other."¹ More recently, the leading figures in contemporary moral philosophy have shown a great deal of agreement in specifying as a fundamental presupposition of their moral theories some similar requirement which operates so as to give everyone's interests equal consideration—although they cannot agree on how this requirement is best formulated.²

It is an implication of this principle of equality that our concern for others ought not to depend on what they are like, or what abilities they possess—although precisely what this concern requires us to do may vary according to the characteristics of those affected by what we do. It is on this basis that the case against racism and the case against sexism must both ultimately rest; and it is in accordance with this principle that speciesism is also to be condemned. If possessing a higher degree of intelligence does not entitle one human to use another for his own ends, how can it entitle humans to exploit nonhumans?

Many philosophers have proposed the principle of equal consideration of interests, in some form or other, as a basic moral principle; but, as we shall see in more detail shortly, not many of them have recognized that this principle applies to members of other species as well as to our own. Bentham was one of the few who did realize this. In a forward-looking passage, written at a time when black slaves in the British dominions were still being treated much as we now treat nonhuman animals, Bentham wrote:

The day may come when the rest of the animal creation may acquire those rights which never could have been withheld from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may one day come to be recognized that the number of the legs, the villostiy of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or perhaps the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose they were otherwise, what would it avail? The question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?³

In this passage Bentham points to the capacity for suffering as the vital characteristic that gives a being the right to equal consideration. The capacity for suffering—or more strictly, for suffering and/or enjoyment or happiness—is not just another characteristic like the capacity for language, or for higher mathematics. Bentham is not saying that those who try to mark “the insuperable line” that determines whether the interests of a being should be considered happen to have selected the wrong characteristic. The capacity for suffering and enjoying things is a prerequisite for having interests at all, a condition that must be satisfied before we can speak of interests in any meaningful way. It would be nonsense to say that it was not in the interests of a stone to be kicked along the road by a schoolboy. A stone does not have interests because it cannot suffer. Nothing that we can do to it could possibly make any difference to its welfare. A mouse, on the other hand, does have an interest in not being tormented, because it will suffer if it is.

If a being suffers, there can be no moral justification for refusing to take that suffering into consideration. No matter what the nature of the being, the principle of equality requires that its suffering be counted equally with the like suffering—in so far as rough comparisons can be made—of any other being. If a being is not capable of suffering,

or of experiencing enjoyment or happiness, there is nothing to be taken into account. This is why the limit of sentience (using the term as a convenient, if not strictly accurate, shorthand for the capacity to suffer or experience enjoyment or happiness) is the only defensible boundary of concern for the interests of others. To mark this boundary by some characteristic like intelligence or rationality would be to mark it in an arbitrary way. Why not choose some other characteristic, like skin color?

The racist violates the principle of equality by giving greater weight to the interests of members of his own race, when there is a clash between their interests and the interests of those of another race. Similarly the speciesist allows the interests of his own species to override the greater interests of members of other species.⁴ The pattern is the same in each case. Most human beings are speciesists. I shall now very briefly describe some of the practices that show this.

For the great majority of human beings, especially in urban, industrialized societies, the most direct form of contact with members of other species is at mealtimes: we eat them. In doing so we treat them purely as means to our ends. We regard their life and well-being as subordinate to our taste for a particular kind of dish. I say “taste” deliberately—this is purely a matter of pleasing our palate. There can be no defense of eating flesh in terms of satisfying nutritional needs, since it has been established beyond doubt that we could satisfy our need for protein and other essential nutrients far more efficiently with a diet that replaced animal flesh by soy beans, or products derived from soy beans, and other high-protein vegetable products.⁵

It is not merely the act of killing that indicates what we are ready to do to other species in order to gratify our tastes. The suffering we inflict on the animals while they are alive is perhaps an even clearer indication of our speciesism than the fact that we are prepared to kill them.⁶ In order to have meat on the table at a price that people can afford, our society tolerates methods of meat production that confine sentient animals in cramped, unsuitable conditions for the entire durations of their lives. Animals are treated like machines that convert fodder into flesh, and any innovation that results in

a higher “conversion ratio” is liable to be adopted. As one authority on the subject has said, “cruelty is acknowledged only when profitability ceases.” . . .

Since, as I have said, none of these practices cater for anything more than our pleasures of taste, our practice of rearing and killing other animals in order to eat them is a clear instance of the sacrifice of the most important interests of other beings in order to satisfy trivial interests of our own. To avoid speciesism we must stop this practice, and each of us has a moral obligation to cease supporting the practice. Our custom is all the support that the meat-industry needs. The decision to cease giving it that support may be difficult, but it is no more difficult than it would have been for a white Southerner to go against the traditions of his society and free his slaves: if we do not change our dietary habits, how can we censure those slaveholders who would not change their own way of living?

The same form of discrimination may be observed in the widespread practice of experimenting on other species in order to see if certain substances are safe for human beings, or to test some psychological theory about the effect of severe punishment on learning, or to try out various new compounds just in case something turns up. . . .

In the past, argument about vivisection has often missed the point, because it has been put in absolutist terms: Would the abolitionist be prepared to let thousands die if they could be saved by experimenting on a single animal? The way to reply to this purely hypothetical question is to pose another: Would the experimenter be prepared to perform his experiment on an orphaned human infant, if that were the only way to save many lives? (I say “orphan” to avoid the complication of parental feelings, although in doing so I am being overfair to the experimenter, since the nonhuman subjects of experiments are not orphans.) If the experimenter is not prepared to use an orphaned human infant, then his readiness to use nonhumans is simple discrimination, since adult apes, cats, mice, and other mammals are more aware of what is happening to them, more self-directing and, so far as we can tell, at least as sensitive to pain, as any human infant. There seems to be no relevant characteristic that human infants possess that adult mammals do not

have to the same or a higher degree. (Someone might try to argue that what makes it wrong to experiment on a human infant is that the infant will, in time and if left alone, develop into more than the nonhuman, but one would then, to be consistent, have to oppose abortion, since the fetus has the same potential as the infant—indeed, even contraception and abstinence might be wrong on this ground, since the egg and sperm, considered jointly, also have the same potential. In any case, this argument still gives us no reason for selecting a nonhuman, rather than a human with severe and irreversible brain damage, as the subject for our experiments).

The experimenter, then, shows a bias in favor of his own species whenever he carries out an experiment on a nonhuman for a purpose that he would not think justified him in using a human being at an equal or lower level of sentience, awareness, ability to be self-directing, etc. No one familiar with the kind of results yielded by most experiments on animals can have the slightest doubt that if this bias were eliminated the number of experiments performed would be a minute fraction of the number performed today.

Experimenting on animals, and eating their flesh, are perhaps the two major forms of speciesism in our society. By comparison, the third and last form of speciesism is so minor as to be insignificant, but it is perhaps of some special interest to those for whom this article was written. I am referring to speciesism in contemporary philosophy.

Philosophy ought to question the basic assumptions of the age. Thinking through, critically and carefully, what most people take for granted is, I believe, the chief task of philosophy, and it is this task that makes philosophy a worthwhile activity. Regrettably, philosophy does not always live up to its historic role. Philosophers are human beings, and they are subject to all the preconceptions of the society to which they belong. Sometimes they succeed in breaking free of the prevailing ideology: more often they become its most sophisticated defenders. So, in this case, philosophy as practiced in the universities today does not challenge anyone’s preconceptions about our relations with other species. By their writings, those philosophers who tackle problems that touch upon the issue reveal that they make the same

unquestioned assumptions as most other humans, and what they say tends to confirm the reader in his or her comfortable speciesist habits.

I could illustrate this claim by referring to the writings of philosophers in various fields—for instance, the attempts that have been made by those interested in rights to draw the boundary of the sphere of rights so that it runs parallel to the biological boundaries of the species *homo sapiens*, including infants and even mental defectives, but excluding those other beings of equal or greater capacity who are so useful to us at mealtimes and in our laboratories. I think it would be a more appropriate conclusion to this article, however, if I concentrated on the problem with which we have been centrally concerned, the problem of equality.

It is significant that the problem of equality, in moral and political philosophy, is invariably formulated in terms of human equality. The effect of this is that the question of the equality of other animals does not confront the philosopher, or student, as an issue itself—and this is already an indication of the failure of philosophy to challenge accepted beliefs. Still, philosophers have found it difficult to discuss the issue of human equality without raising, in a paragraph or two, the question of the status of other animals. The reason for this, which should be apparent from what I have said already, is that if humans are to be regarded as equal to one another, we need some sense of “equal” that does not require any actual, descriptive equality of capacities, talents or other qualities. If equality is to be related to any actual characteristics of humans, these characteristics must be some lowest common denominator, pitched so low that no human lacks them—but then the philosopher comes up against the catch that any such set of characteristics which covers all humans will not be possessed only by humans. In other words, it turns out that in the only sense in which we can truly say, as an assertion of fact, that all humans are equal, at least some members of other species are also equal—equal, that is, to each other and to humans. If, on the other hand, we regard the statement “All humans are equal” in some non-factual way, perhaps as a prescription, then, as I have already argued, it is even more difficult to exclude non-humans from the sphere of equality.

This result is not what the egalitarian philosopher originally intended to assert. Instead of accepting the radical outcome to which their own reasonings naturally point, however, most philosophers try to reconcile their beliefs in human equality and animal inequality by arguments that can only be described as devious.

As a first example, I take William Frankena's well-known article “The Concept of Social Justice.” Frankena opposes the idea of basing justice on merit, because he sees that this could lead to highly inegalitarian results. Instead he proposes the principle that

all men are to be treated as equals, not because they are equal, in any respect, but simply because they are human. They are human because they have emotions and desires, and are able to think, and hence are capable of enjoying a good life in a sense in which other animals are not.⁸

But what is this capacity to enjoy the good life which all humans have, but no other animals? Other animals have emotions and desires and appear to be capable of enjoying a good life. We may doubt that they can think—although the behavior of some apes, dolphins, and even dogs suggests that some of them can—but what is the relevance of thinking? Frankena goes on to admit that by “the good life” he means “not so much the morally good life as the happy or satisfactory life,” so thought would appear to be unnecessary for enjoying the good life; in fact to emphasize the need for thought would make difficulties for the egalitarian since only some people are capable of leading intellectually satisfying lives, or morally good lives. This makes it difficult to see what Frankena's principle of equality has to do with simply being human. Surely every sentient being is capable of leading a life that is happier or less miserable than some alternative life, and hence has a claim to be taken into account. In this respect the distinction between humans and nonhumans is not a sharp division, but rather a continuum along which we move gradually, and with overlaps between the species, from simple capacities for enjoyment and satisfaction, or pain and suffering, to more complex ones.

Faced with a situation in which they see a need for some basis for the moral gulf that is commonly

thought to separate humans and animals, but can find no concrete difference that will do the job without undermining the equality of humans, philosophers tend to waffle. They resort to high-sounding phrases like “the intrinsic dignity of the human individual”;⁹ they talk of the “intrinsic worth of all men” as if men (humans?) had some worth that other beings did not,¹⁰ or they say that humans, and only humans, are “ends in themselves,” while “everything other than a person can only have value for a person.”¹¹

This idea of a distinctive human dignity and worth has a long history; it can be traced back directly to the Renaissance humanists, for instance to Pico della Mirandola's *Oration on the Dignity of Man*. Pico and other humanists based their estimate of human dignity on the idea that man possessed the central, pivotal position in the “Great Chain of Being” that led from the lowliest forms of matter to God himself; this view of the universe, in turn, goes back to both classical and Judeo-Christian doctrines. Contemporary philosophers have cast off these metaphysical and religious shackles and freely invoke the dignity of mankind without needing to justify the idea at all. Why should we not attribute “intrinsic dignity” or “intrinsic worth” to ourselves? Fellow-humans are unlikely to reject the accolades we so generously bestow on them, and those to whom we deny the honor are unable to object. Indeed, when one thinks only of humans, it can be very liberal, very progressive, to talk of the dignity of all human beings. In so doing, we implicitly condemn slavery, racism, and other violations of human rights. We admit that we ourselves are in some fundamental sense on a par with the poorest, most ignorant members of our own species. It is only when we think of humans as no more than a small sub-group of all the beings that inhabit our planet that we may realize that in elevating our own species we are at the same time lowering the relative status of all other species.

The truth is that the appeal to the intrinsic dignity of human beings appears to solve the egalitarian's problems only as long as it goes unchallenged. Once we ask why it should be that all humans—including infants, mental defectives, psychopaths, Hitler, Stalin, and the rest—have some kind of dignity or worth that no elephant, pig, or chimpanzee can ever achieve, we see that this question is as difficult

to answer as our original request for some relevant fact that justifies the inequality of humans and other animals. In fact, these two questions are really one: talk of intrinsic dignity or moral worth only takes the problem back one step, because any satisfactory defence of the claim that all and only humans have intrinsic dignity would need to refer to some relevant capacities or characteristics that all and only humans possess. Philosophers frequently introduce ideas of dignity, respect, and worth at the point at which other reasons appear to be lacking, but this is hardly good enough. Fine phrases are the last resource of those who have run out of arguments.

In case there are those who still think it may be possible to find some relevant characteristic that distinguishes all humans from all members of other species, I shall refer again, before I conclude, to the existence of some humans who quite clearly are below the level of awareness, self-consciousness, intelligence, and sentience, of many non-humans. I am thinking of humans with severe and irreparable brain damage, and also of infant humans. To avoid the complication of the relevance of a being's potential, however, I shall henceforth concentrate on permanently retarded humans.

Philosophers who set out to find a characteristic that will distinguish humans from other animals rarely take the course of abandoning these groups of humans by lumping them in with the other animals. It is easy to see why they do not. To take this line without re-thinking our attitudes to other animals would entail that we have the right to perform painful experiments on retarded humans for trivial reasons; similarly it would follow that we had the right to rear and kill these humans for food. To most philosophers these consequences are as unacceptable as the view that we should stop treating nonhumans in this way.

Of course, when discussing the problem of equality it is possible to ignore the problem of mental defectives, or brush it aside as if somehow insignificant.¹² This is the easiest way out. What else remains? My final example of speciesism in contemporary philosophy has been selected to show what happens when a writer is prepared to face the question of human equality and animal inequality without ignoring the existence of mental defectives, and without resorting

to obscurantist mumbo jumbo. Stanley Benn's clear and honest article "Egalitarianism and Equal Consideration of Interests"¹³ fits this description.

Benn, after noting the usual "evident human inequalities" argues, correctly I think, for equality of consideration as the only possible basis for egalitarianism. Yet Benn, like other writers, is thinking only of "equal consideration of human interests." Benn is quite open in his defence of this restriction of equal consideration:

... not to possess human shape is a disqualifying condition. However faithful or intelligent a dog may be, it would be a monstrous sentimentality to attribute to him interests that could be weighed in an equal balance with those of human beings ... if, for instance, one had to decide between feeding a hungry baby or a hungry dog, anyone who chose the dog would generally be reckoned morally defective, unable to recognize a fundamental inequality of claims.

This is what distinguishes our attitude to animals from our attitude to imbeciles. It would be odd to say that we ought to respect equally the dignity or personality of the imbecile and of the rational man ... but there is nothing odd about saying that we should respect their interests equally, that is, that we should give to the interests of each the same serious consideration as claims to considerations necessary for some standard of well-being that we can recognize and endorse.

Benn's statement of the basis of the consideration we should have for imbeciles seems to me correct, but why should there be any fundamental inequality of claims between a dog and a human imbecile? Benn sees that if equal consideration depended on rationality, no reason could be given against using imbeciles for research purposes, as we now use dogs and guinea pigs. This will not do: "But of course we do distinguish imbeciles from animals in this regard," he says. That the common distinction is justifiable is something Benn does not question; his problem is how it is to be justified. The answer he gives is this:

... we respect the interests of men and give them priority over dogs not *insofar* as they are rational, but because rationality is the human norm. We say it is *unfair* to exploit the deficiencies of the imbecile who falls short of the norm, just as it would be

unfair, and not just ordinarily dishonest, to steal from a blind man. If we do not think in this way about dogs, it is because we do not see the irrationality of the dog as a deficiency or a handicap, but as normal for the species. The characteristics, therefore, that distinguish the normal man from the normal dog make it intelligible for us to talk of other men having interests and capacities, and therefore claims, of precisely the same kind as we make on our own behalf. But although these characteristics may provide the point of the distinction between men and other species, they are not in fact the qualifying conditions for membership, to the distinguishing criteria of the class of morally considerable persons; and this is precisely because a man does not become a member of a different species, with its own standards of normality, by reason of not possessing these characteristics.

The final sentence of this passage gives the argument away. An imbecile, Benn concedes, may have no characteristics superior to those of a dog; nevertheless this does not make the imbecile a member of "a different species" as the dog is. Therefore it would be "unfair" to use the imbecile for medical research as we use the dog. But why? That the imbecile is not rational is just the way things have worked out, and the same is true of the dog—neither is any more responsible for their mental level. If it is unfair to take advantage of an isolated defect, why is it fair to take advantage of a more general limitation? I find it hard to see anything in this argument except a defense of preferring the interests of members of our own species because they are members of our own species. To those who think there might be more to it, I suggest the following mental exercise. Assume that it has been proven that there is a difference in the average, or normal, intelligence quotient for two different races, say whites and blacks. Then substitute the term "white" for every occurrence of "men" and "black" for every occurrence of "dog" in the passage quoted; and substitute "high I.Q." for "rationality" and when Benn talks of "imbeciles" replace this term by "dumb whites"—that is, whites who fall well below the normal white I.Q. score. Finally, change "species" to "race." Now retread the passage. It has become a defense of a rigid, no-exceptions division between whites and blacks, based on I.Q. scores, not

withstanding an admitted overlap between whites and blacks in this respect. The revised passage is, of course, outrageous, and this is not only because we have made fictitious assumptions in our substitutions. The point is that in the original passage Benn was defending a rigid division in the amount of consideration due to members of different species, despite admitted cases of overlap. If the original did not, at first reading strike us as being as outrageous as the revised version does, this is largely because although we are not racists ourselves, most of us are speciesists. Like the other articles, Benn's stands as a warning of the ease with which the best minds can fall victim to a prevailing ideology.

NOTES

1. *The Methods of Ethics* (7th Ed.), p. 382.
2. For example, R. M. Hare, *Freedom and Reason* (Oxford, 1963) and J. Rawls, *A Theory of Justice* (Harvard, 1972); for a brief account of the essential agreement on this issue between these and other positions, see R. M. Hare, "Rules of War and Moral Reasoning," *Philosophy and Public Affairs*, vol. 1, no. 2 (1972).
3. *Introduction to the Principles of Morals and Legislation*, ch. XVII.
4. I owe the term speciesism to Richard Ryder.
5. In order to produce 1 lb. of protein in the form of beef or veal, we must feed 21 lbs. of protein to the animal. Other forms of livestock are slightly less inefficient, but the average ratio in the United States is still 1:8. It has been estimated that the amount of protein lost to humans in this way is equivalent to 90 percent of the annual world protein deficit. For a brief account, see Frances Moore Lappe, *Diet for a Small Planet* (Friends of The Earth/Ballantine, New York 1971), pp. 4-11.
6. Although one might think that killing a being is obviously the ultimate wrong one can do to it, I think that the infliction of suffering is a clearer indication of speciesism because it might be argued that at least part of what is wrong with killing a human is that most humans are conscious of their existence over time and have desires and purposes that extend into the future—see, for instance, M. Tooley, "Abortion and Infanticide," *Philosophy and Public Affairs*, vol. 2, no. 1 (1972). Of course,

if one took this view one would have to hold—as Tooley does—that killing a human infant or mental defective is not in itself wrong and is less serious than killing certain higher mammals that probably do have a sense of their own existence over time.

7. Ruth Harrison, *Animal Machines* (Stuart, London, 1964). For an account of farming conditions, see my *Animal Liberation* (New York Review Company, 1975).
8. In R. Brandt (ed.), *Social Justice* (Prentice Hall, Englewood Cliffs, 1962), p. 19.
9. Frankena, op. cit. p. 23.
10. H. A. Bedau, "Egalitarianism and the Idea of Equality," in *Nomos IX: Equality*, ed. J. R. Pennock and J. W. Chapman, New York, 1967.
11. C. Vlastos, "Justice and Equality," in Brandt, *Social Justice*, p. 48.
12. For example, Bernard Williams, "The Idea of Equality," in *Philosophy, Politics, and Society* (second series), ed. P. Laslett and W. Rundman (Blackwell, Oxford, 1962), p. 118; J. Rawls, *A Theory of Justice*, pp. 509-10.
13. *Nomos IX: Equality*; the passages quoted are on p. 62ff.

Peter Singer: All Animals Are Equal

1. Singer claims that speciesism commits the same sort of moral error as racism and sexism. Do you agree? Why or why not?
2. If you believe that animal experimentation is morally justified even when experimenting on mentally similar "marginal" human beings is not, what explains why such differential treatment is morally acceptable?
3. Singer claims that rationality or intelligence is as arbitrary a basis for determining moral importance as skin color. Do you find his claim plausible? Why or why not?
4. Does sentience really serve as the basis for independent moral importance? If so, why? If not, what other basis would you propose?
5. Does Singer's view allow for any circumstances in which it is morally acceptable to eat meat? If so, which circumstances are these, and why? If not, why not?

The Case for Animal Rights

Tom Regan

Tom Regan considers a variety of strategies that seek to downgrade the value of non-human animals when compared to the value of humans. He finds each of these strategies to be problematic.

The first strategy argues that we have no duties to animals, though we have duties regarding them. Regan summarizes this position by saying that this leaves animals with the same moral status as a windshield. I have a duty regarding your windshield not to destroy it, but that's only because of how the windshield, which is not important in itself, is related to you, who are. The most plausible basis for this position is contractarianism, which makes membership in the moral community dependent on an ability to contract with others for purposes of securing mutual protection. But many human beings lack this ability. As a result, contractarianism would assign to those humans, as well as to all nonhuman animals, the same moral status as a windshield.

Regan also considers the merits of utilitarianism, which seems to have better implications for the moral status of animals. But Regan disagrees. Utilitarians assign intrinsic value to experiences of pleasure, rather than to those beings who experience it. On this view, people, and animals, are disposable: if we can maximize pleasure by killing innocent people, as we might do by painlessly killing an elderly relative so as to inherit her riches, then utilitarianism requires us to do so. We need to look beyond contractarianism and utilitarianism for a plausible view of humanity's moral status. Once we do, we will see that ensuring the moral importance of all human beings does the same thing for nonhuman animals.

Regan thinks that the only secure basis for the moral protection of human beings is a rights-based view, which says that we are inherently valuable because we are experiencing subjects of a life: there is something it is like to be us. This is the basis for our intrinsic moral importance. But (almost) all animals are also such subjects, and so are intrinsically morally important as well. Further, every experiencing subject of a life is equally morally important, and this yields a set of equal basic moral rights for both humans and animals. These rights protect both humans and animals from being experimented on or killed without consent. Since animals do not consent to such experimentation, or to being killed for use as human food, such behavior on our part is morally wrong.

I regard myself as an advocate of animal rights—as a part of the animal rights movement. That movement, as I conceive it, is committed to a number of goals, including:

- the total abolition of the use of animals in science;
- the total dissolution of commercial animal agriculture;
- the total elimination of commercial and sport hunting and trapping.

From Tom Regan, "The Case for Animal Rights," in Peter Singer, ed., *In Defense of Animals* (Basil Blackwell, 1985), pp. 13–26.

There are, I know, people who profess to believe in animal rights but do not avow these goals. Factory

farming, they say, is wrong—it violates animals' rights—but traditional animal agriculture is all right. Toxicity tests of cosmetics on animals violates their rights, but important medical research—cancer research, for example—does not. The clubbing of baby seals is abhorrent, but not the harvesting of adult seals. I used to think I understood this reasoning. Not any more. You don't change unjust institutions by tidying them up.

What's wrong—fundamentally wrong—with the way animals are treated isn't the details that vary from case to case. It's the whole system. The forlornness of the veal calf is pathetic, heart wrenching; the pulsing pain of the chimp with electrodes planted deep in her brain is repulsive; the slow, tortuous death of the racoon caught in the leg-hold trap is agonizing. But what is wrong isn't the pain, isn't the suffering, isn't the deprivation. These compound what's wrong. Sometimes—often—they make it much, much worse. But they are not the fundamental wrong.

The fundamental wrong is the system that allows us to view animals as *our resources*, here for *us*—to be eaten, or surgically manipulated, or exploited for sport or money. Once we accept this view of animals—as our resources—the rest is as predictable as it is regrettable. Why worry about their loneliness, their pain, their death? Since animals exist for us, to benefit us in one way or another, what harms them really doesn't matter—or matters only if it starts to bother us, makes us feel a trifle uneasy when we eat our veal escalope, for example. So, yes, let us get veal calves out of solitary confinement, give them more space, a little straw, a few companions. But let us keep our veal escalope.

But a little straw, more space and a few companions won't eliminate—won't even touch—the basic wrong that attaches to our viewing and treating these animals as our resources. A veal calf killed to be eaten after living in close confinement is viewed and treated in this way: but so, too, is another who is raised (as they say) 'more humanely'. To right the wrong of our treatment of farm animals requires more than making rearing methods 'more humane'; it requires the total dissolution of commercial animal agriculture.

How we do this, whether we do it or, as in the case of animals in science, whether and how we

abolish their use—these are to a large extent political questions. People must change their beliefs before they change their habits. Enough people, especially those elected to public office, must believe in change—must want it—before we will have laws that protect the rights of animals. This process of change is very complicated, very demanding, very exhausting, calling for the efforts of many hands in education, publicity, political organization and activity, down to the licking of envelopes and stamps. As a trained and practising philosopher, the sort of contribution I can make is limited but, I like to think, important. The currency of philosophy is ideas—their meaning and rational foundation—not the nuts and bolts of the legislative process, say, or the mechanics of community organization. That's what I have been exploring over the past ten years or so in my essays and talks and, most recently, in my book, *The Case for Animal Rights*. I believe the major conclusions I reach in the book are true because they are supported by the weight of the best arguments. I believe the idea of animal rights has reason, not just emotion, on its side.

In the space I have at my disposal here I can only sketch, in the barest outline, some of the main features of the book. Its main themes—and we should not be surprised by this—involve asking and answering deep, foundational moral questions about what morality is, how it should be understood and what is the best moral theory, all considered. I hope I can convey something of the shape I think this theory takes. The attempt to do this will be (to use a word a friendly critic once used to describe my work) cerebral, perhaps too cerebral. But this is misleading. My feelings about how animals are sometimes treated run just as deep and just as strong as those of my more volatile compatriots. Philosophers do—to use the jargon of the day—have a right side to their brains. If it's the left side we contribute (or mainly should), that's because what talents we have reside there.

How to proceed? We begin by asking how the moral status of animals has been understood by thinkers who deny that animals have rights. Then we test the mettle of their ideas by seeing how well they stand up under the heat of fair criticism. If we

start our thinking in this way, we soon find that some people believe that we have no duties directly to animals, that we owe nothing to them, that we can do nothing that wrongs them. Rather, we can do wrong acts that involve animals, and so we have duties regarding them, though none to them. Such views may be called indirect duty views. By way of illustration: suppose your neighbour kicks your dog. Then your neighbour has done something wrong. But not to your dog. The wrong that has been done is a wrong to you. After all, it is wrong to upset people, and your neighbour's kicking your dog upsets you. So you are the one who is wronged, not your dog. Or again: by kicking your dog your neighbour damages your property. And since it is wrong to damage another person's property, your neighbour has done something wrong—to you, of course, not to your dog. Your neighbour no more wrongs your dog than your car would be wronged if the windshield were smashed. Your neighbour's duties involving your dog are indirect duties to you. More generally, all of our duties regarding animals are indirect duties to one another—to humanity.

How could someone try to justify such a view? Someone might say that your dog doesn't feel anything and so isn't hurt by your neighbour's kick, doesn't care about the pain since none is felt, is as unaware of anything as is your windshield. Someone might say this, but no rational person will, since, among other considerations, such a view will commit anyone who holds it to the position that no human being feels pain either—that human beings also don't care about what happens to them. A second possibility is that though both humans and your dog are hurt when kicked, it is only human pain that matters. But, again, no rational person can believe this. Pain is pain wherever it occurs. If your neighbour's causing you pain is wrong because of the pain that is caused, we cannot rationally ignore or dismiss the moral relevance of the pain that your dog feels.

Philosophers who hold indirect duty views—and many still do—have come to understand that they must avoid the two defects just noted: that is, both the view that animals don't feel anything as well as the idea that only human pain can be morally relevant. Among such thinkers the sort of view

now favoured is one or other form of what is called *contractarianism*.

Here, very crudely, is the root idea: morality consists of a set of rules that individuals voluntarily agree to abide by, as we do when we sign a contract (hence the name *contractarianism*). Those who understand and accept the terms of the contract are covered directly; they have rights created and recognized by, and protected in, the contract. And these contractors can also have protection spelled out for others who, though they lack the ability to understand morality and so cannot sign the contract themselves, are loved or cherished by those who can. Thus young children, for example, are unable to sign contracts and lack rights. But they are protected by the contract none the less because of the sentimental interests of others, most notably their parents. So we have, then, duties involving these children, duties regarding them, but no duties to them. Our duties in their case are indirect duties to other human beings, usually their parents.

As for animals, since they cannot understand contracts, they obviously cannot sign; and since they cannot sign, they have no rights. Like children, however, some animals are the objects of the sentimental interest of others. You, for example, love your dog or cat. So those animals that enough people care about (companion animals, whales, baby seals, the American bald eagle), though they lack rights themselves, will be protected because of the sentimental interests of people. I have, then, according to *contractarianism*, no duty directly to your dog or any other animal, not even the duty not to cause them pain or suffering; my duty not to hurt them is a duty I have to those people who care about what happens to them. As for other animals, where no or little sentimental interest is present—in the case of farm animals, for example, or laboratory rats—what duties we have grow weaker and weaker, perhaps to vanishing point. The pain and death they endure, though real, are not wrong if no one cares about them.

When it comes to the moral status of animals, *contractarianism* could be a hard view to refute if it were an adequate theoretical approach to the moral status of human beings. It is not adequate in this latter respect, however, which makes the question of its adequacy in the former case, regarding animals,

utterly moot. For consider: morality, according to the (crude) contractarian position before us, consists of rules that people agree to abide by. What people? Well, enough to make a difference—enough, that is, *collectively* to have the power to enforce the rules that are drawn up in the contract. That is very well and good for the signatories but not so good for anyone who is not asked to sign. And there is nothing in contractarianism of the sort we are discussing that guarantees or requires that everyone will have a chance to participate equally in framing the rules of morality. The result is that this approach to ethics could sanction the most blatant forms of social, economic, moral and political injustice, ranging from a repressive caste system to systematic racial or sexual discrimination. Might, according to this theory, does make right. Let those who are the victims of injustice suffer as they will. It matters not so long as no one else—no contractor, or too few of them—cares about it. Such a theory takes one's moral breath away . . . as if, for example, there would be nothing wrong with apartheid in South Africa if few white South Africans were upset by it. A theory with so little to recommend it at the level of the ethics of our treatment of our fellow humans cannot have anything more to recommend it when it comes to the ethics of how we treat our fellow animals.

The version of contractarianism just examined is, as I have noted, a crude variety, and in fairness to those of a contractarian persuasion it must be noted that much more refined, subtle and ingenious varieties are possible. For example, John Rawls, in his *A Theory of Justice*, sets forth a version of contractarianism that forces contractors to ignore the accidental features of being a human being—for example, whether one is white or black, male or female, a genius or of modest intellect. Only by ignoring such features, Rawls believes, can we ensure that the principles of justice that contractors would agree upon are not based on bias or prejudice. Despite the improvement a view such as Rawls's represents over the cruder forms of contractarianism, it remains deficient: it systematically denies that we have direct duties to those human beings who do not have a sense of justice—young children, for instance, and many mentally retarded humans. And yet it seems reasonably certain that, were we to torture a young

child or a retarded elder, we would be doing something that wronged him or her, not something that would be wrong if (and only if) other humans with a sense of justice were upset. And since this is true in the case of these humans, we cannot rationally deny the same in the case of animals.

Indirect duty views, then, including the best among them, fail to command our rational assent. Whatever ethical theory we should accept rationally, therefore, it must at least recognize that we have some duties directly to animals, just as we have some duties directly to each other. The next two theories I'll sketch attempt to meet this requirement.

The first I call the cruelty-kindness view. Simply stated, this says that we have a direct duty to be kind to animals and a direct duty not to be cruel to them. Despite the familiar, reassuring ring of these ideas, I do not believe that this view offers an adequate theory. To make this clearer, consider kindness. A kind person acts from a certain kind of motive—compassion or concern, for example. And that is a virtue. But there is no guarantee that a kind act is a right act. If I am a generous racist, for example, I will be inclined to act kindly towards members of my own race, favouring their interests above those of others. My kindness would be real and, so far as it goes, good. But I trust it is too obvious to require argument that my kind acts may not be above moral reproach—may, in fact, be positively wrong because rooted in injustice. So kindness, notwithstanding its status as a virtue to be encouraged, simply will not carry the weight of a theory of right action.

Cruelty fares no better. People or their acts are cruel if they display either a lack of sympathy for or, worse, the presence of enjoyment in another's suffering. Cruelty in all its guises is a bad thing, a tragic human failing. But just as a person's being motivated by kindness does not guarantee that he or she does what is right, so the absence of cruelty does not ensure that he or she avoids doing what is wrong. Many people who perform abortions, for example, are not cruel, sadistic people. But that fact alone does not settle the terribly difficult question of the morality of abortion. The case is no different when we examine the ethics of our treatment of animals. So, yes, let us be for kindness and against cruelty. But let us not suppose that being for the

one and against the other answers questions about moral right and wrong.

Some people think that the theory we are looking for is utilitarianism. A utilitarian accepts two moral principles. The first is that of equality: everyone's interests count, and similar interests must be counted as having similar weight or importance. White or black, American or Iranian, human or animal—everyone's pain or frustration matter, and matter just as much as the equivalent pain or frustration of anyone else. The second principle a utilitarian accepts is that of utility: do the act that will bring about the best balance between satisfaction and frustration for everyone affected by the outcome.

As a utilitarian, then, here is how I am to approach the task of deciding what I morally ought to do: I must ask who will be affected if I choose to do one thing rather than another, how much each individual will be affected, and where the best results are most likely to lie—which option, in other words, is most likely to bring about the best results, the best balance between satisfaction and frustration. That option, whatever it may be, is the one I ought to choose. That is where my moral duty lies.

The great appeal of utilitarianism rests with its uncompromising *egalitarianism*: everyone's interests count and count as much as the like interests of everyone else. The kind of odious discrimination that some forms of contractarianism can justify—discrimination based on race or sex, for example—seems disallowed in principle by utilitarianism, as is speciesism, systematic discrimination based on species membership.

The equality we find in utilitarianism, however, is not the sort an advocate of animal or human rights should have in mind. Utilitarianism has no room for the equal moral rights of different individuals because it has no room for their equal inherent value or worth. What has value for the utilitarian is the satisfaction of an individual's interests, not the individual whose interests they are. A universe in which you satisfy your desire for water, food and warmth is, other things being equal, better than a universe in which these desires are frustrated. And the same is true in the case of an animal with similar desires. But neither you nor the animal have any value in your own right. Only your feelings do.

Here is an analogy to help make the philosophical point clearer: a cup contains different liquids, sometimes sweet, sometimes bitter, sometimes a mix of the two. What has value are the liquids: the sweeter the better, the bitterer the worse. The cup, the container, has no value. It is what goes into it, not what they go into, that has value. For the utilitarian you and I are like the cup; we have no value as individuals and thus no equal value. What has value is what goes into us, what we serve as receptacles for; our feelings of satisfaction have positive value, our feelings of frustration negative value.

Serious problems arise for utilitarianism when we remind ourselves that it enjoins us to bring about the best consequences. What does this mean? It doesn't mean the best consequences for me alone, or for my family or friends, or any other person taken individually. No, what we must do is, roughly, as follows: we must add up (somehow!) the separate satisfactions and frustrations of everyone likely to be affected by our choice, the satisfactions in one column, the frustrations in the other. We must total each column for each of the options before us. That is what it means to say the theory is aggregative. And then we must choose that option which is most likely to bring about the best balance of totalled satisfactions over totalled frustrations. Whatever act would lead to this outcome is the one we ought morally to perform—it is where our moral duty lies. And that act quite clearly might not be the same one that would bring about the best results for me personally, or for my family or friends, or for a lab animal. The best aggregated consequences for everyone concerned are not necessarily the best for each individual.

That utilitarianism is an aggregative theory—different individuals' satisfactions or frustrations are added, or summed, or totalled—is the key objection to this theory. My Aunt Bea is old, inactive, a cranky, sour person, though not physically ill. She prefers to go on living. She is also rather rich. I could make a fortune if I could get my hands on her money, money she intends to give me in any event, after she dies, but which she refuses to give me now. In order to avoid a huge tax bite, I plan to donate a handsome sum of my profits to a local children's hospital. Many, many children will benefit from my generosity, and much joy will be brought to their parents,

relatives and friends. If I don't get the money rather soon, all these ambitions will come to naught. The once-in-a-lifetime opportunity to make a real killing will be gone. Why, then, not kill my Aunt Bea? Oh, of course I *might* get caught. But I'm no fool and, besides, her doctor can be counted on to co-operate (he has an eye for the same investment and I happen to know a good deal about his shady past). The deed can be done . . . professionally, shall we say. There is *very* little chance of getting caught. And as for my conscience being guilt-ridden, I am a resourceful sort of fellow and will take more than sufficient comfort—as I lie on the beach at Acapulco—in contemplating the joy and health I have brought to so many others. Suppose Aunt Bea is killed and the rest of the story comes out as told. Would I have done anything wrong? Anything immoral? One would have thought that I had. Not according to utilitarianism. Since what I have done has brought about the best balance between totalled satisfaction and frustration for all those affected by the outcome, my action is not wrong. Indeed, in killing Aunt Bea the physician and I did what duty required.

This same kind of argument can be repeated in all sorts of cases, illustrating, time after time, how the utilitarian's position leads to results that impartial people find morally callous. It *is* wrong to kill my Aunt Bea in the name of bringing about the best results for others. A good end does not justify an evil means. Any adequate moral theory will have to explain why this is so. Utilitarianism fails in this respect and so cannot be the theory we seek.

What to do? Where to begin anew? The place to begin, I think, is with the utilitarian's view of the value of the individual—or, rather, lack of value. In its place, suppose we consider that you and I, for example, do have value as individuals—what we'll call *inherent value*. To say we have such value is to say that we are something more than, something different from, mere receptacles. Moreover, to ensure that we do not pave the way for such injustices as slavery or sexual discrimination, we must believe that all who have inherent value have it equally, regardless of their sex, race, religion, birthplace and so on. Similarly to be discarded as irrelevant are one's talents or skills, intelligence and wealth, personality or pathology, whether one is loved and admired or

despised and loathed. The genius and the retarded child, the prince and the pauper, the brain surgeon and the fruit vendor, Mother Teresa and the most unscrupulous used-car salesman—all have inherent value, all possess it equally, and all have an equal right to be treated with respect, to be treated in ways that do not reduce them to the status of things, as if they existed as resources for others. My value as an individual is independent of my usefulness to you. Yours is not dependent on your usefulness to me. For either of us to treat the other in ways that fail to show respect for the other's independent value is to act immorally, to violate the individual's rights.

Some of the rational virtues of this view—what I call the rights view—should be evident. Unlike (crude) contractarianism, for example, the rights view *in principle* denies the moral tolerability of any and all forms of racial, sexual or social discrimination; and unlike utilitarianism, this view *in principle* denies that we can justify good results by using evil means that violate an individual's rights—denies, for example, that it could be moral to kill my Aunt Bea to harvest beneficial consequences for others. That would be to sanction the disrespectful treatment of the individual in the name of the social good, something the rights view will not—categorically will not—ever allow.

The rights view, I believe, is rationally the most satisfactory moral theory. It surpasses all other theories in the degree to which it illuminates and explains the foundation of our duties to one another—the domain of human morality. On this score it has the best reasons, the best arguments, on its side. Of course, if it were possible to show that only human beings are included within its scope, then a person like myself, who believes in animal rights, would be obliged to look elsewhere.

But attempts to limit its scope to humans only can be shown to be rationally defective. Animals, it is true, lack many of the abilities humans possess. They can't read, do higher mathematics, build a bookcase or make *baba ghanoush*. Neither can many human beings, however, and yet we don't (and shouldn't) say that they (these humans) therefore have less inherent value, less of a right to be treated with respect, than do others. It is the *similarities* between those human beings who most clearly, most

non-controversially have such value (the people reading this, for example), not our differences, that matter most. And the really crucial, the basic similarity is simply this: we are each of us the experiencing subject of a life, a conscious creature having an individual welfare that has importance to us whatever our usefulness to others. We want and prefer things, believe and feel things, recall and expect things. And all these dimensions of our life, including our pleasure and pain, our enjoyment and suffering, our satisfaction and frustration, our continued existence or our untimely death—all make a difference to the quality of our life as lived, as experienced, by us as individuals. As the same is true of those animals that concern us (the ones that are eaten and trapped, for example), they too must be viewed as the experiencing subjects of a life, with inherent value of their own.

Some there are who resist the idea that animals have inherent value. "Only humans have such value," they profess. How might this narrow view be defended? Shall we say that only humans have the requisite intelligence, or autonomy, or reason? But there are many, many humans who fail to meet these standards and yet are reasonably viewed as having value above and beyond their usefulness to others. Shall we claim that only humans belong to the right species, the species *Homo sapiens*? But this is blatant speciesism. Will it be said, then, that all—and only—humans have immortal souls? Then our opponents have their work cut out for them. I am myself not ill-disposed to the proposition that there are immortal souls. Personally, I profoundly hope I have one. But I would not want to rest my position on a controversial ethical issue on the even more controversial question about who or what has an immortal soul. That is to dig one's hole deeper, not to climb out. Rationally, it is better to resolve moral issues without making more controversial assumptions than are needed. The question of who has inherent value is such a question, one that is resolved more rationally without the introduction of the idea of immortal souls than by its use.

Well, perhaps some will say that animals have some inherent value, only less than we have. Once again, however, attempts to defend this view can be shown to lack rational justification. What could be

the basis of our having more inherent value than animals? Their lack of reason, or autonomy, or intellect? Only if we are willing to make the same judgment in the case of humans who are similarly deficient. But it is not true that such humans—the retarded child, for example, or the mentally deranged—have less inherent value than you or I. Neither, then, can we rationally sustain the view that animals like them in being the experiencing subjects of a life have less inherent value. All who have inherent value have it *equally*, whether they be human animals or not.

Inherent value, then, belongs equally to those who are the experiencing subjects of a life. Whether it belongs to others—to rocks and rivers, trees and glaciers, for example—we do not know and may never know. But neither do we need to know, if we are to make the case for animal rights. We do not need to know, for example, how many people are eligible to vote in the next presidential election before we can know whether I am. Similarly, we do not need to know how many individuals have inherent value before we can know that some do. When it comes to the case for animal rights, then, what we need to know is whether the animals that, in our culture, are routinely eaten, hunted and used in our laboratories, for example, are like us in being subjects of a life. And we do know this. We do know that many—literally, billions and billions—of these animals are the subjects of a life in the sense explained and so have inherent value if we do. And since, in order to arrive at the best theory of our duties to one another, we must recognize our equal inherent value as individuals, reason—not sentiment, not emotion—reason compels us to recognize the equal inherent value of these animals and, with this, their equal right to be treated with respect.

That, *very* roughly, is the shape and feel of the case for animal rights. Most of the details of the supporting argument are missing. They are to be found in the book to which I alluded earlier. Here, the details go begging, and I must, in closing, limit myself to four final points.

The first is how the theory that underlies the case for animal rights shows that the animal rights movement is a part of, not antagonistic to, the human rights movement. The theory that rationally grounds the rights of animals also grounds the rights of

humans. Thus those involved in the animal rights movement are partners in the struggle to secure respect for human rights—the rights of women, for example, or minorities, or workers. The animal rights movement is cut from the same moral cloth as these.

Second, having set out the broad outlines of the rights view, I can now say why its implications for farming and science, among other fields, are both clear and uncompromising. In the case of the use of animals in science, the rights view is categorically abolitionist. Lab animals are not our tasters; we are not their kings. Because these animals are treated routinely, systematically as if their value were reducible to their usefulness to others, they are routinely, systematically treated with a lack of respect, and thus are their rights routinely, systematically violated. This is just as true when they are used in trivial, duplicative, unnecessary or unwise research as it is when they are used in studies that hold out real promise of human benefits. We can't justify harming or killing a human being (my Aunt Bea, for example) just for these sorts of reason. Neither can we do so even in the case of so lowly a creature as a laboratory rat. It is not just refinement or reduction that is called for, not just larger, cleaner cages, not just more generous use of anaesthetic or the elimination of multiple surgery, not just tidying up the system. It is complete replacement. The best we can do when it comes to using animals in science is—not to use them. That is where our duty lies, according to the rights view.

As for commercial animal agriculture, the rights view takes a similar abolitionist position. The fundamental moral wrong here is not that animals are kept in stressful close confinement or in isolation, or that their pain and suffering, their needs and preferences are ignored or discounted. All these *are* wrong, of course, but they are not the fundamental wrong. They are symptoms and effects of the deeper, systematic wrong that allows these animals to be viewed and treated as lacking independent value, as resources for us—as, indeed, a renewable resource. Giving farm animals more space, more natural environments, more companions does not right the fundamental wrong, any more than giving lab animals more anaesthesia or

bigger, cleaner cages would right the fundamental wrong in their case. Nothing less than the total dissolution of commercial animal agriculture will do this, just as, for similar reasons I won't develop at length here, morality requires nothing less than the total elimination of hunting and trapping for commercial and sporting ends. The rights view's implications, then, as I have said, are clear and uncompromising.

My last two points are about philosophy, my profession. It is, most obviously, no substitute for political action. The words I have written here and in other places by themselves don't change a thing. It is what we do with the thoughts that the words express—our acts, our deeds—that changes things. All that philosophy can do, and all I have attempted, is to offer a vision of what our deeds should aim at. And the why. But not the how.

Finally, I am reminded of my thoughtful critic, the one I mentioned earlier, who chastised me for being too cerebral. Well, cerebral I have been: indirect duty views, utilitarianism, contractarianism—hardly the stuff deep passions are made of. I am also reminded, however, of the image another friend once set before me—the image of the ballerina as expressive of disciplined passion. Long hours of sweat and toil, of loneliness and practice, of doubt and fatigue: those are the discipline of her craft. But the passion is there too, the fierce drive to excel, to speak through her body, to do it right, to pierce our minds. That is the image of philosophy I would leave with you, not 'too cerebral' but *disciplined passion*. Of the discipline enough has been seen. As for the passion: there are times, and these not infrequent, when tears come to my eyes when I see, or read, or hear of the wretched plight of animals in the hands of humans. Their pain, their suffering, their loneliness, their innocence, their death. Anger. Rage. Pity. Sorrow. Disgust. The whole creation groans under the weight of the evil we humans visit upon these mute, powerless creatures. It *is* our hearts, not just our heads, that call for an end to it all, that demand of us that we overcome, for them, the habits and forces behind their systematic oppression. All great movements, it is written, go through three stages: ridicule, discussion, adoption. It is the realization of this third stage, adoption, that requires

both our passion and our discipline, our hearts and our heads. The fate of animals is in our hands. God grant we are equal to the task.

Tom Regan: The Case for Animal Rights

1. What is inherent worth?
2. Explain the distinction between duties to, and duties regarding, a given being. Then illustrate the distinction with a plausible example of your own.

3. Do you find Regan's criticisms of contractarianism and utilitarianism plausible? Why or why not?
4. Do you think that being an experiencing subject of a life is the correct basis for possessing inherent worth? If so, why? If not, what other basis would you propose?
5. Suppose that animals have inherent worth. Why think that they have inherent worth that is *equal to* that of human beings?

Difficulties with the Strong Animal Rights Position

Mary Anne Warren

Mary Anne Warren offers a thorough consideration of Tom Regan's case for animal rights. She finds much to admire, although she is critical of his view at various points. She wonders about the nature of inherent value and finds some obscurity in this concept. She challenges the claim that being a subject of a life is the basis for possession of moral rights. Regan's thought is that being such a subject is what grounds the possession of inherent value, which in turn grounds possession of moral rights. But Warren thinks that it is plausible to assume that some things possess inherent worth (e.g., entire species or some marvels of the natural world), even though it makes no sense to assign them rights. If she is correct, then inherent value is not the basis for moral rights.

Warren's primary criticism is that Regan has failed to show that animal and human rights are equal. Warren accepts that animals have rights, although she thinks that those rights are more likely based on sentience than on being a subject of a life. Still, she claims that animal rights are ordinarily weaker than human rights, so that if these rights conflict, then those of human beings take moral priority. That is because humans are capable of being moved to act on the basis of reasoned argument; animals are not. Warren thinks that the purpose of morality is to resolve conflict efficiently and nonviolently. The ability to reason with one another enables us to secure this purpose (even if we sometimes fail). Almost all animals, though, lack this ability, and so possess moral rights that are less stringent than those of humans.

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Tom Regan has produced what is perhaps the definitive defense of the view that the basic moral rights of at least some non-human animals are in no way inferior to our own. In *The Case for Animal Rights*, he argues that all normal mammals over a year of

age have the same basic moral rights. Non-human mammals have essentially the same right not to be harmed or killed as we do. I shall call this “the strong animal rights position,” although it is weaker than the claims made by some animal liberationists in that it ascribes rights to only some sentient animals.

I will argue that Regan’s case for the strong animal rights position is unpersuasive and that this position entails consequences which a reasonable person cannot accept. I do not deny that some non-human animals have moral rights; indeed, I would extend the scope of the rights claim to include all sentient animals, that is, all those capable of having experiences, including experiences of pleasure or satisfaction and pain, suffering, or frustration. However, I do not think that the moral rights of most non-human animals are identical in strength to those of persons. The rights of most non-human animals may be overridden in circumstances which would not justify overriding the rights of persons. There are, for instance, compelling realities which sometimes require that we kill animals for reasons which could not justify the killing of persons. I will call this view “the weak animal rights” position. . . .

I will begin by summarizing Regan’s case for the strong animal rights position and noting two problems with it. Next, I will explore same consequences of the strong animal rights position which I think are unacceptable. Finally, I will outline the case for the weak animal rights position.

REGAN’S CASE

Regan’s argument moves through three stages. First, he argues that normal, mature mammals are not only sentient but have other mental capacities, as well. These include the capacities for emotion, memory, belief, desire, the use of general concepts, intentional action, a sense of the future, and some degree of self-awareness. Creatures with such capacities are said to be subjects-of-a-life. They are not only alive in the biological sense but have a psychological identity over time and an existence which can go better or worse for them. Thus, they can be harmed or benefitted. These are plausible claims, and well defended. . . . The second and third stages of the argument are more problematic.

In the second stage, Regan argues that subjects-of-a-life have inherent value. His concept of inherent value grows out of his opposition to utilitarianism. Utilitarian moral theory, he says, treats individuals as “mere receptacles” for morally significant value, in that harm to one individual may be justified by the production of a greater net benefit to other individuals. In opposition to this, he holds that subjects-of-a-life have a value independent of both the value they may place upon their lives or experiences and the value others may place upon them.

Inherent value, Regan argues, does not come in degrees. Its hold that some individuals have more inherent value than others is to adopt a “perfectionist” theory, i.e., one which assigns different moral worth to individuals according to how well they are thought to exemplify some virtue(s), such as intelligence or moral autonomy. Perfectionist theories have been used, at least since the time of Aristotle, to rationalize such injustices as slavery and male domination, as well as the unrestrained exploitation of animals. Regan argues that if we reject these injustices, then we must also reject perfectionism and conclude that all subjects-of-a-life have equal inherent value. Moral agents have no more inherent value than moral patients, i.e., subjects-of-a-life who are not morally responsible for their actions.

In the third phase of the argument, Regan uses the thesis of equal inherent value to derive strong moral rights for all subjects-of-a-life. This thesis underlies the Respect Principle, which forbids us to treat beings who have inherent value as mere receptacles, i.e., mere means to the production of the greatest overall good. This principle, in turn, underlies the Harm Principle, which says that we have a direct *prima facie* duty not to harm beings who have inherent value. Together, these principles give rise to moral rights. Rights are defined as valid claims, claims to certain goods and against certain beings, i.e., moral agents. Moral rights generate duties not only to refrain from inflicting harm upon beings with inherent value but also to come to their aid when they are threatened by other moral agents. Rights are not absolute but may be overridden in certain circumstances. Just what these circumstances are we will consider later. But first, let’s look at some difficulties in the theory as thus far presented.

THE MYSTERY OF INHERENT VALUE

Inherent value is a key concept in Regan's theory. It is the bridge between the plausible claim that all normal, mature mammals—human or otherwise—are subjects-of-a-life and the more debatable claim that they all have basic moral rights of the same strength. But it is a highly obscure concept, and its obscurity makes it ill-suited to play this crucial role.

Inherent value is defined almost entirely in negative terms. It is not dependent upon the value which either the inherently valuable individual or anyone else may place upon that individual's life or experiences. It is not (necessarily) a function of sentience or any other mental capacity, because, Regan says, some entities which are not sentient (e.g., trees, rivers, or rocks) may, nevertheless, have inherent value. It cannot attach to anything other than an individual; species, eco-systems, and the like cannot have inherent value.

These are some of the things which inherent value is not. But what is it? Unfortunately, we are not told. Inherent value appears as a mysterious non-natural property which we must take on faith. Regan says that it is a *postulate* that subjects-of-a-life have inherent value, a postulate justified by the fact that it avoids certain absurdities which he thinks follow from a purely utilitarian theory. But why is the postulate that *subjects-of-a-life* have inherent value? If the inherent value of a being is completely independent of the value that it or anyone else places upon its experiences, then why does the fact that it has certain sorts of experiences constitute evidence that it has inherent value? If the reason is that subjects-of-a-life have an existence which can go better or worse for them, then why isn't the appropriate conclusion that all sentient beings have inherent value, since they would all seem to meet that condition? Sentient but mentally unsophisticated beings may have a less extensive range of possible satisfactions and frustration, but why should it follow that they have—or may have—no inherent value at all?

In the absence of a positive account of inherent value, it is also difficult to grasp the connection between being inherently valuable and having moral rights. Intuitively, it seems that value is one thing, and rights are another. It does not seem incoherent to say that some things (e.g., mountains, rivers,

redwood trees) are inherently valuable and yet are not the sorts of things which can have moral rights. Nor does it seem incoherent to ascribe inherent value to some things which are not individuals, e.g., plant or animal species, though it may well be incoherent to ascribe moral rights to such things.

In short, the concept of inherent value seems to create at least as many problems as it solves. . . . That it may enable us to avoid some of the problems faced by the utilitarian is not a sufficient reason, if it creates other problems which are just as serious.

IS THERE A SHARP LINE?

Perhaps the most serious problems are those that arise when we try to apply the strong animal rights position to animals other than normal, mature mammals. Regan's theory requires us to divide all living things into two categories; those which have the same inherent value and the same basic moral rights that we do, and those which have no inherent value and presumably no moral rights. But wherever we try to draw the line, such a sharp division is implausible.

It would surely be arbitrary to draw such a sharp line between normal, mature mammals and all other living things. Some birds (e.g., crows, magpies, parrots, mynahs) appear to be just as mentally sophisticated as most mammals and thus are equally strong candidates for inclusion under the subject-of-a-life criterion. Regan is not in fact advocating that we draw the line here. His claim is only that normal, mature mammals are clear cases, while other cases are less clear. Yet, on his theory, there must be such a sharp line *somewhere*, since there are no degrees of inherent value. But why should we believe that there is a sharp line between creatures that are subjects-of-a-life and creatures that are not? Isn't it more likely that "subjecthood" comes in degrees, that some creatures have only a little self-awareness, and only a little capacity to anticipate the future, while some have a little more, and some a good deal more?

Should we, for instance, regard fish, amphibians, and reptiles as subjects-of-a-life? A simple yes-or-no answer seems inadequate. On the one hand, some of their behavior is difficult to explain without the assumption that they have sensations, beliefs, desires,

emotions, and memories; on the other hand, they do not seem to exhibit very much self-awareness or very much conscious anticipation of future events. Do they have enough mental sophistication to count as subjects-of-a-life? Exactly how much is enough?

It is still more unclear what we should say about insects, spiders, octopi, and other invertebrate animals which have brains and sensory organs but whose minds (if they have minds) are even more alien to us than those of fish or reptiles. Such creatures are probably sentient. . . . It must, however, be admitted that we do not *know* whether spiders can feel pain (or something very like it), let alone whether they have emotions, memories, beliefs, desires, self-awareness, or a sense of the future. . . .

The existence of a few unclear cases need not pose a serious problem for a moral theory, but in this case, the unclear cases constitute most of those with which an adequate theory of animal rights would need to deal. The subject-of-a-life criterion can provide us with little or no moral guidance in our interactions with the vast majority of animals. That might be acceptable if it could be supplemented with additional principles which would provide such guidance. However, the radical dualism of the theory precludes supplementing it in this way. We are forced to say that either a spider has the same right to life as you and I do, or it has no right to life whatever—and that only the gods know which of these alternatives is true.

Regan's suggestion for dealing with such unclear cases is to apply the "benefit of the doubt" principle. That is, when dealing with beings that may or may not not be subjects-of-a-life, we should act as if they are. But if we try to apply this principle to the entire range of doubtful cases, we will find ourselves with moral obligations which we cannot possibly fulfill. In many climates, it is virtually impossible to live without swatting mosquitoes and exterminating cockroaches, and not all of us can afford to hire someone to sweep the path before we walk, in order to make sure that we do not step on ants. Thus, we are still faced with the daunting task of drawing a sharp line somewhere on the continuum of life forms—this time, a line demarcating the limits of the benefit of the doubt principle.

The weak animal rights theory provides a more plausible way of dealing with this range of cases, in that it allows the rights of animals of different kinds

to vary in strength. A creature's probable degree of mental sophistication may be relevant to the strength of its moral rights, because mentally sophisticated creatures are apt to be capable of greater suffering and probably lose more which is of potential value to them when they lose their lives. The degree of uncertainty about whether a creature is sentient at all is also relevant: whether and in what way we ought to apply the benefit of the doubt principle depends in part upon how much doubt there is. (For instance, it is *possible* that plants are sentient, but it is so unlikely that we are surely not morally obligated to act as though they are.) Thus, we may follow common sense in saying that to kill a spider just for fun is not as objectionable as to kill a bird or a mammal just for fun, but it is wrong, nevertheless. No sentient being should be killed except for some good reason, and sport or amusement are not good reasons. . . .

WHY ARE ANIMAL RIGHTS WEAKER THAN HUMAN RIGHTS?

How can we justify regarding the rights of persons as generally stronger than those of sentient beings which are not persons? There are a plethora of bad justifications, based on religious premises or false or unprovable claims about the differences between human and non-human nature. But there is one difference which has a clear moral relevance: people are at least sometimes capable of being moved to action or inaction by the force of reasoned argument. Rationality rests upon other mental capacities, notably those which Regan cites as criteria for being a subject-of-a-life. We share these capacities with many other animals. But it is not just because we are subjects-of-a-life that we are both able and morally compelled to recognize one another as beings with equal basic moral rights. It is also because we are able to "listen to reason" in order to settle our conflicts and cooperate in shared projects. This capacity, unlike the others, may require something like a human language.

Why is rationality morally relevant? It does not make us "better" than other animals or more "perfect." It does not even automatically make us more intelligent. (Bad reasoning reduces our effective intelligence rather than increasing it.) But it is morally relevant insofar as it provides greater possibilities

for cooperation and for the nonviolent resolution of problems. It also makes us more dangerous than non-rational beings can ever be. Because we are potentially more dangerous and less predictable than wolves, we need an articulated system of morality to regulate our conduct. Any human morality, to be workable in the long run, must recognize the equal moral status of all persons, whether through the postulate of equal basic moral rights or in some other way. The recognition of the moral equality of other persons is the price we must each pay for their recognition of our moral equality. Without this mutual recognition of moral equality, human society can exist only in a state of chronic and bitter conflict. The war between the sexes will persist so long as there is sexism and male domination; racial conflict will never be eliminated so long as there are racist laws and practices. But, to the extent that we achieve a mutual recognition of equality, we can hope to live together, perhaps as peacefully as wolves, achieving (in part) through explicit moral principles what they do not seem to need explicit moral principles to achieve.

Why not extend this recognition of moral equality to other creatures, even though they cannot do the same for us? The answer is that we cannot. Because we cannot reason with most non-human animals, we cannot always solve the problems which they may cause without harming them—although we are always obligated to try. We cannot negotiate a treaty with the feral cats and foxes, requiring them to stop preying on endangered native species in return for suitable concessions on our part. . . .

Aristotle was not wrong in claiming that the capacity to alter one's behavior on the basis of reasoned argument is relevant to the full moral status which he accorded to free men. Of course, he was wrong in his other premise, that women and slaves by their nature cannot reason well enough to function as autonomous moral agents. Had that premise been true, so would his conclusion that women and slaves are not quite the moral equals of free men. In the case of most non-human animals, the corresponding premise is true. If, on the other hand, there are animals with whom we can (learn to) reason, then we are obligated to do this and to regard them as our moral equals.

Thus, to distinguish between the rights of persons and those of most other animals on the grounds that only people can alter their behavior on the basis of reasoned argument does not commit us to a perfectionist theory of the sort Aristotle endorsed. There is no excuse for refusing to recognize the moral equality of some people on the grounds that we don't regard them as quite as rational as we are, since it is perfectly clear that most people can reason well enough to determine how to act so as to respect the basic rights of others (if they choose to), and that is enough for moral equality.

But what about people who are clearly not rational? It is often argued that sophisticated mental capacities such as rationality cannot be essential for the possession of equal basic moral rights, since nearly everyone agrees that human infants and mentally incompetent persons have such rights, even though they may lack those sophisticated mental capacities. But this argument is inconclusive, because there are powerful practical and emotional reasons for protecting non-rational human beings, reasons which are absent in the case of most non-human animals. Infancy and mental incompetence are human conditions which all of us either have experienced or are likely to experience at some time. We also protect babies and mentally incompetent people because we care for them. We don't normally care for animals in the same way, and when we do—e.g., in the case of much-loved pets—we may regard them as having special rights by virtue of their relationship to us. We protect them not only for their sake but also for our own, lest we be hurt by harm done to them. Regan holds that such “side-effects” are irrelevant to moral rights, and perhaps they are. But in ordinary usage, there is no sharp line between moral rights and those moral protections which are not rights. The extension of strong moral protections to infants and the mentally impaired in no way proves that non-human animals have the same basic moral rights as people.

WHY SPEAK OF “ANIMAL RIGHTS” AT ALL?

If, as I have argued, reality precludes our treating all animals as our moral equals, then why should we still ascribe rights to them? Everyone agrees that animals

are entitled to some protection against human abuse, but why speak of animal *rights* if we are not prepared to accept most animals as our moral equals? The weak animal rights position may seem an unstable compromise between the bold claim that animals have the same basic moral rights that we do and the more common view that animals have no rights at all.

It is probably impossible to either prove or disprove the thesis that animals have moral rights by producing an analysis of the concept of a moral right and checking to see if some or all animals satisfy the conditions for having rights. The concept of a moral right is complex, and it is not clear which of its strands are essential. Paradigm rights holders, i.e., mature and mentally competent persons, are *both* rational and morally autonomous beings and sentient subjects-of-a-life. Opponents of animal rights claim that rationality and moral autonomy are essential for the possession of rights, while defenders of animal rights claim that they are not. The ordinary concept of a moral right is probably not precise enough to enable us to determine who is right on purely definitional grounds.

If logical analysis will not answer the question of whether animals have moral rights, practical considerations may, nevertheless, incline us to say that they do. The most plausible alternative to the view that animals have moral rights is that, while they do not have *rights*, we are, nevertheless, obligated not to be cruel to them. Regan argues persuasively that the injunction to avoid being cruel to animals is inadequate to express our obligations towards animals, because it focuses on the mental states of those who cause animal suffering, rather than on the harm done to the animals themselves. Cruelty is inflicting pain or suffering and either taking pleasure in that pain or suffering or being more or less indifferent to it. Thus, to express the demand for the decent treatment of animals in terms of the rejection of cruelty is to invite the too easy response that those who subject animals to suffering are not being cruel because they regret the suffering they cause but sincerely believe that what they do is justified. The injunction to avoid cruelty is also inadequate in that it does not preclude the killing of animals—for any reason, however trivial—so long as it is done relatively painlessly.

The inadequacy of the anti-cruelty view provides one practical reason for speaking of animal rights. Another practical reason is that this is an age in which nearly all significant moral claims tend to be expressed in terms of rights. Thus, the denial that animals have rights, however carefully qualified, is likely to be taken to mean that we may do whatever we like to them, provided that we do not violate any human rights. In such a context, speaking of the rights of animals may be the only way to persuade many people to take seriously protests against the abuse of animals.

Why not extend this line of argument and speak of the rights of trees, mountains, oceans, or anything else which we may wish to see protected from destruction? Some environmentalists have not hesitated to speak in this way, and, given the importance of protecting such elements of the natural world, they cannot be blamed for using this rhetorical device. But, I would argue that moral rights can meaningfully be ascribed only to entities which have some capacity for sentience. This is because moral rights are protections designed to protect rights holders from harms or to provide them with benefits which matter *to them*. Only beings capable of sentience can be harmed or benefitted in ways which matter to them, for only such beings can like or dislike what happens to them or prefer some conditions to others. Thus, sentient animals, unlike mountains, rivers, or species, are at least logically possible candidates for moral rights. This fact, together with the need to end current abuses of animals—e.g., in scientific research and intensive farming—provides a plausible case for speaking of animal rights.

CONCLUSION

I have argued that Regan's case for ascribing strong moral rights to all normal, mature mammals is unconvincing because (1) it rests upon the obscure concept of inherent value, which is defined only in negative terms, and (2) it seems to preclude any plausible answer to questions about the moral status of the vast majority of sentient animals. Moreover, (3) the strong animal rights position leads to unacceptable conclusions: e.g., that we may not kill rodents when they invade our houses or protect endangered species by killing introduced predators. The weak animal rights position allows for the necessary flexibility in

dealing with animals when they pose a threat to our well-being, or that of other animals, or ecological systems. On the other hand, it also ascribes moral rights to a much wider range of animals: not just normal, mature mammals but all sentient beings, whether warm- or cold-blooded, vertebrate or invertebrate.

The weak animal rights theory asserts that (1) any creature whose natural mode of life includes the pursuit of certain satisfactions has the right not to be forced to exist without the opportunity to pursue those satisfactions; (2) that any creature which is capable of pain, suffering, or frustration has the right that such experiences not be deliberately inflicted upon it without some compelling reason; and (3) that no sentient being should be killed without good reason. However, moral rights are not an all-or-nothing affair. The strength of the reasons required to override the rights of a non-human organism varies, depending upon—among other things—the probability that it is sentient and (if it is clearly sentient) its probable degree of mental sophistication. . . .

Mary Anne Warren: Difficulties with the Strong Animal Rights Position

1. Do you share Warren's doubts about the coherence of the idea of inherent worth?
2. Warren thinks that whether a given being is the subject of a life is usually unclear, with the result that this is a poor basis for inherent value and moral rights. Do you agree with her criticism? Why or why not?
3. Warren claims that the purpose of morality is to resolve conflict in nonviolent ways. Do you agree with that position? If so, do you think that her use of this view to downgrade the relative importance of animal rights succeeds?
4. Does Warren's argument for the weaker status of animal rights also imply that human infants and young children have weaker moral rights than those of adults? Why or why not?
5. Warren argues that moral rights require sentience. Do you agree with this position and her argument for it?

Puppies, Pigs and People: Eating Meat and Marginal Cases

Alastair Norcross

Alastair Norcross opens his provocative piece with a fictional scenario that is both outrageous and meant to make a very serious philosophical point. As he sees it, **current practices of factory farming are deeply immoral**. One might think that meat-eaters are exempt from blame, though, since for the most part they are not the ones who are actually perpetrating the harms to animals on the factory farms that process the great majority of animal products. Norcross rejects this thought. As he sees it, **meat-eaters—at least those who know of the cruelty of the treatment of factory-farmed animals—are fully blameworthy for their indulgence**. The good they get from eating meat—primarily the gustatory pleasure they get from eating meat—is far outweighed by the awful suffering of the animals when confined and killed on factory farms.

Norcross considers a wide variety of replies to his charge. These include the claim that individual meat-eaters are off the moral hook because their purchases are so insignificant that they cannot affect the practices on factory farms. Another reply is that

meat-eaters do not intend to harm animals, but only foresee animal harm as a result of contemporary farming practices. Norcross extensively criticizes both replies.

He then introduces a very popular argument in the literature on animal welfare: the argument from marginal cases. This argument says that we must treat animals and so-called marginal human beings as equals, since such humans have mental lives that are no more developed than those of the animals that are killed and eaten for food. He considers several replies to this argument and finds fault with each of them. If we are unwilling to cruelly confine, prematurely kill, and eat "marginal" human beings, then we should be equally reluctant to do such things to animals.

Norcross concludes with a discussion of the difference between being a moral agent (i.e., someone who can respond to moral reasons and control her behavior by means of such reasons) and a moral patient (i.e., a being to whom we owe duties, even if that being lacks rights or lacks the cognitive powers needed to be a moral agent). Norcross argues that animals qualify as moral patients, even if, because of their diminished or nonexistent rationality, they cannot qualify as moral agents. We therefore owe them duties of respect, which protect them against the current practices involved in factory farming.

1. FRED'S BASEMENT

Consider the story of Fred, who receives a visit from the police one day. They have been summoned by Fred's neighbors, who have been disturbed by strange sounds emanating from Fred's basement. When they enter the basement they are confronted by the following scene: Twenty-six small wire cages, each containing a puppy, some whining, some whimpering, some howling. The puppies range in age from newborn to about six months. Many of them show signs of mutilation. Urine and feces cover the bottoms of the cages and the basement floor. Fred explains that he keeps the puppies for twenty-six weeks, and then butchers them while holding them upside-down. During their lives he performs a series of mutilations on them, such as slicing off their noses and their paws with a hot knife, all without any form of anesthesia. Except for the mutilations, the puppies are never allowed out of the cages, which are barely big enough to hold them at twenty-six weeks. The police are horrified, and promptly charge Fred with animal abuse. As details of the case are publicized, the public is

outraged. Newspapers are flooded with letters demanding that Fred be severely punished. There are calls for more severe penalties for animal abuse. Fred is denounced as a vile sadist.

Finally, at his trial, Fred explains his behavior, and argues that he is blameless and therefore deserves no punishment. He is, he explains, a great lover of chocolate. A couple of years ago, he was involved in a car accident, which resulted in some head trauma. Upon his release from hospital, having apparently suffered no lasting ill effects, he visited his favorite restaurant and ordered their famous rich dark chocolate mousse. Imagine his dismay when he discovered that his experience of the mousse was a pale shadow of its former self. The mousse tasted bland, slightly pleasant, but with none of the intense chocolaty flavor he remembered so well. The waiter assured him that the recipe was unchanged from the last time he had tasted it, just the day before his accident. In some consternation, Fred rushed out to buy a bar of his favorite Belgian chocolate. Again, he was dismayed to discover that his experience of the chocolate was barely even pleasurable. Extensive investigation revealed that his experience of other foods remained unaffected, but chocolate, in all its forms, now tasted bland and insipid. Desperate for a solution to his problem, Fred visited a renowned gustatory neurologist, Dr. T. Bud. Extensive tests

revealed that the accident had irreparably damaged the godiva gland, which secretes cocoamone, the hormone responsible for the experience of chocolate. Fred urgently requested hormone replacement therapy. Dr. Bud informed him that, until recently, there had been no known source of cocoamone, other than the human godiva gland, and that it was impossible to collect cocoamone from one person to be used by another. However, a chance discovery had altered the situation. A forensic veterinary surgeon, performing an autopsy on a severely abused puppy, had discovered high concentrations of cocoamone in the puppy's brain. It turned out that puppies, who don't normally produce cocoamone, could be stimulated to do so by extended periods of severe stress and suffering. The research, which led to this discovery, while gaining tenure for its authors, had not been widely publicized, for fear of antagonizing animal welfare groups. Although this research clearly gave Fred the hope of tasting chocolate again, there were no commercially available sources of puppy-derived cocoamone. Lack of demand, combined with fear of bad publicity, had deterred drug companies from getting into the puppy torturing business. Fred appeals to the court to imagine his anguish, on discovering that a solution to his severe deprivation was possible, but not readily available. But he wasn't inclined to sit around bemoaning his cruel fate. He did what any chocolate lover would do. He read the research, and set up his own cocoamone collection lab in his basement. Six months of intense puppy suffering, followed by a brutal death, produced enough cocoamone to last him a week, hence the twenty-six cages. He isn't a sadist or an animal abuser, he explains. If there were a method of collecting cocoamone without torturing puppies, he would gladly employ it. He derives no pleasure from the suffering of the puppies itself. He sympathizes with those who are horrified by the pain and misery of the animals, but the court must realize that human pleasure is at stake. The puppies, while undeniably cute, are mere animals. He admits that he would be just as healthy without chocolate, if not more so. But this isn't a matter of survival or health. His life would be unacceptably impoverished without the experience of chocolate.

End of story. Clearly, we are horrified by Fred's behavior, and unconvinced by his attempted justification. It is, of course, unfortunate for Fred that he can no longer enjoy the taste of chocolate, but that in no way excuses the imposition of severe suffering on the puppies. I expect near universal agreement with this claim (the exceptions being those who are either inhumanly callous or thinking ahead, and wish to avoid the following conclusion, to which such agreement commits them). No decent person would even contemplate torturing puppies merely to enhance a gustatory experience. However, billions of animals endure intense suffering every year for precisely this end. Most of the chicken, veal, beef, and pork consumed in the US comes from intensive confinement facilities, in which the animals live cramped, stress-filled lives and endure unanesthetized mutilations. The vast majority of people would suffer no ill health from the elimination of meat from their diets. Quite the reverse. The supposed benefits from this system of factory farming, apart from the profits accruing to agribusiness, are increased levels of gustatory pleasure for those who claim that they couldn't enjoy a meat-free diet as much as their current meat-filled diets. If we are prepared to condemn Fred for torturing puppies merely to enhance his gustatory experiences, shouldn't we similarly condemn the millions who purchase and consume factory-raised meat? Are there any morally significant differences between Fred's behavior and their behavior?

2. FRED'S BEHAVIOR COMPARED WITH OUR BEHAVIOR

The first difference that might seem to be relevant is that Fred tortures the puppies himself, whereas most Americans consume meat that comes from animals that have been tortured by others. But is this really relevant? What if Fred had been squeamish and had employed someone else to torture the puppies and extract the cocoamone? Would we have thought any better of Fred? Of course not.

Another difference between Fred and many consumers of factory-raised meat is that many, perhaps most, such consumers are unaware of the treatment of the animals, before they appear in neatly wrapped packages on supermarket shelves. Perhaps I should

moderate my challenge, then. If we are prepared to condemn Fred for torturing puppies merely to enhance his gustatory experiences, shouldn't we similarly condemn those who purchase and consume factory-raised meat, in full, or even partial, awareness of the suffering endured by the animals? While many consumers are still blissfully ignorant of the appalling treatment meted out to meat, that number is rapidly dwindling, thanks to vigorous publicity campaigns waged by animal welfare groups. Furthermore, any meat-eating readers of this article are now deprived of the excuse of ignorance.

Perhaps a consumer of factory-raised animals could argue as follows: While I agree that Fred's behavior is abominable, mine is crucially different. If Fred did not consume his chocolate, he would not raise and torture puppies (or pay someone else to do so). Therefore Fred could prevent the suffering of the puppies. However, if I did not buy and consume factory-raised meat, no animals would be spared lives of misery. Agribusiness is much too large to respond to the behavior of one consumer. Therefore I cannot prevent the suffering of any animals. I may well regret the suffering inflicted on animals for the sake of human enjoyment. I may even agree that the human enjoyment doesn't justify the suffering. However, since the animals will suffer no matter what I do, I may as well enjoy the taste of their flesh.

There are at least two lines of response to this attempted defense. First, consider an analogous case. You visit a friend in an exotic location, say Alabama. Your friend takes you out to eat at the finest restaurant in Tuscaloosa. For dessert you select the house specialty, "Chocolate Mousse à la Bama," served with a small cup of coffee, which you are instructed to drink before eating the mousse. The mousse is quite simply the most delicious dessert you have ever tasted. Never before has chocolate tasted so rich and satisfying. Tempted to order a second, you ask your friend what makes this mousse so delicious. He informs you that the mousse itself is ordinary, but the coffee contains a concentrated dose of cocoamone, the newly discovered chocolate-enhancing hormone. Researchers at Auburn University have perfected a technique for extracting cocoamone from the brains of freshly slaughtered puppies, who have been subjected to lives of pain and frustration. Each

puppy's brain yields four doses, each of which is effective for about fifteen minutes, just long enough to enjoy one serving of mousse. You are, naturally, horrified and disgusted. You will certainly not order another serving, you tell your friend. In fact, you are shocked that your friend, who had always seemed to be a morally decent person, could have both recommended the dessert to you and eaten one himself, in full awareness of the loathsome process necessary for the experience. He agrees that the suffering of the puppies is outrageous, and that the gain in human pleasure in no way justifies the appalling treatment they have to endure. However, neither he nor you can save any puppies by refraining from consuming cocoamone. Cocoamone production is now Alabama's leading industry, so it is much too large to respond to the behavior of one or two consumers. Since the puppies will suffer no matter what either of you does, you may as well enjoy the mousse.

If it is as obvious as it seems that a morally decent person, who is aware of the details of cocoamone production, couldn't order Chocolate Mousse à la Bama, it should be equally obvious that a morally decent person, who is aware of the details of factory farming, can't purchase and consume factory-raised meat. If the attempted excuse of causal impotence is compelling in the latter case, it should be compelling in the former case. But it isn't.

The second response to the claim of causal impotence is to deny it. Consider the case of chickens, the most cruelly treated of all animals raised for human consumption, with the possible exception of veal calves. In 1998, almost 8 billion chickens were slaughtered in the US, almost all of them raised on factory farms. Suppose that there are 250 million chicken eaters in the US, and that each one consumes, on average, 25 chickens per year (this leaves a fair number of chickens slaughtered for nonhuman consumption, or for export). Clearly, if only one of those chicken eaters gave up eating chicken, the industry would not respond. Equally clearly, if they all gave up eating chicken, billions of chickens (approximately 6.25 billion per year) would not be bred, tortured, and killed. But there must also be some number of consumers, far short of 250 million, whose renunciation of chicken

would cause the industry to reduce the number of chickens bred in factory farms. The industry may not be able to respond to each individual's behavior, but it must respond to the behavior of fairly large numbers. Suppose that the industry is sensitive to a reduction in demand for chicken equivalent to 10,000 people becoming vegetarians. (This seems like a reasonable guess, but I have no idea what the actual numbers are, nor is it important.) For each group of 10,000 who give up chicken, a quarter of a million fewer chickens are bred per year. It appears, then, that if you give up eating chicken, you have only a one in ten thousand chance of making any difference to the lives of chickens, unless it is certain that fewer than 10,000 people will ever give up eating chicken, in which case you have no chance. Isn't a one in ten thousand chance small enough to render your continued consumption of chicken blameless? Not at all.... A one in ten thousand chance of saving 250,000 chickens per year from excruciating lives is morally and mathematically equivalent to the certainty of saving 25 chickens per year. We commonly accept that even small risks of great harms are unacceptable. That is why we disapprove of parents who fail to secure their children in car seats or with seat belts, who leave their small children unattended at home, or who drink or smoke heavily during pregnancy. Or consider commercial aircraft safety measures. The chances that the oxygen masks, the lifejackets, or the emergency exits on any given plane will be called on to save any lives in a given week, are far smaller than one in ten thousand. And yet we would be outraged to discover that an airline had knowingly allowed a plane to fly for a week with non-functioning emergency exits, oxygen masks, and lifejackets. So, even if it is true that your giving up factory-raised chicken has only a tiny chance of preventing suffering, given that the amount of suffering that would be prevented is in inverse proportion to your chance of preventing it, your continued consumption is not thereby excused.

But perhaps it is not even true that your giving up chicken has only a tiny chance of making any difference. Suppose again that the poultry industry only reduces production when a threshold of 10,000 fresh vegetarians is reached. Suppose also, as is

almost certainly true, that vegetarianism is growing in popularity in the US (and elsewhere). Then, even if you are not the one, newly converted vegetarian, to reach the next threshold of 10,000, your conversion will reduce the time required before the next threshold is reached. The sooner the threshold is reached, the sooner production, and therefore animal suffering, is reduced. Your behavior, therefore, does make a difference. Furthermore, many people who become vegetarians influence others to become vegetarian, who in turn influence others, and so on. It appears, then, that the claim of causal impotence is mere wishful thinking, on the part of those meat lovers who are morally sensitive enough to realize that human gustatory pleasure does not justify inflicting extreme suffering on animals.

Perhaps there is a further difference between the treatment of Fred's puppies and the treatment of animals on factory farms. The suffering of the puppies is a necessary means to the production of gustatory pleasure, whereas the suffering of animals on factory farms is simply a by-product of the conditions dictated by economic considerations. Therefore, it might be argued, the suffering of the puppies is *intended as a means* to Fred's pleasure, whereas the suffering of factory raised animals is merely *foreseen* as a side-effect of a system that is a means to the gustatory pleasures of millions. The distinction between what is intended, either as a means or as an end in itself, and what is 'merely' foreseen is central to the Doctrine of Double Effect. Supporters of this doctrine claim that it is sometimes permissible to bring about an effect that is merely foreseen, even though the very same effect could not permissibly be brought about if intended. (Other conditions have to be met in order for the Doctrine of Double Effect to judge an action permissible, most notably that there be an outweighing good effect.) Fred acts impermissibly, according to this line of argument, because he intends the suffering of the puppies as a means to his pleasure. Most meat eaters, on the other hand, even if aware of the suffering of the animals, do not intend the suffering.

In response to this line of argument, I could remind the reader that Samuel Johnson said, or should have said, that the Doctrine of Double Effect is the last refuge of a scoundrel. I won't do

that, however, since neither the doctrine itself nor the alleged moral distinction between intending and foreseeing can justify the consumption of factory-raised meat. The Doctrine of Double Effect requires not merely that a bad effect be foreseen and not intended, but also that there be an outweighing good effect. In the case of the suffering of factory-raised animals, whatever good could plausibly be claimed to come out of the system clearly doesn't outweigh the bad. Furthermore, it would be easy to modify the story of Fred to render the puppies' suffering 'merely' foreseen. For example, suppose that the cocoamone is produced by a chemical reaction that can only occur when large quantities of drain-cleaner are forced down the throat of a conscious, unanaesthetized puppy. The consequent appalling suffering, while not itself a means to the production of cocoamone, is nonetheless an unavoidable side-effect of the means. In this variation of the story, Fred's behavior is no less abominable than in the original.

One last difference between the behavior of Fred and the behavior of the consumers of factory-raised meat is worth discussing, if only because it is so frequently cited in response to the arguments of this paper. Fred's behavior is abominable, according to this line of thinking, because it involves the suffering of *puppies*. The behavior of meat-eaters, on the other hand, 'merely' involves the suffering of chickens, pigs, cows, calves, sheep, and the like. Puppies (and probably dogs and cats in general) are morally different from the other animals. Puppies *count* (morally, that is), whereas the other animals don't, or at least not nearly as much.

So, what gives puppies a higher moral status than the animals we eat? Presumably there is some morally relevant property or properties possessed by puppies but not by farm animals. Perhaps puppies have a greater degree of rationality than farm animals, or a more finely developed moral sense, or at least a sense of loyalty and devotion. The problems with this kind of approach are obvious. It's highly unlikely that any property that has even an outside chance of being ethically relevant is both possessed by puppies and not possessed by any farm animals. For example, it's probably true that most puppies have a greater degree of rationality (whatever that

means) than most chickens, but the comparison with pigs is far more dubious. Besides, if Fred were to inform the jury that he had taken pains to acquire particularly stupid, morally obtuse, disloyal and undevoted puppies, would they (or we) have declared his behavior to be morally acceptable? Clearly not.

I have been unable to discover any morally relevant differences between the behavior of Fred, the puppy torturer, and the behavior of the millions of people who purchase and consume factory-raised meat, at least those who do so in the knowledge that the animals live lives of suffering and deprivation. If morality demands that we not torture puppies merely to enhance our own eating pleasure, morality also demands that we not support factory farming by purchasing factory-raised meat. . . .

3. HUMANS' VERSUS ANIMALS' ETHICAL STATUS—THE RATIONALITY GAMBIT

For the purposes of this discussion, to claim that humans have a superior ethical status to animals is to claim that it is morally right to give the interests of humans greater weight than those of animals in deciding how to behave. Such claims will often be couched in terms of rights, such as the rights to life, liberty or respect, but nothing turns on this terminological matter. One may claim that it is generally wrong to kill humans, but not animals, because humans are rational, and animals are not. Or one may claim that the suffering of animals counts less than the suffering of humans (if at all), because humans are rational, and animals are not. . . .

What could ground the claim of superior moral status for humans? Just as the defender of a higher moral status for puppies than for farm animals needs to find some property or properties possessed by puppies but not by farm animals, so the defender of a higher moral status for humans needs to find some property or properties possessed by humans but not by other animals. The traditional view, dating back at least to Aristotle, is that rationality is what separates humans, both morally and metaphysically, from other animals.

One of the most serious challenges to the traditional view involves a consideration of what

philosophers refer to as 'marginal cases.' Whatever kind and level of rationality is selected as justifying the attribution of superior moral status to humans will either be lacking in some humans or present in some animals. To take one of the most commonly-suggested features, many humans are incapable of engaging in moral reflection. For some, this incapacity is temporary, as is the case with infants, or the temporarily cognitively disabled. Others who once had the capacity may have permanently lost it, as is the case with the severely senile or the irreversibly comatose. Still others never had and never will have the capacity, as is the case with the severely mentally disabled. If we base our claims for the moral superiority of humans over animals on the attribution of such capacities, won't we have to exclude many humans? Won't we then be forced to the claim that there is at least as much moral reason to use cognitively deficient humans in experiments and for food as to use animals? Perhaps we could exclude the only temporarily disabled, on the grounds of potentiality, though that move has its own problems. Nonetheless, the other two categories would be vulnerable to this objection.

I will consider two lines of response to the argument from marginal cases. The first denies that we have to attribute different moral status to marginal humans, but maintains that we are, nonetheless, justified in attributing different moral status to animals who are just as cognitively sophisticated as marginal humans, if not more so. The second admits that, strictly speaking, marginal humans are morally inferior to other humans, but proceeds to claim pragmatic reasons for treating them, at least usually, *as if* they had equal status.

As representatives of the first line of defense, I will consider arguments from three philosophers, Carl Cohen, Alan White, and David Schmidtz. First, Cohen:

[the argument from marginal cases] fails; it mistakenly treats an essential feature of humanity as though it were a screen for sorting humans. The capacity for moral judgment that distinguishes humans from animals is not a test to be administered to human beings one by one. Persons who are unable, because of some disability, to perform the full moral functions natural to human beings

are certainly not for that reason ejected from the moral community. The issue is one of kind. . . . What humans retain when disabled, animals have never had.¹

Alan White argues that animals don't have rights, on the grounds that they cannot intelligibly be spoken of in the full language of a right. By this he means that they cannot, for example, claim, demand, assert, insist on, secure, waive, or surrender a right. This is what he has to say in response to the argument from marginal cases:

Nor does this, as some contend, exclude infants, children, the feeble-minded, the comatose, the dead, or generations yet unborn. Any of these may be for various reasons empirically unable to fulfill the full role of right-holder. But . . . they are logically possible subjects of rights to whom the full language of rights can significantly, however falsely, be used. It is a misfortune, not a tautology, that these persons cannot exercise or enjoy, claim, or waive, their rights or do their duty or fulfil their obligations.²

David Schmidtz defends the appeal to typical characteristics of species, such as mice, chimpanzees, and humans, in making decisions on the use of different species in experiments. He also considers the argument from marginal cases:

Of course, some chimpanzees lack the characteristic features in virtue of which chimpanzees command respect as a species, just as some humans lack the characteristic features in virtue of which humans command respect as a species. It is equally obvious that some chimpanzees have cognitive capacities (for example) that are superior to the cognitive capacities of some humans. But whether every human being is superior to every chimpanzee is beside the point. The point is that we can, we do, and we should make decisions on the basis of our recognition that mice, chimpanzees, and humans are relevantly different *types*. We can have it both ways after all. Or so a speciesist could argue.³

There is something deeply troublesome about the line of argument that runs through all three of these responses to the argument from marginal cases. A particular feature, or set of features is claimed to have so much moral significance that its

presence or lack can make the difference to whether a piece of behavior is morally justified or morally outrageous. But then it is claimed that the presence or lack of the feature in any *particular* case is not important. The relevant question is whether the presence or lack of the feature is *normal*. Such an argument would seem perfectly preposterous in most other cases. Suppose, for example, that ten famous people are on trial in the afterlife for crimes against humanity. On the basis of conclusive evidence, five are found guilty and five are found not guilty. Four of the guilty are sentenced to an eternity of torment, and one is granted an eternity of bliss. Four of the innocent are granted an eternity of bliss, and one is sentenced to an eternity of torment. The one innocent who is sentenced to torment asks why he, and not the fifth guilty person, must go to hell. Saint Peter replies, "Isn't it obvious Mr. Gandhi? You are male. The other four men—Adolph Hitler, Joseph Stalin, George W. Bush, and Richard Nixon—are all guilty. Therefore the normal condition for a male defendant in this trial is guilt. The fact that you happen to be innocent is irrelevant. Likewise, of the five female defendants in this trial, only one was guilty. Therefore the normal condition for female defendants in this trial is innocence. That is why Margaret Thatcher gets to go to heaven instead of you."

As I said, such an argument is preposterous. Is the reply to the argument from marginal cases any better? Perhaps it will be claimed that a biological category such as a species is more 'natural,' whatever that means, than a category like 'all the male (or female) defendants in this trial.' Even setting aside the not inconsiderable worries about the conventionality of biological categories, it is not at all clear why this distinction should be morally relevant. What if it turned out that there were statistically relevant differences in the mental abilities of men and women? Suppose that men were, on average, more skilled at manipulating numbers than women, and that women were, on average, more empathetic than men. Would such differences in what was 'normal' for men and women justify us in preferring an innumerate man to a female math genius for a job as an accountant, or an insensitive woman to an ultra-sympathetic man for a job as a

counselor? I take it that the biological distinction between male and female is just as real as that between human and chimpanzee.

A second response to the argument from marginal cases is to concede that cognitively deficient humans really do have an inferior moral status to normal humans. Can we, then, use such humans as we do animals? I know of no-one who takes the further step of advocating the use of marginal humans for food. . . . How can we advocate this second response while blocking the further step? Mary Anne Warren suggests that "there are powerful practical and emotional reasons for protecting non-rational human beings, reasons which are absent in the case of most non-human animals."⁴ It would clearly outrage common human sensibilities, if we were to raise retarded children for food or medical experiments. Here is Steinbock in a similar vein:

I doubt that anyone will be able to come up with a concrete and morally relevant difference that would justify, say, using a chimpanzee in an experiment rather than a human being with less capacity for reasoning, moral responsibility, etc. Should we then experiment on the severely retarded? Utilitarian considerations aside, we feel a special obligation to care for the handicapped members of our own species, who cannot survive in this world without such care. . . . In addition, when we consider the severely retarded, we think, 'That could be me.' It makes sense to think that one might have been born retarded, but not to think that one might have been born a monkey. . . . Here we are getting away from such things as 'morally relevant differences' and are talking about something much more difficult to articulate, namely, the role of feeling and sentience in moral thinking.⁵

This line of response clearly won't satisfy those who think that marginal humans really do deserve equal moral consideration with other humans. It is also a very shaky basis on which to justify our current practices. What outrages human sensibilities is a very fragile thing. Human history is littered with examples of widespread acceptance of the systematic mistreatment of some groups who didn't generate any sympathetic

response from others. That we do feel a kind of sympathy for retarded humans that we don't feel for dogs is, if true, a contingent matter. To see just how shaky a basis this is for protecting retarded humans, imagine that a new kind of birth defect (perhaps associated with beef from cows treated with bovine growth hormone) produces severe mental retardation, green skin, and a complete lack of emotional bond between parents and child. Furthermore, suppose that the mental retardation is of the same kind and severity as that caused by other birth defects that don't have the other two effects. It seems likely that denying moral status to such defective humans would not run the same risks of outraging human sensibilities as would the denial of moral status to other, less easily distinguished and more loved defective humans. Would these contingent empirical differences between our reactions to different sources of mental retardation justify us in ascribing different direct moral status to their subjects? The only difference between them is skin color and whether they are loved by others. Any theory that could ascribe moral relevance to differences such as these doesn't deserve to be taken seriously.

Finally, perhaps we could claim that the practice of giving greater weight to the interests of all humans than of animals is justified on evolutionary grounds. Perhaps such differential concern has survival value for the species. Something like this may well be true, but it is hard to see the moral relevance. We can hardly justify the privileging of human interests over animal interests on the grounds that such privileging serves human interests!

6. AGENT AND PATIENT—THE SPECIESIST'S CENTRAL CONFUSION

Although the argument from marginal cases certainly poses a formidable challenge to any proposed criterion of full moral standing that excludes animals, it doesn't, in my view, constitute the most serious flaw in such attempts to justify the status quo. The proposed criteria are all variations on the Aristotelian criterion of rationality. But what is the moral relevance of rationality? Why should we think that the possession of a certain level or kind of rationality renders the possessor's interests

of greater moral significance than those of a merely sentient being? In Bentham's famous words "The question is not, Can they reason? nor Can they talk? But, Can they suffer?"⁶

What do defenders of the alleged superiority of human interests say in response to Bentham's challenge? Some, such as Carl Cohen, simply reiterate the differences between humans and animals that they claim to carry moral significance. Animals are not members of moral communities, they don't engage in moral reflection, they can't be moved by moral reasons, *therefore* (?) their interests don't count as much as ours. Others, such as Steinbock and Warren, attempt to go further. Here is Warren on the subject:

Why is rationality morally relevant? It does not make us "better" than other animals or more "perfect." . . . But it is morally relevant insofar as it provides greater possibilities for cooperation and for the nonviolent resolution of problems.⁷

Warren is certainly correct in claiming that a certain level and kind of rationality is morally relevant. Where she, and others who give similar arguments, go wrong is in specifying what the moral relevance amounts to. If a being is incapable of moral reasoning, at even the most basic level, if it is incapable of being moved by moral reasons, claims, or arguments, then it cannot be a moral agent. It cannot be subject to moral obligations, to moral praise or blame. Punishing a dog for doing something "wrong" is no more than an attempt to alter its future behavior.

All this is well and good, but what is the significance for the question of what weight to give to animal interests? That animals can't be moral *agents* doesn't seem to be relevant to their status as moral *patients*. Many, perhaps most, humans are both moral agents and patients. Most, perhaps all, animals are only moral patients. Why would the lack of moral agency give them diminished status as moral patients? Full status as a moral patient is not some kind of reward for moral agency. I have heard students complain in this regard that it is *unfair* that humans bear the burdens of moral responsibility, and don't get enhanced consideration of their interests in return. This is a very strange claim. Humans

are subject to moral obligations, because they are the kind of creatures who *can* be. What grounds moral agency is simply different from what grounds moral standing as a patient. It is no more unfair that humans and not animals are moral agents, than it is unfair that real animals and not stuffed toys are moral patients.

... It seems that any attempt to justify the claim that humans have a higher moral status than other animals by appealing to some version of rationality as the morally relevant difference between humans and animals will fail on at least two counts. It will fail to give an adequate answer to the argument from marginal cases, and, more importantly, it will fail to make the case that such a difference is morally relevant to the status of animals as moral patients as opposed to their status as moral agents.

I conclude that our intuitions that Fred's behavior is morally impermissible are accurate. Furthermore, given that the behavior of those who knowingly support factory farming is morally indistinguishable, it follows that their behavior is also morally impermissible.

NOTES

- 1 Carl Cohen, "The Case for the Use of Animals in Biomedical Research," *The New England Journal of Medicine*, vol. 315, 1986.
- 2 Alan White, *Rights*, (OUP 1984). Reprinted in *Animal Rights and Human Obligations*, 2nd edition, Tom Regan and Peter Singer (eds.) (Prentice Hall, 1989), 120.
- 3 David Schmidtz, "Are All Species Equal?" *Journal of Applied Philosophy*, Vol. 15, no. 1 (1998), 61, my emphasis.
- 4 Warren, op. cit. 483. Mary Anne Warren, "Difficulties with the Strong Animal Rights Position," *Between the Species* 2, no. 4, 1987. Reprinted

in *Contemporary Moral Problems*, 5th edition, James E. White (ed.) (West, 1997), 482.

- 5 Steinbock, op. cit. 469–470. Bonnie Steinbock, "Speciesism and the Idea of Equality," *Philosophy* 53, no. 204 (April 1978). Reprinted in *Contemporary Moral Problems*, 5th edition, James E. White (ed.) (West, 1997) 467–468.
- 6 Jeremy Bentham, *Introduction to the Principles of Morals and Legislation*, (Various) chapter 17.
- 7 Warren, op. cit. 482.

Alastair Norcross: Puppies, Pigs and People: Eating Meat and Marginal Cases

1. Do you agree that Fred acts immorally in the case that Norcross describes? If so, what exactly is it about Fred's behavior that is morally objectionable? If not, why not?
2. Some might claim that eating meat from factory farms is relevantly different from Fred's behavior because individual consumers are powerless to change the factory-farming system, whereas Fred is fully in control of the puppies. How does Norcross respond to this claim?
3. Another disanalogy between Fred's behavior and that of most meat-eaters is that Fred *intends* to make the puppies suffer, while most consumers of meat don't intend to make any animals suffer. Does this disanalogy undermine Norcross's argument? Why or why not?
4. What is the "argument from marginal cases" and what is it supposed to show? What do you think is the strongest objection to the argument?
5. What is the difference between being a moral agent and being a moral patient? Why does Norcross think that nonhuman animals are moral patients? Do you agree with him?

Moral Standing, the Value of Lives, and Speciesism

R. G. Frey

Raymond Frey defends a view that he calls the **unequal value thesis**—the idea that **human life is more valuable than animal life**. Some philosophers have charged that this is a version of “speciesism,” which is the view that being a member of the species *Homo sapiens* by itself makes human beings more important than other animals. One of the goals of Frey’s article is to show that **we can defend the unequal value thesis without relying on speciesist assumptions.**

Frey **denies** that species membership is by itself a morally important trait. Being human is not what makes most us more valuable than any other kind of animal. Rather, **our lives are valuable just in proportion to their quality**; the **higher the quality of life, the greater the value of that life**. Frey tells us that the quality of life is itself a function of its **capacity for enrichment**. You and I have this capacity to a very high degree—we can make all sorts of complicated plans, take pleasure in a huge variety of activities, develop deep and complex relationships with others. When we compare the capacity for enriching our lives with that capacity as possessed, say, by a rabbit, it becomes clear that **our capacity for an enriched life far outstrips the rabbit’s. So our lives are more valuable than a rabbit’s (and that of any other animal we know of).**

To reinforce the point that this is not a kind of speciesism, Frey invites us to compare the life of a normal adult human being with that of an elderly patient fully in the grips of Alzheimer’s disease. Surely, he says, the former life is more valuable than the latter. Late-stage Alzheimer’s patients have far less capacity to enrich their lives than **do you and I**. Thus **Frey judges that their lives are less valuable than ours. It is also the case, according to Frey, that the lives of some animals are more valuable than the lives of some humans, since some human beings have a lower quality of life than that of some animals.**

Frey thinks that **our moral duties to others depend in large part on the value of their lives**. As a result, he thinks that, ordinarily, when we must choose between conducting experiments on animals or on humans, **we are right to make animals our test subjects, since they usually possess lives of lesser value. But not always. So, morally speaking, we must sometimes conduct tests on humans and spare the animals.**

I.

Those who concern themselves with the moral considerability of animals may well be tempted to suppose that their work is finished, once they successfully envelop animals within the moral community.

From R. G. Frey, “Moral Standing, the Value of Lives, and Speciesism” (Bowling Green State University), selections from pp. 191–201 (*Between the Species*, vol. 4 [1988], pp. 191–201).
<http://digitalcommons.calpoly.edu/bts/>

Yet, to stop there is never *per se* to address the issue of the value of animal life and so never to engage the position that I, and others, hold on certain issues. Thus, I am a restricted vivisectionist; not because I think animals are outside the moral community but because of views I hold about the value of their lives. Again, I think it is permissible to use animal parts in human transplants, not because I think animals lack moral standing but because I think animal life is less valuable than human life.

I have written of views that I hold; the fact is, I think, that the vast majority of people share my view of the differing value of human and animal life. This view we might capture in the form of three propositions:

1. Animal life has some value;
2. Not all animal life has the same value;
3. Human life is more valuable than animal life.

Very few people today would seem to believe that animal life is without value and that, therefore, we need not trouble ourselves morally about taking it. Equally few people, however, would seem to believe that all animal life has the same value. Certainly, the lives of dogs, cats, and chimps are very widely held to be more valuable than the lives of mice, rats, and worms, and the legal protections we accord these different creatures, for example, reflect this fact. Finally, whatever value we take the lives of dogs and cats to have, most of us believe human life to be more valuable than animal life. We believe this, moreover, even as we oppose cruelty to animals and acknowledge value—in the case of some animals, considerable value—to their lives. I shall call this claim about the comparative value of human and animal life the unequal value thesis. A crucial question, obviously, is whether we who hold this thesis can defend it.

Many “animal rightists” themselves seem inclined to accept something like the unequal value thesis. With respect to the oft-cited raft example, in which one can save a man or a dog but not both, animal rightists often concede that, other things being equal, one ought to save the man. To be sure, this result only says something about our intuitions and about those *in extremis*; yet, what it is ordinarily taken to say about them—that we take human life to be more valuable than animal life—is not something we think in extreme circumstances only. Our intuitions about the greater value of human life seem apparent in and affect all our relations with animals, from the differences in the ways we regard, treat, and even bury humans and animals to the differences in the safeguards for their protection that we construct and the differences in penalties we exact for violation of those safeguards.

In a word, the unequal value thesis seems very much a part of the approach that most of us adopt towards animal issues. We oppose cruelty to animals as well as humans, but this does not lead us to suppose that the lives of humans and animals have the same value. Nor is there any entailment in the matter: one can perfectly consistently oppose cruelty to all sentient creatures without having to suppose that the lives of all such creatures are equally valuable.

We might note in passing that if this is right about our intuitions, then it is far from clear that it is the defender of the unequal value thesis who must assume the burden of proof in the present discussion. Our intuitions about pain and suffering are such that if a theorist today suggested that animal suffering did not count morally, then he would quickly find himself on the defensive. If I am right about our intuitions over the comparative value of human and animal life, why is the same not true in the case of the theorist who urges or assumes that these lives are of equal value? If, over suffering, our intuitions force the exclusion of the pains of animals to be defended, why, over the value of life, do they not force an *equal* value thesis to be defended?

Where pain and suffering are the central issue, most of us tend to think of the human and animal cases in the same way; thus, cruelty to a child and cruelty to a dog are wrong and wrong for the same reason. Pain is pain; it is an evil, and the evidence suggests that it is as much an evil for dogs as for humans. Furthermore, autonomy or agency (or the lack thereof) does not seem a relevant factor here, since the pains of non-autonomous creatures count as well as the pains of autonomous ones. Neither the child nor the dog is autonomous, at least in any sense that captures why autonomy is such an immensely important value; but the pains of both child and dog count and affect our judgments of rightness and wrongness with respect to what is done to them.

Where the value of life is the central issue, however, we do not tend to think of the human and animal cases alike. Here, we come down in favor of humans, as when we regularly experiment upon and kill animals in our laboratories for (typically) human benefit; and a main justification reflective people give for according humans such advantage

invokes directly a difference in value between human and animal life. Autonomy or agency is now, moreover, of the utmost significance, since the exercise of autonomy by normal adult humans is one of the central ways they make possible further, important dimensions of value to their lives.

Arguably, even the extended justification of animal suffering in, say, medical research may make indirect appeal to the unequal value thesis. Though pain remains an evil, the nature and size of some benefit determine whether its infliction is justified in the particular cases. Nothing precludes this benefit from accruing to human beings, and when it does, we need an independent defence of the appeal to benefit in this kind of case. For the appeal is typically invoked in cases where those who suffer are those who benefit, as when we go to the dentist, and in the present instance human beings are the beneficiaries of animal suffering. Possibly the unequal value thesis can provide the requisite defence: what justifies the infliction of pain, if anything does, is the appeal to benefit; but what justifies use of the appeal in those cases where humans are the beneficiaries of animal suffering is, arguably, that human life is more valuable than animal life. Thus, while the unequal value thesis cannot alter the character of pain, which remains an evil, and cannot directly, independently of benefit, justify the infliction of pain, it can, the suggestion is, anchor a particular use of the appeal to benefit.

More broadly, I think a presumption, not in favor of, but against the use of animals in medical/scientific research would be desirable. Its intended effect would be to force researchers as a matter of routine to argue in depth a case for animal use. Such a presumption coheres with my earlier remarks. The unequal value thesis in no way compels its adherents to deny that animal lives have value; the destruction or impairment of such lives, therefore, needs to be argued for, which a presumption against use of animals would force researchers to do.

Clearly, a presumption against use is not the same thing as a bar; I allow, therefore, that researchers can make a case. That they must do so, that they must seek to justify the destruction or impairment of lives that have value, is the point.

II.

How might we defend the unequal value thesis? At least the beginnings of what I take to be the most promising option in this regard can be briefly sketched.

Pain is one thing, killing is another, and what makes killing wrong—a killing could be free of pain and suffering—seems to be the fact that it consists in the destruction of something of value. That is, killing and the value of life seem straightforwardly connected, since it is difficult to understand why taking a particular life would be wrong if it had no value. If few people consider animal life to be without value, equally few, I think, consider it to have the same value as normal (adult) human life. They need not be speciesists as a result: in my view, normal (adult) human life is of a much higher quality than animal life, not because of species, but because of richness; and the value of a life is a function of its quality.

Part of the richness of our lives involves activities that we have in common with animals but there are as well whole dimensions to our lives—love, marriage, educating children, jobs, hobbies, sporting events, cultural pursuits, intellectual development and striving, etc.—that greatly expand our range of absorbing endeavors and so significantly deepen the texture of our lives. An impoverished life for *us* need not be one in which food or sex or liberty is absent; it can equally well be a life in which these other dimensions have not taken root or have done so only minimally. When we look back over our lives and regret that we did not make more of them, we rarely have in mind only the kinds of activities that we share with animals; rather, we think much more in terms of precisely these other dimensions of our lives that equally go to make up a rich, full life.

The lives of normal (adult) humans betray a variety and richness that the lives of rabbits do not; certainly, we do not think of ourselves as constrained to live out our lives according to some (conception of a) life deemed appropriate to our species. Other conceptions of a life for ourselves are within our reach, and we can try to understand and appreciate them and to choose among them. Some of us are artists, others educators, still others mechanics; the richness of our lives is easily enhanced through

developing and molding our talents so as to enable us to live out these conceptions of the good life. Importantly, also, we are not condemned to embrace in our lifetimes only a single conception of such a life; in the sense intended, the artist can choose to become an educator and the educator a mechanic. We can embrace at different times different conceptions of how we want to live.

Choosing among conceptions of the good life and trying to live out such a conception are not so intellectualized a set of tasks that only an elite few can manage them. Some reflection upon the life one wants to live is necessary, and some reflection is required in order to organize one's life to live out such a conception; but virtually all of us manage to engage in this degree of reflection. (One of the tragic aspects of Alzheimer's disease is how it undoes a person in just this regard, once it has reached advanced stages.) Even an uneducated man can see the choice between the army and professional boxing as one that requires him to sit down and ponder what he wants to do, whether he has the talents to do it, and what his other, perhaps conflicting desires come to in strength. Even an habitual street person, if free long enough from the influence of drink or drugs to be capable of addressing himself to the choice, can see the life the Salvation Army holds out before him as different in certain respects, some appealing, others perhaps not, from his present life. Choosing how one will live one's life can often be a matter of simply focussing upon these particulars and trying to gauge one's desires with respect to them.

Now, in the case of the rabbit the point is not that the activities which enrich an adult human's life are different from those which enrich its life; it is that the scope or potentiality for enrichment is truncated or severely diminished in the rabbit's case. The quality of a life is a function of its richness, which is a function of its scope or potentiality for enrichment; the scope or potentiality for enrichment in the rabbit's case never approaches that of the human. Nothing we have ever observed about rabbits, nothing we know of them, leads us to make judgments about the variety and richness of their life in anything even remotely comparable to the

judgments we make in the human case. To assume as present in the rabbit's life dimensions that supply the full variety and richness of ours, only that these dimensions are hidden from us, provides no real answer, especially when the evidence we have about their lives runs in the other direction.

Autonomy is an important part of the human case. By exercising our autonomy we can mold our lives to fit a conception of the good life that we have decided upon for ourselves; we can then try to live out this conception, with all the sense of achievement, self-fulfillment, and satisfaction that this can bring. Some of us pursue athletic or cultural or intellectual endeavors; some of us are good with our hands and enjoy mechanical tasks and manual labor; and all of us see a job—be it the one we have or the one we should like to have—as an important part of a full life. (This is why unemployment affects more than just our incomes.) The emphasis is upon agency: we can *make* ourselves into repairmen, pianists, and accountants; by exercising our autonomy, we can *impose* upon our lives a conception of the good life that we have for the moment embraced. We can then try to live out this conception, with the consequent sense of fulfillment and achievement that this makes possible. Even failure can be part of the picture: a woman can try to make herself into an Olympic athlete and fail; but her efforts to develop and shape her talents and to take control of and to mold her life in the appropriate ways can enrich her life. Thus, by exercising our autonomy and trying to live out some conception of how we want to live, we make possible further, important dimensions of value to our lives.

We still share certain activities with rabbits, but no mere record of those activities would come anywhere near accounting for the richness of our lives. What is missing in the rabbit's case is the same scope or potentiality for enrichment; and lives of less richness have less value.

The kind of story that would have to be told to make us think that the rabbit's life *was* as rich as the life of a normal (adult) human is one that either postulates in the rabbit potentialities and abilities vastly beyond what we observe and take it to have, or lapses into a rigorous scepticism. By the latter,

I mean that we should have to say either that we know nothing of the rabbit's life (and so can know nothing of that life's richness and quality) or that what we know can never be construed as adequate for grounding judgments about the rabbit's quality of life. But the real puzzle is how this recourse to scepticism is supposed to make us think that a rabbit's life is as varied and rich as a human's life. If I can know nothing of the rabbit's life, presumably because I do not live that life and so cannot experience it from the inside, then how do I know that the rabbit's life is as rich as a human's life? Plainly, if I cannot know this, I must for the argument's sake assume it. But why should I do this? Nothing I observe and experience leads me to assume it; all the evidence I have about rabbits and humans seems to run entirely in the opposite direction. So, why make this assumption? Most especially, why assume animal lives are as rich as human lives, when we do not even assume, or so I suggest below, that all *human* lives have the same richness?

III.

Agency matters to the value of a life, and animals are not agents. Thus, we require some argument to show that their lack of agency notwithstanding, animals have lives of roughly equal richness and value to the lives of normal (adult) humans. The view that they are members of the moral community will not supply it, the demand is compatible with acknowledging that not all life has the same value; and as we shall see, the argument from the value of the lives of defective humans will not supply it. Any *assumption* that they have lives of equal richness and value to ours seems to run up against, quite apart from the evidence we take ourselves to have about the lives of animals, the fact that, as we shall see, not all human lives have the same richness and value.

Most importantly, it will not do to claim that the rabbit's life is as valuable as the normal (adult) human's life because it is the only life each has. This claim does not as yet say that the rabbit's life has any particular value. If the rabbit and man are dead, they have no life which they can carry on living, at some quality or other; but this *per se* does not show that the lives of the man and the rabbit have a particular value as such, let alone that they have

the same value. Put differently, both creatures must be alive in order to have a quality of life, but nothing at all in this shows that they have the same richness and quality of life and, therefore, value of life. I am not disputing that animals can have *a* quality of life and that their lives, as a result, can have value; I am disputing that the richness, quality, and value of their lives is that of normal (adult) humans.

IV.

Not all members of the moral community have lives of equal value. Human life is more valuable than animal life. That is our intuition, and as I have assumed, we must defend it. How we defend it is, however, a vitally important affair. For I take the charge of speciesism—the attempt to justify either different treatment or the attribution of a different value of life by appeal to species membership—very seriously. In my view, if a defence of the unequal value thesis is open to that charge, then it is no defence at all.

As a result, one's options for grounding the unequal value thesis become limited; no ground will suffice that appeals, either in whole or in part, to species membership. Certainly, some ways of trying to differentiate the value of human from animal life in the past seem pretty clearly to be speciesist. But not all ways are; the important option set out above—one that construes the value of a life as a function of its quality, its quality as a function of its richness, and its richness as a function of its capacity of enrichment—does not use species membership to determine the value of lives. Indeed, it quite explicitly allows for the possibility that some animal life may be more valuable than some human life.

To see this, we have only to realize that the claim that not all members of the moral community have lives of equal value encompasses not only animals but also some humans. Some human lives have less value than others. An infant born without a brain, or any very severely handicapped infant, seems a case in point, as does an elderly person fully in the grip of Alzheimer's disease or some highly degenerative brain, nervous, or physiological disorder. In other words, I think we are compelled to admit that some human life is of a much lower quality and so value than normal (adult) human life. (This is true as well of infants generally, though readers may

think in their unlike the cases of seriously defective infants and adults, some argument from potentiality may be adduced to place them in a separate category. The fact remains, however, that the lives of normal (adult) humans betray a variety and richness that the lives of animals, defective humans, and infants do not.)

Accordingly, we must understand the unequal value thesis to claim that normal (adult) human life is more valuable than animal life. If we justify this claim by appeal to the quality and richness of normal (adult) human life and if we at the same time acknowledge that some human life is of a much lower quality and value than normal (adult) human life, then it seems quite clear that we are not using species membership to determine the value of a life.

Moreover, because some human lives fall drastically below the quality of life of normal (adult) human life, we must face the prospect that the lives of some perfectly healthy animals have a higher quality and greater value than the lives of some humans. And we must face this prospect, with all the implications it may have for the use of these unfortunate humans by others, at least if we continue to justify the use of animals in medical/scientific research by appeal to the lower quality and value of their lives.

What justifies the medical/scientific use of perfectly healthy rabbits instead of humans with a low quality of life? If, for example, experiments on retinas are suggested, why use rabbits or chimps instead of defective humans with otherwise excellent retinas? I know of nothing that cedes human life of any quality, however low, greater value than animal life of any quality, however high. If, therefore, we are going to justify medical/scientific uses of animals by appeal to the value of their lives, we open up directly the possibility of our having to envisage the use of humans of a lower quality of life in preference to animals of a higher quality of life. It is important to bear in mind as well that other factors then come under consideration, such as (i) the nature and size of benefit to be achieved, (ii) the side-effects that any decision to use humans in preference to animals may evoke, (iii) the degree to which education and explanation can dissipate any such negative side-effects, and (iv) the projected reliability of animal results for the human case (as opposed

to the projected reliability of human results for the human case). All these things may, in the particular case, work in favor of the use of humans.

The point, of course, is not that we *must* use humans; it is that we cannot invariably use animals in preference to humans, if appeal to the quality and value of lives is the ground we give for using animals. The only way we could justifiably do this is if we could cite something that always, no matter what, cedes human life greater value than animal life. I know of no such thing.

Always in the background, of course, are the benefits that medical/scientific research confers: if we desire to continue to obtain these benefits, are we prepared to pay the price of the use of defective humans? The answer, I think, must be positive, at least until the time comes when we no longer have to use either humans or animals for research purposes. Obviously, this deliberate use of some of the weakest members of our society is distasteful to contemplate and is not something, in the absence of substantial benefit, that we could condone; yet, we presently condone the use of perfectly healthy animals on an absolutely massive scale, and benefit is the justification we employ.

I remain a vivisectionist, therefore, because of the benefits medical/scientific research can bestow. Support for vivisection, however, exacts a cost: it forces us to envisage the use of defective humans in such research. Paradoxically, then, to the extent that one cannot bring oneself to envisage and consent to their use, to that extent, in my view, the case for anti-vivisectionism becomes stronger.

V.

The fact that not even all human life has the same value explains why some argument from marginal cases, one of the most common arguments in support of an equal value thesis, comes unstuck. Such an argument would only be possible if human life of a much lower quality were ceded equal value with normal (adult) human life. In that case, the same concession could be requested for animal life, and an argument from marginal or defective humans could get underway. On the account of the value of a life set out above, however, the initial concession is not made; it is not true that defective human life has the same quality and value as normal (adult) human

life. Nor is this result unfamiliar to us today; it is widely employed in much theoretical and practical work in medical ethics.

This leaves the argument from marginal cases to try to force the admission of the equal value of human and animal life. Tom Regan has long relied upon this argument; in a recent article Regan wonders what could be the basis for the view that human life is more valuable than animal life and moves at once to invoke the argument from marginal cases to dispel any such possibility:

What could be the basis of our having more inherent value than animals? Their lack of reason, or autonomy, or intellect? Only if we are willing to make the same judgment in the case of humans who are similarly deficient. But it is not true that some humans—the retarded child, for example, or the mentally deranged—have less inherent value than you or I.¹

Regan provides no argument for this claim (and, for that matter, no analysis of “inherent value”), but it seems at least to involve, if not to depend upon, our agreeing that human life of any quality, however low, has the same value as normal (adult) human life. I can see no reason whatever to accept this. Some human lives are so very deficient in quality that we would not wish those lives upon anyone, and there are few lengths to which we would not go in order to avoid such lives for ourselves and our loved ones. I can see little point in pretending that lives which we would do everything we could to avoid are of equal value to those normal (adult) human lives that we are presently living.

So far as I can see, the quality of some lives can plummet so disastrously that those lives can cease to have much value at all, can cease to be lives, that is, that are any longer worth living. I acknowledge the difficulty in determining in many cases when a life is no longer worth living; in other cases, however, such as an elderly person completely undone by Alzheimer’s disease or an infant born with no or only half a brain, the matter seems far less problematic.

VI.

Is an involved defence of the unequal value thesis, however, really necessary? Is there not a much more

direct and uncomplicated defence readily to hand? I have space for only a few words on several possibilities in this regard.

The defence of the unequal value thesis that I have begun to sketch, whether in its positive or negative aspect, does not make reference to religion; yet, it is true that certain religious beliefs seem to favor the thesis. The doctrine of the sanctity of life has normally been held with respect to human life alone; the belief in human dominion over the rest of creation has traditionally been held to set humans apart; and the belief that humans but not animals are possessed of an immortal soul seems plainly to allude to a further dimension of significance to human life. I am not myself religious, however, and I do not adopt a religious approach to questions about the value of lives. Any such approach would seem to tie one’s defence of the unequal value thesis to the adequacy of one’s theological views, something which a non-religious person can scarcely endorse. I seek a defence of the unequal value thesis, whatever the status of God’s existence or the adequacy of this or that religion or religious doctrine. I do not prejudge the issue of whether a religious person can accept a quality-of-life defence of the sort I have favored; my point is simply that that defence does not rely upon theological premisses.

It may be asked, however, why we need anything quite so sophisticated as a *defence* of the unequal value thesis at all. Why can we not just express a preference for our own kind and be done with the matter? After all, when a father gives a kidney to save his daughter’s life, we perfectly well understand why he did not choose to give the kidney to a stranger *in preference* to his daughter. This “natural bias” we do not condemn and do not take to point to a moral defect in the father. Why, therefore, is not something similar possible in the case of our interaction with animals? Why, that is, can we not appeal to a natural bias in favor of members of our own species? There are a number of things that can be said in response, only several of which I shall notice here.

There is the problem, if one takes the charge of speciesism seriously, of how to articulate this bias in favor of members of our species in such a way as to avoid that charge. Then there is the problem of how to articulate this preference for our own kind in such

a way as to exclude interpretations of “our own kind” that express preferences for one’s own race, gender, or religion. Otherwise, one is going to let such preferences do considerable work in one’s moral decision-making. I do not wish to foreclose all possibilities in these two cases, however; it may well be that a preference for our own kind *can* be articulated in a way that avoids these and some other problems.

Even so, I believe that there is another and deeper level of problem that this preference for our own kind encounters. On the one hand, we can understand the preference to express a bond we feel with members of our own species *over and above* the bond that we (or most of us) feel with (“higher”) animals. Such a bond, if it exists, poses no direct problem, if its existence is being used to explain, for example, instances of behavior where we obviously exhibit sympathy for human beings. (We must be careful not to *under-value* the sympathy most people exhibit towards animals, especially domesticated ones.) On the other hand, we can understand this preference for our own kind to express the claim that we stand in a special moral relationship to members of our own species. This claim does pose a problem, since, if we systematically favor humans over animals on the basis of it, it does considerable moral work, work, obviously, that would not be done if the claim were rejected.

I cannot see that species membership is a ground for holding that we stand in a special moral relationship to our fellow humans. The father obviously stands in such a relationship to his daughter, and his decision to marry and to have children is how he comes to have or to stand in that relationship. But how, through merely being born, does one come to stand in a special moral relationship to humans generally? Typically, I can step in and out of special moral relationships; in the case of species membership, that is not true. In that case, so long as I live, nothing can change my relationship to others, so long as they live. If this were true, my morality would to an extent no longer express my view of myself at large in a world filled with other people but would be something foisted upon me simply through being born.

Since we do not choose our species membership, a special moral relationship I am supposed to stand in to humans generally would lie outside my

control; whereas it is precisely the voluntary nature of such relationships that seems most central to their character. And it is precisely because of this voluntary nature, of, as it were, our ability to take on and shed such relationships, that these relationships can be read as expressing *my* view of myself at large in a world filled with other people.

We often do stand in special moral relationships to others; but mere species membership would have us stand in such a relationship to all others. There is something too sweeping about this, as if birth alone can give the rest of human creation a moral hold over me. In a real sense, such a view would sever me from my morality; for my morality would no longer consist in expressions of how I see myself interacting with others and how I choose to interact with them. My own choices and decisions have no effect upon species membership and so on a moral relationship that I am supposed to stand in to each and every living, human being. Such a view is at odds not only with how we typically understand special moral relationships but also with how we typically understand our relationship to our own morality.

VII.

It may well be tempting, I suppose, to try to develop another sense of “speciesism” and to hold that a position such as mine is speciesist in that sense. I have space here for only a few comments on one such sense.

If to be a *direct* speciesist is to discriminate among the value of lives solely on the basis of species membership, as it is, for example, for Peter Singer, then I am not, as I have tried to show, a direct speciesist. But am I not, it might be suggested, an *indirect* speciesist, in that, in order to determine the quality and value of a life, I use human-centred criteria as if they were appropriate for assessing the quality and value of all life? Thus, for instance, when I emphasize cultural and artistic endeavors, when I emphasize autonomy and mental development and achievement, when I emphasize making choices, directing one’s life, and selecting and living out conceptions of the good life, the effect is to widen the gulf between animals and humans by using human-centred criteria for assessing the quality and value of a life as if they were appropriate to appreciating the quality and value of animal

life. And this will not do; for it amounts to trying to judge animals and animal lives by human standards. What one should do, presumably, is to judge the quality and value of animal life by criteria appropriate to each separate species of animals.

I stress again that the argument of this paper is not about whether rabbits have lives of value (I think that they do) but rather about whether they have lives of equal value to normal (adult) human life. It is unclear to me how the charge of indirect speciesism addresses this argument.

We must distinguish this charge of an indirect speciesism from the claim, noted earlier, that we can know nothing of animal lives and so nothing about their quality and value; indeed, the two claims may conflict. The point behind the speciesism charge is that I am not using criteria appropriate to a species of animal for assessing its quality of life, which presumably means that there *are* appropriate criteria available for selection. Knowledge of appropriate criteria seems to require that we know something of an animal's life, in order to make the judgment of appropriateness. Yet, the whole point behind the lack of knowledge claim is that we can know nothing of an animal's life, nothing of how it experiences the world, nothing, in essence, about how well or how badly its life is going. It would seem, therefore, as if the two views can conflict.

The crucial thing here about both claims, however, is this: both are advanced against my defence of the unequal value thesis and on behalf of the equality of value of human and animal life without it being in any wise clear how they show this equality.

The ignorance claim would seem to have it that, because we can know nothing of the animal case, we must assume that animal and human life have the same value. But why should we fall in with this assumption? The ignorance claim would have us start from the idea, presumably, that all life, irrespective of its level of development and complexity, has the same value; but why should we start from that particular idea? Surely there must be some reason for thinking all life whatever has the same value. It is this reason that needs to be stated and assessed.

The indirect speciesist claim would seem to have it that, were we only to select criteria for assessing the quality and value of life appropriate to animals'

species, we must agree that animal and human life are of equal value. The temptation is to inquire after what these criteria might be in rabbits, but any such concern must be firmly understood in the light of the earlier discussion of the richness of our lives. What the unequal value thesis represents is our quest to gain some understanding of (i) the capacities of animals and humans, (ii) the differences among these various capacities, (iii) the complexity of lives, (iv) the role of agency in this complexity, and (v) the way agency enables humans to add further dimensions of value to their lives. The richness of our lives encompasses these multi-faceted aspects of our being and is a function of them. The point is not that a rabbit may not have a keener sense of smell than we do and may not derive intense, pleasurable sensations through that sense of smell; it is that we have to believe that something like this, augmented, perhaps, by other things we might say in the rabbit's case of like kind, suffices to make the rabbit's life as rich and as full as ours. If one thinks of our various capacities and of the different levels on which they operate, physical, mental, emotional, imaginative, then pointing out that rabbits can have as pleasurable sensations as we do in certain regards does not meet the point.

When we say of a woman that she has "tasted life to the full," we do not make a point about (or solely about) pleasurable sensations; we refer to the different dimensions of our being and to the woman's attempt to develop these in herself and to actualize them in the course of her daily life. And an important aspect in all this is what agency means to the woman: in the sense intended, she is not condemned to live the life that all of her ancestors have lived; she can mold and shape her life to "fit" her own conception of how she should live, thereby enabling her to add further dimensions of value to her life. It is this diversity and complexity in us that needs to be made good in the rabbit's case and that no mere catalogue of its pleasures through the sense of smell seems likely to accomplish.

Again, it is not that the rabbit cannot do things that we are unable to do and not that it has capacities which we lack; what has to be shown is how this sort of thing, given how rabbits behave and live out their days, so enriches their lives that the quality and value

of them approach those of humans. And what *is* one going to say in the rabbit's case that makes good the role agency plays in ours? The absence of agency from a human life is a terrible thing; it deeply impoverishes a life and forestalls completely one's making one's life into the life one wants to live. Yet, this must be the natural condition of rabbits. It is this gulf that agency creates, the gulf between living out the life appropriate to one's species and living out a life one has chosen for oneself and has molded and shaped accordingly, that is one of the things that it is difficult to understand what rabbits can do to overcome.

VIII.

In sum, I think the unequal value thesis is defensible and can be defended even as its adherent takes seriously the charge of speciesism. And it is the unequal value thesis that figures centrally in the justification of our use of animals in medical and scientific research. If as I have done here, we assume that the thesis must be defended, then the character of that defence, I think, requires that *if* we are to continue to use animals for research purposes, then we must begin to envisage the use of some humans for those same purposes. The cost of holding the unequal value thesis, and most of us, I suggest, do hold it, is to realize that, upon a quality-of-life defence of it, it encompasses the lives of some humans as well as animals. I cannot at the moment see that any other defence of it both meets the charge of speciesism and yet does indeed amount to a defence.

NOTE

1 Tom Regan, "The Case for Animal Rights," in Peter Singer (ed.), *In Defence of Animals* (Oxford: Basil

Blackwell, 1985), p. 23. This article mirrors some central claims of Regan's book of the same name.

R. G. Frey: Moral Standing, the Value of Lives, and Speciesism

1. Explain Frey's unequal value thesis. What implications does it have for how we should treat nonhuman animals? What implications does it have for how we should treat other humans? Do you think any of these implications are problematic? Why or why not?
2. What, according to Frey, makes a life valuable? What reasons does he give in support of his account? Do you find the account plausible? Support your answer.
3. Explain the distinction between direct speciesism and indirect speciesism. Why might direct speciesist views be problematic? Why might indirect speciesist views be problematic? Does Frey's view qualify as one or the other? Why or why not?
4. According to Frey, what makes a being worthy of moral consideration? Which (if any) animals are members of the moral community? In virtue of what are animals' lives more or less valuable than humans' lives? Do you agree with Frey's criteria? Why or why not?
5. Frey refers to himself as a "restricted vivisectionist." Explain what he means by this. Under what conditions does he think that animal experimentation is morally permissible? Under what conditions does he think that human experimentation is morally permissible? Do you think there is a relevant difference between the two that Frey has failed to appreciate? Explain your answer.

The Environment

JUST THE FACTS

There are plenty of reasons to worry about the current and future state of the environment. We can't consider them all in detail, so we'll focus on what many regard as the two most serious environmental problems facing humanity: **climate change** and **deforestation**.

“Climate change” refers to the change in weather patterns across the globe over an extended period of time (e.g., thousands of years). Climate change certainly includes **global warming** (the Earth’s rising average atmospheric temperatures), but it also includes the meteorological consequences of global warming, namely, an increase in the frequency and severity of precipitation (leading to increased flooding), more frequent drought, and more frequent heat waves. These changes are expected to bring about a number of unwelcome consequences. For example, rising global temperatures are causing the melting of large parts of the polar ice caps. This has led to a rise in global sea levels, which, if left unchecked, will likely cause widespread coastal flooding, displacing millions from their homes. So far, sea levels have risen about eight inches since statistics were first kept in 1880. They’re expected to rise between one and four feet by the end of this century.¹ More frequent droughts and flooding will cause a greater proportion of crops to fail, leading to widespread food shortages and a significant increase in world hunger. The social consequences are harder to predict, but history

has shown that food shortages and land disputes often lead to very serious social harms.

Most climate scientists agree that the main cause of the current global warming trend is human expansion of the **greenhouse effect**—warming that results when greenhouse gases (e.g., carbon dioxide, methane, water vapor, nitrous oxide, and ozone) in the atmosphere trap heat radiating from the Earth’s surface toward outer space. Ordinarily, the greenhouse effect is beneficial. Without it, Earth’s average temperature would be near 0°F, instead of its current average (58.4°F). The trouble is that having too much greenhouse gas in the atmosphere leads to the problems described earlier.

As of 2017, carbon dioxide (CO₂) levels in the atmosphere are higher than they’ve been at any time in the past 400,000 years. During past ice ages, CO₂ levels were around 200 parts per million (ppm). During the warmer interglacial periods, they hovered around 280 ppm. In 2013, however, CO₂ levels surpassed 400 ppm for the first time in recorded history.²

The two greatest contributors to these unprecedented CO₂ levels are the burning of fossil fuels for manufacturing, meat production, and other industrial purposes, and changes in land use, especially deforestation (which we’ll discuss shortly). When industrial plants burn coal, oil, and other fossil fuels, they release enormous amounts of carbon into the atmosphere, exacerbating the greenhouse effect. The animals on factory farms produce a huge amount of waste that generates an amount of greenhouse gas that exceeds that of the global transportation

1. <http://nca2014.globalchange.gov/report/our-changing-climate/sea-level-rise>

2. https://climate.nasa.gov/climate_resources/24/

industry.³ China, still a developing country with the largest population on Earth (about 19 percent of the world population), is far and away the biggest contributor of greenhouse gases—releasing 23 percent of all greenhouse gases in the world. The United States is next, dwarfing the contribution of most countries, with about 15 percent—though the United States is only 4 percent of the world’s population. Next are India, Russia, Brazil, and Japan, each contributing somewhere between 4 percent and 5 percent. All other countries contribute 2 percent or less.⁴

One of the biggest obstacles to slowing the progress of global warming has been convincing people that it is actually occurring and that humans are the primary cause. For instance, from 2011 to June 2017, US President Donald Trump tweeted 115 different times expressing his doubts about **anthropogenic** climate change (i.e., climate change that is caused by human beings).⁵ That skepticism seems to be shared by a significant number of Americans, but not a majority. According to a 2017 Gallup poll, 68 percent of US citizens believe that climate change is caused by human activities; 32 percent do not.⁶

The other major environmental challenge we face is deforestation—the large-scale destruction of forests. Today, forests cover 31 percent of the land area on our planet, but each year an area roughly the size of Greece is destroyed—about forty-eight football fields every minute. Over the last century, about half of the Earth’s forest cover was lost.⁷ Forests produce vital

oxygen and provide homes for people, plants, and wildlife—somewhere between 70 percent and 90 percent of the world’s biodiversity. Forests also play a crucial role in mitigating climate change because they act as a **carbon sink**, soaking up enormous amounts of carbon dioxide that would otherwise float free in the atmosphere. If deforestation continues at its current rate, the world’s rainforests will vanish within one hundred years, thereby eliminating the majority of plant and animal species on Earth.⁸

When most people think of the causes of deforestation, they usually think of commercial logging—cutting down trees for sale as timber or pulp. While logging accounts for a significant amount of deforestation across the globe, its impact is dwarfed by deforestation due to agriculture (e.g., planting crops, grazing cattle). Poor farmers, especially in South America, often chop down small areas (usually just a few acres) and burn the tree trunks—a process called **slash and burn agriculture**. They use this land just to get by, growing food to support themselves and their families. Industrial agriculture occurs on a much larger scale, sometimes deforesting several square miles at a time. These larger areas of land are cleared for beef cattle to graze upon. The cattle are then slaughtered and much of the meat is sold to countries where demand is especially high (e.g., the United States, Canada). Cattle ranching is the number-one cause of deforestation in South America, accounting for 80 percent of it on the continent. Thus, environmentalists have long argued that one of the best ways that individuals can help slow deforestation and climate change is by avoiding meat, adopting a plant-based diet, and encouraging others to do so as well.

ARGUMENT ANALYSIS

Though environmental ethics covers a huge range of issues, perhaps the most fundamental one concerns moral standing. The issue is which parts of the environment have independent moral

3. <https://www.ecowatch.com/how-factory-farming-contributes-to-global-warming-1881690535.html>

4. http://www.ucsusa.org/global_warming/science_and_impacts/science/each-countrys-share-of-co2.html#.WclDS9Frw2w

5. <https://www.vox.com/policy-and-politics/2017/6/1/15726472/trump-tweets-global-warming-paris-climate-agreement>

6. <http://www.gallup.com/poll/206030/global-warming-concern-three-decade-high.aspx>

7. <https://www.worldwildlife.org/threats/deforestation>

8. <https://www.conserve-energy-future.com/Various-deforestation-facts.php>

importance—importance in their own right, apart from any benefits that treating them well might bring about. Relying on a distinction we've seen in other discussions, the question, really, is which elements of the environment are **intrinsically valuable**—good and important in and of themselves—and which elements are merely **instrumentally valuable**—good because of the other good things they make possible. You are intrinsically valuable. A hammer or screwdriver, by contrast, can be only instrumentally valuable. Their goodness resides in their usefulness—if they were defective, for instance, and only frustrated our efforts to build or repair things, then they wouldn't be good at all. But people are valuable regardless of how useful they are.

The question we need to address is which non-human elements of the environment are intrinsically valuable. We can put the question in terms of membership in the **moral community**: members of the moral community are those possessed of independent moral importance, those who are valuable in and of themselves, regardless of how useful they are to others. Since we discussed non-human animals in Chapter 13, where various positions about their moral standing are assessed, our question here is actually a bit narrower: are there any elements of the nonanimal environment that are members of the moral community?

The answer standardly given by Western philosophers is no. On this view, even the most magnificent elements of the natural environment—the Grand Canyon, say, or the massive stands of sequoias and redwoods in northern California—are valuable only because of the enjoyment they provide us, or the resources (minerals, wood) that we can utilize by exploiting them. Kantians defend this view by means of

The Kantian Argument about Moral Standing

1. You are a member of the moral community if, and only if, you are rational and autonomous.
2. Only humans are rational and autonomous.

Therefore,

3. Only humans are members of the moral community; only humans are morally important in their own right.

Kant, as you may recall from Chapter 6, had very high standards for being rational and autonomous. You had to be able to freely choose a plan of life, to contemplate and weigh the value of different alternatives, to imagine what the world would be like were everyone to act on your principles, and to have your behavior conform to your decisions. Given these rigorous standards for rationality and autonomy, premise 2 is true. But premise 1 is problematic—it forces us to say that human infants, very young children, the severely mentally impaired, and all nonhuman animals have no value in their own right. They lack independent moral importance. That is very difficult to accept.

Social contract theorists have a similarly restrictive view of who is and isn't a member of the moral community. They defend their view by means of

The Contractarian Argument about Moral Standing

1. You are a member of the moral community if, and only if, you are able to enter into reciprocal agreements that promise to benefit those who have benefitted you, and to harm those who have harmed you.
2. Only humans are able to enter into such reciprocal agreements.

Therefore,

3. Only humans are members of the moral community.

As indicated in Chapter 7, there is a lot to like about the social contract theory. Still, its tough entry standards for membership in the moral community exclude the most vulnerable among us, just as Kantian views do.

Utilitarians have a broader conception of membership in the moral community. They

allow that most nonhuman animals are valuable in their own right. They defend this by means of

The Utilitarian Argument about Moral Standing

1. A being is a member of the moral community if, and only if, it can experience pleasure or pain.
2. Almost every human being and most nonhuman animals can experience pleasure or pain.
3. Nothing else can experience pleasure or pain.

Therefore,

4. Almost every human being and most nonhuman animals are members of the moral community; nothing else is.

Utilitarians let many more beings into the moral community than Kantians and contractarians do. Unlike those positions, utilitarianism allows infants, young children, the severely mentally impaired, and most nonhuman animals to be members. But like those views, utilitarianism bars entry to all other elements of the environment. Majestic mountain ranges, diverse ecosystems, remarkable coral reefs—none of these are valuable in themselves. Their value lies solely in what they can do for us, and for other animals. Nature can nourish us, and we can take pleasure in its contemplation. But in and of itself, the natural environment—animals (including us) aside—has no value.

Some environmentalists accept these conclusions but argue that we must nevertheless do much more than we currently do in order to protect the natural environment. Their reasoning is straightforward. Although nonanimal elements of the natural environment have no intrinsic value, it is vital that we preserve them against exploitation, because doing so is essential to securing our long-term interests. When we treat the environment as if we were its rulers rather than its stewards, we are harming ourselves and future generations. In a word, we are acting shortsightedly.

This is a strategic argument for greater environmental protections, and it is often a

compelling one. A great many of our current practices—especially, but not exclusively, in the United States—are undertaken with only short-term profits in mind. Of course, compelling arguments often fall on deaf ears, and the ignorance or self-interest of individuals, corporations, and politicians often conspires to stand in the way of sensible policies that are much more beneficial in the long run. Still, some environmentalists are dissatisfied with arguments that appeal only to the interests of humans and other animals. These environmentalists argue that other elements of nature are intrinsically valuable.

But which ones? Is a pebble or a blade of grass independently morally important? Or (for instance) only mountain ranges, or species, or entire ecosystems? Kantians and contractarians and utilitarians have sometimes been accused of chauvinism—of assigning intrinsic value on the basis of traits that we humans have, but that the rest of nature doesn’t. Still, their criteria for membership in the moral community do seem to pick out morally important features, even if, as their critics argue, those features are not *all*-important. A stand of redwoods isn’t rational, it can’t enter agreements, and it doesn’t feel pleasure or pain. So what feature (if any) qualifies it for independent moral importance?

One idea, championed by philosopher Paul Taylor, is that *being alive* is the crucial feature. His central thought can be cast in terms of

The Biocentrism Argument

1. Something has independent moral importance if, and only if, it is alive.
2. Plants and animals are alive.

Therefore,

3. Plants and animals have independent moral importance.

Biocentrism is the view that all living things are important in their own right, and that all living things are equally intrinsically valuable. A human is just as alive as a tree—as a result, in and of themselves, humans and trees are equally valuable. Of course we may be allowed to give priority

to humans over trees in many cases, just as we are allowed to take actions that benefit some humans at the expense of others. But the trees will sometimes win out, too—in some cases, we must protect them even at the expense of the interests of humans who would wish to use or destroy them.

There is no arguing with premise 2; premise 1 is where the action is. Why is it that being alive, no matter the quality of one's experiences or abilities, is so important? It's difficult to answer that question, but then again, it is difficult to answer it for *any* candidate feature that is supposed to be the ultimate basis for moral importance. Why is *suffering* morally important? Why is *rationality* morally important? It's very hard to know how to answer these questions.

The typical line of argument on behalf of premise 1 says that being alive is the central basis for intrinsic value because so long as a being is alive, things can go better or worse for it, and that is a nonarbitrary basis for assigning it importance. Biocentrists also claim that any *other* basis is arbitrary. Rationality or reciprocity or suffering very conveniently gives *us* intrinsic importance. The biocentrist argues there is no good basis for restricting the moral community in these ways.

But we might wonder whether being able to be better or worse off is really the key to moral importance. It's true that a sapling can fare well or poorly—just fail to give it water and see. But it's also true that things can go well or poorly with my ten-year-old Toyota. Just fail to give it oil and watch it deteriorate. Paint the exterior of a windowsill and you will make it better off by protecting it against the elements. But no one thinks that Toyotas or windows are intrinsically valuable. So it's not clear why the ability to improve or worsen is so morally important.

We might also question the biocentrist's commitment to the equal intrinsic importance of all living things. Suppose that being alive is, in itself, morally important. But why think that this feature is the *only* thing that confers intrinsic value? Why isn't rationality or the capacity to suffer also important in its own right? Think of a region where mosquitoes are transmitting

malaria. About 655,000 people die each year from this disease. Suppose you are located in such an area, and you see a mosquito land on a child's arm. For all you know, its bite may result in the child's death. It seems obvious that killing the mosquito is morally better than letting it alone. Part of the reason it's obvious is because the child possesses so many more valuable traits than the mosquito. The mosquito is alive. But the mosquito can't reflect on its life, can't make plans for the future, can't deliberate about what's right and wrong, can't forge and maintain loving relations, and can't forsake its own interests in the name of a higher cause. These abilities do seem to be valuable in their own right. If they are, then some living things are, in themselves, more important than others, because some beings have many more of these abilities than other living things.

The Biocentric Argument is expansive in one way and restrictive in another. Compared to the traditional moral theories, it broadens the moral community significantly by providing membership for all animals and plants. But some environmentalists want more. They believe that some things that are not themselves living beings (e.g., species, ecosystems, mountain ranges, or the atmosphere) are intrinsically valuable. These environmentalists argue, for instance, that strip mining a mountain top can be immoral—not (just) because of the pollutants that so often end up in local riverbeds and harm local communities, and not (just) because humans will no longer be able to take pleasure in viewing the landscape or in hiking the mountain trails. Rather, there is something valuable about the mountain itself, something that extends beyond the use to which it can be put for our benefit. The mountain, though, is not alive. Nor is the atmosphere. Nor are species or ecosystems themselves (though of course these last two include many living things). On this view, then, biocentrism is too narrow—it excludes certain elements of nature that possess moral importance in their own right, even though these elements are not alive.

The most common way to defend this idea is by invoking the importance of the natural. The thought is that there is something important, in itself, about being natural—so important, in fact, that preservation of the natural environment is sometimes more important than the benefits to be gained by altering it.

One difficulty we face when assessing this proposal is that the term *natural* has so many different meanings and can be applied to so many different things. We consider most of the morally relevant meanings in Chapter 22, so here we can be brief. In the context of environmentalism, what is **natural** is usually contrasted with what is **artificial**: artificial things are those that have been created or modified by human activity; natural things are not.

No one argues that everything that is natural is good in itself. *Salmonella* bacteria (which cause infections that lead to over 200,000 human deaths worldwide each year) are natural. It's hard to think of why an individual *Salmonella* bacterium should be considered intrinsically valuable. The same holds for a small pebble on a distant, uninhabited planet, or a dried-out splinter of wood in a remote desert. So being natural is not a sufficient condition of being intrinsically valuable. Still, many environmentalists believe that some nonliving elements of the natural environment are intrinsically valuable, just because they are natural, rather than artificial.

It's not easy to identify a principle that sorts the natural things that are thought to be intrinsically valuable (mountain ranges, ecosystems, species) from natural things that lack such value (stray pebbles, individual bacteria). You might think that things in the former category are valuable because we value them, whereas things in the latter category lack value because we are indifferent to their existence. But this is not the story these environmentalists want to tell. Instead, they believe that parts of nature have value in themselves. If we appreciate them, that's because we are recognizing a value that they have independently of the value we place on them.

If a mountain range can't think or feel, and isn't alive, then why think that it possesses any value in itself? A famous reply was given by philosopher Richard Routley, who invited his readers to reflect on what we think of the options available to the last person on Earth.⁹ Suppose that person knows that he's the end of the line; once he dies, there's nothing left of humanity. Now suppose he has a choice. He can just die peacefully, or he can set out beforehand to do as much environmental damage as he can—exterminating whole species, polluting entire ecosystems, dynamiting mountain ranges, destroying the atmosphere. If we think (and we do, don't we?) that he'd be very wrong to take the second path, then this seems to show that we are committed to thinking of these elements of the natural environment as important in their own right. By hypothesis, no human will be around to value such things. If their importance depended on our valuing them, then in the absence of humans, they'd have no value. But if they were valueless, then it wouldn't be wrong to destroy them. We can formulate this line of thinking in

The Last Person Argument

1. If the natural environment lacked intrinsic value, then it would be morally OK for the last person on earth to destroy it.
2. That wouldn't be morally OK.

Therefore,

3. The natural environment possesses intrinsic value.

A parallel line of thought, inspired by the great English philosopher G. E. Moore, yields the same conclusion. Imagine two worlds with no humans or animals in them. One world is lush and beautiful—picture your scene of paradise and insert it here. The second world is completely barren—no life, permanently baked by a

9. This first appeared in Richard Routley, "Is There a Need for a New, an Environmental, Ethic?" *Proceedings of the XVth World Congress of Philosophy* 1 (1973): 205–210.

fiery sun, with a flat, featureless surface. Is one world more valuable than another? To test your answer, imagine that you were forced by someone to push a button that would destroy just one of these two worlds. I'd preserve the first world. (Wouldn't you?) I think it's more valuable than the second. But the value isn't instrumental—after all, nothing in the first world is useful to anyone. So the value is intrinsic.

Even if you find these two arguments persuasive, however, two more questions arise. First: *why* do only some elements of the natural environment, but not others, possess intrinsic value? And, second: how can we balance the value of the natural environment against human interests? We need to alter the natural environment in order to remain alive—we need food, water, and shelter. Meeting those needs requires us to change the natural environment. It follows that unless we are all morally required to die immediately, so as to no longer have any impact on the natural environment, we are morally permitted to modify the natural environment to some extent. But in what ways, and how much?

Suppose that you are convinced that some elements of the natural environment require protection, either for instrumental reasons (e.g., to ensure that we have enough food to eat) or because you assign some intrinsic value to nature. Still, the scope of our moral duties is unclear. Protecting the natural environment is a communal enterprise—the actions of a single individual don't seem to make much difference. Indeed, there seems little that you, as an individual, can do to prevent climate change, for instance. So even if we can settle the issues of the value of nature, we still may be puzzled about what we are morally required to do about it.

Some philosophers argue that we are obligated to do very little—perhaps nothing at all. They support their view by means of

The No Difference Argument

1. You are morally required to change your behavior or refrain from doing something only if that would improve the situation.

2. Changing or refraining from your ordinary consumer practices would not improve the environmental situation.

Therefore,

3. You are not morally required to change or refrain from your ordinary consumer practices in order to improve the environmental situation.

The idea behind premise 1 is that if your actions make no difference to a bad outcome, then you are not morally required to refrain from them. That sounds pretty sensible. If something bad is going to happen no matter what you do, and if you aren't going to make a bad situation even worse, then you are free to do what you want. In general, we are morally allowed to do as we please, at least so long as we are not worsening things. Premise 1 makes perfect sense of these thoughts.

Here are two cases designed to put pressure on this principle. See what you think. First, imagine someone with a fascination for Nazi artifacts. He discovers a lampshade for sale, one that was made from the flesh of concentration camp victims. He wants to buy the lampshade and keep it in a private viewing area in his home. Purchasing it is not going to support Nazi policies. So it doesn't look like the purchase of this piece is going to lead to anyone being worse off. If there is nevertheless something wrong with what this person is doing, then this casts doubt on premise 1.

The second case is one in which I cast a vote for a political candidate who runs on a platform that is popular with many but that is deeply immoral. Suppose that the other candidate is a reasonable, experienced person who stands for policies that are morally good. Still, the first politician wins by a large margin. Since he would have won easily even without my vote, it seems that my vote did not change the outcome. And if it didn't change the outcome, then it didn't make things worse. Still, you might think that my voting as I did was immoral. If so, you cannot accept premise 1.

Suppose, though, that neither of these examples fazed you, and you are committed to

premise 1. Still, you might wonder about whether premise 2 is true. On the one hand, your environmental impact does seem negligible, a drop in the bucket. Suppose you gave up your car and biked everywhere, drastically reduced your energy consumption at home, and purchased only locally grown food. Now try to think of all of the harms that will ensue over the next decades as a result of climate change. Changing your habits will make no difference to the existence or intensity of these harms. Of course, it's a different matter entirely if you are the CEO of a large utility company or major corporation and have the power to effect change on a large scale. But for the rest of us individuals, a change in our daily practices doesn't seem to make any difference at all.

And yet the practices of millions of individuals *do* add up to something quite serious, just as the votes of millions of individuals, when taken together, signify something very important. If there is a major harm being done collectively, then the harm has to come from somewhere. One suggestion is that it comes from each of us; our individual contributions, even if they are very small, are still something. On this view, each of us *is* harming the environment when we drive, when we purchase foods transported from a different continent, when we throw things in the trash. Each harm is minuscule. But very tiny harms can add up to very large ones. If it's true that our ordinary habits are making the environment (perhaps imperceptibly) worse off, then premise 2 is mistaken.

CONCLUSION

As we have seen from discussions of abortion and animals, it is not easy to locate the precise basis of membership in the moral community. Beings are valuable in their own right if, only if, and because _____. Filling in that blank is a challenge, to put it mildly.

Kantians, contractarians, and utilitarians have given it a shot. Some environmentalists embrace one or the other of these theories. In doing so, they thereby deny the intrinsic value of the natural environment, and argue that we must extend our protection of it on instrumental

grounds: such protection is useful to us, or perhaps to other animals or to future generations.

Other environmentalists, though, want to defend the claim that at least some nonhuman and nonanimal elements of nature are important in their own right. Biocentrism is one such effort. If true, it would extend independent moral importance to all living things, no matter how useful (or harmful) to us they happen to be. Biocentrism doesn't go far enough for some, however, as it fails to explain why (for instance) mountain ranges are important in themselves. The challenge for such views is to explain why some nonliving elements of the natural environment are intrinsically valuable, while others are not.

There is also the matter of the scope of our moral duties to protect the natural environment. Our individual actions seem to make either no difference at all, or, at most, only the tiniest difference to whether environmental harms occur. Given this, are we free to do as we please? Or is there some basis for arguing that we are duty-bound to change our individual practices?

ESSENTIAL CONCEPTS

Anthropogenic: originated by human beings.

Artificial: created or modified by human activity.

Biocentric: focused on all living things and their interests and denying the greater intrinsic importance of human beings vis-à-vis other life forms.

Carbon sink: a large system (e.g., an ocean, a forest) that absorbs and stores carbon dioxide from the atmosphere.

Climate change: a change in weather patterns that lasts for a long time (e.g., thousands or millions of years).

Deforestation: the destruction of a forest to make land available for other uses (e.g., agriculture).

Global warming: a rise in average atmospheric temperatures across the world.

Greenhouse effect: warming that results when greenhouse gases in the atmosphere (e.g., carbon dioxide, methane) trap heat radiating from the Earth's surface toward outer space.

STAT SHOT

- Atmospheric CO₂ levels are higher than they've been in the last 400,000 years. They've risen dramatically since the Industrial Revolution (Figure 14.1).

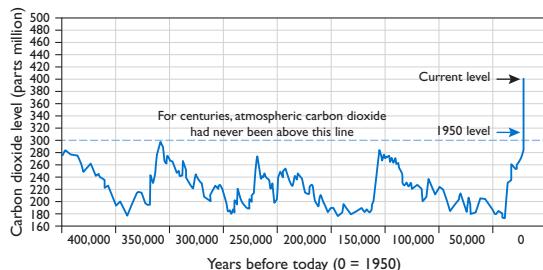


Figure 14.1.

Source: https://climate.nasa.gov/climate_resources/24/

- Average global temperature has been trending upward since at least 1870 (Figure 14.2).

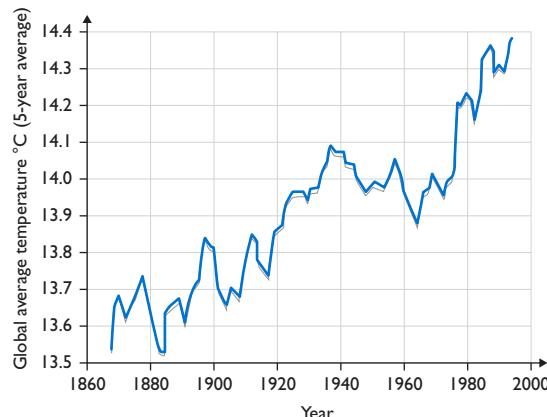


Figure 14.2.

Source: http://www.bbc.co.uk/schools/gcsebitesize/science/aqa_ppe_2011/rocks/fuelsrev6.shtml

- China emits more CO₂ than the next two biggest contributors combined. The United States still contributes far more

CO₂ per capita (since the US population is a quarter of China's) (Figure 14.3).

Rank	Country	Share of Global CO ₂ Emissions
1	China	23.43%
2	United States	14.69%
3	India	5.70%
4	Russian Federation	4.87%
5	Brazil	4.17%
6	Japan	3.61%
7	Indonesia	2.31%
8	Germany	2.23%
9	Korea	1.75%
10	Canada	1.57%
11	Iran	1.57%

Figure 14.3.

Source: <http://www.worldatlas.com/articles/biggestcontributors-to-global-warming-in-the-world.html>

- Sixty-eight percent of US citizens believe that climate change is caused by human activities; 32 percent do not (Figure 14.4).

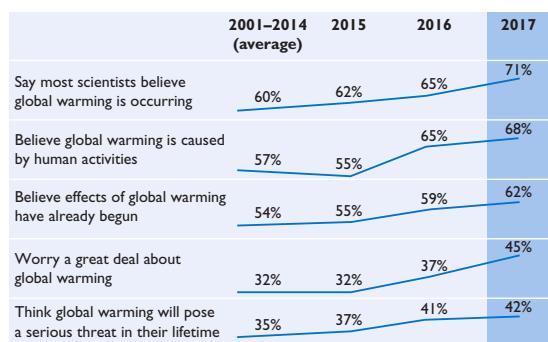


Figure 14.4. Summary of Americans' views on global warming.

Source: <http://www.gallup.com/poll/206030/global-warming-concern-three-decade-high.aspx>

Instrumentally valuable: something good because of the other good things it makes possible.

Intrinsically valuable: something good and important in and of itself.

Moral community: the group of those who possess independent moral importance—those who are valuable in and of themselves, regardless of how useful they are.

Natural: neither created nor altered by humans.

Slash and burn agriculture: a process in which a subsistence farmer cuts down the trees on a small parcel of land, then burns their stumps, so as to create an area suitable for agriculture.

Cases for Critical Thinking

Destroying Ancient Rock Formations

In 2014, two Boy Scout leaders, David Hall and Glenn Taylor, were leading a group of scouts on a hike in Utah's Goblin Valley State Park.¹ They came across a hoodoo, an ancient rock formation. The one they saw dates back to the Jurassic Period—145 to 170 million years ago. Hoodoos are often shaped like long slender pillars of rock, but the one these men encountered looked like a giant round boulder joined to the earth by a very thin piece of rock. With a great deal of effort, and the video camera on Hall's cell phone recording, Taylor proceeded to push the rock from its perch. The rock fell five or six feet to the ground and landed with a thud while the men danced and giggled. They claimed that they were just preventing the rock from falling on an unsuspecting passerby. They posted the video on social media and it went viral—garnering 5.5 million views as of 2017.² Most who saw the video were not amused. When the leadership of the Boy Scouts saw the video, they immediately kicked both men out of the organization, forbidding them from ever leading another troop. Emery County law enforcement in Utah charged Taylor with criminal mischief for pushing the

rock and charged Hall with assisting criminal mischief for capturing the video. Both are felonies. There were no signs posted prohibiting the men's behavior.

1. <http://www.npr.org/sections/thetwo-way/2014/02/01/269926160/men-filmed-toppling-ancient-rock-formation-are-charged-in-utah>

2. <https://www.youtube.com/watch?v=AYFD18BwmJ4>

Questions

1. Did Hall and Taylor do something morally wrong here? Why or why not?
2. Most people who saw the video were outraged at the men's behavior. But suppose that people reacted to the video the way the men themselves did—by laughing in amusement. And suppose that the Emery County police decided not to press any charges. Would that change your view about the moral permissibility of their actions? Why or why not?
3. The same year the video went viral, Goblin Valley State Park saw a 25 percent increase in attendance. The spike began almost immediately after the video was posted. Nearly every month since Hall and Taylor's stunt, the park has seen a new record in attendance. The following spring, nearly 60,000 people visited the park, doubling the 30,081 who visited the entire year of 2006. Thus, the controversial video has resulted in tens of thousands more people enjoying the park and learning about its ancient rock formations. Park employees have been able to educate thousands more people, not only about rock formations, but about how to treat them properly. There have even been proposals for the park to expand from its current 3,500 acres to 132,000 acres—an enormous increase in size.³ The park and its visitors seem to have benefited a great deal from this episode. Imagine that you could go back to that day in 2014—the day the men destroyed the hoodoo—knowing what you know now.

Do you think you should try to stop the men, or should you let things proceed precisely as they actually did? Why?

3. <http://www.deseretnews.com/article/865626278/A-tale-of-2-cameras.html>

Taxing Meat

The meat industry is one of the biggest contributors to global warming—about 25 percent of all greenhouse emissions. Animals' digestive systems, as well as the production and shipment of their feed, produce lots of greenhouse gas. If, however, people around the world decided to eat much less meat, the meat industry would reduce their production of it. This would reduce both deforestation and greenhouse emissions, which would do wonders for the environment. But it's highly unlikely that enough people would give up eating meat so that it would make an appreciable difference to the environment. One way to achieve this desired reduction in the demand for meat, however, might be to tax it. If governments, especially the United States and Chinese governments, imposed high taxes on the purchase of meat, people would probably be less inclined to buy it. Researchers at Oxford University recently found that, in order to compensate for the damage done to the environment by meat production, governments should impose a 40 percent tax on beef, 15 percent on lamb, 8.5 percent on chicken, 7 percent on pork, and 5 percent on eggs.¹ On their proposal, the money received in tax revenue could then be used to fight climate change. Citing both the health and environmental advantages of such a tax policy, the lead researcher on the Oxford study commented, "Either we have climate change and more heart disease, diabetes and obesity, or we do something about the food system."²

1. <https://www.theguardian.com/environment/2016/nov/07/tax-meat-and-dairy-to-cut-emissions-and-save-lives-study-urges>

2. <https://www.theguardian.com/environment/2016/nov/07/tax-meat-and-dairy-to-cut-emissions-and-save-lives-study-urges>

Questions

1. What do you find attractive about the idea of a tax on meat? What do you find unattractive about it?
2. All things considered, do you think we ought to endorse a policy of taxing meat? Or do you think that such taxes ought to be opposed? Why? If you object to a meat tax, is it because you object to the tax rates for various meats mentioned earlier, or is it because you object, in principle, to a tax on meat?
3. There don't seem to be many overwhelmingly attractive options for achieving a significant reduction in worldwide greenhouse gas emissions. Do you think there are any better, or even equally good, alternatives to a meat tax?

Kenyan Deforestation

In 2009, the Kenyan government began enacting a plan to evict 8,000 Kenyans from their homes without compensating them.¹ These Kenyans had, years before, settled illegally in the Mau forest, one of Kenya's national forests, and the Kenyan government turned a blind eye. Drought elsewhere in Kenya was causing many farmers' crops to fail and their grazing land to become barren. These Kenyan "squatters" (as the government called them) entered the Mau looking for a way to support their families. They began clearing away parts of the forest so they could plant crops and give their cattle a place to graze. After clearing roughly 1,500 square miles of land—an area a third the size of Rhode Island—the Kenyan government decided that enough was enough. In their judgment, the rapid deforestation was threatening the Mau, and they very much wished to preserve it. The government began removing squatters from their homes and erecting electrified fences around the area to keep them out.²

1. <https://www.theguardian.com/world/2009/nov/18/kenya-forest-squatters-evicted>

2. <https://www.theguardian.com/world/2009/may/10/kenya-climate-change-mau-park>

Questions

- Was the Kenyan government justified in preventing its citizens from settling in the Mau to make a living?
- Whether or not the Kenyan law prohibiting deforestation was justified, it was (and is) the law. But do you think it's morally permissible for the so-called squatters, who depend on the Mau to provide for their families, to disobey the law by continuing to farm?
- The turmoil in Kenya is, in part, the product of droughts caused by global warming. Do you think that countries who have contributed significantly to global warming (e.g., the United States, China, members of the European Union) ought to compensate Kenya for the damage global warming has done? Why or why not?

READINGS**The Ethics of Respect for Nature****Paul Taylor**

Paul Taylor argues against the anthropocentric view that human interests, and the human perspective generally, are morally superior to all others. Instead, Taylor encourages us to take what he calls “an attitude of respect for nature,” in which we regard all elements of nature as possessed of as much inherent worth as all others. He develops a “life-centered ethic” that assigns importance to the well-being of every living thing, regardless of whether it is rational, able to suffer, or even conscious. That something is alive, or is (like the biosphere or specific ecosystems) composed of living things, is enough to grant it moral importance.

Taylor proceeds to identify the four essential claims that make up a *biocentric* (i.e., life-centered) outlook on nature: (1) humans are members of the Earth's community of life; (2) the Earth's natural ecosystems are a complex web of interconnected environments; (3) each individual living thing has a good of its own; (4) the assertion of greater human merit or inherent worth is nothing but irrational bias. The remainder of the article is devoted to a discussion of each of these four elements. The last claim, (4), receives the most attention.

Human beings have long thought of themselves as more important than members of any other species. But what could justify this attitude? We have rationality and autonomy—they don't. But cheetahs have speed that we lack; birds can fly; eagles can see things we can't. Why think of our special traits as more important than theirs? Taylor says that there is no good answer to this question. From our perspective, we are likely to give more value to the features that we alone possess.

But there is no neutral reason to assign our perspective any more importance than any other—to argue otherwise is already to assume the superiority of humanity. Taylor concludes by sketching some of the significant implications of taking up the life-centered ethic.

HUMAN-CENTERED AND LIFE-CENTERED SYSTEMS OF ENVIRONMENTAL ETHICS

In this paper I show how the taking of a certain ultimate moral attitude toward nature, which I call “respect for nature,” has a central place in the foundations of a life-centered system of environmental ethics. I hold that a set of moral norms (both standards of character and rules of conduct) governing human treatment of the natural world is a rationally grounded set if and only if, first, commitment to those norms is a practical entailment of adopting the attitude of respect for nature as an ultimate moral attitude, and second, the adopting of that attitude on the part of all rational agents can itself be justified. . . .

In designating the theory to be set forth as life-centered, I intend to contrast it with all anthropocentric views. According to the latter, human actions affecting the natural environment and its nonhuman inhabitants are right (or wrong) by either of two criteria: they have consequences which are favorable (or unfavorable) to human well-being, or they are consistent (or inconsistent) with the system of norms that protects and implements human rights. From this human-centered standpoint it is to humans and only to humans that all duties are ultimately owed. We may have responsibilities *with regard to* the natural ecosystems and biotic communities of our planet, but these responsibilities are in every case based on the contingent fact that our treatment of those ecosystems and communities of life can further the realization of human values and/or human rights. We have no obligation to promote or protect the good of nonhuman living things, independently of this contingent fact.

From Paul Taylor, “The Ethics of Respect for the Environment,” *Environmental Ethics* 3 (1981): pp. 197–201, 211–218.

A life-centered system of environmental ethics is opposed to human-centered ones precisely on this point. From the perspective of a life-centered theory, we have *prima facie* moral obligations that are owed to wild plants and animals themselves as members of the Earth’s biotic community. We are morally bound (other things being equal) to protect or promote their good for *their* sake. . . .

THE GOOD OF A BEING AND THE CONCEPT OF INHERENT WORTH

What would justify acceptance of a life-centered system of ethical principles? In order to answer this it is first necessary to make clear the fundamental moral attitude that underlies and makes intelligible the commitment to live by such a system. It is then necessary to examine the considerations that would justify any rational agent’s adopting that moral attitude.

Two concepts are essential to the taking of a moral attitude of the sort in question. . . . These concepts are, first, that of the good (well-being, welfare) of a living thing, and second, the idea of an entity possessing inherent worth. I examine each concept in turn.

(1) Every organism, species population, and community of life has a good of its own which moral agents can intentionally further or damage by their actions. To say that an entity has a good of its own is simply to say that, without reference to any *other* entity, it can be benefited or harmed. . . . We can think of the good of an individual nonhuman organism as consisting in the full development of its biological powers. Its good is realized to the extent that it is strong and healthy. . . .

The idea of a being having a good of its own, as I understand it, does not entail that the being must have interests or take an interest in what affects its life for better or for worse. We can act in a being’s

interest or contrary to its interest without its being interested in what we are doing to it in the sense of wanting or not wanting us to do it. It may, indeed, be wholly unaware that favorable and unfavorable events are taking place in its life. I take it that trees, for example, have no knowledge or desires or feelings. Yet it is undoubtedly the case that trees can be harmed or benefited by our actions. . . .

(2) The second concept essential to the moral attitude of respect for nature is the idea of inherent worth. We take that attitude toward wild living things (individuals, species populations, or whole biotic communities) when and only when we regard them as entities possessing inherent worth. Indeed, it is only because they are conceived in this way that moral agents can think of themselves as having validly binding duties, obligations, and responsibilities that are *owed* to them as their *due*. I am not at this juncture arguing why they *should* be so regarded; I consider it at length below. But so regarding them is a presupposition of our taking the attitude of respect toward them and accordingly understanding ourselves as bearing certain moral relations to them. This can be shown as follows:

What does it mean to regard an entity that has a good of its own as possessing inherent worth? Two general principles are involved: the principle of moral consideration and the principle of intrinsic value.

According to the principle of moral consideration, wild living things are deserving of the concern and consideration of all moral agents simply in virtue of their being members of the Earth's community of life. From the moral point of view their good must be taken into account whenever it is affected for better or worse by the conduct of rational agents. This holds no matter what species the creature belongs to. The good of each is to be accorded some value and so acknowledged as having some weight in the deliberations of all rational agents. Of course, it may be necessary for such agents to act in ways contrary to the good of this or that particular organism or group of organisms in order to further the good of others, including the good of humans. But the principle of moral consideration prescribes that, with respect to each being an entity having its own good, every individual is deserving of consideration.

The principle of intrinsic value states that, regardless of what kind of entity it is in other respects, if it is a member of the Earth's community of life, the realization of its good is something *intrinsically* valuable. This means that its good is *prima facie* worthy of being preserved or promoted as an end in itself and for the sake of the entity whose good it is. Insofar as we regard any organism, species population, or life community as an entity having inherent worth, we believe that it must never be treated as if it were a mere object or thing whose entire value lies in being instrumental to the good of some other entity. The well-being of each is judged to have value in and of itself.

Combining these two principles, we can now define what it means for a living thing or group of living things to possess inherent worth. To say that it possesses inherent worth is to say that its good is deserving of the concern and consideration of all moral agents, and that the realization of its good has intrinsic value, to be pursued as an end in itself and for the sake of the entity whose good it is.

The duties owed to wild organisms, species populations, and communities of life in the Earth's natural ecosystems are grounded on their inherent worth. When rational, autonomous agents regard such entities as possessing inherent worth, they place intrinsic value on the realization of their good and so hold themselves responsible for performing actions that will have this effect and for refraining from actions having the contrary effect. . . .

THE BIOCENTRIC OUTLOOK ON NATURE

The biocentric outlook on nature has four main components. (1) Humans are thought of as members of the Earth's community of life, holding that membership on the same terms as apply to all the nonhuman members. (2) The Earth's natural ecosystems as a totality are seen as a complex web of interconnected elements, with the sound biological functioning of each being dependent on the sound biological functioning of the others. (This is the component referred to above as the great lesson that the science of ecology has taught us.) (3) Each individual organism is conceived of as a teleological center of life, pursuing its own good in its own way.

(4) Whether we are concerned with standards of merit or with the concept of inherent worth, the claim that humans by their very nature are superior to other species is a groundless claim and, in the light of elements (1), (2), and (3) above, must be rejected as nothing more than an irrational bias in our own favor. . . .

THE DENIAL OF HUMAN SUPERIORITY

This fourth component of the biocentric outlook on nature is the single most important idea in establishing the justifiability of the attitude of respect for nature. Its central role is due to the special relationship it bears to the first three components of the outlook. This relationship will be brought out after the concept of human superiority is examined and analyzed.

In what sense are humans alleged to be superior to other animals? We are different from them in having certain capacities that they lack. But why should these capacities be a mark of superiority? From what point of view are they judged to be signs of superiority and what sense of superiority is meant? After all, various nonhuman species have capacities that humans lack. There is the speed of a cheetah, the vision of an eagle, the agility of a monkey. Why should not these be taken as signs of *their* superiority over humans?

One answer that comes immediately to mind is that these capacities are not as *valuable* as the human capacities that are claimed to make us superior. Such uniquely human characteristics as rational thought, aesthetic creativity, autonomy and self-determination, and moral freedom, it might be held, have a higher value than the capacities found in other species. Yet we must ask: valuable to whom, and on what grounds?

The human characteristics mentioned are all valuable to humans. They are essential to the preservation and enrichment of our civilization and culture. Clearly it is from the human standpoint that they are being judged to be desirable and good. It is not difficult here to recognize a begging of the question. Humans are claiming human superiority from a strictly human point of view, that is, from a point of view in which the good of humans is taken as the standard of judgment. All we need to

do is to look at the capacities of nonhuman animals (or plants, for that matter) from the standpoint of *their* good to find a contrary judgment of superiority. The speed of the cheetah, for example, is a sign of its superiority to humans when considered from the standpoint of the good of its species. If it were as slow a runner as a human, it would not be able to survive. And so for all the other abilities of nonhumans which further their good but which are lacking in humans. In each case the claim to human superiority would be rejected from a non-human standpoint.

When superiority assertions are interpreted in this way, they are based on judgments of *merit*. To judge the merits of a person or an organism one must apply grading or ranking standards to it. (As I show below, this distinguishes judgments of merit from judgments of inherent worth.) Empirical investigation then determines whether it has the “good-making properties” (merits) in virtue of which it fulfills the standards being applied. In the case of humans, merits may be either moral or nonmoral. We can judge one person to be better than (superior to) another from the moral point of view by applying certain standards to their character and conduct. Similarly, we can appeal to nonmoral criteria in judging someone to be an excellent piano player, a fair cook, a poor tennis player, and so on. Different social purposes and roles are implicit in the making of such judgments, providing the frame of reference for the choice of standards by which the nonmoral merits of people are determined. Ultimately such purposes and roles stem from a society’s way of life as a whole. Now a society’s way of life may be thought of as the cultural form given to the realization of human values. Whether moral or nonmoral standards are being applied, then, all judgments of people’s merits finally depend on human values. All are made from an exclusively human standpoint.

The question that naturally arises at this juncture is: why should standards that are based on human values be assumed to be the only valid criteria of merit and hence the only true signs of superiority? This question is especially pressing when humans are being judged superior in merit to nonhumans.

It is true that a human being may be a better mathematician than a monkey, but the monkey may be a better tree climber than a human being. If we humans value mathematics more than tree climbing, that is because our conception of civilized life makes the development of mathematical ability more desirable than the ability to climb trees. But is it not unreasonable to judge nonhumans by the values of human civilization, rather than by values connected with what it is for a member of *that* species to live a good life? If all living things have a good of their own, it at least makes sense to judge the merits of nonhumans by standards derived from *their* good. To use only standards based on human values is already to commit oneself to holding that humans are superior to nonhumans, which is the point in question.

A further logical flaw arises in connection with the widely held conviction that humans are *morally* superior beings because they possess, while others lack, the capacities of a moral agent (free will, accountability, deliberation, judgment, practical reason). This view rests on a conceptual confusion. As far as moral standards are concerned, only beings that have the capacities of a moral agent can properly be judged to be *either* moral (morally good) *or* immoral (morally deficient). Moral standards are simply not applicable to beings that lack such capacities. Animals and plants cannot therefore be said to be morally inferior in merit to humans. Since the only beings that can have moral merits *or be deficient in such merits* are moral agents, it is conceptually incoherent to judge humans as superior to nonhumans on the ground that humans have moral capacities while nonhumans don't.

Up to this point I have been interpreting the claim that humans are superior to other living things as a grading or ranking judgment regarding their comparative merits. There is, however, another way of understanding the idea of human superiority. According to this interpretation, humans are superior to nonhumans not as regards their merits but as regards their inherent worth. Thus the claim of human superiority is to be understood as asserting that all humans, simply in virtue of their humanity, have a *greater inherent worth* than other living things.

The inherent worth of an entity does not depend on its merits.¹ To consider something as possessing inherent worth, we have seen, is to place intrinsic value on the realization of its good. This is done regardless of whatever particular merits it might have or might lack, as judged by a set of grading or ranking standards. In human affairs, we are all familiar with the principle that one's worth as a person does not vary with one's merits or lack of merits. The same can hold true of animals and plants. To regard such entities as possessing inherent worth entails disregarding their merits and deficiencies, whether they are being judged from a human standpoint or from the standpoint of their own species.

The idea of one entity having more merit than another, and so being superior to it in merit, makes perfectly good sense. Merit is a grading or ranking concept, and judgments of comparative merit are based on the different degrees to which things satisfy a given standard. But what can it mean to talk about one thing being superior to another in inherent worth?...

The vast majority of people in modern democracies . . . do not maintain an egalitarian outlook when it comes to comparing human beings with other living things. Most people consider our own species to be superior to all other species and this superiority is understood to be a matter of inherent worth, not merit. There may exist thoroughly vicious and depraved humans who lack all merit. Yet because they are human they are thought to belong to a higher class of entities than any plant or animal. That one is born into the species *Homo sapiens* entitles one to have lordship over those who are one's inferiors, namely, those born into other species. The parallel with hereditary social classes is very close. Implicit in this view is a hierarchical conception of nature according to which an organism has a position of superiority or inferiority in the Earth's community of life simply on the basis of its genetic background. The "lower" orders of life are looked down upon and it is considered perfectly proper that they serve the interests of those belonging to the highest order, namely humans. The intrinsic value we place on the well-being of our fellow humans reflects our recognition of their rightful position as our equals. No such intrinsic value is to be placed

on the good of other animals, unless we choose to do so out of fondness or affection for them. But their well-being imposes no moral requirement on us. In this respect there is an absolute difference in moral status between ourselves and them.

This is the structure of concepts and beliefs that people are committed to insofar as they regard humans to be superior in inherent worth to all other species. I now wish to argue that this structure of concepts and beliefs is completely groundless. If we accept the first three components of the biocentric outlook and from that perspective look at the major philosophical traditions which have supported that structure, we find it to be at bottom nothing more than the expression of an irrational bias in our own favor. The philosophical traditions themselves rest on very questionable assumptions or else simply beg the question. I briefly consider three of the main traditions to substantiate the point. These are classical Greek humanism, Cartesian dualism, and the Judeo-Christian concept of the Great Chain of Being.

The inherent superiority of humans over other species was implicit in the Greek definition of man as a rational animal. Our animal nature was identified with “brute” desires that need the order and restraint of reason to rule them (just as reason is the special virtue of those who rule in the ideal state). Rationality was then seen to be the key to our superiority over animals. It enables us to live on a higher plane and endows us with a nobility and worth that other creatures lack. This familiar way of comparing humans with other species is deeply ingrained in our Western philosophical outlook. The point to consider here is that this view does not actually provide an argument *for* human superiority but rather makes explicit the framework of thought that is implicitly used by those who think of humans as inherently superior to nonhumans. The Greeks who held that humans, in virtue of their rational capacities, have a kind of worth greater than that of any nonrational being, never looked at rationality as but one capacity of living things among many others. But when we consider rationality from the standpoint of the first three elements of the ecological outlook, we see that its value lies in its importance for *human* life. Other creatures achieve their species-specific

good without the need of rationality, although they often make use of capacities that humans lack. So the humanistic outlook of classical Greek thought does not give us a neutral (nonquestion-begging) ground on which to construct a scale of degrees of inherent worth possessed by different species of living things.

The second tradition, centering on the Cartesian dualism of soul and body, also fails to justify the claim to human superiority. That superiority is supposed to derive from the fact that we have souls while animals do not. Animals are mere automata and lack the divine element that makes us spiritual beings. I won’t go into the now familiar criticisms of this two-substance view. I only add the point that, even if humans are composed of an immaterial, unextended soul and a material, extended body, this in itself is not a reason to deem them of greater worth than entities that are only bodies. Why is a soul substance a thing that adds value to its possessor? Unless some theological reasoning is offered here (which many, including myself, would find unacceptable on epistemological grounds), no logical connection is evident. An immaterial something which thinks is better than a material something which does not think only if thinking itself has value, either intrinsically or instrumentally. Now it is intrinsically valuable to humans alone, who value it as an end in itself, and it is instrumentally valuable to those who benefit from it, namely humans.

For animals that neither enjoy thinking for its own sake nor need it for living the kind of life for which they are best adapted, it has no value. Even if “thinking” is broadened to include all forms of consciousness, there are still many living things that can do without it and yet live what is for their species a good life. The anthropocentricity underlying the claim to human superiority runs throughout Cartesian dualism.

A third major source of the idea of human superiority is the Judeo-Christian concept of the Great Chain of Being. Humans are superior to animals and plants because their Creator has given them a higher place on the chain. It begins with God at the top, and then moves to the angels, who are lower than God but higher than humans, then to humans, positioned between the angels and the

beasts (partaking of the nature of both), and then on down to the lower levels occupied by nonhuman animals, plants, and finally inanimate objects. Humans, being “made in God’s image,” are inherently superior to animals and plants by virtue of their being closer (in their essential nature) to God.

The metaphysical and epistemological difficulties with this conception of a hierarchy of entities are, in my mind, insuperable. Without entering into this matter here, I only point out that if we are unwilling to accept the metaphysics of traditional Judaism and Christianity, we are again left without good reasons for holding to the claim of inherent human superiority.

The foregoing considerations (and others like them) leave us with but one ground for the assertion that a human being, regardless of merit, is a higher kind of entity than any other living thing. This is the mere fact of the genetic makeup of the species *Homo sapiens*. But this is surely irrational and arbitrary. Why should the arrangement of genes of a certain type be a mark of superior value, especially when this fact about an organism is taken by itself, unrelated to any other aspect of its life? We might just as well refer to any other genetic makeup as a ground of superior value. Clearly we are confronted here with a wholly arbitrary claim that can only be explained as an irrational bias in our own favor.

That the claim is nothing more than a deep-seated prejudice is brought home to us when we look at our relation to other species in the light of the first three elements of the biocentric outlook. Those elements taken conjointly give us a certain overall view of the natural world and of the place of humans in it. When we take this view we come to understand other living things, their environmental conditions, and their ecological relationships in such a way as to awake in us a deep sense of our kinship with them as fellow members of the Earth’s community of life. Humans and nonhumans alike are viewed together as integral parts of one unified whole in which all living things are functionally interrelated. Finally, when our awareness focuses on the individual lives of plants and animals, each is seen to share with us the characteristic of being a teleological center of life striving to realize its own good in its own unique way.

As this entire belief system becomes part of the conceptual framework through which we understand and perceive the world, we come to see ourselves as bearing a certain moral relation to nonhuman forms of life. Our ethical role in nature takes on a new significance. We begin to look at other species as we look at ourselves, seeing them as beings which have a good they are striving to realize just as we have a good we are striving to realize. We accordingly develop the disposition to view the world from the standpoint of their good as well as from the standpoint of our own good. Now if the groundlessness of the claim that humans are inherently superior to other species were brought clearly before our minds, we would not remain intellectually neutral toward that claim but would reject it as being fundamentally at variance with our total world outlook. In the absence of any good reasons for holding it, the assertion of human superiority would then appear simply as the expression of an irrational and self-serving prejudice that favors one particular species over several million others.

Rejecting the notion of human superiority entails its positive counterpart: the doctrine of species impartiality. One who accepts that doctrine regards all living things as possessing inherent worth—the *same* inherent worth, since no one species has been shown to be either “higher” or “lower” than any other. Now we saw earlier that, insofar as one thinks of a living thing as possessing inherent worth, one considers it to be the appropriate object of the attitude of respect and believes that attitude to be the only fitting or suitable one for all moral agents to take toward it.

Here, then, is the key to understanding how the attitude of respect is rooted in the biocentric outlook of nature. The basic connection is made through the denial of human superiority. Once we reject the claim that humans are superior either in merit or in worth to other living things, we are ready to adopt the attitude of respect. The denial of human superiority is itself the result of taking the perspective on nature built into the first three elements of the biocentric outlook.

Now the first three elements of the biocentric outlook, it seems clear, would be found acceptable

to any rational and scientifically informed thinker who is fully “open” to the reality of the lives of non-human organisms. Without denying our distinctively human characteristics, such a thinker can acknowledge the fundamental respects in which we are members of the Earth’s community of life and in which the biological conditions necessary for the realization of our human values are inextricably linked with the whole system of nature. In addition, the conception of individual living things as teleological centers of life simply articulates how a scientifically informed thinker comes to understand them as the result of increasingly careful and detailed observations. Thus, the biocentric outlook recommends itself as an acceptable system of concepts and beliefs to anyone who is clear-minded, unbiased, and factually enlightened, and who has a developed capacity of reality awareness with regard to the lives of individual organisms. This, I submit, is as good a reason for making the moral commitment involved in adopting the attitude of respect for nature as any theory of environmental ethics could possibly have.

MORAL RIGHTS AND THE MATTER OF COMPETING CLAIMS

I have not asserted anywhere in the foregoing account that animals or plants have moral rights. This omission was deliberate. I do not think that the reference class of the concept, bearer of moral rights, should be extended to include nonhuman living things. My reasons for taking this position, however, go beyond the scope of this paper. I believe I have been able to accomplish many of the same ends which those who ascribe rights to animals or plants wish to accomplish. There is no reason, moreover, why plants and animals, including whole species populations and life communities, cannot be accorded *legal* rights under my theory. To grant them legal protection could be interpreted as giving them legal entitlement to be protected, and this, in fact, would be a means by which a society that subscribed to the ethics of respect for nature could give public recognition to their inherent worth.

There remains the problem of competing claims, even when wild plants and animals are not thought of as bearers of moral rights. If we accept the

biocentric outlook and accordingly adopt the attitude of respect for nature as our ultimate moral attitude, how do we resolve conflicts that arise from our respect for persons in the domain of human ethics and our respect for nature in the domain of environmental ethics? This is a question that cannot adequately be dealt with here. My main purpose in this paper has been to try to establish a base point from which we can start working toward a solution to the problem. I have shown why we cannot just begin with an initial presumption in favor of the interests of our own species. It is after all within our power as moral beings to place limits on human population and technology with the deliberate intention of sharing the Earth’s bounty with other species. That such sharing is an ideal difficult to realize even in an approximate way does not take away its claim to our deepest moral commitment.

NOTE

- 1 For this way of distinguishing between merit and inherent worth, I am indebted to Gregory Vlastos, “Justice and Equality,” in R. Brandt, ed., *Social Justice* (Englewood Cliffs, N.J.: Prentice-Hall, 1962), pp. 31–72.

Paul Taylor: The Ethics of Respect for Nature

1. In what sense is Taylor’s view “life-centered”? How does his view differ from anthropocentric views?
2. What does it mean to say that an entity has “a good of its own”? Which entities does Taylor think have goods of their own? Do you agree with him on this?
3. What is the difference, according to Taylor, between merit and worth? Which does he think is important to determining whether an entity is morally considerable? Do you agree with him?
4. One reason people have given for thinking that humans are morally considerable while animals are not is that only humans are *rational*. How does Taylor respond to this line of argument? Do you find his response persuasive?
5. Taylor claims that the view that humans are morally superior to animals is “an irrational bias in our own favor.” How does he argue for this claim? Is his argument a good one?

Ideals of Human Excellence and Preserving Natural Environments

Thomas Hill, Jr.

According to Thomas Hill, Jr., the standard moral theories have difficulty explaining what is wrong with the destruction of the environment. Utilitarianism runs into trouble, because it is possible that overall happiness is maximized when cutting down a virgin forest or bulldozing a field to make way for suburban homes. Kantian and rights-based moral theories have just as much trouble here, because it is very difficult to defend the idea that plants or ecosystems—incapable of reasoning, asserting claims, or even feeling anything—are possessed of rights. Contractarian theories are just as vulnerable on this score. If our basic duties are owed only to our fellow members of the social contract, then plants and ecosystems will again be left out in the cold.

These concerns lead Hill to consider an alternative way of understanding our ethical relations with the environment. Rather than focusing on the question of whether we have any duties directly toward the environment, Hill invites us to consider a virtue ethical approach, which places primary emphasis on the sort of person we should try to become. He argues that those who fail to treat the environment with respect are almost certainly going to be less than fully virtuous. They will fail to be admirable in a number of ways, and will exemplify a variety of vices. In particular, those who are indifferent to the value of nature will almost certainly be ignorant and self-important. They will lack proper humility, and will either fail to have a well-developed sense of beauty, or will be insufficiently grateful for the good things in life. Thus even if we can't defend the claim that nature has rights, or that we owe nature anything, there is still excellent reason to respect and preserve natural environments. For if we don't, we will fall short of plausible ideals of human excellence.

A wealthy eccentric bought a house in a neighborhood I know. The house was surrounded by a beautiful display of grass, plants, and flowers, and it was shaded by a huge old avocado tree. But the grass required cutting, the flowers needed tending, and the man wanted more sun. So he cut the whole lot down and covered the yard with asphalt. After all it was his property and he was not fond of plants.

It was a small operation, but it reminded me of the strip mining of large sections of the Appalachians. In both cases, of course, there were

reasons for the destruction, and property rights could be cited as justification. But I could not help but wonder, "What sort of person would do a thing like that?"

Many Californians had a similar reaction when a recent governor defended the leveling of ancient redwood groves, reportedly saying, "If you have seen one redwood, you have seen them all."

Incidents like these arouse the indignation of ardent environmentalists and leave even apolitical observers with some degree of moral discomfort. The reasons for these reactions are mostly obvious. Uprooting the natural environment robs both present and future generations of much potential use and enjoyment. Animals too depend on the environment; and even if one does not value animals

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for their own sakes, their potential utility for us is incalculable. Plants are needed, of course, to replenish the atmosphere quite aside from their aesthetic value. These reasons for hesitating to destroy forests and gardens are not only the most obvious ones, but also the most persuasive for practical purposes. But, one wonders, is there nothing more behind our discomfort? Are we concerned solely about the potential use and enjoyment of the forests, etc., for ourselves, later generations, and perhaps animals? Is there not something else which disturbs us when we witness the destruction or even listen to those who would defend it in terms of cost/benefit analysis?

Imagine that in each of our examples those who would destroy the environment argue elaborately that, even considering future generations of human beings and animals, there are benefits in “replacing” the natural environment which outweigh the negative utilities which environmentalists cite. No doubt we could press the argument on the facts, trying to show that the destruction is shortsighted and that its defenders have underestimated its potential harm or ignored some pertinent rights or interests. But is this all we could say? Suppose we grant, for a moment, that the utility of destroying the redwoods, forests, and gardens is equal to their potential for use and enjoyment by nature lovers and animals. Suppose, further, that we even grant that the pertinent human rights and animal rights, if any, are evenly divided for and against destruction. Imagine that we also concede, for argument’s sake, that the forests contain no potentially useful endangered species of animals and plants. Must we then conclude that there is no further cause for moral concern? Should we then feel morally indifferent when we see the natural environment uprooted?

II

Suppose we feel that the answer to these questions should be negative. Suppose, in other words, we feel that our moral discomfort when we confront the destroyers of nature is not fully explained by our belief that they have miscalculated the best use of natural resources or violated rights in exploiting them. Suppose, in particular, we sense that part of the problem is that the natural environment is

being viewed exclusively as a natural resource. What could be the ground of such a feeling? That is, what is there in our system of normative principles and values that could account for our remaining moral dissatisfaction?

Some may be tempted to seek an explanation by appeal to the interests, or even the rights, of plants. After all, they may argue, we only gradually came to acknowledge the moral importance of all human beings, and it is even more recently that consciences have been aroused to give full weight to the welfare (and rights?) of animals. The next logical step, it may be argued, is to acknowledge a moral requirement to take into account the interests (and rights?) of plants. The problem with the strip miners, redwood cutters, and the like, on this view, is not just that they ignore the welfare and rights of people and animals: they also fail to give due weight to the survival and health of the plants themselves.

The temptation to make such a reply is understandable if one assumes that all moral questions are exclusively concerned with whether *acts* are right or wrong, and that this, in turn, is determined entirely by how the acts impinge on the rights and interests of those directly affected. On this assumption, if there is cause for moral concern, some right or interest has been neglected; and if the rights and interests of human beings and animals have already been taken into account, then there must be some other pertinent interests, for example, those of plants. A little reflection will show that the assumption is mistaken; but, in any case, the conclusion that plants have rights or morally relevant interests is surely untenable. We do speak of what is “good for” plants, and they can “thrive” and also be “killed.” But this does not imply that they have “interests” in any morally relevant sense. Some people apparently believe that plants grow better if we talk to them, but the idea that the plants suffer and enjoy, desire and dislike, etc., is clearly outside the range of both common sense and scientific belief. The notion that the forests should be preserved to avoid *hurting* the trees or because they have a *right* to life is not part of a widely shared moral consciousness, and for good reason.

Another way of trying to explain our moral discomfort is to appeal to certain religious beliefs.

If one believes that all living things were created by a God who cares for them and entrusted us with the use of plants and animals only for limited purposes, then one has a reason to avoid careless destruction of the forests, etc., quite aside from their future utility. Again, if one believes that a divine force is immanent in all nature, then too one might have reason to care for more than sentient things. But such arguments require strong and controversial premises, and, I suspect, they will always have a restricted audience.

Early in this century, due largely to the influence of G. E. Moore, another point of view developed which some may find promising.¹ Moore introduced, or at least made popular, the idea that certain states of affairs are intrinsically valuable—not just valued, but valuable, and not necessarily because of their effects on sentient beings. . . . The intrinsic goodness of something, he thought, was an objective, nonrelational property of the thing, like its texture or color, but not a property perceptible by sense perception or detectable by scientific instruments. In theory at least, a single tree thriving alone in a universe without sentient beings, and even without God, could be intrinsically valuable. . . . The survival of a forest might have worth beyond its worth to sentient beings.

Even if we try to . . . think in Moore's terms, it is far from obvious that everyone would agree that the existence of forests, etc., is intrinsically valuable. The test, says Moore, is what we would say when we imagine a universe with just the thing in question, without any effects or accompaniments, and then we ask, "Would its existence be better than its non-existence?" Be careful, Moore would remind us, not to construe this question as, "Would you *prefer* the existence of that universe to its nonexistence?" The question is, "Would its existence have the objective, nonrelational property, intrinsic goodness?"

Now even among those who have no worries about whether this really makes sense, we might well get a diversity of answers. Those prone to destroy natural environments will doubtless give one answer, and nature lovers will likely give another. When an issue is as controversial as the one at hand, intuition is a poor arbiter.

The problem, then, is this. We want to understand what underlies our moral uneasiness at the

destruction of the redwoods, forests, etc., even apart from the loss of these as resources for human beings and animals. But I find no adequate answer by pursuing the questions, "Are rights or interests of plants neglected?" "What is God's will on the matter?" and "What is the intrinsic value of the existence of a tree or forest?" My suggestion, which is in fact the main point of this paper, is that we look at the problem from a different perspective. That is, let us turn for a while from the effort to find reasons why certain *acts* destructive of natural environments are morally wrong to the ancient task of articulating our ideals of human excellence. Rather than argue directly with destroyers of the environment who say, "Show me why what I am doing is *immoral*," I want to ask, "What sort of person would want to do what they propose?" The point is not to skirt the issue with an *ad hominem*, but to raise a different moral question, for even if there is no convincing way to show that the destructive acts are wrong (independently of human and animal use and enjoyment), we may find that the willingness to indulge in them reflects the absence of human traits that we admire and regard as morally important.

This strategy of shifting questions may seem more promising if one reflects on certain analogous situations. Consider, for example, the Nazi who asks, in all seriousness, "Why is it wrong for me to make lampshades out of human skin—provided, of course, I did not myself kill the victims to get the skins?" We would react more with shock and disgust than with indignation, I suspect, because it is even more evident that the question reveals a defect in the questioner than that the proposed act is itself immoral. Sometimes we may not regard an act wrong at all though we see it as reflecting something objectionable about the person who does it. Imagine, for example, one who laughs spontaneously to himself when he reads a newspaper account of a plane crash that kills hundreds. Or, again, consider an obsequious grandson who, having waited for his grandmother's inheritance with mock devotion, then secretly spits on her grave when at last she dies. Spitting on the grave may have no adverse consequences and perhaps it violates no rights. The moral uneasiness which it arouses is explained more by our view of the agent than by any

conviction that what he did was immoral. Had he hesitated and asked, "Why shouldn't I spit on her grave?" it seems more fitting to ask him to reflect on the sort of person he is than to try to offer reasons why he should refrain from spitting.

III

What sort of person, then, would cover his garden with asphalt, strip mine a wooded mountain, or level an irreplaceable redwood grove? Two sorts of answers, though initially appealing, must be ruled out. The first is that persons who would destroy the environment in these ways are either shortsighted, underestimating the harm they do, or else are too little concerned for the well-being of other people. Perhaps too they have insufficient regard for animal life. But these considerations have been set aside in order to refine the controversy. Another tempting response might be that we count it a moral virtue, or at least a human ideal, to love nature. Those who value the environment only for its utility must not really love nature and so in this way fall short of an ideal. But such an answer is hardly satisfying in the present context, for what is at issue is *why* we feel moral discomfort at the activities of those who admittedly value nature only for its utility. That it is ideal to care for nonsentient nature beyond its possible use is really just another way of expressing the general point which is under controversy.

What is needed is some way of showing that this ideal is connected with other virtues, or human excellences, not in question. To do so is difficult and my suggestions, accordingly, will be tentative and subject to qualification. The main idea is that, though indifference to nonsentient nature does not *necessarily* reflect the absence of virtues, it often signals the absence of certain traits which we want to encourage because they are, in most cases, a natural basis for the development of certain virtues. It is often thought, for example, that those who would destroy the natural environment must lack a proper appreciation of their place in the natural order, and so must either be ignorant or have too little humility. Though I would argue that this is not necessarily so, I suggest that, given certain plausible empirical assumptions, their attitude may well be rooted in ignorance, a narrow perspective, inability to see

things as important apart from themselves and the limited groups they associate with, or reluctance to accept themselves as natural beings. Overcoming these deficiencies will not guarantee a proper moral humility, but for most of us it is probably an important psychological preliminary. Later I suggest, more briefly, that indifference to nonsentient nature typically reveals absence of either aesthetic sensibility or a disposition to cherish what has enriched one's life and that these, though not themselves moral virtues, are a natural basis for appreciation of the good in others and gratitude.

Consider first the suggestion that destroyers of the environment lack an appreciation of their place in the universe. Their attention, it seems, must be focused on parochial matters, on what is, relatively speaking, close in space and time. They seem not to understand that we are a speck on the cosmic scene, a brief stage in the evolutionary process, only one among millions of species on Earth, and an episode in the course of human history. Of course, they know that there are stars, fossils, insects, and ancient ruins; but do they have any idea of the complexity of the processes that led to the natural world as we find it? Are they aware how much the forces at work within their own bodies are like those which govern all living things and even how much they have in common with inanimate bodies? Admittedly scientific knowledge is limited and no one can master it all; but could one who had a broad and deep understanding of his place in nature really be indifferent to the destruction of the natural environment?

This first suggestion, however, may well provoke a protest from a sophisticated anti-environmentalist. "Perhaps *some* may be indifferent to nature from ignorance," the critic may object, "but I have studied astronomy, geology, biology, and biochemistry, and I still unashamedly regard the nonsentient environment as simply a resource for our use. It should not be wasted, of course, but what should be preserved is decidable by weighing long-term costs and benefits." "Besides," our critic may continue, "as philosophers you should know the old Humean formula, 'You cannot derive an *ought* from an *is*.' All the facts of biology, biochemistry, etc., do not entail that I ought to love nature or want to preserve it. What one understands is one thing; what one values is

something else. Just as nature lovers are not necessarily scientists, those indifferent to nature are not necessarily ignorant.”

Although the environmentalist may concede the critic’s logical point, he may well argue that, as a matter of fact, increased understanding of nature tends to heighten people’s concern for its preservation. If so, despite the objection, the suspicion that the destroyers of the environment lack deep understanding of nature is not, in most cases, unwarranted, but the argument need not rest here.

The environmentalist might amplify his original idea as follows: “When I said that the destroyers of nature do not appreciate their place in the universe, I was not speaking of intellectual understanding alone, for, after all, a person can *know* a catalog of facts without ever putting them together and seeing vividly the whole picture which they form. To see oneself as just one part of nature is to look at oneself and the world from a certain perspective which is quite different from being able to recite detailed information from the natural sciences. What the destroyers of nature lack is this perspective, not particular information.”

Again our critic may object, though only after making some concessions: “All right,” he may say, “*some* who are indifferent to nature may lack the cosmic perspective of which you speak, but again there is no *necessary* connection between this failing, if it is one, and any particular evaluative attitude toward nature. In fact, different people respond quite differently when they move to a wider perspective. When I try to picture myself vividly as a brief, transitory episode in the course of nature, I simply get depressed. Far from inspiring me with a love of nature, the exercise makes me sad and hostile. . . .” In sum, the critic may object, “Even if one should try to see oneself as one small transitory part of nature, doing so does not dictate any particular normative attitude. Some may come to love nature, but others are moved to live for the moment; some sink into sad resignation; others get depressed or angry. So indifference to nature is not necessarily a sign that a person fails to look at himself from the larger perspective.”

The environmentalist might respond to this objection in several ways. He might, for example, argue that even though some people who see themselves as part of the natural order remain indifferent

to nonsentient nature, this is not a common reaction. Typically, it may be argued, as we become more and more aware that we are parts of the larger whole we come to value the whole independently of its effect on ourselves. Thus, despite the possibilities the critic raises, indifference to nonsentient nature is still in most cases a sign that a person fails to see himself as part of the natural order.

If someone challenges the empirical assumption here, the environmentalist might develop the argument along a quite different line. The initial idea, he may remind us, was that those who would destroy the natural environment fail to *appreciate* their place in the natural order. “Appreciating one’s place” is not simply an intellectual appreciation. It is also an attitude, reflecting what one values as well as what one knows. When we say, for example, that both the servile and the arrogant person fail to *appreciate* their place in a society of equals, we do not mean simply that they are ignorant of certain empirical facts, but rather that they have certain objectionable attitudes about their importance relative to other people. Similarly, to fail to appreciate one’s place in nature is not merely to lack knowledge or breadth of perspective, but to take a certain attitude about what matters. A person who *understands* his place in nature but still views nonsentient nature merely as a resource takes the attitude that nothing is *important* but human beings and animals. Despite first appearances, he is not so much like the pre-Copernican astronomers who made the intellectual error of treating the Earth as the “center of the universe” when they made their calculations. He is more like the racist who, though well aware of other races, treats all races but his own as insignificant.

So construed, the argument appeals to the common idea that awareness of nature typically has, and should have, a humbling effect. The Alps, a storm at sea, the Grand Canyon, towering redwoods, and “the starry heavens above” move many a person to remark on the comparative insignificance of our daily concerns and even of our species, and this is generally taken to be a quite fitting response. What seems to be missing, then, in those who understand nature but remain unmoved is a proper humility.² Absence of proper humility

is not the same as selfishness or egoism, for one can be devoted to self-interest while still viewing one's own pleasures and projects as trivial and unimportant. And one can have an exaggerated view of one's own importance while grandly sacrificing for those one views as inferior. Nor is the lack of humility identical with belief that one has power and influence, for a person can be quite puffed up about himself while believing that the foolish world will never acknowledge him. The humility we miss seems not so much a belief about one's relative effectiveness and recognition as an attitude which measures the importance of things independently of their relation to oneself or to some narrow group with which one identifies. A paradigm of a person who lacks humility is the self-important emperor who grants status to his family because it is *his*, to his subordinates because *he* appointed them, and to his country because *he* chooses to glorify it. Less extreme but still lacking proper humility is the elitist who counts events significant solely in proportion to how they affect his class. The suspicion about those who would destroy the environment, then, is that what they count important is too narrowly confined insofar as it encompasses only what affects beings who, like us, are capable of feeling.

This idea that proper humility requires recognition of the importance of nonsentient nature is similar to the thought of those who charge meat eaters with "species-ism." In both cases it is felt that people too narrowly confine their concerns to the sorts of beings that are most like them. But, however intuitively appealing, the idea will surely arouse objections from our nonenvironmentalist critic. "Why," he will ask, "do you suppose that the sort of humility I *should* have requires me to acknowledge the importance of nonsentient nature aside from its utility? You cannot, by your own admission, argue that nonsentient nature *is* important, appealing to religious or intuitionist grounds. And simply to assert, without further argument, that an ideal humility requires us to view nonsentient nature as important for its own sake begs the question at issue. If proper humility is acknowledging the relative importance of things as one should, then to show that I must lack this you must first establish that one *should* acknowledge the importance of nonsentient nature."

Though some may wish to accept this challenge, there are other ways to pursue the connection between humility and response to nonsentient nature. For example, suppose we grant that proper humility requires only acknowledging a due status to sentient beings. We must admit, then, that it is logically possible for a person to be properly humble even though he viewed all nonsentient nature simply as a resource. But this logical possibility may be a psychological rarity. It may be that, given the sort of beings we are, we would never learn humility before persons without developing the general capacity to cherish, and regard important, many things for their own sakes. The major obstacle to humility before persons is self-importance, a tendency to measure the significance of everything by its relation to oneself and those with whom one identifies. The processes by which we overcome self-importance are doubtless many and complex, but it seems unlikely that they are exclusively concerned with how we relate to other people and animals. Learning humility requires learning to feel that something matters besides what will affect oneself and one's circle of associates. What leads a child to care about what happens to a lost hamster or a stray dog he will not see again is likely also to generate concern for a lost toy or a favorite tree where he used to live. Learning to value things for their own sake, and to count what affects them important aside from their utility, . . . is necessary to the development of humility and it seems likely to take place in experiences with nonsentient nature as well as with people and animals. If a person views all nonsentient nature merely as a resource, then it seems unlikely that he has developed the capacity needed to overcome self-importance.

IV

This last argument, unfortunately, has its limits. It presupposes an empirical connection between experiencing nature and overcoming self-importance, and this may be challenged. Even if experiencing nature promotes humility before others, there may be other ways people can develop such humility in a world of concrete, glass, and plastic. If not, perhaps all that is needed is limited experience of nature in one's early, developing years; mature adults, having overcome youthful self-importance, may live well

enough in artificial surroundings. More importantly, the argument does not fully capture the spirit of the intuition that an ideal person stands humbly before nature. That idea is not simply that experiencing nature tends to foster proper humility before other people; it is, in part, that natural surroundings encourage and are appropriate to an ideal sense of oneself as part of the natural world. Standing alone in the forest, after months in the city, is not merely good as a means of curbing one's arrogance before others; it reinforces and fittingly expresses one's acceptance of oneself as a natural being.

Previously we considered only one aspect of proper humility, namely, a sense of one's relative importance with respect to other human beings. Another aspect, I think, is a kind of *self-acceptance*. This involves acknowledging, in more than a merely intellectual way, that we are the sort of creatures that we are. Whether one is self-accepting is not so much a matter of how one attributes *importance* comparatively to oneself, other people, animals, plants, and other things as it is a matter of understanding, facing squarely, and responding appropriately to who and what one is, e.g., one's powers and limits, one's affinities with other beings and differences from them, one's unalterable nature and one's freedom to change. Self-acceptance is not merely intellectual awareness, for one can be intellectually aware that one is growing old and will eventually die while nevertheless behaving in a thousand foolish ways that reflect a refusal to acknowledge these facts. On the other hand, self-acceptance is not passive resignation, for refusal to pursue what one truly wants within one's limits is a failure to accept the freedom and power one has. Particular behaviors, like dying one's gray hair and dressing like those twenty years younger, do not *necessarily* imply lack of self-acceptance, for there could be reasons for acting in these ways other than the wish to hide from oneself what one really is. One fails to accept oneself when the patterns of behavior and emotion are rooted in a desire to disown and deny features of oneself, to pretend to oneself that they are not there. This is not to say that a self-accepting person makes no value judgments about himself, that he likes all facts about himself, wants equally to develop and display them; he can, and should feel remorse for his

past misdeeds and strive to change his current vices. The point is that he does not disown them, pretend that they do not exist or are facts about something other than himself. Such pretense is incompatible with proper humility because it is seeing oneself as better than one is.

Self-acceptance of this sort has long been considered a human excellence, under various names, but what has it to do with preserving nature? There is, I think, the following connection. As human beings we are part of nature, living, growing, declining, and dying by natural laws similar to those governing other living beings; despite our awesomely distinctive human powers, we share many of the needs, limits, and liabilities of animals and plants. These facts are neither good nor bad in themselves, aside from personal preference and varying conventional values. To say this is to utter a truism which few will deny, but to accept these facts, as facts about oneself, is not so easy—or so common. Much of what naturalists deplore about our increasingly artificial world reflects, and encourages, a denial of these facts, an unwillingness to avow them with equanimity. . . .

My suggestion is not merely that experiencing nature causally promotes such self-acceptance, but also that those who fully accept themselves as part of the natural world lack the common drive to disassociate themselves from nature by replacing natural environments with artificial ones. A storm in the wilds helps us to appreciate our animal vulnerability, but, equally important, the reluctance to experience it may reflect an unwillingness to accept this aspect of ourselves. The person who is too ready to destroy the ancient redwoods may lack humility, not so much in the sense that he exaggerates his importance relative to others, but rather in the sense that he tries to avoid seeing himself as one among many natural creatures.

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My suggestion so far has been that, though indifference to nonsentient nature is not itself a moral vice, it is likely to reflect either ignorance, a self-importance, or a lack of self-acceptance which we must overcome to have proper humility. A similar idea might be developed connecting attitudes

toward nonsentient nature with other human excellences. For example, one might argue that indifference to nature reveals a lack of either an aesthetic sense or some of the natural roots of gratitude.

When we see a hillside that has been gutted by strip miners or the garden replaced by asphalt, our first reaction is probably, "How ugly!" The scenes assault our aesthetic sensibilities. We suspect that no one with a keen sense of beauty could have left such a sight. Admittedly not everything in nature strikes us as beautiful, or even aesthetically interesting, and sometimes a natural scene is replaced with a more impressive architectural masterpiece. But this is not usually the situation in the problem cases which environmentalists are most concerned about. More often beauty is replaced with ugliness.

At this point our critic may well object that, even if he does lack a sense of beauty, this is no moral vice. His cost/benefit calculations take into account the pleasure others may derive from seeing the forests, etc., and so why should he be faulted?

Some might reply that, despite contrary philosophical traditions, aesthetics and morality are not so distinct as commonly supposed. Appreciation of beauty, they may argue, is a human excellence which morally ideal persons should try to develop. But, setting aside this controversial position, there still may be cause for moral concern about those who have no aesthetic response to nature. Even if aesthetic sensibility is not itself a moral virtue, many of the capacities of mind and heart which it presupposes may be ones which are also needed for an appreciation of other people. Consider, for example, curiosity, a mind open to novelty, the ability to look at things from unfamiliar perspectives, empathetic imagination, interest in details, variety, and order, and emotional freedom from the immediate and the practical. All these, and more, seem necessary to aesthetic sensibility, but they are also traits which a person needs to be fully sensitive to people of all sorts. The point is not that a moral person must be able to distinguish beautiful from ugly people; the point is rather that unresponsiveness to what is beautiful, awesome, dainty, dumpy, and otherwise aesthetically interesting in nature probably reflects a lack of the openness of mind and spirit necessary to appreciate the best in human beings.

The anti-environmentalist, however, may refuse to accept the charge that he lacks aesthetic sensibility. If he claims to appreciate seventeenth-century miniature portraits, but to abhor natural wildernesses, he will hardly be convincing. Tastes vary, but aesthetic sense is not *that* selective. He may, instead, insist that he *does* appreciate natural beauty. He spends his vacations, let us suppose, hiking in the Sierras, photographing wildflowers, and so on. He might press his argument as follows: "I enjoy natural beauty as much as anyone, but I fail to see what this has to do with preserving the environment independently of human enjoyment and use. Nonsentient nature is a resource, but one of its best uses is to give us pleasure. I take this into account when I calculate the costs and benefits of preserving a park, planting a garden, and so on. But the problem you raised explicitly set aside the desire to preserve nature as a means to enjoyment. I say, let us enjoy nature fully while we can, but if all sentient beings were to die tomorrow, we might as well blow up all plant life as well. A redwood grove that no one can use or enjoy is utterly worthless."

The attitude expressed here, I suspect, is not a common one, but it represents a philosophical challenge. The beginnings of a reply may be found in the following. When a person takes joy in something, it is a common (and perhaps natural) response to come to cherish it. To cherish something is not simply to be happy with it at the moment, but to care for it for its own sake. This is not to say that one necessarily sees it as having feelings and so wants it to feel good; nor does it imply that one judges the thing to have Moore's intrinsic value. One simply wants the thing to survive and (when appropriate) to thrive, and not simply for its utility. We see this attitude repeatedly regarding mementos. They are not simply valued as a means to remind us of happy occasions; they come to be valued for their own sake. Thus, if someone really took joy in the natural environment, but was prepared to blow it up as soon as sentient life ended, he would lack this common human tendency to cherish what enriches our lives. While this response is not itself a moral virtue, it may be a natural basis of the virtue we call "gratitude." People who have no tendency to cherish things that give them pleasure may be poorly disposed to respond gratefully to persons who are good

to them. Again the connection is not one of logical necessity, but it may nevertheless be important. A nonreligious person unable to “thank” anyone for the beauties of nature may nevertheless feel “grateful” in a sense; and I suspect that the person who feels no such “gratitude” toward nature is unlikely to show proper gratitude toward people.

Suppose these conjectures prove to be true. One may wonder what is the point of considering them. Is it to disparage all those who view nature merely as a resource? To do so, it seems, would be unfair, for, even if this attitude typically stems from deficiencies which affect one’s attitudes toward sentient beings, there may be exceptions and we have not shown that their view of nonsentient nature is itself blameworthy. But when we set aside questions of blame and inquire what sorts of human traits we want to encourage, our reflections become relevant in a more positive way. The point is not to insinuate that all anti-environmentalists are defective, but to see that those who value such traits as humility, gratitude, and sensitivity to others have reason to promote the love of nature.

NOTES

1. G. E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1903); *Ethics* (London: H. Holt, 1912).
2. By “proper humility” I mean that sort and degree of humility that is a morally admirable character trait. How precisely to define this is, of course,

a controversial matter; but the point for present purposes is just to set aside obsequiousness, false modesty, underestimation of one’s abilities, and the like.

Thomas Hill, Jr.: Ideals of Human Excellence and Preserving Natural Environments

1. Why does Hill think it is sometimes difficult to explain what is wrong with destroying the environment in terms of rights and welfare? What alternative framework does he propose for looking at the issue?
2. Hill presents several examples of acts which may not necessarily be immoral, but which would clearly reveal a defect in any person who performed them. Do you find his examples convincing? Is harming the environment relevantly similar to these actions?
3. Hill suggests that many environmentally destructive actions might be performed as a result of ignorance. How does he argue for this claim, and how might an “anti-environmentalist” respond?
4. What exactly is *humility*, and why does Hill claim that those who are unmoved by nature lack it? Do you agree with him?
5. What connection, if any, is there between self-acceptance and preserving nature? Can a person fully accept himself or herself while at the same time destroying natural environments?

Climate Change Justice

Eric A. Posner and Cass R. Sunstein

Climate change is already having a substantial impact on countries around the world and will almost certainly lead to great suffering for large portions of the population over the coming decades. In addition to the very practical issues of how best to fore-stall or manage such change, there are also issues about what justice demands of the wealthier nations whose actions have been largely responsible for causing climate change. Legal scholars Eric Posner and Cass Sunstein divide such issues into two sorts: those concerning distributive justice and those that have to do with corrective justice.

Distributive justice is a matter of justly distributing resources and opportunities. Many argue that wealthy nations are required by justice to drastically reduce their greenhouse gas emissions so as to protect the citizens of poorer countries who will suffer from the effects of such emissions. Posner and Sunstein raise a variety of questions about this claim. First, they point out that climate change is not an unmitigated disaster—many millions of people who currently live in very cold climates will benefit in a variety of ways when their lands become warmer. That said, they accept, at least for purpose of argument, that the harms of climate change will greatly outweigh these benefits. Even so, they ask whether the money spent on lowering emissions might instead be better spent as a direct grant to the poorer countries whose future populations are likely to suffer so greatly from climate change. They also worry that offering aid to poorer countries fails to benefit the poor in wealthy nations while also benefiting the wealthy who are citizens of the poorer nations receiving aid.

Posner and Sunstein allow that justice might demand that wealthy nations greatly lower their emissions if doing so is required in order to avoid a worldwide catastrophe. Whether that is so, though, depends on what the risks actually are—a matter on which they take no stand. It's also the case that lowering emissions may better serve justice than giving direct aid to poorer countries if ineffective or corrupt rulers govern those countries, but even here Posner and Sunstein raise serious questions about what justice requires in such situations.

Corrective justice is a matter of righting wrongs, correcting for past injustices. Wealthier nations have emitted far more greenhouse gases than have poorer ones, and so have done much more to harm the planet. As a result, the argument goes, wealthier nations must repair the damage their harmful emissions have (and will have) caused those in poorer nations.

Posner and Sunstein identify three problems for this argument. First, there is the worry that many of those who are responsible for having caused the relevant harms are now dead, and many others who live in wealthy nations support policies that will substantially reduce greenhouse emissions. So it may be hard to determine who should be asked to pay the costs required to correct for environmental harms. Second, the identity of the victims of climate change is very difficult to discern, since most of the harm will occur decades or centuries from now and most of the victims of such harm have not yet been born. Third, claims of corrective justice rest on showing that the wrongdoer has actually caused the victim's harm. Even if we can settle who has perpetrated the wrong and who has suffered the harm, establishing the causal link between the actions of citizens of wealthy nations and the suffering of citizens in poorer countries will be extremely hard.

CLIMATE CHANGE AND DISTRIBUTIVE JUSTICE

To separate issues of distributive justice from those of corrective justice, and to clarify intuitions, let us begin with a risk of natural calamity that does not involve human action at all.

From Eric R. Posner and Cass A. Sunstein, "Climate Change Justice," *Georgetown Law Review* 96 (2008), pp. 1565–1612.

The Asteroid

Imagine that India faces a serious new threat of some kind—say, a threat of a collision with a large asteroid. Imagine too that the threat will not materialize for a century. Imagine finally that the threat can be eliminated, today, at a cost. India would be devastated by having to bear that cost now; as a practical matter, it lacks the resources to do so. But if the world acts as a whole, it can begin to build

technology that will allow it to divert the asteroid, thus ensuring that it does not collide with India a century hence. The cost is high, but it is lower than the discounted benefit of eliminating the threat. If the world delays, it might also be able to eliminate the threat or reduce the damage if it comes to fruition. But many scientists believe that the best approach, considering relevant costs and benefits, is to start immediately to build technology that will divert the asteroid.

Are wealthy nations, such as the United States, obliged to contribute significant sums of money to protect India from the asteroid? On grounds of distributive justice, it is tempting to think so. But if we reach that conclusion, how is the case different from one in which India contends, now, that it would be able to prevent millions of premature deaths from disease and malnutrition if the United States gave it (say) some small fraction of its Gross Domestic Product? If one nation is threatened by malaria or a tsunami, other nations might well agree that it is appropriate to help; it is certainly generous and in that sense commendable to assist those in need. But even generous nations do not conventionally think that a threatened nation has an entitlement to their assistance. For those who believe that there is such an entitlement, the puzzle remains: Why is there an entitlement to help in avoiding future harm from an asteroid, rather than current harms from other sources?

The problem of the asteroid threat does have a significant difference from that of climate change, whose adverse effects are not limited to a single nation. To make the analogy closer, assume that all nations are threatened by the asteroid in the sense that it is not possible to project where the collision will occur; scientists believe that each nation faces a risk. But the risk is not identical. Because of its adaptive capacity, its location, its technology, and a range of other factors, assume that the United States is less vulnerable to serious damage than (for example) India and the nations of Africa and Europe. Otherwise the problem is the same. Under plausible assumptions, the world will certainly act to divert the asteroid, and it seems clear that the United States will contribute substantial resources for that purpose. Suppose that all nations favor an international

agreement that requires contributions to a general fund, but, because it is less vulnerable, the United States believes that the fund should be smaller than the fund favored by the more vulnerable nations of Africa and Europe, and by India. From the standpoint of domestic self-interest, then, those nations with the most to lose will naturally seek a larger fund than those nations facing lower risks.

At first glance, it might seem intuitive to think that the United States should accept the proposal for the larger fund simply because it is so wealthy. If resources should be redistributed from rich to poor on the ground that redistribution would increase overall welfare or promote fairness, the intuition appears sound. But there is an immediate problem: If redistribution from rich nations to poor nations is *generally* desirable, it is not at all clear that it should take the particular form of a deal in which the United States joins an agreement that is not in its interest. Other things being equal, the more sensible kind of redistribution would be a cash transfer, so that poor nations can use the money as they see fit. Perhaps India would prefer to spend the money on education, or on AIDS prevention, or on health care generally. If redistribution is what is sought, a generous deal with respect to the threat of an asteroid collision seems a crude way of achieving it.

Analytically, that deal has some similarities to housing assistance for poor people when recipients might prefer to spend the money on food or health care. If redistribution is desirable, housing assistance is better than nothing, but it remains puzzling why wealthy nations should be willing to protect poor nations from the risks of asteroid collisions (or climate change), while not being willing to give them resources with which they can set their own priorities. Indeed, a generous deal with respect to the asteroid threat may be worse than housing assistance as a redistributive strategy because, by hypothesis, many of the beneficiaries of the deal are in rich nations and are not poor at all—a point to which we will return.

There is a second difficulty. We have stipulated that the asteroid will not hit the earth for another 100 years. If the world takes action now, it will be spending current resources for the sake of future generations, which are likely to be much

richer. The current poor citizens of poor nations are probably much poorer than will be the *future* poor citizens of those nations. If the goal is to help the poor, it is odd for the United States to spend significant resources to help posterity while neglecting the present. Thus far, then the claim that the United States should join what it believes to be an unjustifiably costly agreement to divert the asteroid is doubly puzzling. Poor nations would benefit more from cash transfers, and the current poor have a stronger claim to assistance than the future (less) poor.

From the standpoint of distributional justice, there is a third problem. Nations are not people; they are collections of people, ranging from very rich to very poor. Wealthy countries, such as the United States, have many poor people, and poor countries, such as India, have many rich people. If the United States is paying a lot of money to avert the threat of an asteroid collision, it would be good to know whether that cost is being paid, in turn, by wealthy Americans or by poor Americans. Suppose, for example, that greenhouse gas reductions lead to a significant increase in the cost of energy. Any such increase—from either carbon taxes or cap-and-trade—would be regressive, in the sense that it would hit poor people harder than wealthy people, who spend a smaller portion of the income on energy costs. But if the concern is to help people who need help, such a tax is hard to defend.

If redistribution is our goal, it would also be good to know whether the beneficiaries are mostly rich or mostly poor. Many of the beneficiaries of actions to reduce a worldwide risk are in wealthy nations, and so it should be clear that the class of those who are helped will include many people who are not poor at all. Because the median member of wealthy nations is wealthier than the median member of poor nations, it is plausible to think that if wealthy nations contribute a disproportionately high amount to the joint endeavor, the distributive effects will be good. For example, the Americans who are asked to make the relevant payments are, on average, wealthier than the Indians who are paying less. But asking Americans to contribute more to a joint endeavor is hardly the best way of achieving the goal of transferring wealth from the rich to the poor.

Climate Change: From Whom to Whom?

In terms of distributive justice, the problem of climate change is closely analogous to the asteroid problem. From that problem, three general questions emerge. First, why should redistribution take the form of an in-kind benefit, rather than a general grant of money that poor nations could use as they wish? Second, why should rich nations help poor nations in the future, rather than poor nations now? Third, if redistribution is the goal, why should it take the form of action by rich nations that would hurt many poor people in those nations and benefit many rich people in poor nations? To sharpen these questions, suppose that an international agreement to cut greenhouse gas emissions would cost the United States \$325 billion. If distributive justice is the goal, should the United States spend \$325 billion on climate change, or instead on other imaginable steps to help people who are in need? If the goal is to assist poor people, perhaps there would be far better means than emissions reductions.

In fact, the argument from distributive justice runs into an additional problem in the context of climate change. No one would gain from an asteroid collision, but millions of people would benefit from climate change. Many people die from cold, and to the extent that warming reduces cold, it will save lives. Warming will also produce monetary benefits in many places, such as Russia, due to increases in agricultural productivity. Indeed, many millions of poor people in such countries may benefit from climate change. Some of them will live when they would otherwise die from extreme cold. In China, many millions of people living in rural areas continue to be extremely poor despite the increasing prosperity of the nation as a whole. These people are among the poorest in the world. For at least some of these people, climate change could well provide benefits by increasing the productivity of their land.

In addition, many millions of poor people would be hurt by the cost of emissions reductions. They would bear that cost in the form of higher energy bills, lost jobs, and increased poverty. Recall too that industrialized and relatively wealthy European nations have been found to be at greater risk than the relatively poorer China.

It follows that purely as an instrument of redistribution, emission reductions on the part of the United States are quite crude. True, a suitably designed emissions control agreement would almost certainly help poor people more than it would hurt them, because disadvantaged people in sub-Saharan Africa and India are at such grave risk. And true, an agreement in which the United States pays more than its self-interest dictates might well be better, from the standpoint of distributive justice, than the status quo, or than an agreement that would simply require all nations to scale back their emissions by a specified amount. But there is a highly imperfect connection between distributive goals on the one hand and requiring wealthy countries to pay for emissions reductions on the other.

To see the problem more concretely, suppose that Americans (and the same could be said about citizens in other wealthy countries) are willing to devote a certain portion, X , of their national income to helping people living in poor countries. The question is, How is X best spent? If X is committed to emissions controls, then X is being spent to benefit wealthy Europeans as well as impoverished Indians, and X is also being spent to harm some or many impoverished people living in China and Russia by denying them the benefit of increased agricultural productivity that warming will bring. And if all of X is spent on global emissions control, then none of X is being spent to purchase malaria nets or to distribute AIDS drugs—which are highly effective ways of helping poor people who are alive today rather than poor people who will be alive in 100 years.

Two Counterarguments

There are two tempting counterarguments. The first involves the risk of catastrophe. The second involves the fact that cash transfers will go to governments that may be ineffective or corrupt.

Catastrophe

On certain assumptions about the science, greenhouse gas cuts are necessary to prevent a catastrophic loss of life. Suppose, by way of imperfect analogy, that a genocide is occurring in some nation. For multiple reasons, it would not be sensible to say

that rich countries should give money to such a nation, rather than acting to prevent the genocide. Or suppose that a nation is threatened by a natural disaster that would wipe out millions of lives; if other nations could eliminate the harms associated with such a disaster, it would be hard to object that they should offer cash payments instead. One reason is that if many lives are at risk, and if they can be saved through identifiable steps, taking those steps would seem to be the most effective response to the problem, and cash transfers would have little or no advantage.

Suppose that climate change threatens to create massive losses of life in various countries. In light of the risk of catastrophe, perhaps emissions reductions are preferable to other redistributive strategies. The catastrophic scenario is a way of saying that the future benefits of cuts could be exceptionally high rather than merely high. If poor people in poor nations face a serious risk of catastrophe, then greenhouse gas abatement *could* turn out to be the best way to redistribute wealth (or, more accurately, welfare) to people who would otherwise die in the future.

Ultimately the strength of the argument turns on the extent of the risk. To the extent that the risk of catastrophe is not low, and to the extent that it is faced mostly by people living in difficult or desperate conditions, the argument from distributive justice does gain a great deal of force. To the extent that the catastrophic scenario remains highly unlikely, the argument is weakened. We cannot exclude the possibility that the argument is correct; it depends on the scientific evidence for the truly catastrophic scenarios.

Ineffective or Corrupt Governments

We have emphasized that development aid is likely to be more effective than greenhouse gas restrictions as a method of helping poor people in poor nations. A legitimate response is that cutting greenhouse gas emissions bypasses the governments of poor states more completely than other forms of development aid do. This might be counted as a virtue because the governments of many poor states are either inefficient or corrupt (or both), and partly for that reason, ordinary development aid has not been very effective.

But here too there are counterarguments. As we have stressed, this form of redistribution does not help existing poor people at all; it can, at best, help poor people in future generations. And it is far from clear that donor states can avoid the pathologies of development aid by, in effect, transferring resources to the future rather than to the present, or by transferring resources directly to the people rather than to corrupt governments. Benefits received by individuals can be expropriated, or taxed away, by governments that do not respect the rule of law. This is just as true for the future as for the present. If abatement efforts today result in higher crop yields in Chad in 100 years than would otherwise occur, Chadians might be better off, of course, but it is also possible that a future authoritarian government would expropriate these gains for itself, or that they would be squandered as a result of bad economic policy, or that in the meantime Chad has become a completely different place that does best by importing food from elsewhere.

Even more important, the claim that emissions reductions avoid corruption overlooks the fact that emissions abatement does not occur by itself but must take place through the activity of governments, including those in developing countries. In cap-and-trade systems, for example, the government of a poor country would be given permits that it could then sell to industry, raising enormous sums of money that the government could spend however it chose. Corrupt governments would spend this money badly, perhaps using it to finance political repression, while also possibly accepting bribes from local industry that chooses not to buy permits, in return for non-enforcement of the country's treaty obligations. To be sure, significant emissions reductions by wealthy nations would directly benefit poor nations.

Notwithstanding the complexities here, the basic point remains: in principle, greenhouse gas cuts do not seem to be the most direct or effective means of helping poor people or poor nations. We cannot exclude the possibility that the more direct methods are inferior, for example because it is not feasible to provide that direct aid; but it would remain necessary to explain why a crude form of redistribution is feasible when a less crude form is not.

CORRECTIVE JUSTICE

Climate change differs from our asteroid example in another way. In the asteroid example, no one can be blamed for the appearance of the asteroid and the threat that it poses to India (or the world). But many people believe that by virtue of its past actions and policies, the United States, along with other developed nations, is particularly to blame for the problem of climate change. In the international arena, the argument that the United States has an obligation to devote significant resources to reducing greenhouse gas emissions is not solely and perhaps not even mainly an argument about distributive justice. The argument also rests on moral intuitions about corrective justice—about wrongdoers and their victims.

The Basic Argument

Corrective justice arguments are backward-looking, focused on wrongful behavior that occurred in the past. Even though China is now the world's leading greenhouse gas emitter, the United States has been the largest emitter historically and thus has the greater responsibility for the stock of greenhouse gases in the atmosphere. Of course, a disproportionate share of the stock of greenhouse gases can be attributed to other long-industrialized countries as well, such as Germany and Japan, and so what we say here about the United States can be applied, *mutatis mutandi*, to those other countries. The emphasis on the United States is warranted by the fact that the United States has contributed more to the existing stock than any other nation (nearly 30%).

In the context of climate change, the corrective justice argument is that the United States wrongfully harmed the rest of the world—especially low-lying states and others that are most vulnerable to global warming—by emitting greenhouse gases in vast quantities. On a widespread view, corrective justice requires that the United States devote significant resources to remedying the problem—perhaps by paying damages, agreeing to extensive emissions reductions, or participating in a climate pact that is not in its self-interest. India, for example, might be thought to have a moral claim against the United States—one derived from the principles of corrective justice—and on this view the United States has

an obligation to provide a compensatory remedy to India. (Because India is especially vulnerable to climate change, we use that nation as a placeholder for those at particular risk.)

This argument enjoys a great deal of support in certain circles and seems intuitively correct. The apparent simplicity of the argument, however, masks some serious difficulties. We shall identify a large number of problems here, and the discussion will be lamentably complex. The most general point, summarizing the argument as a whole, is that the climate change problem poorly fits the corrective justice model because the consequence of tort-like thinking would be to force many people who have not acted wrongfully to provide a remedy to many people who have not been victimized. Some of the problems we identify could be reduced if it were possible to trace complex causal chains with great precision; unfortunately, legal systems lack the necessary tools to do so.

The Wrongdoer Identity Problem

The current stock of greenhouse gases in the atmosphere is a result of the behavior of people living in the past. Much of it is due to the behavior of people who are dead. The basic problem for corrective justice is that dead wrongdoers cannot be punished or held responsible for their behavior, or forced to compensate those they have harmed. At first glance, holding Americans today responsible for the activities of their ancestors is not fair or reasonable on corrective justice grounds, because current Americans are not the relevant wrongdoers; they are not responsible for the harm.

Indeed, many Americans today do not support the current American energy policy and already make some sacrifices to reduce the greenhouse gas emissions that result from their behavior. They avoid driving, they turn down the heat in their homes, and they support electoral candidates who advocate greener policies. Holding these people responsible for the wrongful activities of people who lived in the past seems perverse. An approach that emphasized corrective justice would attempt to be more finely tuned, focusing on particular actors, rather than Americans as a class, which would appear to violate deeply held moral objections to

collective responsibility. The task would be to distinguish between the contributions of those who are living and those who are dead.

The most natural and best response to this point is to insist that all or most Americans today benefit from the greenhouse gas emitting activities of Americans living in the past, and therefore it would not be wrong to require Americans today to pay for abatement measures. This argument is familiar from debates about slave reparations, where it is argued that Americans today have benefited from the toil of slaves 150 years ago. To the extent that members of current generations have gained from past wrongdoing, it may well make sense to ask them to make compensation to those harmed as a result. On one view, compensation can work to restore the *status quo ante*, that is, to put members of different groups, and citizens of different nations, in the position that they would have occupied if the wrongdoing had not occurred.

In the context of climate however, this argument runs into serious problems. The most obvious difficulty is empirical. It is true that many Americans benefit from past greenhouse-gas-emissions, but how many benefit, and how much do they benefit? Many Americans today are, of course, immigrants or children of immigrants, and so not the descendants of greenhouse-gas-emitting Americans of the past. Such people may nonetheless gain from past emissions, because they enjoy the kind of technological advance and material wealth that those emissions made possible. But have they actually benefited, and to what degree? Further, not all Americans inherit the wealth of their ancestors, and even those who do would not necessarily have inherited less if their ancestors' generations had not engaged in the greenhouse-gas-emitting activities. The idea of corrective justice, building on the tort analogy, does not seem to fit the climate change situation.

Suppose that these various obstacles could be overcome and that we could trace, with sufficient accuracy, the extent to which current Americans have benefited from past emissions. As long as the costs are being toted up, the benefits should be as well, and used to offset the requirements of corrective justice. We have noted that climate change is

itself anticipated to produce benefits for many nations, both by increasing agricultural productivity and by reducing extremes of cold. And if past generations of Americans have imposed costs on the rest of the world, they have also conferred substantial benefits. American industrial activity has produced products that were consumed in foreign countries, for example, and has driven technological advances from which citizens in other countries have gained. Many of these benefits are positive externalities, for which Americans have not been fully compensated. To be sure, many citizens in, say, India have not much benefited from those advances, just as many citizens of the United States have not much benefited from them. But what would the world, or India, look like if the United States had engaged in 10% of its level of greenhouse gas emissions, or 20%, or 40%? For purposes of corrective justice, a proper accounting would seem to be necessary, and it presents formidable empirical and conceptual problems.

In the context of slave reparations, the analogous points have led to interminable debates, again empirical and conceptual, about historical causation and difficult counterfactuals. But-for causation arguments, used in standard legal analysis and conventional for purposes of conventional justice, present serious and perhaps insuperable problems when applied historically. We can meaningfully ask whether an accident would have occurred if the driver had operated the vehicle more carefully, but conceptual and empirical questions make it difficult to answer the question whether and to what extent white Americans today would have been worse off if there had been no slavery—and difficult too to ask whether Indians would be better off today if Americans of prior generations had not emitted greenhouse gases. What kind of a question is that? In this hypothetical world of limited industrialization in the United States, India would be an entirely different country, and the rest of the world would be unrecognizably different as well.

Proponents of slave reparations have sometimes appealed to principles of corporate liability. Corporations can be immortal, and many corporations today benefited from the slave economy in the nineteenth century. Corporations

are collectivities, not individuals, yet they can be held liable for their actions, which means that shareholders today are “punished” (in the sense of losing share value) as a result of actions taken by managers and employees long before the shareholders obtained their ownership interest. If innocent shareholders can be made to pay for the wrongdoing of employees who are long gone, why can’t citizens be made to pay for the wrongful actions of citizens who lived in the past?

The best answer is that corporate liability is most easily justified on grounds other than corrective justice. Shareholder liability can be defended on the basis of consent or (in our view most plausibly) on the welfarist ground that corporate liability deters employees from engaging in wrongdoing on behalf of the corporate entity. A factor that distinguishes corporate liability is that purchasing shares is a voluntary activity and one does so with the knowledge that the share price will decline if a past legal violation comes to light, and this is reflected in the share price at the time of purchase. (One also benefits if an unknown past action enhances the value of the company.) But because the corporate form itself is a fiction, and the shareholders today are different from the wrongdoers yesterday, corporate liability cannot be grounded in corrective justice. Thus, it provides no analogy on behalf of corrective justice for the climate change debate.

The Victim/Claimant Identity Problem

As usually understood, corrective justice requires an identity between the victim and the claimant: the person who is injured by the wrongdoer must be the same as the person who has a claim against the wrongdoer. In limited circumstances, a child or other dependent might inherit that claim, but usually one thinks of the dependent as having a separate claim, deriving from the wrongdoer’s presumed knowledge that by harming the victim she also harms the victim’s dependents.

Who are the victims of climate change? Most of them live in the future. Thus, their claims have not matured. To say that future Indians might have a valid claim against Americans today, or Americans of the past, is not the same as saying that Americans today have a duty to help Indians today. To be sure,

some people are now harmed by climate change. In addition, people living in low-lying islands or coastal regions can plausibly contend that a particular flood or storm has some probabilistic relationship with climate change—but from the standpoint of corrective justice, this group presents its own difficulties (a point to which we will return shortly). What remains plausible is the claim that future Indians would have corrective justice claims against current and past Americans.

A successful abatement program would, of course, benefit many people living in the future, albeit by preventing them from becoming victims in the first place or reducing the magnitude of their injury, rather than compensating them for harm. One might justify the abatement approach on welfarist grounds: perhaps the welfare benefits for people living in the future exceed the welfare losses to people living today. One could also make an argument that people living today have a non-welfarist obligation to refrain from engaging in actions today that harm people in the future. The point for present purposes is that both arguments are forward-looking: the obligation, whether welfarist or nonwelfarist, is not based on past actions, and thus a nation's relative contribution to the current greenhouse gas stock in the atmosphere would not be a relevant consideration in the design of the greenhouse gas abatement program, as we have been arguing. By contrast, the corrective justice argument is that the United States should contribute the most to abatement efforts because it has caused the most damage to the carbon-absorbing capacity of the atmosphere.

The argument that we owe duties to the future, on welfarist or other grounds, seems right, but as a basis for current abatement efforts, it runs into a complication. Suppose that activities in the United States that produce greenhouse gases (a) do harm people in the future by contributing to climate change, but also (b) benefit people in the future by amassing capital on which they can draw to reduce poverty and illness and to protect against a range of social ills. Supposing, as we agree, that present generations are obliged not to render future generations miserable, it is necessary to ask whether current activities create benefits that are equivalent to,

or higher than, costs for those generations. As our discussion of distributive justice suggests, it is possible that greenhouse gas abatement programs—as opposed to, say, research and development or promoting economic growth in poor countries—are not the best way to ensure that the appropriate level of intergenerational equity is achieved.

The Causation Problem

Corrective justice requires that the wrongdoing cause the harm. In ordinary person-to-person encounters, this requirement is straightforward. But in the context of climate change, causation poses formidable challenges, especially when we are trying to attribute particular losses to a warmer climate.

To see why, consider a village in India that is wiped out by a monsoon. One might make a plausible argument that the flooding was more likely than it would otherwise have been, as a result of rising sea levels caused by climate change. But it might well be impossible to show that greenhouse gas emissions in the United States “caused” the flooding, in the sense that they were a necessary and sufficient condition, and difficult even to show that they even contributed to it. If the flooding was in a probabilistic sense the result of greenhouse gas activities around the world, its likelihood was also increased by complex natural phenomena that are poorly understood. And to the extent that the United States was involved, much of the contribution was probably due to people who died years ago.

Causation problems are not fatal to corrective justice claims, but they significantly weaken them. In tort law, courts are occasionally willing to assign liability according to market share when multiple firms contribute to a harm—for example, pollution or dangerous products whose provenance cannot be traced. Perhaps scientific and economic studies could find, with sufficient accuracy, aggregate national losses. And it would be plausible to understand corrective justice, in this domain, in probabilistic terms, with the thought that victims should receive “probabilistic recoveries,” understood as the fraction of their injury that is probabilistically connected with climate change. It is unclear, however, that statistical relationships can be established with

sufficient clarity to support a claim sounding in corrective justice.

CONCLUSION

Our narrow goal has been to investigate considerations of distributive justice and corrective justice. If the United States wants to use its wealth to help to protect India or Africa or impoverished people generally, there can be no reason for complaint. The question remains, however, what is the best way to help disadvantaged people around the world. It is plausible that protecting other countries from genocide or poverty or famine is such a way. It is far from clear that greenhouse gas restrictions on the part of the United States are the best way to help the most disadvantaged citizens of the world.

It is tempting to treat climate change as a kind of tort, committed by the United States against those who are most vulnerable. But we have seen that principles of corrective justice have an awkward relationship to the problem of climate change. Many of the relevant actors are long dead, and a general transfer from the United States to those in places especially threatened by climate change is not an apt way of restoring some imagined status quo. In this context, the idea of corrective justice is a metaphor, and a highly imperfect one.

Eric A. Posner and Cass R. Sunstein: Climate Change Justice

1. Formulate in your own words the best version of an argument from distributive justice to support the conclusion that wealthy nations are morally required to drastically reduce their greenhouse gas emissions.
2. Formulate in your own words the best version of an argument from corrective justice to support the conclusion that wealthy nations are morally required to drastically reduce their greenhouse gas emissions.
3. Posner and Sunstein identify several worries for an argument from distributive justice. Which of these do you find least compelling, and why?
4. Some scientists claim that devastating climate change is now inevitable. Suppose they are right. What, if anything, does this do to affect the merits of arguments from distributive or corrective justice?
5. Much of the ethical concern about climate change is focused on the impact such change will have on people who won't be born for at least another century. Such people don't exist, and, as a general matter, we lack duties to beings or things that don't exist. What implications do these claims have for climate change justice?

It's Not My Fault: Global Warming and Individual Moral Obligations

[Walter Sinnott-Armstrong](#)

Global warming, and climate change more generally, is causing huge problems. Sinnott-Armstrong believes that governments have moral duties to address these problems. These duties fall especially to the wealthier countries, which are responsible for the vast majority of the harms that arise from global warming. But the case is far less clear when it comes to individuals, since individuals are far less able to reduce or prevent these harms and are far less responsible for causing them in the first place. To bring out the challenge, Sinnott-Armstrong invites us to consider a case of wasteful driving.

Suppose I take a pleasure drive in a gas-guzzling car. Have I violated any moral obligation in doing so?

Sinnott-Armstrong admits that he has the intuition that I have indeed done wrong in taking such a drive. But he offers many reasons to be suspicious of moral intuitions, and so he argues that if we are to be rightly confident of a verdict here, then we must enlist some general moral principle to show that my pleasure ride is immoral. Sinnott-Armstrong considers a wide variety of such principles: that we oughtn't to do harm or worsen harms that are already occurring, the Kantian principle of universalizability and principle of humanity, the doctrine of double effect, and several others. He then argues that none of these principles implies that I have done wrong in taking such a pleasure drive. According to Sinnott-Armstrong, my moral obligation is to prompt my government to take action to combat the harms of global warming—only in that way will my actions make a real contribution to solving the problem.

.... Even if scientists establish that global warming is occurring, even if economists confirm that its costs will be staggering, and even if political theorists agree that governments must do something about it, it is still not clear what moral obligations regarding global warming devolve upon individuals like you and me. That is the question to be addressed in this essay.

I. ASSUMPTIONS

To make the issue stark, let us begin with a few assumptions. I believe that these assumptions are probably roughly accurate, but none is certain, and I will not try to justify them here. Instead, I will simply take them for granted for the sake of argument.

First, global warming has begun and is likely to increase over the next century. We cannot be sure exactly how much or how fast, but hot times are coming.

Second, a significant amount of global warming is due to human activities. The main culprit is fossil fuels.

Third, global warming will create serious problems for many people over the long term by causing climate changes, including violent storms, floods from sea level rises, droughts, heat waves, and so on. Millions of people will probably be displaced or die.

From W. Sinnott-Armstrong, "It's Not My Fault: Global Warming and Individual Moral Obligations," in W. Sinnott-Armstrong and Richard Howarth, eds., *Perspectives on Climate Change* (Elsevier, 2006), pp. 295–315. Notes have been edited.

Fourth, the poor will be hurt most of all. The rich countries are causing most of the global warming, but they will be able to adapt to climate changes more easily. Poor countries that are close to sea level might be devastated.

Fifth, governments, especially the biggest and richest ones, are able to mitigate global warming. They can impose limits on emissions. They can require or give incentives for increased energy efficiency. They can stop deforestation and fund reforestation. They can develop ways to sequester carbon dioxide in oceans or underground. These steps will help, but the only long-run solution lies in alternatives to fossil fuels. These alternatives can be found soon if governments start massive research projects now.

Sixth, it is too late to stop global warming. Because there is so much carbon dioxide in the atmosphere already, because carbon dioxide remains in the atmosphere for so long, and because we will remain dependent on fossil fuels in the near future, governments can slow down global warming or reduce its severity, but they cannot prevent it. Hence, governments need to adapt. They need to build seawalls. They need to reinforce houses that cannot withstand storms. They need to move populations from low-lying areas.

Seventh, these steps will be costly. Increased energy efficiency can reduce expenses, adaptation will create some jobs, and money will be made in the research and production of alternatives to fossil fuels. Still, any steps that mitigate or adapt to global

warming will slow down our economies, at least in the short run. That will hurt many people, especially many poor people.

Eighth, despite these costs, the major governments throughout the world still morally ought to take some of these steps. The clearest moral obligation falls on the United States. The United States caused and continues to cause more of the problem than any other country. The United States can spend more resources on a solution without sacrificing basic necessities. This country has the scientific expertise to solve technical problems. Other countries follow its lead (sometimes!). So the United States has a special moral obligation to help mitigate and adapt to global warming.

2. THE PROBLEM

Even assuming all of this, it is still not clear what I as an individual morally ought to do about global warming. That issue is not as simple as many people assume. I want to bring out some of its complications.

It should be clear from the start that *individual* moral obligations do not always follow directly from *collective* moral obligations. The fact that your government morally ought to do something does not prove that *you* ought to do it, even if your government fails. Suppose that a bridge is dangerous because so much traffic has gone over it and continues to go over it. The government has a moral obligation to make the bridge safe. If the government fails to do its duty, it does not follow that I personally have a moral obligation to fix the bridge. It does not even follow that I have a moral obligation to fill in one crack in the bridge, even if the bridge would be fixed if everyone filled in one crack, even if I drove over the bridge many times, and even if I still drive over it every day. Fixing the bridge is the government's job, not mine. While I ought to encourage the government to fulfill its obligations, I do not have to take on those obligations myself.

All that this shows is that government obligations do not *always* imply parallel individual obligations. Still, maybe *sometimes* they do. My government has a moral obligation to teach arithmetic to the children in my town, including my own children. If the government fails in this obligation, then I do take on a moral obligation to teach arithmetic to my

children. Thus, when the government fails in its obligations, sometimes I have to fill in, and sometimes I do not.

What about global warming? If the government fails to do anything about global warming, what am I supposed to do about it? There are lots of ways for me as an individual to fight global warming. I can protest against bad government policies and vote for candidates who will make the government fulfill its moral obligations. I can support private organizations that fight global warming, such as the Pew Foundation, or boycott companies that contribute too much to global warming, such as most oil companies. Each of these cases is interesting, but they all differ. To simplify our discussion, we need to pick one act as our focus.

My example will be wasteful driving. Some people drive to their jobs or to the store because they have no other reasonable way to work and eat. I want to avoid issues about whether these goals justify driving, so I will focus on a case where nothing so important is gained. I will consider driving for fun on a beautiful Sunday afternoon. My drive is not necessary to cure depression or calm aggressive impulses. All that is gained is pleasure: Ah, the feel of wind in your hair! The views! How spectacular! Of course, you could drive a fuel-efficient hybrid car. But fuel-efficient cars have less "get up and go." So let us consider a gas-guzzling sport utility vehicle. Ah, the feeling of power! The excitement! Maybe you do not like to go for drives in sport utility vehicles on sunny Sunday afternoons, but many people do.

Do we have a moral obligation not to drive in such circumstances? This question concerns driving, not *buying* cars. To make this clear, let us assume that I borrow the gas-guzzler from a friend. This question is also not about *legal* obligations. So let us assume that it is perfectly legal to go for such drives. Perhaps it ought to be illegal, but it is not. Note also that my question is not about what would be *best*. Maybe it would be better, even morally better, for me not to drive a gas-guzzler just for fun. But that is not the issue I want to address here. My question is whether I have a *moral* obligation not to drive a gas-guzzler just for fun on this particular sunny Sunday afternoon.

One final complication must be removed. I am interested in global warming, but there might be other moral reasons not to drive unnecessarily. I risk causing an accident, since I am not a perfect driver. I also will likely spew exhaust into the breathing space of pedestrians, bicyclists, or animals on the side of the road as I drive by. Perhaps these harms and risks give me a moral obligation not to go for my joyride. That is not clear. After all, these reasons also apply if I drive the most efficient car available, and even if I am driving to work with no other way to keep my job. Indeed, I might scare or injure bystanders even if my car gave off no greenhouse gases or pollution. In any case, I want to focus on global warming. So my real question is whether the facts about global warming give me any moral obligation not to drive a gas-guzzler just for fun on this sunny Sunday afternoon.

I admit that I am *inclined* to answer, *Yes*. To me, global warming does *seem* to make such wasteful driving morally wrong.

Still, I do not feel confident in this judgment. I know that other people disagree (even though they are also concerned about the environment). I would probably have different moral intuitions about this case if I had been raised differently or if I now lived in a different culture. My moral intuition might be distorted by overgeneralization from the other cases where I think that other entities (large governments) do have moral obligations to fight global warming. I also worry that my moral intuition might be distorted by my desire to avoid conflicts with my environmentalist friends. The issue of global warming generates strong emotions because of its political implications and because of how scary its effects are. It is also a peculiarly modern case, especially because it operates on a much grander scale than my moral intuitions evolved to handle long ago when acts did not have such long-term effects on future generations (or at least people were not aware of such effects). In such circumstances, I doubt that we are justified in trusting our moral intuitions alone. We need some kind of confirmation.

One way to confirm the truth of my moral intuitions would be to derive them from a general moral principle. A principle could tell us why wasteful driving is morally wrong, so we would not have to

depend on bare assertion. And a principle might be supported by more trustworthy moral beliefs. The problem is *which* principle?

3. ACTUAL ACT PRINCIPLES

One plausible principle refers to causing harm. If one person had to inhale all of the exhaust from my car, this would harm him and give me a moral obligation not to drive my car just for fun. Such cases suggest:

The harm principle: We have a moral obligation not to perform an act that causes harm to others.

This principle implies that I have a moral obligation not to drive my gas-guzzler just for fun *if* such driving causes harm.

The problem is that such driving does *not* cause harm in normal cases. If one person were in a position to inhale all of my exhaust, then he would get sick if I did drive, and he would not get sick if I did not drive (under normal circumstances). In contrast, global warming will still occur even if I do not drive just for fun. Moreover, even if I do drive a gas-guzzler just for fun for a long time, global warming will not occur unless lots of other people also expel greenhouse gases. So my individual act is neither necessary nor sufficient for global warming. . . .

Another argument leads to the same conclusion: the harms of global warming result from the massive quantities of greenhouse gases in the atmosphere. Greenhouse gases (such as carbon dioxide and water vapor) are perfectly fine in small quantities. They help plants grow. The problem emerges only when there is too much of them. But my joyride by itself does not cause the massive quantities that are harmful.

Contrast someone who pours cyanide poison into a river. Later someone drinking from the river downstream ingests some molecules of the poison. Those molecules cause the person to get ill and die. This is very different from the causal chain in global warming, because no particular molecules from my car cause global warming in the direct way that particular molecules of the poison do cause the drinker's death. Global warming is more like a river that is going to flood downstream because of torrential rains. I pour a quart of water into the river upstream (maybe just because I do not want to carry it). My act of pouring the quart into the river is not a cause

of the flood. Analogously, my act of driving for fun is not a cause of global warming.

Contrast also another large-scale moral problem: famine relief. Some people say that I have no moral obligation to contribute to famine relief because the famine will continue and people will die whether or not I donate my money to a relief agency. However, I could help a certain individual if I gave my donation directly to that individual. In contrast, if I refrain from driving for fun on this one Sunday, there is no individual who will be helped in the least. I cannot help anyone by depriving myself of this joyride.

The point becomes clearer if we distinguish global warming from climate change. You might think that my driving on Sunday raises the temperature of the globe by an infinitesimal amount. I doubt that, but, even if it does, my exhaust on that Sunday does not cause any climate change at all. No storms or floods or droughts or heat waves can be traced to my individual act of driving. It is these climate changes that cause harms to people. Global warming by itself causes no harm without climate change. Hence, since my individual act of driving on that one Sunday does not cause any climate change, it causes no harm to anyone.

The point is not that harms do not occur from global warming. I have already admitted that they do. The point is also not that my exhaust is overkill, like poisoning someone who is already dying from poison. My exhaust is not sufficient for the harms of global warming, and I do not intend those harms. Nor is it the point that the harms from global warming occur much later in time, if I place a time bomb in a building, I can cause harm many years later. And the point is not that the harm I cause is imperceptible. I admit that some harms can be imperceptible because they are too small or for other reasons. Instead, the point is simply that my individual joyride does not cause global warming, climate change, or any of their resulting harms, at least directly....

Of course, even if I do not cause climate change, I still might seem to contribute to climate change in the sense that I make it worse. If so, another principle applies:

The contribution principle: We have a moral obligation not to make problems worse.

This principle applies if climate change will be worse if I drive than it will be if I do not drive.

The problem with this argument is that my act of driving does not even make climate change worse. Climate change would be just as bad if I did not drive. The reason is that climate change becomes worse only if more people (and animals) are hurt or if they are hurt worse. There is nothing bad about global warming or climate change in itself if no people (or animals) are harmed. But there is no individual person or animal who will be worse off if I drive than if I do not drive my gas-guzzler just for fun. Global warming and climate change occur on such a massive scale that my individual driving makes no difference to the welfare of anyone.

Some might complain that this is not what they mean by "contribute." All it takes for me to contribute to global warming in their view is for me to expel greenhouse gases into the atmosphere. I do that when I drive, so we can apply:

The gas principle: We have a moral obligation not to expel greenhouse gases into the atmosphere.

If this principle were true, it would explain why I have a moral obligation not to drive my gas-guzzler just for fun.

Unfortunately, it is hard to see any reason to accept this principle. There is nothing immoral about greenhouse gases in themselves when they cause no harm. Greenhouse gases include carbon dioxide and water vapor, which occur naturally and help plants grow. The problem of global warming occurs because of the high quantities of greenhouse gases, not because of anything bad about smaller quantities of the same gases. So it is hard to see why I would have a moral obligation not to expel harmless quantities of greenhouse gases. And that is all I do by myself.

Furthermore, if the gas principle were true, it would be unbelievably restrictive. It implies that I have a moral obligation not to boil water (since water vapor is a greenhouse gas) or to exercise (since I expel carbon dioxide when I breathe heavily). When you think it through, an amazing array of seemingly morally acceptable activities would be ruled out by the gas principle. These implications suggest that we had better look elsewhere for a

reason why I have a moral obligation not to drive a gas-guzzler just for fun.

Maybe the reason is risk. It is sometimes morally wrong to create a risk of a harm even if that harm does not occur. I grant that drunk driving is immoral, because it risks harm to others, even if the drunk driver gets home safely without hurting anyone. Thus, we get another principle:

The risk principle: We have a moral obligation not to increase the risk of harms to other people.

The problem here is that global warming is not like drunk driving. When drunk driving causes harm, it is easy to identify the victim of this particular drunk driver. There is no way to identify any particular victim of my wasteful driving in normal circumstances.

In addition, my earlier point applies here again. If the risk principle were true, it would be unbelievably restrictive. Exercising and boiling water also expel greenhouse gases, so they also increase the risk of global warming if my driving does. This principle implies that almost everything we do violates a moral obligation.

Defenders of such principles sometimes respond by distinguishing significant from insignificant risks or increases in risks. That distinction is problematic, at least here. A risk is called significant when it is “too” much. But then we need to ask what makes this risk too much when other risks are not too much. The reasons for counting a risk as significant are then the real reasons for thinking that there is a moral obligation not to drive wastefully. So we need to specify those reasons directly instead of hiding them under a waffle-term like “significant”

4. INTERNAL PRINCIPLES

None of the principles discussed so far is both defensible and strong enough to yield a moral obligation not to drive a gas-guzzler just for fun. Maybe we can do better by looking inward.

Kantians claim that the moral status of acts depends on their agents' maxims or “subjective principles of volition”¹—roughly what we would call motives or intentions or plans. This internal focus is evident in Kant's first formulation of the categorical imperative:

The universalizability principle: We have a moral obligation not to act on any maxim that we cannot will to be a universal law.

The idea is not that universally acting on that maxim would have bad consequences. (We will consider that kind of principle below.) Instead, the claim is that some maxims “cannot even be thought as a universal law of nature without contradiction”² However, my maxim when I drive a gas-guzzler just for fun on this sunny Sunday afternoon is simply to have harmless fun. There is no way to derive a contradiction from a universal law that people do or may have harmless fun. Kantians might respond that my maxim is, instead, to expel greenhouse gases. I still see no way to derive a literal contradiction from a universal law that people do or may expel greenhouse gases. There would be bad consequences, but that is not a contradiction, as Kant requires. In any case, my maxim (or intention or motive) is not to expel greenhouse gases. My goals would be reached completely if I went for my drive and had my fun without expelling any greenhouse gases. This leaves no ground for claiming that my driving violates Kant's first formula of the categorical imperative.

Kant does supply a second formulation, which is really a different principle:

The means principle: We have a moral obligation not to treat any other person as a means only.³

It is not clear exactly how to understand this formulation, but the most natural interpretation is that for me to treat someone as a means implies my using harm to that person as part of my plan to achieve my goals. Driving for fun does not do that. I would have just as much fun if nobody were ever harmed by global warming. Harm to others is no part of my plans. So Kant's principle cannot explain why I have a moral obligation not to drive just for fun on this sunny Sunday afternoon.

A similar point applies to a traditional principle that focuses on intention:

The doctrine of double effect: We have a moral obligation not to harm anyone intentionally (either as an end or as a means).

This principle fails to apply to my Sunday driving both because my driving does not cause harm

to anyone and because I do not intend harm to anyone. I would succeed in doing everything I intended to do if I enjoyed my drive but magically my car gave off no greenhouse gases and no global warming occurred. . . .

5. COLLECTIVE PRINCIPLES

Maybe our mistake is to focus on individual persons. We could, instead, focus on institutions. One institution is the legal system, so we might adopt.

The ideal law principle: We have a moral obligation not to perform an action if it ought to be illegal.

I already said that the government ought to fight global warming. One way to do so is to make it illegal to drive wastefully or to buy (or sell) inefficient gas-guzzlers. If the government ought to pass such laws, then, even before such laws are passed, I have a moral obligation not to drive a gas-guzzler just for fun, according to the ideal law principle.

The first weakness in this argument lies in its assumption that wasteful driving or gas-guzzlers ought to be illegal. That is dubious. The enforcement costs of a law against joyrides would be enormous. A law against gas-guzzlers would be easier to enforce, but inducements to efficiency (such as higher taxes on gas and gas-guzzlers, or tax breaks for buying fuel-efficient cars) might accomplish the same goals with less loss of individual freedom. Governments ought to accomplish their goals with less loss of freedom, if they can. Note the "if." I do not claim that these other laws would work as well as an outright prohibition of gas-guzzlers. I do not know. Still, the point is that such alternative laws would not make it illegal (only expensive) to drive a gas-guzzler for fun. If those alternative laws are better than outright prohibitions (because they allow more freedom), then the ideal law principle cannot yield a moral obligation not to drive a gas-guzzler now.

Moreover, the connection between law and morality cannot be so simple. Suppose that the government morally ought to raise taxes on fossil fuels in order to reduce usage and to help pay for adaptation to global warming. It still seems morally permissible for me and for you not to pay that tax now. We do not have any moral obligation to send a check

to the government for the amount that we would have to pay if taxes were raised to the ideal level. One reason is that our checks would not help to solve the problem, since others would continue to conduct business as usual. What would help to solve the problem is for the taxes to be increased. Maybe we all have moral obligations to try to get the taxes increased. Still, until they are increased, we as individuals have no moral obligations to abide by the ideal tax law instead of the actual tax law.

Analogously, it is actually legal to buy and drive gas-guzzlers. Maybe these vehicles should be illegal. I am not sure. If gas-guzzlers morally ought to be illegal, then maybe we morally ought to work to get them outlawed. But that still would not show that now, while they are legal, we have a moral obligation not to drive them just for fun on a sunny Sunday afternoon.

Which laws are best depends on side effects of formal institutions, such as enforcement costs and loss of freedom (resulting from the coercion of laws). Maybe we can do better by looking at informal groups.

Different groups involve different relations between members. Orchestras and political parties, for example, plan to do what they do and adjust their actions to other members of the group in order to achieve a common goal. Such groups can be held responsible for their joint acts, even when no individual alone performs those acts. However, gas-guzzler drivers do not form this kind of group. Gas-guzzler drivers do not share goals, do not make plans together, and do not adjust their acts to each other (at least usually).

There is an abstract set of gas-guzzler drivers, but membership in a set is too arbitrary to create moral responsibility. I am also in a set of all terrorists plus me, but my membership in that abstract set does not make me responsible for the harms that terrorists cause.

The only feature that holds together the group of people who drive gas-guzzlers is simply that they all perform the same kind of act. The fact that so many people carry out acts of that kind does create or worsen global warming. That collective bad effect is supposed to make it morally wrong to perform any act of that kind, according to the following:

The group principle: We have a moral obligation not to perform an action if this action makes us a member of a group whose actions together cause harm.

Why? It begs the question here merely to assume that, if it is bad for everyone in a group to perform acts of a kind, then it is morally wrong for an individual to perform an act of that kind. Besides, this principle is implausible or at least questionable in many cases. Suppose that everyone in an airport is talking loudly. If only a few people were talking, there would be no problem. But the collective effect of so many people talking makes it hard to hear announcements, so some people miss their flights. Suppose, in these circumstances, I say loudly (but not too loudly), "I wish everyone would be quiet." My speech does not seem immoral, since it alone does not harm anyone. Maybe there should be a rule (or law) against such loud speech in this setting (as in a library), but if there is not (as I am assuming), then it does not seem immoral to do what others do, as long as they are going to do it anyway, so the harm is going to occur anyway.

Again, suppose that the president sends everyone (or at least most taxpayers) a check for \$600. If all recipients cash their checks, the government deficit will grow, government programs will have to be slashed, and severe economic and social problems will result. You know that enough other people will cash their checks to make these results to a great degree inevitable. You also know that it is perfectly legal to cash your check, although you think it should be illegal, because the checks should not have been issued in the first place. In these circumstances, is it morally wrong for you to cash your check? I doubt it. Your act of cashing your check causes no harm by itself, and you have no intention to cause harm. Your act of cashing your check does make you a member of a group that collectively causes harm, but that still does not seem to give you a moral obligation not to join the group by cashing your check, since you cannot change what the group does. It might be morally good or ideal to protest by tearing up your check, but it does not seem morally obligatory.

Thus, the group principle fails. Perhaps it might be saved by adding some kind of qualification, but I do not see how.

6. COUNTERFACTUAL PRINCIPLES

Maybe our mistake is to focus on actual circumstances. So let us try some counterfactuals about what would happen in possible worlds that are not actual. Different counterfactuals are used by different versions of rule-consequentialism.

One counterfactual is built into the common question, "What would happen if everybody did that?" This question suggests a principle:

The general action principle: I have a moral obligation not to perform an act when it would be worse for everyone to perform an act of the same kind.

It does seem likely that, if everyone in the world drove a gas-guzzler often enough, global warming would increase intolerably. We would also quickly run out of fossil fuels. The general action principle is, thus, supposed to explain why it is morally wrong to drive a gas-guzzler.

Unfortunately, that popular principle is indefensible. It would be disastrous if every human had no children. But that does not make it morally wrong for a particular individual to choose to have no children. There is no moral obligation to have at least one child.

The reason is that so few people *want* to remain childless. Most people would not go without children even if they were allowed to. This suggests a different principle:

The general permission principle: I have a moral obligation not to perform an act whenever it would be worse for everyone to be permitted to perform an act of that kind.

This principle seems better because it would not be disastrous for everyone to be permitted to remain childless. This principle is supposed to be able to explain why it is morally wrong to steal (or lie, cheat, rape, or murder), because it would be disastrous for everyone to be permitted to steal (or lie, cheat, rape, or murder) whenever (if ever) they wanted to.

Not quite. An agent is permitted or allowed in the relevant sense when she will not be liable to

punishment, condemnation (by others), or feelings of guilt for carrying out the act. It is possible for someone to be permitted in this sense without knowing that she is permitted and, indeed, without anyone knowing that she is permitted. But it would not be disastrous for everyone to be permitted to steal if nobody knew that they were permitted to steal, since then they would still be deterred by fear of punishment, condemnation, or guilt. Similarly for lying, rape, and so on. So the general permission principle cannot quite explain why such acts are morally wrong. . . .

7. WHAT IS LEFT?

We are left with no defensible principle to support the claim that I have a moral obligation not to drive a gas-guzzler just for fun. Does this result show that this claim is false? Not necessarily.

Some audiences have suggested that my journey through various principles teaches us that we should not look for general moral principles to back up our moral intuitions. They see my arguments as a *reductio ad absurdum* of principlism, which is the view that moral obligations (or our beliefs in them) depend on principles. Principles are unavailable, so we should focus instead on particular cases, according to the opposing view called particularism.

However, the fact that we cannot find any principle does not show that we do not need one. I already gave my reasons why we need a moral principle to back up our intuitions in this case. This case is controversial, emotional, peculiarly modern, and likely to be distorted by overgeneralization and partiality. These factors suggest that we need confirmation for our moral intuitions at least in this case, even if we do not need any confirmation in other cases.

For such reasons, we seem to need a moral principle, but we have none. This fact still does not show that such wasteful driving is not morally wrong. It only shows that we do not *know* whether it is morally wrong. Our ignorance might be temporary. If someone comes up with a defensible principle that does rule out wasteful driving, then I will be happy to listen and happy if it works. However, until some such principle is found, we cannot claim to know that it is morally wrong to drive a gas-guzzler just for fun.

The demand for a principle in this case does not lead to general moral skepticism. We still might know that acts and omissions that cause harm are morally wrong because of the harm principle. Still, since that principle and others do not apply to my wasteful driving, and since moral intuitions are unreliable in cases like this, we cannot know that my wasteful driving is morally wrong.

This conclusion will still upset many environmentalists. They think that they know that wasteful driving is immoral. They want to be able to condemn those who drive gas-guzzlers just for fun on sunny Sunday afternoons.

My conclusion should not be so disappointing. Even if individuals have no such moral obligations, it is still morally better or morally ideal for individuals not to waste gas. We can and should praise those who save fuel. We can express our personal dislike for wasting gas and for people who do it. We might even be justified in publicly condemning wasteful driving and drivers who waste a lot, in circumstances where such public rebuke is appropriate. Perhaps people who drive wastefully should feel guilty for their acts and ashamed of themselves, at least if they perform such acts regularly; and we should bring up our children so that they will feel these emotions. All of these reactions are available even if we cannot truthfully say that such driving violates a moral *obligation*. And these approaches might be more constructive in the long run than accusing someone of violating a moral obligation.

Moreover, even if individuals have no moral obligations not to waste gas by taking unnecessary Sunday drives just for fun, governments still have moral obligations to fight global warming, because they can make a difference. My fundamental point has been that global warming is such a large problem that it is not individuals who cause it or who need to fix it. Instead, governments need to fix it, and quickly. Finding and implementing a real solution is the task of governments. Environmentalists should focus their efforts on those who are not doing their job rather than on those who take Sunday afternoon drives just for fun.

This focus will also avoid a common mistake. Some environmentalists keep their hands clean by withdrawing into a simple life where they use very

little fossil fuels. That is great. I encourage it. But some of these escapees then think that they have done their duty, so they rarely come down out of the hills to work for political candidates who could and would change government policies. This attitude helps nobody. We should not think that we can do enough simply by buying fuel-efficient cars, insulating our houses, and setting up a windmill to make our own electricity. That is all wonderful, but it neither does little or nothing to stop global warming, nor does this focus fulfill our real moral obligations, which are to get governments to do their job to prevent the disaster of excessive global warming. It is better to enjoy your Sunday driving while working to change the law so as to make it illegal for you to enjoy your Sunday driving.

NOTES

1. Immanuel Kant (1959), *Foundations of the Metaphysics of Morals* (L. W. Beck, trans.). Indianapolis, IN: Bobbs-Merrill. (Original work published in 1785.)
2. *ibid*, 429.
3. *ibid*, 429.

Walter Sinnott-Armstrong: It's Not My Fault: Global Warming and Individual Moral Obligations

1. Sinnott-Armstrong claims that individual actions, such as taking a pleasure drive, do

not cause any global warming at all. Do you agree?

2. If *everyone* took such drives, then global warming would increase. Does that have any impact on the issue of whether each individual has a moral duty to refrain from such driving? Why or why not?
3. Sinnott-Armstrong thinks that individuals have moral obligations to help end global warming, but that these obligations are restricted to influencing governments to change their climate policies. Are people like you and I powerful enough to do that? If so, then why aren't we powerful enough to partially prevent global warming? Alternatively, if, as individuals, we cannot cause global warming, can we, as individuals, cause governments to change their climate policies?
4. The ideal law principle says that we have a moral obligation not to perform an action if that action ought to be illegal. Why does Sinnott-Armstrong think that this principle fails to generate a moral obligation for individuals to refrain from pleasure drives? Is his argument successful? Why or why not?
5. What is a counterfactual principle? Is there any such principle that is both a plausible test for moral requirements and yields a moral obligation to refrain from taking a pleasure drive?

Euthanasia

JUST THE FACTS

Euthanasia is the practice of assisting in a patient's death, where such assistance is motivated by the hope of benefitting the patient. This beneficial motivation distinguishes euthanasia from most other behavior that results in an innocent person's death. Whether this difference is enough to make a moral difference is a matter of great debate, as we shall see.

All types of euthanasia have this in common: they are meant to benefit the patient, whose death is the end result. While this has an air of paradox—how can someone be better off dead than alive?—the cases we are concerned with are all ones in which a patient is looking at a very dire forecast that involves a drastic reduction in quality of life. Typically, this is a matter either of great physical pain or of substantial cognitive impairment. When faced with such a choice, a patient may, after careful reflection, decide to end things on her own terms, rather than suffer through such a radical deterioration.

Not all patients are in a position to make such a choice. To see this, consider a distinction among three types of euthanasia: voluntary, nonvoluntary, and involuntary. **Involuntary euthanasia** occurs when a person makes a voluntary choice to remain alive, but someone else overrides that choice and seeks to end the person's life, for his own good. Now this may be incoherent—it may be impossible actually to benefit a person by killing him, if he prefers to remain alive. Or it may be coherent. But if it is, it's certainly immoral! So let's consider the other two forms of euthanasia, to see whether either of them might do better, morally speaking.

Nonvoluntary euthanasia occurs when patients are incapable of making voluntary choices. These are some of the most publicized cases of euthanasia—ones, typically, where a patient has suffered extreme brain damage as a result of an overdose or an accident. This patient isn't ever going to wake up; her cerebral cortex is so damaged that there is no chance of regaining consciousness. She doesn't feel anything; she doesn't think any thoughts. Her body is functioning at a minimal level, sometimes with the aid of life-sustaining treatment. These cases raise some very difficult issues. Are such people even alive? Their bodies are, to be sure. But are people identical to their bodies? Who gets to decide for such patients? Parents? Spouses? Children? What if there is disagreement among the nearest and dearest of the unfortunate patient? Even if we can settle this issue, on what basis should the decision makers make their decision? Most medical ethicists agree that we should defer to the expressed wishes of the patient while she was *compos mentis* (i.e., of sound mind). But what if the patient never made her desires known, either verbally or in writing? What if she did, but had conflicting opinions, or was undecided about which choice she would want her guardian to make?

I raise these issues only to set them to one side—not because they are in any way unimportant, but because the readings in this chapter, and the vast majority of ethical thinking about euthanasia, have instead focused on issues surrounding **voluntary euthanasia**. This occurs when patients voluntarily consent to end their lives and seek the assistance of others

to do so. A patient might request in person that her doctor administer lethal drugs. Alternatively, the request might come in the form of an **advance directive**. This is a document the patient has written in advance instructing her doctor about the kind of care she would like to receive if she can no longer communicate or is no longer competent to make decisions about her own care. It's uncommon, but some advance directives specify conditions under which the patient would like to be euthanized. From now on, I'll be talking just about voluntary euthanasia, and so will leave the "voluntary" qualifier implicit.

Another dimension along which we could distinguish acts of euthanasia is with respect to the doctor's level of involvement in the act. **Passive euthanasia** occurs when a doctor omits doing something, such as providing life-sustaining care, so that the suffering patient may die relatively painlessly. For example, a doctor may give a patient powerful analgesics (painkillers) and refrain from giving her food and water while she dies of starvation or dehydration. **Active euthanasia**, by contrast, is the intentional termination of a patient's life that involves taking means to hasten her death. For example, a doctor might inject a patient with lethal drugs or expose the patient to a lethal amount of carbon monoxide. In these cases, the doctor doesn't merely allow the patient to die, as in the case of withholding nutrition; rather, the doctor actively brings about the patient's death.

With the voluntary/nonvoluntary and the active/passive distinctions in hand (having set involuntary euthanasia aside), we can identify four kinds of euthanasia:

1. Active voluntary (e.g., lethal injection by a doctor at the patient's request)
2. Active nonvoluntary (e.g., lethal injection for a terminally ill infant whose parents consent to the procedure)
3. Passive voluntary (e.g., withholding life-extending antibiotics, with the patient's

consent, leaving her underlying condition to kill her while she's sedated)

4. Passive nonvoluntary (e.g., withholding nutrition from a terminally ill patient and allowing her to die of dehydration with her family's consent)

One further act in the vicinity of, but distinct from, euthanasia is worth mentioning. Sometimes patients want to end their suffering themselves—not to have a doctor do it for them. Since most people don't have lethal drugs in their medicine cabinet, they need help from a doctor. In such cases, a patient may ask a doctor to prescribe a lethal dose of drugs that the patient can then administer to herself, thereby ending her suffering. When a doctor helps a person commit suicide in this way, it's called **physician-assisted suicide**.

Doctors have at their disposal several methods for peacefully ending a patient's life. The most common method of passive euthanasia is called "terminal sedation." This occurs when a doctor gives a terminally ill patient a powerful sedative over an extended period of time. The patient is rendered unconscious, and during that time, food and water are withheld until the patient dies of dehydration or starvation. If all goes as intended, the patient experiences very little discomfort after being sedated.

Lethal injection is the most common method of active euthanasia. This consists of three different drugs injected successively into a patient's veins. The first drug is a powerful sedative, the second is a powerful muscle relaxant, and the third stops the heart from beating—roughly the same procedure as the one used for death row inmates executed by lethal injection.

The most common method of physician-assisted suicide is orally taking a lethal dose of secobarbital—a sedative commonly used as anesthesia for minor surgeries. About an hour before taking the lethal drug, patients take an antiemetic (a drug that prevents vomiting). They then mix the lethal dose with a sweet substance

to mask the bitter taste. Once the drugs are ingested, the patient loses consciousness and dies within a matter of minutes.

Active voluntary euthanasia is legal in only four countries in the world: the Netherlands (since 2002), Belgium (2002), Luxembourg (2009), and Colombia (2015). Active nonvoluntary euthanasia is illegal in every country, but is decriminalized (i.e., not prosecuted by the government) in the Netherlands when parents of terminally ill infants enduring “unbearable suffering” consent to euthanasia for their child. Passive nonvoluntary euthanasia is legal almost everywhere. And passive voluntary euthanasia is legal in most European Union countries, Canada, and the United States.

Physician-assisted suicide is legal in Switzerland, Germany, Japan, Canada, and the US states of California, Colorado, Montana, Oregon, Vermont, Washington, and Washington, D.C. In the United States, candidates for physician-assisted suicide must have a terminal illness and a prognosis of six months or fewer to live. To legally obtain lethal drugs in Washington D.C., a patient is required to make two oral requests, separated by at least fifteen days, to an attending physician. The patient must then submit a written request to the attending physician before the patient makes her second oral request and must wait at least 48 hours before an insurance-covered medication may be prescribed. Other states have very similar regulations to ensure that the patient is fully informed about, and committed to, her decision to end her life.

Oregon began permitting physician-assisted suicide in 1997. Since that time, 1,127 patients have died by a self-administered lethal dose of a prescription medication—52 percent male, 48 percent female. Seventy percent of those people were over the age of 65, and about 80 percent had metastatic cancer.

The majority of Americans favor legalizing active voluntary euthanasia. According to a 2016 Gallup poll, 69 percent of US citizens say that a doctor should be allowed to end a patient’s life

by painless means if the patient requests it. That has been the majority view in the United States since about 1970.¹

ARGUMENT ANALYSIS

Some critics of euthanasia argue that patients can never choose to end their lives voluntarily. Whether such critics are correct depends in part on the nature of voluntary choice. Unsurprisingly, this question has vexed philosophers for a very long time. Aristotle argued that there are two essential elements to such choice: adequate information, and the absence of coercion or compulsion. When we know enough about our options, and no one is twisting our arm, then our choice is voluntary. While philosophers have added nuance to Aristotle’s conception, his two elements remain central to contemporary notions of voluntary choice.

Now the question: *can* anyone voluntarily choose to seek aid in ending one’s life? One argument answers no:

The Impossibility of Voluntary Euthanasia Argument

1. Euthanasia is morally permissible only if patients voluntarily choose it.
2. Patients cannot voluntarily choose to be euthanized.

Therefore,

3. Euthanasia is not morally permissible.

Depending on the verdicts we reach about nonvoluntary euthanasia, premise 1 may be mistaken. After careful reflection, we might determine that some instances of nonvoluntary euthanasia are morally acceptable. But assume for now that premise 1 is true. Why think that premise 2 is true?

Those who support premise 2 argue that anyone who would be eligible for euthanasia cannot be choosing voluntarily, because the

1. <http://www.gallup.com/poll/193082/euthanasia-acceptable-solid-majority.aspx>

person would have to be in such agony or fear that he cannot think clearly. He would be unable to process all of the relevant information about his situation, or his condition would effectively be coercing him into any such choice.

This reasoning is problematic, for two reasons. First, it assumes without argument that the only patients who might be eligible for euthanasia are those who are in intense agony, or the depths of fear, or so heavily medicated that they are unable to coherently think through their options. There is no doubt that end-of-life circumstances sometimes include these factors. But they needn't. Some patients at the end of life can take in the relevant information about their diagnosis and their prognosis. They can balance the choices they face. One might say that they can never rationally choose to end their life before their condition does, but it's unclear why we should think this. Some have undergone numerous surgeries and invasive or debilitating treatments and have decided they'd rather seek assistance in dying than try to fight the disease that is killing them. There doesn't seem to be anything necessarily irrational about such a choice. Some have said that anyone choosing to end his own life must be deeply depressed, and so irrational, and so not choosing voluntarily. But this, too, seems like unfounded speculation. Not all who elect euthanasia are depressed. And for many who are depressed, that may be a perfectly rational response to a situation that presents only terrible choices. Depression need not be clinical depression, of the sort whose presence in a life could undercut one's rational capacity to make life-and-death decisions.

Let's assume for now that it is possible for people to sometimes voluntarily choose to seek assistance to end their life, for their own good. Still, many questions remain. Because everyone believes that passive euthanasia is often morally acceptable—it has been common practice for centuries, in diverse societies across the world—we will restrict our focus from now on to active euthanasia, which has long been illegal in most

countries and, in the United States, has been opposed by the American Medical Association since its inception.

There are at least two angles one might take: legal and moral. Many discussions fail to carefully distinguish between these, and the explanation here is simple: if you think that active euthanasia is immoral, you think that it is a form of unjustified killing, and it's then clear that it should be illegal as well. But things are more complicated if you think that active euthanasia is at least sometimes morally acceptable. Many people who think this also think that it should be illegal. This is an unusual combination—in almost every case, we criminalize behavior only if we regard it as immoral, since punishment has an element of moral condemnation that would not make sense if the convict had done nothing immoral. Still, some people do hold this interesting combination of views, because they are convinced by

The Slippery Slope Argument

1. If legalizing active euthanasia would eventually lead to widespread terrible abuse, then active euthanasia should be illegal.
2. Legalizing active euthanasia would eventually lead to terrible abuse.

Therefore,

3. Active euthanasia should be illegal.

A **slippery slope argument** is designed to criticize certain social innovations on the grounds that allowing them will lead to terrible results in the long run. The metaphor works like this: imagine that we are securely positioned at the top of a very steep hill. At the bottom of the hill lies disaster. Once we take even a tiny step from our safe perch, we are destined to tumble all the way down—the slope is slippery precisely because we can't stop ourselves from the inevitable crash.

Premise 1 seems pretty plausible, so let us grant it in order to consider premise 2. Its supporters often argue as follows: if we allow this practice, then we will be authorizing doctors and nurses to sometimes kill their patients. And

once medical professionals are making decisions about whose life is worth living and whose life is not, then, over time—not next week, next year, or even five years from now, but perhaps in a generation or two—our commitment to protecting innocent life will inevitably weaken. Down the road, we will become so morally corrupted that we won't even recognize it as corruption. Medical professionals will be killing elderly patients who want to live, but whose care is extremely expensive. They will be killing infants born with various illnesses and deformities. Perhaps, in a move reminiscent of the Nazi “euthanasia” programs (which were simply disguised campaigns to murder patients in mental hospitals), we will allow the killing of the mentally ill and the mentally retarded, justifying such practices with the claim that we are really doing these people a favor.

Such an outcome rightly strikes us as horrific. And we might think that there is no way that allowing a merciful end to patients' lives will land us in such a morally compromised position. But proponents of this slippery slope argument claim that once we take the fateful step of letting doctors kill their patients, then centuries of moral inhibitions will begin to be erased.

It is sometimes easy to determine when a prediction of disaster is unreasonable. Many people crafted slippery slope arguments to defend segregationist policies, or those that denied women the right to vote. These arguments were based on unwarranted fears, long-standing prejudice, and deep-seated ignorance. But sometimes it's quite difficult to know whether a prediction at the heart of a slippery slope argument is plausible. This is often the case with truly radical social reforms, ones that have rarely (if ever) been tested. Only a very small number of places have allowed active euthanasia, for instance, and even where it is permitted, it has been legal only for a relatively short time. Without a substantial track record to rely on, it might be unclear whether allowing it will have the disastrous results that opponents predict. In that case, we need further arguments to tell us how to respond to such uncertainty.

Opponents of voluntary active euthanasia may argue that we should allow it only if we have clear evidence that it won't lead to disaster. Since we lack such evidence, we should continue to forbid it. Supporters will argue that such a rule would prevent all sorts of morally important social innovations; after all, we can't prove that they will be beneficial if we are never permitted to test them in the first place. Those who favor allowing active euthanasia will further argue that the status quo results in needless suffering, that it undermines a patient's right to self-determination, and that a doctor's primary moral duty is to benefit her patients—and that, in unusual cases, assisting in a patient's death is the best way to benefit him.

Let's consider some of these reasons by building up arguments that incorporate them. The first of these is

The Compassion Argument

1. If an act is compassionate and prevents needless suffering, then it is morally acceptable.
2. Active euthanasia is compassionate and prevents needless suffering.

Therefore,

3. Active euthanasia is morally acceptable.

Premise 2 is ordinarily true. Those of you who have been pet owners: consider the situation when you have had to “put your pet down,” that is, actively euthanize it. Why did you do such a thing, ending the animal's life hours or days before the fatal condition killed your beloved pet? The answer is simple: compassion. You wanted to spare it the needless suffering it would have experienced had you let nature take its course. You judged that it was better for the animal to be painlessly killed than to deteriorate any further.

If we extend this kindness to animals, why shouldn't we do so to our fellow human beings who have asked for similar treatment? That is the rhetorical way of asking about the merits of premise 1. Critics of this argument need to show

that some compassionate actions are nevertheless immoral, and that those cases are relevantly similar to the case of active euthanasia. In particular, we need examples in which a person voluntarily requests to be relieved of her suffering, though granting that request would be immoral. There *may* be such cases. For instance, if some very bad people deserve to suffer and ask to be let off the hook, it may be wrong to grant that request. But this isn't relevantly similar, since, we are assuming, those who request to be euthanized do not deserve the suffering they are facing. If a child asks to be spared a minor difficulty, it is immoral to say yes every time—you will harm the child in the long run by preventing the development of strength of character needed to weather the inevitable difficulties faced in later years. But here, too, it seems that the case is relevantly different, since patients at the end of their life already have a well-formed character, and should not be asked to endure possibly excruciating suffering on the chance that it might fortify their character.

Another argument for active euthanasia claims that there is no morally relevant difference between killing people and letting them die. In both cases, the result is the same, and the specific means—*doing* something (killing) that ends in someone's death, versus *allowing* something that has the same outcome—makes no moral difference. So they are morally equivalent. Since passive euthanasia is morally OK, so too is active euthanasia. We can summarize this line of thought in

The Equivalence Argument

1. If there is no morally relevant difference between killing someone and letting him die, then there is no morally relevant difference between active and passive euthanasia.
2. There is no morally relevant difference between killing someone and letting him die.

Therefore,

3. There is no morally relevant difference between active and passive euthanasia.

Philosopher James Rachels proposed this argument in a very influential article written several decades ago.² He argued for premise 2 as follows. Think of a case that is identical in every way except one: in the first case, someone kills. In the second, someone lets another person die. Then see whether there is any moral difference. He claims that you won't find any.

Here is Rachels's example. Imagine that Smith stands to gain a large inheritance from the death of his six-year-old cousin. When his cousin is taking a bath, Smith proceeds to drown him, solely out of desire for the inheritance money. Now imagine Jones, who is in exactly the same situation, with exactly the same motives and intentions. Just as he is about to drown *his* cousin, the child slips under the water and drowns. Jones watches the entire thing and is prepared to push the child's head back under water if he has to. But he doesn't have to—the child dies without Jones having done anything. Rachels predicts that when we reflect on the case, we will come to believe that Smith's action is no worse than Jones's inaction, and so, in itself, killing someone is no worse than letting that person die.

Of course, there are lots of cases where killing someone *is* morally worse than letting him die. For instance, one might set out intentionally to betray and murder a friend, which is much worse, we think, than what happens when we fail to write a check to a famine relief agency, thereby letting a stranger halfway around the world die from hunger or preventable disease. But in such cases, there is some *other* difference, besides the fact that the first death involves a killing and the second death involves allowing someone to die, that explains why one is morally worse than the other.

It's true that the case Rachels uses is *not* a case of euthanasia, but rather a case of straight-up murder. Smith and Jones are not trying to promote the best interests of their cousin; rather,

2. James Rachels, "Active and Passive Euthanasia," *New England Journal of Medicine* 292 (1975): 78–80.

they are selfishly acting from greedy motives. But Rachels asks us not to get distracted by this point. He is presenting a controlled experiment, in which all variables are identical except one: the means of securing the death of their cousin. As with the best controlled experiments, we isolate just a single difference to see whether it makes a difference. Rachels claims that once you think hard about the Smith-Jones case, you will see that when the intentions, motivations, circumstances, and the results are the same, then whether those results were obtained by killing or letting die does not matter, morally speaking. Do you agree?

Another argument in favor of active euthanasia invites us to reflect on the importance of autonomy—the capacity to determine for ourselves how we are going to live our life. Autonomy is crucially important to living a decent life, as we can see when we contemplate its violation. The basic problem with slavery, exploitation, manipulation, and coercion is that these are all violations of autonomy. These immoral practices fail to treat a person with the respect she deserves, instead regarding her simply as a means to fulfilling someone else's desires.

While autonomy is very important, we cannot, of course, let people do just whatever they want—our autonomy does not extend so far as to allow me to violate your rights. For instance, I have a right to life. So even if someone wanted very much to kill me, he can't justify his action by claiming that he chose to do so autonomously!

With this limitation on autonomous action in place, we are now in a position to develop an argument that focuses explicitly on whether the law ought to permit active euthanasia:

The Autonomy Argument

1. If an action is autonomous and violates no one else's rights, then the law ought to allow it.
2. Many requests for active euthanasia are both autonomous and such that granting that request will violate no one's rights.

Therefore,

3. Many instances of active euthanasia should be legally permitted.

The core idea is this: it's my life, and I can do with it as I please. No one else should be in a position to tell me how to live my life, or, for that matter, tell me how to end it—unless, in doing so, I threaten to violate someone else's rights.

In some cases, choosing to die might indeed threaten someone else's rights. If a single parent who was terminally ill requested euthanasia without having taken steps to ensure that her children were well cared for after her death, then she would at least arguably be violating their rights. But this is a pretty unusual case. One might, of course, cause loved ones to suffer by requesting to be euthanized, but they don't have a right to be spared emotional pain of this sort. We don't violate the rights of others every time we cause them to suffer. (Suppose, for instance, that in becoming engaged to John, you cause intense suffering to Ted, who was hoping to marry you. You are not thereby violating Ted's rights.)

So premise 2 seems pretty plausible. What about premise 1? Many people find this attractive. But others have their concerns. The two major sources of worry come from those who endorse **legal moralism** and **legal paternalism**. Legal moralism says that we can legally prohibit behavior that violates no one's rights, so long as that behavior is immoral. Legal paternalism says that we can legally prohibit a person's behavior for her own good, even if that behavior is autonomous and violates no one's rights. To give you a sense of these views, those who favor legal moralism have tried to ban "indecent" books, to criminalize homosexual sex, to outlaw gambling, and to forbid the sale of liquor on Sundays, despite the fact that adults could autonomously choose to engage in these activities without violating anyone's rights in doing so. Legal paternalism has been used to require the use of seat belts in cars and helmets for motorcycle riders, even though people can autonomously choose to take the risks of going without them and, in doing so, needn't violate anyone's rights.

We could write a book about each of these two doctrines, and many have done so. Rather than engage them, though, let me make two brief points. First, both doctrines may be mistaken. If so, they give us no grounds for rejecting premise 1 of the Autonomy Argument. But, second, even if they are correct, legal moralism threatens premise 1 only if active euthanasia is immoral. We will shortly consider various arguments for that conclusion, so stay tuned. As far as legal paternalism is concerned, it gives us grounds for rejecting premise 1 only if a ban on euthanasia will protect the well-being of patients. But that is quite controversial. After all, such a ban would prevent some patients who have considered the matter carefully from doing what they most want to do. It will cause some to experience more suffering than they want to endure. It substitutes the judgment of lawmakers for the judgment of the patients themselves. Perhaps all of these measures are appropriate, but much further argument would be needed to show it so.

Let's turn now to arguments that oppose active euthanasia. The first one appeals to a doctor's special duties of care.

Doctors Must Not Kill

1. Active euthanasia is the intentional killing of an innocent person.
2. It is never morally permissible for doctors to intentionally kill their patients.

Therefore,

3. It is never morally permissible for doctors to perform active euthanasia.

Before we analyze the premises, a word about the conclusion. Even if it is true, this would not represent a complete argument against the morality of active euthanasia. That's because active euthanasia need not be performed by doctors. It might be performed by other medical professionals, such as nurses, or even a loved one with no medical expertise but in possession of medical advice, say, about how many pain pills will make for a lethal dose. So this argument, even if sound, does not show that all active euthanasia is morally forbidden.

With that qualification, let's consider the argument's premises. Premise 1 is true by definition. We might challenge premise 2, though, in the following way. A doctor's Hippocratic Oath, her professional pledge of allegiance to ethical principles, states that the first duty of a doctor is to *do no harm*. In ordinary cases, intentionally killing an innocent person is certainly doing him harm. But we are not speaking of ordinary cases. If a patient makes a repeated voluntary request for euthanasia, then intentionally terminating his life may be benefitting him, rather than harming him, because doing so respects his autonomy and reduces the overall amount of suffering that he has to experience. Premise 2 might instead be supported by a slippery slope argument: once we permit doctors to perform active euthanasia, then centuries of prohibitions against doctors killing their patients will slowly erode, leading eventually to murderous abuse. (See the earlier discussion of slippery slope arguments for an appraisal.)

Opponents of premise 2 might also argue that a doctor's primary moral duty is to benefit her patients, which requires deferring to their deepest autonomous wishes. If that conception of a doctor's role is correct, then so long as patients can indeed elect euthanasia in an autonomous way, then assisting in that procedure may not only be morally permitted but, in fact, a doctor's moral responsibility.

Another argument against active euthanasia enlists a ban against intentionally killing innocent people:

The Absolutist Argument

1. Active euthanasia is the intentional killing of an innocent person.
2. It is never morally acceptable to intentionally kill an innocent person.

Therefore,

3. Active euthanasia is never morally acceptable.

Premise 1 should look familiar (see the previous argument), and is true by definition. Premise 2

is an example of an **absolute rule**—one that is always wrong to break. There is a huge debate in moral philosophy about whether there are any absolute rules. We can't solve that here, so let's focus on just a couple of points.

First, the reason that it is ordinarily wrong to kill an innocent person is because the victim doesn't want to die. But that reason is absent in the sort of case we are discussing. Second, if a rule is absolute, then there are *no* circumstances in which breaking the rule is morally OK. We must obey the rule no matter how horrible the results of doing so may be. So, for instance, if you were faced with a choice in which you had to kill one innocent person in order to save *a million* other innocent people (put that creativity of yours to work and think up such a case), premise 2 would forbid you from doing that. You'd have to let those million people die. Most people have found that very difficult to stomach, not because they'd find anything pleasant in the prospect of killing someone, but rather because they'd find it hard to identify the rationale behind being forced to let a million innocents die when they could have been saved. The natural rationale seems to be this: Innocent human life is morally very important. That's why you shouldn't deliberately end it. But if it is so important, why not protect a million lives at the expense of one? That's a very hard question. Until we have an excellent answer to it, there is some reason to doubt whether premise 2 is true. Perhaps, after all, there are exceptions to the general moral rule against killing innocents. If so, then active euthanasia *might* be one of them.

Another argument focuses on the chance of medical error in offering a diagnosis or prognosis of a patient's condition. This is an argument not against the moral permissibility of active euthanasia, but rather against the advisability of legalizing it. The thought is that if we allow active euthanasia, then some patients may elect it on the basis of mistaken medical information, and so end their lives prematurely. Hence

The Medical Error Argument

1. We should outlaw practices that will mistakenly result in the loss of innocent life.
2. Active euthanasia will sometimes mistakenly result in the loss of innocent life.

Therefore,

3. We should outlaw active euthanasia.

Premise 2 seems very plausible. Doctors are only human; despite their best intentions, they will sometimes make mistakes when it comes to diagnosing a terminal condition or predicting its outcome. But premise 1 is suspect. We rightly allow people to take walks along country roads, bike for pleasure, or drive to work, even though we know in advance that many innocent people will die each year as a result of such behavior. Further, and perhaps ironically, allowing *passive* euthanasia, which every state and country does, also violates premise 1. Patients may decide not to undergo surgery, may forgo a round of chemotherapy, or may otherwise alter their medications or treatment, owing to medical errors of diagnosis and prognosis. When patients opt for passive euthanasia, they typically cease any further treatments or medical interventions. But these steps can also lead to premature death. If we allow passive euthanasia despite such risks, it's not clear why those risks justify outlawing active euthanasia.

The last argument against active euthanasia that we'll consider is

The Playing God Argument

1. Playing God is immoral.
2. Committing active euthanasia is playing God.

Therefore,

3. Active euthanasia is immoral.

What is it to play God? The most straightforward understanding is: to make life-or-death decisions about someone else's life. On that understanding,

premise 2 is true. But premise 1 is false. Emergency room doctors do this all the time, and rightly so. So do military commanders in battle zones. So do parents of young children who seek to vaccinate them against deadly diseases. These counterexamples show that we need a different understanding if premise 1 is to be plausible. The best alternative is to say that playing God is making life-or-death decisions about someone else's life *when one lacks the moral authority to do so*. That handles these problem cases. On this understanding, premise 1 seems to be true. But now premise 2 becomes problematic.

It's not clear why patients lack the moral authority to request euthanasia. It might be that they lack such authority because active euthanasia is immoral, but we can't assume that here, since that is what this argument is meant to show! Perhaps they lack the authority because only God has the right to decide when a person is going to end her life. This gets us into lots of tricky matters, but for now, consider just three points. First, defenders of this view need to justify their claim that God exists. (Don't worry, we're not going there.) Second, they must justify their claim that they know what God wants of us. Third, they also need to defend the claim that God forbids us from seeking to end our lives. But this will be quite complicated, and it is noteworthy that a number of thinkers from different religious traditions have rejected such a view. They have argued that God created human beings as autonomous individuals, and so intended us to exercise our autonomy not just over small issues but over the very largest ones as well. They also believe that God is benevolent and compassionate, and that such a deity would not want to see His creatures suffer needlessly. While it is true that suffering can sometimes be essential for improving one's character, it is also the case that in many instances, especially of the sort we are concerned with in this chapter, the suffering at issue is so intense as to break a patient, rather than facilitate her character development. When things are this bad, it isn't clear why an all-loving God would require a person to experience such

agony. There may be a good answer to that question, but that takes us into the realm of religious speculation, which we must leave to others.

CONCLUSION

Euthanasia presents an especially difficult set of moral issues for at least two reasons. First, there are distinct issues about the morality and the legality of euthanasia, and these are sometimes run together. Interestingly and unusually, some people allow that the most controversial form of euthanasia, active euthanasia, is morally acceptable, while also arguing that we should outlaw the practice. Second, euthanasia involves taking steps that are known, and in some cases intended, to result in the death of innocent people, which in almost every other context is clearly wrong. On the one hand, then, euthanasia—really, voluntary active euthanasia—starts off with a significant strike against it. On the other hand, though, we might think that such a practice is, by default, morally legitimate, since it can honor a patient's right to self-determination and can be the option that minimizes suffering for an innocent person.

ESSENTIAL CONCEPTS

Absolute rule: a rule that is always wrong to break.

Active euthanasia: euthanasia that occurs as the intentional termination of a patient's life that involves taking means to hasten her death.

Advanced directive: a document detailing a person's wishes about medical treatment in the event that that person can no longer communicate those wishes to a doctor.

Euthanasia: the practice of assisting in a patient's death, where such assistance is motivated by the hope of benefitting the patient.

Involuntary euthanasia: euthanasia that occurs when a person makes a voluntary choice to remain alive, but someone else overrides that choice and seeks to end the person's life, for his own good.

Legal moralism: the doctrine that we can legally prohibit behavior that violates no one's rights, so long as that behavior is immoral.

Legal paternalism: the doctrine that we can legally prohibit a person's behavior for her own good, even if that behavior is autonomous and violates no one's rights.

Nonvoluntary euthanasia: euthanasia that occurs when patients are incapable of making voluntary choices.

Passive euthanasia: euthanasia that occurs when we "let nature take its course," allowing someone's terminal condition to worsen with the awareness that she will die as a result, all the while intending to make her as comfortable as possible.

Physician-assisted suicide: a suicide performed with the help of a medical professional whose role is usually to prescribe and to oversee the administration of (but not to administer) lethal drugs.

Slippery slope argument: an argument designed to criticize certain social innovations on the grounds that allowing them will lead to terrible results in the long run.

Voluntary euthanasia: euthanasia that occurs when patients voluntarily consent to end their lives and seek the assistance of others to do so.

STAT SHOT

1. In the Netherlands, there were 5,516 reported cases of assisted dying in 2015. In 208 of those cases the patient self-administered the lethal drugs. In 5,277 cases, the doctor administered the drugs.¹
2. In Oregon, 1,749 prescriptions have been written for lethal drugs for physician-assisted suicide since 1997. As of February 2017, 1,127 patients have died from ingesting those drugs. The others refrained from taking them.²
3. In 2017, 73 percent of US citizens said that a doctor should be *legally* permitted to end a patient's life by painless means if the patient requests it. That has been the majority view in the United States since about 1970 (Figure 15.1).
4. In 2017, 57 percent of Americans said that physician-assisted suicide is *morally* acceptable; 37 percent said it is *morally* wrong (Figure 15.2).

When a person has a disease that cannot be cured, do you think doctors should be allowed by law to end the patient's life by some painless means if the patient and his or her family request it?



Figure 15.1.

Source: <http://news.gallup.com/poll/211928/majorityamericans-remain-supportive-euthanasia.aspx>

Regardless of whether or not you think [this issue] should be legal, for each one, please tell me whether you personally believe that in general it is morally acceptable or morally wrong. How about doctor-assisted suicide?



Figure 15.2.

Source: <http://news.gallup.com/poll/211928/majorityamericans-remain-supportive-euthanasia.aspx>

1. <http://www.dyingforchoice.com/resources/fact-files/netherlands-2015-euthanasia-report-card>

2. <http://www.cnn.com/2014/11/26/us/physician-assisted-suicide-fast-facts/index.html>

Cases for Critical Thinking

Dax Cowart

In the summer of 1973, twenty-five-year-old Donald “Dax” Cowart and his father were working on a broken-down automobile when an explosion, caused by a leaking gas line, erupted, killing Cowart’s father. Cowart began running, his body engulfed in flames. He made it about a half mile, with severe burns over 65 percent of his body and his eyes badly damaged, before he collapsed. A local farmer found Cowart shortly after. Cowart asked the farmer to run, get a gun, and bring it back so he could shoot himself. The farmer refused and called an ambulance instead. Cowart spent the next 232 days in the hospital receiving daily baths in a chlorine bleach solution to clean his wounds and having his bandages painfully peeled off and replaced.¹ He would later compare this treatment to being “skinned alive” each day.² He lost both eyes and all of his fingers. Every day, he was in constant, excruciating pain, and every day he asked his doctors to help him die. The doctors refused. He was also refused a significant amount of pain medicine, since the risks of such medication were poorly understood at the time. Once he was released from the hospital, Cowart made several unsuccessful attempts to end his life. Eventually, however, he completed a law degree and got married. He successfully sued the gas company whose leaky line caused his horrific injury, and he’s now financially secure for life. When asked to describe his life, Cowart says, “Today I’m happy; in fact I even feel that I’m happier than most people.”³ And yet Cowart has never wavered from his insistence that he ought to have been allowed to die. He now speaks often at medical ethics conferences arguing for the importance of patient autonomy about end-of-life decisions.

1. <https://www.youtube.com/watch?v=WAQHuaua4Wo>

2. http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1702&context=fss_papers

3. http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1702&context=fss_papers

Questions

1. Assuming that the farmer was in no danger of legal prosecution, would it have been morally *permissible* for him to provide Dax with a gun to kill himself? Would it have been morally *required*? Why or why not?
2. Do you think that the severity of Dax’s pain rendered him incapable of making an informed and rational decision about his medical treatment? Why or why not?
3. Dax didn’t have a terminal illness or injury. He survived and later thrived. Yet Dax has always said that the doctors ought to have respected his wishes and allowed him to die—either by active euthanasia or by physician-assisted suicide. Do you agree with Dax that he should have been allowed to die, or do you think the doctors did the right thing in continuing to treat him? Why?
4. Is it ever morally permissible to perform euthanasia (either passive or active) on a person without a terminal illness or injury? Why or why not?

Dementia and Advanced Directives

In the Netherlands, active nonvoluntary euthanasia is decriminalized. This means that, under certain circumstances, medical professionals will not be prosecuted if they euthanize a person who is not competent to make decisions about her own medical care. For example, if a patient has severe dementia, but has an advanced directive specifying that she is to be euthanized if she reaches a state of severe dementia, then doctors will not be prosecuted if they euthanize that patient (given that the patient *now* has severe dementia). This led to the following unfortunate scenario.¹

In February of 2017, an elderly Dutch woman with dementia was held down by her family as she resisted her doctor’s attempts to inject her

with lethal drugs. After being diagnosed with dementia, but before the disease had rendered her incompetent to make medical decisions, the patient told doctors that she would like to be euthanized “when the time was right.” When doctors judged that the time was right, they slipped a sleep-inducing drug into her coffee. She fell asleep, but woke unexpectedly when they began the process of injecting the lethal drugs. The patient resisted, apparently not wishing to have the procedure done to her. Nevertheless, the doctors and the patient’s family successfully restrained her and were able to administer the lethal drugs. She died soon after. The doctor who gave the order to proceed with the procedure was under investigation for a time, but officials determined that the doctor acted “in good faith” and was cleared of any wrongdoing.

1. <http://www.independent.co.uk/news/world/europe/doctor-netherlands-lethal-injection-dementia-euthanasia-a7564061.html>

Questions

1. Was it morally *permissible* for the doctor to euthanize this patient? Why or why not? Was it morally *required*, given that the patient clearly specified in her advanced directive that she wanted to be euthanized? Why or why not?
2. Suppose the doctors explained to the patient that they were going to euthanize her and that she understood what they were saying (though the doctors still judged that she was not competent to make decisions about her own care). And suppose that the patient said that she didn’t *ever* want to be euthanized, no matter what she said years earlier when she wrote her advanced directive. Should the doctors respect the patient’s current wishes or her wishes as they were when she wrote her advanced directive? Why?
3. Can people without dementia make accurate judgments about what life with dementia is like? Why or why not? What does your answer suggest about the morality of

advanced directives instructing doctors to perform euthanasia on a future version of oneself with dementia?

Children and Euthanasia

In 1963, a woman at The Johns Hopkins Hospital gave birth to a premature baby boy. Soon after, the child was diagnosed with duodenal atresia (an intestinal blockage) and Down syndrome. The blockage could be corrected with a very low-risk operation. Without the operation, food could not make its way to the intestines to be absorbed and the child would starve to death. The parents opted not to have the operation to correct the blockage. They thought that taking care of a child with Down syndrome would be enormously time consuming and didn’t want to take too much time away from their two other children. The physicians decided to respect the parents’ decision. They withheld food and water from the child, and, over the course of several days, he slowly died of dehydration.¹

1. <https://muse.jhu.edu/article/405764/pdf>
2. <http://www.independent.co.uk/news/world/europe/doctor-netherlands-lethal-injection-dementia-euthanasia-a7564061.html>

Questions

1. Was it permissible for the parents to refuse to consent to the surgery that would have saved their child’s life? Why or why not? If you think not, would it have been permissible for the doctors to save the child against the parents’ wishes? If you think it was permissible to allow the child to die, would it have been permissible for doctors to actively euthanize the child painlessly? Why or why not?
2. Is there any disability a child might have that would justify euthanizing that child (either passively or actively)?
3. In the Netherlands, children between twelve and sixteen can be euthanized if they request it (and meet other conditions, such as being terminally ill), but they need consent

from their parents. From ages sixteen to eighteen, minors can be euthanized without parental consent if they request it—even in the face of parental opposition.² Is it ever

morally justified to euthanize a sixteen-year-old minor against her parent's wishes? If so, under what conditions? If not, why not?

READINGS

The Morality of Euthanasia

James Rachels

James Rachels (1941–2003) argues that active euthanasia is sometimes morally permissible. Active euthanasia occurs when someone (typically a medical professional) takes action to deliberately end a patient's life, at the patient's request, for the patient's own good. Rachels argues that considerations of mercy play a vital role in justifying active euthanasia in many cases.

He first considers a utilitarian argument on behalf of active euthanasia, but finds problems with utilitarianism that are weighty enough to undermine this argument. However, Rachels believes that a different version can succeed. In this one, Rachels claims that any action that promotes the best interests of all concerned, and that violates no rights, is morally acceptable. Since, he claims, active euthanasia sometimes satisfies this description, it is sometimes morally acceptable.

The single most powerful argument in support of euthanasia is the argument from mercy. It is also an exceptionally simple argument, at least in its main idea, which makes one uncomplicated point. Terminally ill patients sometimes suffer pain so horrible that it is beyond the comprehension of those who have not actually experienced it. Their suffering can be so terrible that we do not like even to read about it or think about it; we recoil even from the descriptions of such agony. The argument from mercy says euthanasia is justified because it provides an end to *that*.

From James Rachels, "Euthanasia," in Tom Regan, ed., *Matters of Life and Death*, second edition (New York: McGraw Hill, 1986), pp. 49–52.

The great Irish satirist Jonathan Swift took eight years to die, while, in the words of Joseph Fletcher, "His mind crumbled to pieces." At times the pain in his blinded eyes was so intense he had to be restrained from tearing them out with his own hands. Knives and other potential instruments of suicide had to be kept from him. For the last three years of his life, he could do nothing but sit and drool: and when he finally died it was only after convulsions that lasted thirty-six hours.

Swift died in 1745. Since then, doctors have learned how to eliminate much of the pain that accompanies terminal illness, but the victory has been far from complete. So, here is a more modern example.

Stewart Alsop was a respected journalist who died in 1975 of a rare form of cancer. Before he died,

he wrote movingly of his experiences as a terminal patient. Although he had not thought much about euthanasia before, he came to approve of it after rooming briefly with someone he called Jack:

The third night that I roomed with Jack in our tiny double room in the solid-tumor ward of the cancer clinic of the National Institutes of Health in Bethesda, Md., a terrible thought occurred to me.

Jack had a melanoma in his belly, a malignant solid tumor that the doctors guessed was about the size of a softball. The cancer had started a few months before with a small tumor in his left shoulder, and there had been several operations since. The doctors planned to remove the softball-sized tumor, but they knew Jack would soon die. The cancer had metastasized—it had spread beyond control.

Jack was good-looking, about 28, and brave. He was in constant pain, and his doctor had prescribed an intravenous shot of a synthetic opiate—a pain-killer, or analgesic—every four hours. His wife spent many of the daylight hours with him, and she would sit or lie on his bed and pat him all over, as one pats a child, only more methodically, and this seemed to help control the pain. But at night, when his pretty wife had left (wives cannot stay overnight at the NIH clinic) and darkness fell, the pain would attack without pity.

At the prescribed hour, a nurse would give Jack a shot of the synthetic analgesic, and this would control the pain for perhaps two hours or a bit more. Then he would begin to moan, or whimper, very low, as though he didn't want to wake me. Then he would begin to howl, like a dog.

When this happened, either he or I would ring for a nurse, and ask for a pain-killer. She would give him some codeine or the like by mouth, but it never did any real good—it affected him no more than half an aspirin might affect a man who had just broken his arm. Always the nurse would explain as encouragingly as she could that there was not long to go before the next intravenous shot—“Only about 50 minutes now.” And always poor Jack's whimpers and howls would become more loud and frequent until at last the blessed relief came.

The third night of this routine the terrible thought occurred to me. “If Jack were a dog,” I thought, “what would be done with him?” The

answer was obvious: the pound, and chloroform. No human being with a spark of pity could let a living thing suffer so, to no good end.

The NIH clinic is, of course, one of the most modern and best-equipped hospitals we have. Jack's suffering was not the result of poor treatment in some backward rural facility; it was the inevitable product of his disease, which medical science was powerless to prevent.

I have quoted Alsop at length not for the sake of indulging in gory details but to give a clear idea of the kind of suffering we are talking about. We should not gloss over these facts with euphemistic language or squeamishly avert our eyes from them. For only by keeping them firmly and vividly in mind can we appreciate the full force of the argument from mercy: If a person prefers—and even begs for—death as the only alternative to lingering on *in this kind of torment*, only to die anyway after a while, then surely it is not immoral to help this person die sooner. As Alsop put it, “No human being with a spark of pity could let a living thing suffer so, to no good end.”

THE UTILITARIAN VERSION OF THE ARGUMENT

In connection with this argument, the utilitarians deserve special mention. They argued that actions and social policies should be judged right or wrong *exclusively* according to whether they cause happiness or misery; and they argued that when judged by this standard, euthanasia turns out to be morally acceptable. The utilitarian argument may be elaborated as follows:

(1) Any action or social policy is morally right if it serves to increase the amount of happiness in the world or to decrease the amount of misery. Conversely, an action or social policy is morally wrong if it serves to decrease happiness or to increase misery.

(2) The policy of killing, at their own request, hopelessly ill patients who are suffering great pain would decrease the amount of misery in the world. (An example could be Alsop's friend Jack.)

(3) Therefore, such a policy would be morally right.

The first premise of this argument, (1), states the Principle of Utility, which is the basic utilitarian assumption. Today most philosophers think that this principle is wrong, because they think that the promotion of happiness and the avoidance of misery are not the *only* morally important things. Happiness, they say, is only one among many values that should be promoted: freedom, justice, and a respect for people's rights are also important. To take one example: people *might* be happier if there were no freedom of religion, for if everyone adhered to the same religious beliefs, there would be greater harmony among people. There would be no unhappiness caused within families by Jewish girls marrying Catholic boys, and so forth. Moreover, if people were brainwashed well enough, no one would mind not having freedom of choice. Thus happiness would be increased. But, the argument continues, even if happiness *could* be increased this way, it would not be right to deny people freedom of religion, because people have a right to make their own choices. Therefore, the first premise of the utilitarian argument is unacceptable.

There is a related difficulty for utilitarianism, which connects more directly with the topic of euthanasia. Suppose a person is leading a miserable life—full of more unhappiness than happiness—but does *not* want to die. This person thinks that a miserable life is better than none at all. Now I assume that we would all agree that the person should not be killed; that would be plain, unjustifiable murder. Yet it *would* decrease the amount of misery in the world if we killed this person—it would lead to an increase in the balance of happiness over unhappiness—and so it is hard to see how, on strictly utilitarian grounds, it could be wrong. Again, the Principle of Utility seems to be an inadequate guide for determining right and wrong. So we are on shaky ground if we rely on *this* version of the argument from mercy for a defense of euthanasia.

DOING WHAT IS IN EVERYONE'S BEST INTERESTS

Although the foregoing utilitarian argument is faulty, it is nevertheless based on a sound idea. For even if the promotion of happiness and avoidance of misery are not the *only* morally important things, they are still very important. So, when an action or

a social policy would decrease misery, that is *a* very strong reason in its favor. In the cases of voluntary euthanasia we are now considering, great suffering is eliminated, and since the patient requests it, there is no question of violating individual rights. That is why, regardless of the difficulties of the Principle of Utility, the utilitarian version of the argument still retains considerable force.

I want now to present a somewhat different version of the argument from mercy, which is inspired by utilitarianism but which avoids the difficulties of the foregoing version by not making the Principle of Utility a premise of the argument. I believe that the following argument is sound and proves that active euthanasia *can* be justified:

1. If an action promotes the best interests of *everyone* concerned and violates *no one's* rights, then that action is morally acceptable.
2. In at least some cases, active euthanasia promotes the best interests of everyone concerned and violates no one's rights.
3. Therefore, in at least some cases, active euthanasia is morally acceptable.

It would have been in everyone's best interests if active euthanasia had been employed in the case of Stewart Alsop's friend Jack. First, and most important, it would have been in Jack's own interests, since it would have provided him with an easier, better death, without pain. (Who among us would choose Jack's death, if we had a choice, rather than a quick painless death?) Second, it would have been in the best interests of Jack's wife. Her misery, helplessly watching him suffer, must have been almost unbearable. Third, the hospital staff's best interests would have been served, since if Jack's dying had not been prolonged, they could have turned their attention to other patients whom they could have helped. Fourth, other patients would have benefited, since medical resources would no longer have been used in the sad, pointless maintenance of Jack's physical existence. Finally, if Jack himself requested to be killed, the act would not have violated his rights. Considering all this, how can active euthanasia in this case be wrong? How can it be wrong to do an action that is merciful, that benefits everyone concerned, and that violates no one's rights?

James Rachels: The Morality of Euthanasia

1. Would someone in circumstances like Jack's be better off dead? That is, would dying quickly and painlessly be in his best interest?
2. What are Rachels's objections to the principle of utility? Do you find them convincing?
3. How does Rachels's second argument differ from the utilitarian argument? Do you agree with Rachels that it is a stronger argument?
4. Rachels claims that euthanasia cannot be said to violate anyone's rights, given that the patient requests it. Do you find this claim plausible? Is it possible to do something that violates someone's rights even if he or she consents to it?
5. Rachels claims that (in some cases) active euthanasia promotes the interests of everyone concerned. If our society were to allow active euthanasia, would this be harmful to anyone's interests? Why or why not?

Why Doctors Must Not Kill

Leon R. Kass

Leon Kass argues that doctors must never be allowed to kill their patients, even if they request to be euthanized. As a general matter, Kass believes that permitting active euthanasia will lead to the deterioration of the doctor–patient relationship at all levels, thereby undercutting doctors' abilities to care for their patients' well-being.

Kass insists that patients who are deeply suffering are unlikely to be in a good position to offer informed consent to end their life. If euthanasia is an option, they may also feel pressure to exit life more quickly. And doctors may tire of certain patients and so end their life without gaining consent. Once people become aware of these dynamics, they are sure to lose trust in their doctors, thus eroding the doctor–patient relationship. Furthermore, once the absolute ban on medical killing is weakened, doctors will invariably end up taking the lives of patients even without their consent. Indeed, Kass claims, physicians in the Netherlands, where euthanasia is legal, have already reached that point.

Kass believes that there are three absolute limits on what a doctor is morally permitted to do. Each of these limits is enshrined in the Hippocratic Oath. A physician must not breach patient confidentiality; must not sleep with patients; and must not kill them. Within these outer limits there is much discretion and no fixed rules. But these limits are absolute, says Kass, precisely because they protect against a physician's deepest temptations.

Do you want your doctor licensed to kill? Should he or she be permitted or encouraged to inject or prescribe poison? Shall the mantle of privacy that

From Leon R. Kass, "Why Doctors Must Not Kill," *Commonweal* 14 Supp. (August 9, 1991), pp. 472–475.

protects the doctor–patient relationship, in the service of life and wholeness, now also cloak decisions for death? Do you want *your* doctor deciding, on the basis of his own private views, when you still deserve to live and when you now deserve to die? And what about the other fellow's doctor—that shallow

technician, that insensitive boor who neither asks nor listens, that unprincipled money-grubber, that doctor you used to go to until you got up the nerve to switch: do you want *him* licensed to kill? Speaking generally, shall the healing profession become also the euthanizing profession?

Common sense has always answered, "No." For more than two millennia, the reigning medical ethic, mindful that the power to cure is also the power to kill, has held as an inviolable rule, "Doctors must not kill." Yet this venerable taboo is now under attack. Proponents of euthanasia and physician-assisted suicide would have us believe that it is but an irrational vestige of religious prejudice, alien to a true ethic of medicine, which stands in the way of a rational and humane approach to suffering at the end of life. Nothing could be further from the truth. The taboo against doctors killing patients (even on request) is the very embodiment of reason and wisdom. Without it, medicine will have trouble doing its proper work; without it, medicine will have lost its claim to be an ethical and trustworthy profession; without it, all of us will suffer—yes, more than we now suffer because some of us are not soon enough released from life.

Consider first the damaging consequences for the doctor-patient relationship. The patient's trust in the doctor's whole-hearted devotion to the patient's best interests will be hard to sustain once doctors are licensed to kill. Imagine the scene: you are old, poor, in failing health, and alone in the world; you are brought to the city hospital with fractured ribs and pneumonia. The nurse or intern enters late at night with a syringe full of yellow stuff for your intravenous drip. How soundly will you sleep? It will not matter that your doctor has never yet put anyone to death; that he is legally entitled to do so will make a world of difference.

And it will make a world of psychic difference too for conscientious physicians. How easily will they be able to care whole-heartedly for patients when it is always possible to think of killing them as a "therapeutic option"? Shall it be penicillin and a respirator one more time, or, perhaps, this time just an overdose of morphine? Physicians get tired of treating patients who are hard to cure, who resist their best efforts, who are on their way

down—"gorks," "gomers," and "vegetables" are only some of the less than affectionate names they receive from the house officers. Won't it be tempting to think that death is the best "treatment" for the little old lady "dumped" again on the emergency room by the nearby nursing home?

It is naive and foolish to take comfort from the fact that the currently proposed change in the law provides "aid-in-dying" only to those who request it. For we know from long experience how difficult it is to discover what we truly want when we are suffering. Verbal "requests" made under duress rarely reveal the whole story. Often a demand for euthanasia is, in fact, an angry or anxious plea for help, born of fear of rejection or abandonment, or made in ignorance of available alternatives that could alleviate pain and suffering. Everyone knows how easy it is for those who control the information to engineer requests and to manipulate choices, especially in the vulnerable. Paint vividly a horrible prognosis, and contrast it with that "gentle, quick release": which will the depressed or frightened patient choose, especially in the face of a spiraling hospital bill or children who visit grudgingly? Yale Kamisar asks the right questions: "Is this the kind of choice, assuming that it can be made in a fixed and rational manner, that we want to offer a gravely ill person? Will we not sweep up, in the process, some who are not really tired of life, but think others are tired of them; some who do not really want to die, but who feel that they should not live on, because to do so when there looms the legal alternative of euthanasia is to do a selfish or cowardly act? Will not some feel an obligation to have themselves 'eliminated' in order that funds allocated for their terminal care might be better used by their families or, financial worries aside, in order to relieve their families of the emotional strain involved?"

Euthanasia, once legalized, will not remain confined to those who freely and knowingly elect it—and the most energetic backers of euthanasia do not really want it thus restricted. Why? Because the vast majority of candidates who merit mercy-killing cannot request it for themselves: adults with persistent vegetative state or severe depression or senility or aphasia or mental illness or Alzheimer's disease; infants who are deformed; and children

who are retarded or dying. All incapable of requesting death, they will thus be denied our new humane “assistance-in-dying.” But not to worry. The lawyers and the doctors (and the cost-containers) will soon rectify this injustice. The enactment of a law legalizing mercy killing (or assisted suicide) on voluntary request will certainly be challenged in the courts under the equal-protection clause of the Fourteenth Amendment. Why, it will be argued, should the comatose or the demented be denied the right to such a “dignified death” or such a “treatment” just because they cannot claim it for themselves? With the aid of court-appointed proxy consenters, we will quickly erase the distinction between the right to choose one’s own death and the right to request someone else’s—as we have already done in the termination-of-treatment cases.

Clever doctors and relatives will not need to wait for such changes in the law. Who will be around to notice when the elderly, poor, crippled, weak, powerless, retarded, uneducated, demented, or gullible are mercifully released from the lives their doctors, nurses, and next of kin deem no longer worth living? In Holland, for example, a recent survey of 300 physicians (conducted by an author who supports euthanasia) disclosed that over 40 percent had performed euthanasia *without the patient’s request*, and over 10 percent had done so in more than five cases. Is there any reason to believe that the average American physician is, in his private heart, more committed than his Dutch counterpart to the equal worth and dignity of every life under his care? Do we really want to find out what he is like, once the taboo is broken?

Even the most humane and conscientious physician psychologically needs protection against himself and his weaknesses, if he is to care fully for those who entrust themselves to him. A physician-friend who worked many years in a hospice caring for dying patients explained it to me most convincingly: “Only because I knew that I could not and would not kill my patients was I able to enter most fully and intimately into caring for them as they lay dying.” The psychological burden of the license to kill (not to speak of the brutalization of the physician-killers) could very well be an intolerably high price to pay for the physician-assisted euthanasia.

The point, however, is not merely psychological: it is also moral and essential. My friend’s horror at the thought that he might be tempted to kill his patients, were he not enjoined from doing so, embodies a deep understanding of the medical ethic and its intrinsic limits. We move from assessing consequences to looking at medicine itself.

The beginning of ethics regarding the use of power generally lies in nay-saying. The wise setting of limits on the use of power is based on discerning the excesses to which the power, unrestrained, is prone. Applied to the professions, this principle would establish strict outer boundaries—indeed, inviolable taboos—against those “occupational hazards” to which each profession is especially prone. *Within* these outer limits, no fixed rules of conduct apply; instead, prudence—the wise judgment of the man-on-the-spot—finds and adopts the best course of action in the light of the circumstances. But the outer limits themselves are fixed, firm, and non-negotiable.

What are those limits for medicine? At least three are set forth in the venerable Hippocratic Oath: no breach of confidentiality; no sexual relations with patients; no dispensing of deadly drugs. These unqualified, self-imposed restrictions are readily understood in terms of the temptations to which the physician is most vulnerable, temptations in each case regarding an area of vulnerability and exposure that the practice of medicine requires of patients. Patients necessarily divulge and reveal private and intimate details of their personal lives; patients necessarily expose their naked bodies to the physician’s objectifying gaze and investigating hands; patients necessarily expose and entrust the care of their very lives to the physician’s skill, technique, and judgment. The exposure is, in all cases, one-sided and asymmetric: the doctor does not reveal his intimacies, display his nakedness, offer up his embodied life to the patient. Mindful of the meaning of such nonmutual exposure, the physician voluntarily sets limits on his own conduct, pledging not to take advantage of or to violate the patient’s intimacies, naked sexuality, or life itself.

The prohibition against killing patients, the first negative promise of self-restraint sworn to in the Hippocratic Oath, stands as medicine’s first and

most abiding taboo: "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. . . . In purity and holiness I will guard my life and my art." In forswearing the giving of poison, the physician recognizes and restrains a god-like power he wields over patients, mindful that his drugs can both cure and kill. But in forswearing the giving of poison, *when asked for it*, the Hippocratic physician rejects the view that the patient's choice for death can make killing him—or assisting his suicide—right. For the physician, at least, human life in living bodies commands respect and reverence—*by its very nature*. As its respectability does not depend upon human agreement or patient consent, revocation of one's consent to live does not deprive one's living body of respectability. The deepest ethical principle restraining the physician's power is not the autonomy or freedom of the patient; neither is it his own compassion or good intention. Rather, it is the dignity and mysterious power of human life itself, and, therefore, also what the oath calls the purity and holiness of the life and art to which he has sworn devotion. A person can choose to be a physician, but he cannot simply choose what physicianship means.

The central meaning of physicianship derives not from medicine's powers but from its goal, not from its means but from its end: to benefit the sick by the activity of healing. The physician as physician serves only the sick. He does not serve the relatives or the hospital or the national debt inflated due to Medicare costs. Thus he will never sacrifice the well-being of the sick to the convenience or pocketbook or feelings of the relatives or society. Moreover, the physician serves the sick not because they have rights or wants or claims, but because they are sick. The healer works with and for those who need to be healed, in order to help make them whole. Despite enormous changes in medical technique and institutional practice, despite enormous changes in nosology and therapeutics, the center of medicine has not changed: it is as true today as it was in the days of Hippocrates that the ill desire to be whole; that wholeness means a certain well-working of the enlivened body and its unimpaired powers to sense, think, feel, desire, move, and maintain itself;

and that the relationship between the healer and the ill is constituted, essentially even if only tacitly, around the desire of both to promote the wholeness of the one who is ailing.

Can wholeness and healing ever be compatible with intentionally killing the patient? Can one benefit the patient as a whole by making him dead? There is, of course, a logical difficulty: how can any good exist for a being that is not? But the error is more than logical: to intend and to act for someone's good requires his continued existence to receive the benefit.

To be sure, certain attempts to benefit may in fact turn out, unintentionally, to be lethal. Giving adequate morphine to control pain might induce respiratory depression leading to death. But the intent to relieve the pain of the living presupposes that the living still live to be relieved. This must be the starting point in discussing all medical benefits: no benefit without a beneficiary.

Against this view, someone will surely bring forth the hard cases: patients so ill-served by their bodies that they can no longer bear to live, bodies riddled with cancer and racked with pain, against which their "owners" protest in horror and from which they insist on being released. Cannot the person "in the body" speak up against the rest, and request death for "personal" reasons?

However sympathetically we listen to such requests, we must see them as incoherent. Such person-body dualism cannot be sustained. "Personhood" is manifest on earth only in living bodies; our highest mental functions are held up by, and are inseparable from, lowly metabolism, respiration, circulation, excretion. There may be blood without consciousness, but there is never consciousness without blood. Thus one who calls for death in the service of personhood is like a tree seeking to cut its roots for the sake of growing its highest fruit. No physician, devoted to the benefit of the sick, can serve the patient as person by denying and thwarting his personal embodiment.

To say it plainly, to bring nothingness is incompatible with serving wholeness: one cannot heal—or comfort—by making nil. The healer cannot annihilate if he is truly to heal. The physician-euthanizer is a deadly self-contradiction.

But we must acknowledge a difficulty. The central goal of medicine—health—is, in each case, a perishable good: inevitably, patients get irreversibly sick, patients degenerate, patients die. Healing the sick is *in principle* a project that must at some point fail. And here is where all the trouble begins: How does one deal with “medical failure”? What does one seek when restoration of wholeness—or “much” wholeness—is by and large out of the question?

Contrary to the propaganda of the euthanasia movement, there is, in fact, much that can be done. Indeed, by recognizing finitude yet knowing that we will not kill, we are empowered to focus on easing and enhancing the *lives* of those who are dying. First of all, medicine can follow the lead of the hospice movement and—abandoning decades of shameful mismanagement—provide truly adequate (and now technically feasible) relief of pain and discomfort. Second, physicians (and patients and families) can continue to learn how to withhold or withdraw those technical interventions that are, in truth, merely burdensome or degrading medical additions to the unhappy end of a life—including, frequently, hospitalization itself. Ceasing treatment and allowing death to occur when (and if) it will seem to be quite compatible with the respect life itself commands for itself. Doctors may and must allow to die, even if they must not intentionally kill.

Ceasing medical intervention, allowing nature to take its course, differs fundamentally from mercy killing. For one thing, death does not necessarily follow the discontinuance of treatment; Karen Ann Quinlan lived more than ten years after the court allowed the “life-sustaining” respirator to be removed. Not the physician, but the underlying fatal illness becomes the true cause of death. More important morally, in ceasing treatment the physician need not *intend* the death of the patient, even when the death follows as a result of his omission. His intention should be to avoid useless and degrading medical *additions* to the already sad end of a life. In contrast, in active, direct mercy killing the physician must, necessarily and indubitably, intend *primarily* that the patient be made dead. And he must knowingly and indubitably cast himself in the role of the agent of death. This remains true even if he is merely an assistant in suicide.

A physician who provides the pills or lets the patient plunge the syringe after he leaves the room is *morally* no different from one who does the deed himself. “I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect.”

Once we refuse the technical fix, physicians and the rest of us can also rise to the occasion: we can learn to act humanly in the presence of finitude. Far more than adequate morphine and the removal of burdensome machinery, the dying need our presence and our encouragement. Dying people are all too easily reduced ahead of time to “thinghood” by those who cannot bear to deal with the suffering or disability of those they love. Withdrawal of contact, affection, and care is the greatest single cause of the dehumanization of dying. Not the alleged humanness of an elixir of death, but the humanness of connected living-while-dying is what medicine—and the rest of us—most owe the dying. The treatment of choice is company and care.

The euthanasia movement would have us believe that the physician’s refusal to assist in suicide or perform euthanasia constitutes an affront to human dignity. Yet one of their favorite arguments seems to me rather to prove the reverse. Why, it is argued, do we put animals out of their misery but insist on compelling fellow human beings to suffer to the bitter end? Why, if it is not a contradiction for the veterinarian, does the medical ethic absolutely rule out mercy killing? Is this not simply inhumane?

Perhaps *inhumane*, but not thereby *inhuman*. On the contrary, it is precisely because animals are not human that we must treat them (merely) humanely. We put dumb animals to sleep because they do not know that they are dying, because they can make nothing of their misery or mortality, and, therefore, because they cannot live deliberately—i.e., humanly—in the face of their own suffering and dying. They cannot live out a fitting end. Compassion for their weakness and dumbness is our only appropriate emotion, and given our responsibility for their care and well-being, we do the only humane thing we can. But when a conscious human being asks us for death, by that very action he displays the presence of something that precludes our regarding him as a dumb animal. Humanity is owed humanity, not humaneness. Humanity is owed the

bolstering of the human, even or especially in its dying moments, in resistance to the temptation to ignore its presence in the sight of suffering.

What humanity needs most in the face of evils is courage, the ability to stand against fear and pain and thoughts of nothingness. The deaths we most admire are those of people who, knowing that they are dying, face the fact frontally and act accordingly: they set their affairs in order, they arrange what could be final meetings with their loved ones, and yet, with strength of soul and a small reservoir of hope, they continue to live and work and love as much as they can for as long as they can. Because such conclusions of life require courage, they call for our encouragement—and for the many small speeches and deeds that shore up the human spirit against despair and defeat.

Many doctors are in fact rather poor at this sort of encouragement. They tend to regard every dying or incurable patient as a failure, as if an earlier diagnosis or a more vigorous intervention might have avoided what is, in truth, an inevitable collapse. The enormous successes of medicine these past fifty years have made both doctors and laymen less prepared than ever to accept the fact of finitude. Doctors behave, not without some reason, as if they have godlike powers to revive the moribund; laymen expect an endless string of medical miracles. Physicians today are not likely to be agents of encouragement once their technique begins to fail.

It is, of course, partly for these reasons that doctors will be pressed to kill—and many of them will, alas, be willing. Having adopted a largely technical approach to healing, having medicalized so much of the end of life, doctors are being asked—often with thinly veiled anger—to provide a final technical solution for the evil of human finitude and for their own technical failure: If you cannot cure me, kill me. The last gasp of autonomy or cry for dignity is asserted against a medicalization and institutionalization of the end of life that robs the old and the incurable of most of their autonomy and dignity: intubated and electrified, with bizarre mechanical companions, once proud and independent people find themselves cast in the roles of passive, obedient, highly disciplined children. People who

care for autonomy and dignity should try to reverse this dehumanization of the last stages of life, instead of giving dehumanization its final triumph by welcoming the desperate goodbye-to-all-that contained in one final plea for poison.

The present crisis that leads some to press for active euthanasia is really an opportunity to learn the limits of the medicalization of life and death and to recover an appreciation of living with and against mortality. It is an opportunity for physicians to recover an understanding that there remains a residual human wholeness—however precarious—that can be cared for even in the face of incurable and terminal illness. Should doctors cave in, should doctors become technical dispensers of death, they will not only be abandoning their posts, their patients, and their duty to care; they will set the worst sort of example for the community at large—teaching technicism and so-called humanness where encouragement and humanity are both required and sorely lacking. On the other hand, should physicians hold fast, should doctors learn that finitude is no disgrace and that human wholeness can be cared for to the very end, medicine may serve not only the good of its patients, but also, by example, the failing moral health of modern times.

Leon R. Kass: Why Doctors Must Not Kill

1. Kass claims that “[t]he physician-euthanizer is a deadly self-contradiction.” What does Kass mean by this? Is his claim plausible?
2. Kass argues that respect for human life, which requires that it never be deliberately taken, is an ethical principle that is deeper than respecting patient autonomy and being compassionate. What argument does he give for this view? Is it plausible?
3. Kass believes that doctors must allow their patients to die, though doctors may never kill. Is this a morally defensible position?
4. Kass claims that intending to kill a patient is always wrong, but that taking steps that are known to lead to a patient’s death is not. Does this difference make a moral difference?
5. Kass offers a slippery slope argument against active euthanasia. How plausible is that argument?

Justifying Voluntary Euthanasia

Peter Singer

Peter Singer notes that we have no qualms about euthanizing animals when their quality of life becomes very poor. Indeed, we think it a mercy to do so, an act of kindness. If this is so, why don't the same considerations apply equally to human beings?

Singer identifies four potential reasons why killing a suffering, terminally ill person might be morally worse than killing an animal in the same condition. The first is that people, unlike animals, are capable of anticipating and fearing their own deaths. The second is that people have a strong, self-conscious preference for wanting to remain alive, while animals have no such preferences. The third is that people have a right to life, while animals lack this. The fourth is that persons, but not animals, are rational agents capable of making autonomous choices.

Singer believes that these four considerations are the only ones that might justify treating humans and animals differently when it comes to mercy killing. He argues that none of these four reasons actually succeeds in making a case against voluntary euthanasia.

Regarding the first reason, Singer believes that so long as people are voluntarily euthanized under strict procedural safeguards, allowing euthanasia will not increase the level of fear or insecurity, since patients will be protected against being killed against their will. Further, if voluntary euthanasia is outlawed, this will increase the fear that our deaths will be needlessly drawn out and distressing. Second, those who seek to be euthanized signal that they prefer death to remaining alive. So voluntary euthanasia respects the preferences of the terminally ill; refusing to allow this procedure would dishonor those preferences. Third, rights protect choices—people can waive their rights if they voluntarily choose to do so. As a result, if a patient offers her informed consent to be euthanized, then her right to life has not been violated if a doctor fulfills her request. Finally, the importance of autonomy requires that medical professionals defer to the informed choices of patients. If they autonomously elect to be euthanized, then granting that request is a way of respecting the patient.

Under existing laws in most countries, people suffering unrelievable pain or distress from an incurable illness who beg their doctors to end their lives are asking their doctors to risk a murder charge. Although juries are extremely reluctant to convict in cases of this kind the law is clear that neither the request, nor the degree of suffering, nor the incurable condition of the person killed, is a defense to a charge of murder. Advocates of voluntary

euthanasia propose that this law be changed so that a doctor could legally act on a patient's desire to die without further suffering. Doctors have been able to do this quite openly in the Netherlands, as a result of a series of court decisions during the 1980s, as long as they comply with certain conditions. In Germany, doctors may provide a patient with the means to end her life, but they may not administer the substance to her.

The case for voluntary euthanasia has some common ground with the case for non-voluntary euthanasia, in that death is a benefit for the one

From Peter Singer, *Practical Ethics*, 2nd edition (Cambridge University Press, 1993), pp. 193–200.

killed. The two kinds of euthanasia differ, however, in that voluntary euthanasia involves the killing of a person, a rational and self-conscious being and not a merely conscious being. (To be strictly accurate it must be said that this is not always so, because although only rational and self-conscious beings can consent to their own deaths, they may not be rational and self-conscious at the time euthanasia is contemplated—the doctor may, for instance, be acting on a prior written requestor euthanasia if, through accident or illness, one's rational faculties should be irretrievably lost. For simplicity we shall, henceforth, disregard this complication.)

We have seen that it is possible to justify ending the life of a human being who lacks the capacity to consent. We must now ask in what way the ethical issues are different when the being is capable of consenting, and does in fact consent.

Let us return to the general principles about killing proposed earlier. I argued there that killing a self-conscious being is a more serious matter than killing a merely conscious being. I gave four distinct grounds on which this could be argued:

1. The classical utilitarian claim that since self-conscious beings are capable of fearing their own death, killing them has worse effects on others.
2. The preference utilitarian calculation that counts the thwarting of the victim's desire to go on living as an important reason against killing.
3. A theory of rights according to which to have a right one must have the ability to desire that to which one has a right, so that to have a right to life one must be able to desire one's own continued existence.
4. Respect for the autonomous decisions of rational agents.

Now suppose we have a situation in which a person suffering from a painful and incurable disease wishes to die. If the individual were not a person—not rational or self-conscious—euthanasia would, as I have said, be justifiable. Do any of the four grounds for holding that it is normally worse to kill a person provide reasons against killing when the individual is a person who wants to die?

The classical utilitarian objection does not apply to killing that takes place only with the genuine consent of the person killed. That people are killed under these conditions would have no tendency to spread fear or insecurity, since we have no cause to be fearful of being killed with our own genuine consent. If we do not wish to be killed, we simply do not consent. In fact, the argument from fear points in favour of voluntary euthanasia, for if voluntary euthanasia is not permitted we may, with good cause, be fearful that our deaths will be unnecessarily drawn out and distressing, in the Netherlands, a nationwide study commissioned by the government found that "Many patients want an assurance that their doctor will assist them to die should suffering become unbearable." Often, having received this assurance, no persistent request for euthanasia eventuated. The availability of euthanasia brought comfort without euthanasia having to be provided.

Preference utilitarianism also points in favour of, not against, voluntary euthanasia. Just as preference utilitarianism must count a desire to go on living as a reason against killing, so it must count a desire to die as a reason for killing.

Next, according to the theory of rights we have considered, it is an essential feature of a right that one can waive one's rights if one so chooses. I may have a right to privacy; but I can, if I wish, film every detail of my daily life and invite the neighbours to my home movies. Neighbours sufficiently intrigued to accept my invitation could do so without violating my right to privacy, since the right has on this occasion been waived. Similarly, to say that I have a right to life is not to say that it would be wrong for my doctor to end my life, if she does so at my request. In making this request I waive my right to life.

Lastly, the principle of respect for autonomy tells us to allow rational agents to live their own lives according to their own autonomous decisions, free from coercion or interference: but if rational agents should autonomously choose to die, then respect for autonomy will lead us to assist them to do as they choose.

So, although there are reasons for thinking that killing a self-conscious being is normally worse than killing any other kind of being, in the special

case of voluntary euthanasia most of these reasons count for euthanasia rather than against. Surprising as this result might at first seem, it really does no more than reflect the fact that what is special about self-conscious beings is that they can know that they exist over time and will, unless they die, continue to exist. Normally this continued existence is fervently desired; when the foreseeable continued existence is dreaded rather than desired however, the desire to die may take the place of the normal desire to live, reversing the reasons against killing based on the desire to live. Thus the case for voluntary euthanasia is arguably much stronger than the case for non-voluntary euthanasia.

Some opponents of the legalisation of voluntary euthanasia might concede that all this follows, if we have a genuinely free and rational decision to die: but, they add, we can never be sure that a request to be killed is the result of a free and rational decision. Will not the sick and elderly be pressured by their relatives to end their lives quickly? Will it not be possible to commit outright murder by pretending that a person has requested euthanasia? And even if there is no pressure of falsification, can anyone who is ill, suffering pain, and very probably in a drugged and confused state of mind, make a rational decision about whether to live or die?

These questions raise technical difficulties for the legalisation of voluntary euthanasia, rather than objections to the underlying ethical principles; but they are serious difficulties nonetheless. The guidelines developed by the courts in the Netherlands have sought to meet them by proposing that euthanasia is acceptable only if

- It is carried out by a physician.
- The patient has explicitly requested euthanasia in a manner that leaves no doubt of the patient's desire to die.
- The patient's decision is well-informed, free, and durable.
- The patient has an irreversible condition causing protracted physical or mental suffering that the patient finds unbearable.
- There is no reasonable alternative (reasonable from the patient's point of view) to alleviate the patient's suffering.

- The doctor has consulted another independent professional who agrees with his or her judgment.

Euthanasia in these circumstances is strongly supported by the Royal Dutch Medical Association, and by the general public in the Netherlands. The guidelines make murder in the guise of euthanasia rather far-fetched, and there is no evidence of an increase in the murder rate in the Netherlands.

It is often said, in debates about euthanasia, that doctors can be mistaken. In rare instances patients diagnosed by two competent doctors as suffering from an incurable condition have survived and enjoyed years of good health. Possibly the legalisation of voluntary euthanasia would, over the years, mean the deaths of a few people who would otherwise have recovered from their immediate illness and lived for some extra years. This is not, however, the knockdown argument against euthanasia that some imagine it to be. Against a very small number of unnecessary deaths that might occur if euthanasia is legalised we must place the very large amount of pain and distress that will be suffered if euthanasia is not legalised, by patients who really are terminally ill. Longer life is not such a supreme good that it outweighs all other considerations. (If it were, there, there would be many more effective ways of saving life—such as a ban on smoking, or a reduction of speed limits to 40 kilometres per hour—than prohibiting voluntary euthanasia.) The possibility that two doctors may make a mistake means that the person who opts for euthanasia is deciding on the balance of probabilities and giving up a very slight chance of survival in order to avoid suffering that will almost certainly end in death. This may be a perfectly rational choice. Probability is the guide of life, and of death, too. Against this, some will reply that improved care for the terminally ill has eliminated pain and made voluntary euthanasia unnecessary. Elisabeth Kübler-Ross, whose *On Death and Dying* is perhaps the best-known book on care for the dying, has claimed that none of her patients request euthanasia. Given personal attention and the right medication, she says, people come to accept their deaths and die peacefully without pain.

Kübler-Ross may be right. It may be possible, now, to eliminate pain. In almost all cases, it may even be possible to do it in a way that leaves patients in possession of their rational faculties and free from vomiting, nausea, or other distressing side-effects. Unfortunately only a minority of dying patients now receive this kind of care. Nor is physical pain the only problem. There can also be other distressing conditions, like bones so fragile they fracture at sudden movements, uncontrollable nausea and vomiting, slow starvation due to a cancerous growth, inability to control one's bowels or bladder, difficulty in breathing, and so on.

Dr Timothy Quill, a doctor from Rochester, New York, has described how he prescribed barbiturate sleeping pills for "Diane," a patient with a severe form of leukaemia, knowing that she wanted the tablets in order to be able to end her life. Dr Quill had known Diane for many years, and admired her courage in dealing with previous serious illnesses. In an article in the *New England Journal of Medicine*, Dr Quill wrote:

It was extraordinarily important to Diane to maintain control of herself and her own dignity during the time remaining to her. When this was no longer possible, she clearly wanted to die. As a former director of a hospice program, I know how to use pain medicines to keep patients comfortable and lessen suffering. I explained the philosophy of comfort care, which I strongly believe in. Although Diane understood and appreciated this, she had known of people lingering in what was called relative comfort, and she wanted no part of it. When the time came, she wanted to take her life in the least painful way possible. Knowing of her desire for independence and her decision to stay in control, I thought this request made perfect sense. . . . In our discussion it became clear that preoccupation with her fear of a lingering death would interfere with Diane's getting the most out of the time she had left until she found a safe way to ensure her death.

Not all dying patients who wish to die are fortunate enough to have a doctor like Timothy Quill. Betty Rollin has described, in her moving book *Last Wish*, how her mother developed ovarian cancer that spread to other parts of her body. One morning her mother said to her:

I've had a wonderful life, but now it's over, or it should be. I'm not afraid to die, but I am afraid of this illness, what it's doing to me. . . . There's never any relief from it now. Nothing but nausea and this pain. . . . There won't be any more chemotherapy. There's no treatment anymore. So what happens to me now? I know what happens. I'll die slowly. . . . I don't want that. . . . Who does it benefit if I die slowly? If it benefits my children I'd be willing. But it's not going to do you any good. . . . There's no point in a slow death, none. I've never liked doing things with no point. I've got to end this.

Betty Rollin found it very difficult to help her mother to carry out her desire: "Physician after physician turned down our pleas for help (How many pills? What kind?)." After her book about her mother's death was published, she received hundreds of letters, many from people, or close relatives of people, who had tried to die, failed, and suffered even more. Many of these people were denied help from doctors, because although suicide is legal in most jurisdictions, assisted suicide is not.

Perhaps one day it will be possible to treat all terminally ill and incurable patients in such a way that no one requests euthanasia and the subject becomes a non-issue; but this is now just a utopian ideal, and no reason at all to deny euthanasia to those who must live and die in far less comfortable conditions. It is, in any case, highly paternalistic to tell dying patients that they are now so well looked after that they need not be offered the option of euthanasia. It would be more in keeping with respect for individual freedom and autonomy to legalise euthanasia and let patients decide whether their situation is bearable.

Do these arguments for voluntary euthanasia perhaps give too much weight to individual freedom and autonomy? After all, we do not allow people free choices on matters like, for instance, the taking of heroin. This is a restriction of freedom but, in the view of many, one that can be justified on paternalistic grounds. If preventing people from becoming heroin addicts is justifiable paternalism, why isn't preventing people from having themselves killed?

The question is a reasonable one, because respect for individual freedom can be carried too far. John Stuart Mill thought that the state should never

interfere with the individual except to prevent harm to others. The individual's own good, Mill thought, is not a proper reason for state intervention. But Mill may have had too high an opinion of the rationality of a human being. It may occasionally be right to prevent people from making choices that are obviously not rationally based and that we can be sure they will later regret. The prohibition of voluntary euthanasia cannot be justified on paternalistic grounds, however, for voluntary euthanasia is an act for which good reasons exist. Voluntary euthanasia occurs only when, to the best of medical knowledge, a person is suffering from an incurable and painful or extremely distressing condition. In these circumstances one cannot say that to choose to die quickly is obviously irrational. The strength of the case for voluntary euthanasia lies in this combination of respect for the preferences, or autonomy, of those who decide for euthanasia; and the clear rational basis of the decision itself. . . .

Peter Singer: Justifying Voluntary Euthanasia

1. Singer claims that permitting active euthanasia will reduce the fear associated with dying.

Do you think his prediction is correct? Why or why not?

2. Singer identifies four reasons that might justify withholding active euthanasia from humans while allowing it for nonhuman animals. Can you think of a fifth reason that Singer has not considered, one that might successfully oppose his position?
3. Some critics of voluntary euthanasia claim that patients cannot autonomously elect to be euthanized: in order to be eligible for euthanasia, a person has to be suffering to such an extent that his judgment is invariably clouded. What do you think of this line of reasoning?
4. The legitimacy of active euthanasia seems to depend on the idea that some people are, literally, better off dead than alive. Does this idea make sense? Does the legitimacy of active euthanasia really depend on this idea?
5. Singer assumes that people can waive their right to life by consenting to die. Is this true, or is the right to life inalienable (such that one cannot lose it)?

Economic Justice and Economic Inequality

JUST THE FACTS

Economic inequality refers to the difference in economic well-being between different groups or between individuals within a group. There are various measures of economic well-being, such as income, consumption, and wealth. There are therefore a variety of ways to measure economic inequality. For the most part, however, we'll focus on **wealth inequality**—the unequal distribution of wealth among groups or individuals within a group. Many discussions of economic inequality have focused on wealth and wealth inequality because being more wealthy tends to afford one many advantages over the less wealthy. To the extent that one is wealthy, one can achieve both short- and long-term financial security, gain social prestige and political power, and create still more wealth.

There are many ways to measure a person's wealth, but perhaps the most common way is to measure that person's **net worth**—her assets minus her liabilities. People's assets include the value of their banking and savings accounts, residences, cars, boats, real estate holdings, retirement accounts, investments, and so on. Their liabilities include their debts, such as their mortgage, credit card debt, student loans, car loans, and unpaid medical bills. Thus, one can be very wealthy while having very low income (or no income at all), as in the case of a retired person living on the interest from a large retirement account. Conversely, one can have a very high income but very low (even negative) wealth, as in the case, say, of a professional athlete with

a large salary but a negative net worth due to enormous credit card and mortgage debt.

Most people have probably heard that there is significant wealth inequality both between people within the same country and between people across countries. Few, however, are aware of the severity of the inequality. Indeed, a 2011 study found that US citizens dramatically underestimate the degree of wealth inequality in the United States and would prefer a far more equal distribution of it.¹ It's therefore worth taking a long look at the actual numbers to better appreciate the current state of things.

We'll begin with global wealth inequality. According to a recent Oxfam study,² since 2015, the combined wealth of the richest 1 percent of people in the world (about 75 million people) exceeded the combined wealth of the other 99 percent (about 7.4 billion people). The eight richest people on the planet own roughly the same amount of wealth as the poorest 50 percent (about 3.75 billion people) combined. Bill Gates, founder of Microsoft, has more wealth than the gross domestic product (GDP) of more than one hundred different countries (individually, not combined), including Myanmar, Ethiopia, Luxembourg, Croatia, Belarus, Tunisia, and Lithuania. The 1,810 billionaires on the 2016 Forbes list of billionaires own as much wealth as

1. <http://www.people.hbs.edu/mnorton/norton%20ariley%20in%20press.pdf>

2. https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-economy-for-99-percent-160117-en.pdf

the poorest 70 percent of humanity (5.25 billion people). According to UNICEF, 80 percent of the world's population (6 billion) lives on \$10 or less a day—less than \$3,650 per year.³ All the while, 22,000 children die each day due to poverty.⁴

The difference in wealth between the rich and the poor in the United States is also enormous and continues to grow. Indeed, the wealth gap in the United States is wider than that of any other major developed nation. For example, the wealthiest 1 percent of Americans (3.2 million people) own roughly 40 percent of the nation's wealth, while the poorest 80 percent (256 million people) own just 7 percent. In 2011, the 400 wealthiest Americans had more wealth than the poorest 50 percent of Americans (160 million people) combined.⁵

Inequality along racial lines is large and growing in the United States, too. In 1983, the median household wealth of white families was 8 times that of black families. By 2013, that gap had grown; at that point, median white families owned 12 times the wealth (\$134,230) of median black families (\$11,030). There is still significant inequality among white and Hispanic families, but Hispanic families have managed to close the gap a small bit. In 1983, median white families had 11 times the wealth of median Hispanic families; thirty years later, median white families had 10 times the wealth (\$134,230) of median Hispanic families (\$13,730).⁶ In 2013, white families had over \$100,000 more (about 7 to 11 times more) in average retirement savings than African American and Hispanic families—a gap that is becoming more important as 401(k)s and similar retirement plans replace more traditional pension plans. The billionaires who make up the Forbes

400 list of richest Americans—the vast majority of whom are white—now have as much wealth as all African American households, plus one-third of America's Hispanic population, combined. In other words, 400 extremely wealthy individuals have as much wealth as 21 million African American and Hispanic households in America. As of 2010, there were over 3.5 million vacation homes in the United States,⁷ while over half a million people were homeless.⁸

As with any economic phenomenon, the causes of wealth inequality are complex. There are, however, a few factors that most agree contribute to wealth inequality—even if none of these factors is by itself sufficient to explain the phenomenon. Those factors are income inequality, educational inequality, advancement in technology, and globalization. Obviously, income inequality—the disparity in wages earned between people—will make a difference in wealth inequality, because money earned in wages can be invested, or saved, or used to acquire further assets, thereby contributing to one's wealth. Differences in income are often due to differences in education. In general, the more education a person has, the more employers are willing to pay for the knowledge and skills acquired as a result of that education. Thus, better educated people tend to have higher-paying jobs and better job security. As for technology, computers and robots now perform many highly repetitious jobs formerly carried out by humans. As new technology can perform those tasks more efficiently, those jobs are eliminated. And those jobs have tended to be filled by low-skilled, and therefore low-paid, laborers. Thus, poorer people tend to be hurt most by advances in technology—in the short term, at least. Finally, globalization—the business practice of operating on an international scale—means that

3. https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf

4. https://www.unicef.org/media/media_56045.html

5. <http://www.politifact.com/wisconsin/statements/2011/mar/10/michael-moore/michael-moore-says-400-americans-have-more-wealth/>

6. <http://apps.urban.org/features/wealth-inequality-charts/>

7. <https://www.census.gov/hhes/www/housing/census/historic/vacation.html>

8. <http://www.reuters.com/article/us-usa-homelessness-idUSKCN0T908720151120>

businesses in America can find laborers outside the American labor market. Laborers in poorer countries are often willing to work for lower wages than American workers. Thus, businesses stand to make higher profits if they hire laborers in those other countries and lay off, or refrain from hiring, American laborers.

Americans and Canadians tend to be less concerned about wealth inequality than members of other developed and developing countries. According to a 2013 Pew Research study, 47 percent of Americans and 45 percent of Canadians said that the gap between the rich and poor was a “very big problem.”⁹ That differs significantly from other developed economies such as Greece, Italy, and Spain, where the numbers were 84 percent, 75 percent, and 75 percent respectively. Concern about inequality is highest among developing countries, where a median of 74 percent say that the gap between the rich and poor is a “very big problem.” This includes 86 percent of Lebanese, 85 percent of Pakistanis, and 82 percent of Tunisians. Japan and Australia were especially noteworthy for their lack of concern with inequality, as only 34 percent of Japanese and 33 percent of Australians said that inequality was a “very big problem.”¹⁰

ARGUMENT ANALYSIS

Statistics like the ones mentioned earlier point to great wealth and income gaps in the United States. Is the wide gulf between rich and poor cause for moral concern? Or is this extreme sort of economic inequality morally acceptable?

To help us answer this question, recall a distinction made in several other chapters: that between instrumental and intrinsic value. Things are instrumentally valuable when they cause good things to occur or prevent bad things from happening. Things are intrinsically valuable when they are good in and of themselves, considered entirely apart from any results they may bring about. Many people think that closing the

wealth and income gaps would be of great *instrumental* value. For instance, reducing inequality might enable those who are relatively poor to have access to better health care, educational opportunities, legal defense, and improved career options. Lessening the wealth and income gaps might help many at the lower end of the economic spectrum to feel more allegiance to society. And less poverty might lead to less crime.

But many also think that there is something good, in and of itself, with a situation of equality among people. This is reflected in the idea that each person is of equal fundamental importance—every person has a basic dignity, a core set of moral rights, an intrinsic value that is the same as that of every other person. Suppose we grant that people are in these ways fundamentally equal. Does that also mean that economic equality is intrinsically valuable?

Many people say no and insist that economic equality is, at best, of only instrumental value. One line of reasoning in support of this position is

The Leveling-Down Argument

1. If equality is intrinsically valuable, then it is morally good to **level down**, even if doing so fails to benefit the worse-off.
2. It wouldn’t be morally good to level down in such circumstances.

Therefore,

3. Equality is not intrinsically valuable.

To level down is to decrease the resources or benefits of the better-off. One way to do this—we might call it the Robin Hood way—is to take from the rich and give to the poor. This would level down the wealthy and level up the poor, yielding a more egalitarian outcome. But we could also increase equality by simply taking from the rich and destroying that wealth, without redistributing it at all. This would make the rich much closer in economic status to the poor, and so increase equality. But this sort of leveling down seems objectionable, as premise 2 asserts. Why act so as to harm some people if you won’t thereby benefit anyone else?

9. <http://www.pewglobal.org/2013/05/23/chapter-3-inequality-and-economic-mobility/>

10. Ibid.

Attention to the plight of the poor often motivates people to endorse some form of **economic egalitarianism**—the view that it is morally important to distribute wealth and income equally. But as the previous paragraph revealed, it is possible to construct an egalitarian system that only harms the better-off and fails to benefit any of the worse-off.

Those who advocate for egalitarianism are often motivated by a concern to improve the condition of the poor. But on some plausible (though contested) assumptions, we can in fact best improve the economic status of the worst-off by allowing for inequalities. The idea is that the poor are better off living in a society with such things as life-saving drugs, cell phones, and safe cars. These innovations are possible (the thought goes) only because we promise innovators a chance at becoming wealthy from the investment of their time and energy. If everyone earned the same income, regardless of how hard they worked or how innovative they were, then this would drastically reduce the incentive to develop so many life-enhancing and life-saving products. So economic inequality may be the price we have to pay in order to live in a society that offers such benefits.

Note that even if this line of reasoning is sound, it does not support anything like the level of inequality we see in the United States. Innovations have flourished in our own country, and others, when the upper income tax rates were much higher than they are today. There are also means of redistributing wealth other than through income taxes. We could, for instance, prevent the concentration of wealth across generations by imposing higher **estate taxes** (those paid by the estate of a person who has died) or **inheritance taxes** (paid by those who have inherited the wealth of the deceased). Doing such things wouldn't have much impact on incentives to innovate for the greater good.

Objections to economic equality can come both from those who are **conservative** (in its original and strict meaning: those who want to preserve the status quo), who argue for protecting

the wealthy from increased taxation, as well as from those who want to see greater redistribution of wealth from the rich to the poor. As an example of a conservative argument, consider

The Legal Argument

1. If one obeys the law (including paying all legally required taxes), then one is morally entitled to all of one's remaining wealth and income.
 2. A great many of the rich fully obey the law.
- Therefore,
3. A great many of the rich are morally entitled to their riches.

Premise 2 is true. But premise 1 not very plausible. For it assumes that whatever the tax code allows or requires is morally legitimate. As a general matter, it is false that we are morally entitled to do whatever the law allows us. After all, the law has allowed people to enslave one another. It has sometimes allowed powerful elites to rape or kill their servants with impunity. We are always able to step back from the law and ask about its moral legitimacy. The same holds for tax law. Even if a given law allows the rich to keep most of their wealth, that does not automatically mean that the rich are *morally* entitled to it. We cannot just assume that existing tax codes are morally correct. Some may err too heavily in favor of the wealthy; others, of course, may err in the opposite direction.

Conservatives might instead opt for a more nuanced attempt to preserve the economic status quo. It takes the form of

The Liberty Argument

1. The government can ensure economic equality only by constantly interfering with its citizens to adjust for any inequality, even when it arises from free exchanges.
 2. It is wrong for the government to interfere in this way.
- Therefore,
3. It is wrong for the government to ensure economic equality.

The idea behind this argument is simple. We are morally at liberty to do whatever we want, so long as we don't violate the rights of others. A legitimate government will respect that liberty. But if it is called on to ensure economic equality, the government will have to continuously monitor our economic situation and intrude on our privacy. Further, this sort of radical redistribution of wealth will violate the property rights of the better-off, when they have achieved their economic gains through free exchanges.

Suppose you tell me of a great idea for a new company you want to start. You're honest with me, describing the risks and the potential rewards. I tell you I'll invest \$25,000 in exchange for 90 percent of the profits in your company—if it ever does make a profit, which most start-ups don't. The company is a great success and I become rich—for a short while. Now that I am much wealthier than you, and indeed than most people, the government steps in and takes most of those profits away, in the form of an equality tax. This seems to be a violation of my rights, since our deal was made freely, and in making my newfound wealth, I broke no laws and violated no one's rights.

But this is too quick. After all, most of us, when earning our pay, break no laws and violate no rights. And yet we are all subject to income taxes, and rightly so. Unless you are an **anarchist**—someone who rejects the legitimacy of all governments and thinks that government ought to be abolished—you should believe that some taxes are morally legitimate, since governments require tax revenue in order to provide their services. The question, then, is not *whether* we are morally required to return a portion of our income to the government, but *how much*. People frequently complain about how high their taxes are. But *how much is too much?*

Others argue against an egalitarian ideal not because they seek to protect the interests of the wealthy but because, perhaps surprisingly, they believe that economic equality fails to do enough for the worst-off enough among us. Call this

The Insufficiency Argument

1. Distributing equal resources to citizens will still leave many of the worst-off with little chance of a decent life.
2. Governments should not adopt policies that yield this sort of result; governments should instead adopt policies that maximize the chance that every citizen has an equal opportunity to live a sufficiently good life.

Therefore,

3. The government should not distribute resources equally to its citizens.

The core thought behind this argument is that a substantial number of people are very badly off and need an unusually large number of resources to bring them to a level of well-being that is even close to what the average person enjoys. Imagine poor citizens who require medicines, nursing care, hospitalizations, rehabilitative therapies or surgeries that cost hundreds of thousands of dollars. Guaranteeing economic equality would fall far short of giving such people what they need in order to live a decent life.

According to proponents of the Insufficiency Argument, **distributive justice**—justice in the social distribution of resources and opportunities—requires that we do what we can to ensure that everyone has an equal chance at living a sufficiently good life. That can require giving some people much more than the average, and much more than an equal monetary distribution would require. So economic egalitarianism is mistaken—not because it takes too much from the wealthy, but rather because it fails to give enough to many of the poor.

One potential criticism of this argument is that many societies lack the resources to meet the demands it sets. *Perhaps* the richest countries could tax their wealthier citizens enough so as to ensure that even the neediest are able to live a decent life. But other countries may simply be too poor to provide all of their citizens a chance at a decent life.

As you might also have suspected, another problem with this argument is that it requires the government to take a stand on what qualifies as a sufficiently good life and to be committed to enabling each of its citizens to live such a life. Some argue that there is too much controversy over what counts as a good life for this demand to have any force. Others argue that the government should not be in the business of trying to define the nature of a good life—this is something that each citizen should decide for herself. Finally, even if we could agree on what did and didn't qualify as a sufficiently good life, many claim that it's not the government's business to ensure that we are able to live it.

Addressing these points would require that we investigate the proper purpose of government and the limits of its legitimate reach. Some believe that government is best when it interferes the least; it must maintain a hands-off policy so long as we are respecting the rights of others. Others envision a more proactive role for government, arguing that it is uniquely well positioned to bring about important social benefits that make nearly everyone's life better off. On this view, the government may tax us at a greater rate and constrain us in various ways (e.g., by requiring that we wear seat belts or helmets while driving), even when we are not threatening to violate the rights of others. While properly analyzing these fascinating debates is unfortunately beyond the scope of our present discussion, we can consider some related arguments that have an indirect bearing on the merits of these two visions of the role and limits of good government.

One such argument keeps the focus on the poor and claims once again that an economic egalitarian policy fails to do enough for them. The argument comes from John Rawls (1921–2002), who was perhaps the greatest political philosopher of the twentieth century. He defended what he called the **difference principle**: when distributing resources and opportunities, societies are required to give the greatest priority to the interests of the worst-off among

us. Priority is not the same as equality—when you give one group priority over another, you are treating these groups unequally. Rawls's argument for the difference principle has several steps and involves some jargon, but it is not really that complicated.

To appreciate Rawls's view, we need to get two technical terms under our belt. The first is one that Rawls coined: the **original position**. Rawls defended a social contract theory of justice (see Chapter 7), according to which the fundamental principles of social justice are the outcome of contractual negotiations among free, equal, and rational people. The negotiation takes place in the original position, which for Rawls has a very distinctive feature. The negotiators in the original position are not real people. He does not believe that the principles of justice emerge from any actual negotiation. Rather, we are to imagine a group of fictitious people who know almost nothing about themselves. They do know the basic facts about human psychology. They care about what happens to them post negotiation and know that they have some set of values. But they don't know which values they embrace. Nor do they know their age, economic status, religion, sex, gender, personality type, or social position. For Rawls, the extent of this ignorance ensures the fairness of the principles these contractors agree to. Since no one knows the features that distinguish him or her from anyone else, everyone will be negotiating from an impartial perspective.

Their task: come to agreement on which principles they are going to be governed by. They have no idea of where they're going to land once these principles are enforced. Rawls claims that if we face such an uncertain future, and if we are comfortable accepting a sufficiently good outcome, then we must use the **maximin principle** of rational choice. This tells us to survey all of the options, determine what the worst-case scenario is in each of them, and pick the option that yields the best of the worst-case scenarios. In effect, you are maximizing the minimum—hence, maximin. The basic idea is that when you

are really unsure about your choices, then do your best to protect against disaster by picking the option that will guarantee you the best of the worst outcomes. According to Rawls, the difference principle does just that:

The Rawlsian Argument for the Difference Principle

1. The correct principles of social justice are those that would be chosen in the original position.
2. Those principles should be selected by utilizing the maximin principle.
3. The maximin principle, as applied in the original position, tells us to choose the difference principle to distribute social resources and opportunities.

Therefore,

4. The difference principle is one of the correct principles of social justice.

The reasoning behind premise 3 is interesting. Rawls thinks that there are going to be better and worse-off citizens in every country—no matter how hard a government tried to ensure economic equality, some people are going to end up better off than others, through harder work or good fortune. Still, we have to strive to identify the fairest distribution of social resources and opportunities. Rawls thinks that utilitarianism is the view of social justice that *appears* to be the fairest, because it assigns each person's interests equal importance. Rawls asks us to imagine what the worst-case scenario would be like in a society governed by utilitarian principles. And the answer is: terrible. You might be the sacrificial lamb, the one whose interests get crushed if doing so improves the interests of enough others. (Recall the discussion of the problem of justice in Chapter 5.C.) But under the difference principle, the worst-off citizens get top priority. That doesn't guarantee that they will become as well-off as the rich, but it does guarantee that society will focus its attention and its resources to bettering their plight. Since the occupants of the original

position are rational, they'd use the maximin principle to select principles of justice. The difference principle makes the condition of the worst-off the best it can be, since the difference principle requires society to give them greatest priority. Because, as Rawls sees it, principles selected in the original position are fair, and specify what justice requires, it follows that a fair and just society would adopt the difference principle.

Critics of Rawls, and of the general idea that we must give priority to the worst-off, often argue as follows. Whether we should give priority to some citizens over others depends not on the condition they find themselves in, but how they got there. For instance, if those at the bottom rung of the social and economic ladder are there because they don't like to work, or because they opted out of educational opportunities that would have enabled their economic advancement, then society need not do anything to give them a helping hand. The thought is that if a person is responsible for his poverty, then the government owes him nothing by way of offering greater resources or opportunities. This can be summed up in

The Effort Argument

1. If economic equality is a worthy moral ideal, then we should do our best to ensure that everyone receives the same economic resources.
2. We shouldn't do that; those who work much harder than others should receive greater economic reward; those who expend less effort when working should receive less economic reward.

Therefore,

3. Economic equality is not a worthy moral ideal.

Premise 1 is quite plausible. And there is certainly something appealing about premise 2. Compare a hard-working, industrious person with a lazy, entitled one—why create economic policies designed to give them both the same resources?

And yet—many have argued that we bear (at best) only partial responsibility for our work habits. Those who lack initiative, or who are averse to hard work, may be born with traits that make them so, or may be raised by parents who bear a lot of responsibility for reinforcing these characteristics. Here we enter deep territory—how responsible are we for our personality and character traits? Many of our practices assume that people are genuinely responsible for their motivations and actions. But once we see that so much of who we are depends on factors outside of our control—our genetic endowment, our parents, the influences of those we grew up with, the messages being sent by acquaintances, teachers, the media, community members—the scope of our responsibility seems to dwindle.

Suppose we are indeed responsible for how much effort we put into our work. In that case, premise 2 would have some very interesting implications. There is no reason to think that most millionaires work any harder than the average plumber or school teacher. If the Effort Argument is sound, then most CEOs should earn no more than most construction workers. Indeed, those millionaires who have inherited their wealth and never worked at all should, by this argument, be very heavily taxed. It's also the case that many of the poor live in areas where it is very difficult to find work at all, much less well-paying work. What if people are willing to work quite hard, but unable to find such employment? Because the unemployed are not expending any effort at a job, the Effort Argument offers no basis for providing such people with any economic resources at all.

Those who like this result are committed to rejecting the existence of a social safety net for some of the most vulnerable members of society. This rejection is sometimes motivated by the following consideration. People have many needs. But the fact that someone else has unmet needs does not, by itself, impose a duty on me to meet those needs. Suppose I have a lot of money. You, a complete stranger, have been unable to afford health

insurance and have broken your knee in a fall. The surgery and hospitalization will cost \$20,000, which you don't have. You've heard of my wealth and ask me to give you the funds for the surgery. It would be really nice of me to do that—I am so wealthy that the money is a drop in the bucket. But it doesn't seem that you have a right to the money, or that I have a duty to give it to you.

The lesson many draw from this is that needs do not entail rights; just because I need something does not mean that I am entitled to it. This thought gives rise to the last argument we'll consider here:

The Needs Argument

1. The government's moral obligations are limited to respecting its citizens' entitlements.
 2. Citizens need many things to which they are not entitled.
- Therefore,
3. The government is not morally obligated to meet all of the needs of its citizens.

Premise 2 is very plausible. I may need to be loved, for instance, but that doesn't entitle me to anyone's affection. Premise 1, though, is highly controversial. Many people think, for instance, that even if a person does not have a right to affordable health insurance, the government is required to provide it so as to protect its vulnerable citizens against catastrophic loss. On this view, a government's proper role is much more expansive than premise 1 allows. As indicated earlier, we can't resolve debates about the limits of government here, but we can note the following. When it comes time to defend specific policy proposals, those who endorse the Needs Argument must make further arguments about what citizens are and are not entitled to. For instance, you might love this argument, but also believe that citizens *are* entitled to decent health care. In that case, you'll argue that the government ought to provide it to all citizens. Others, who favor a more limited government, will allow that

everyone needs good health care, but then argue that this is one of those needs that does not generate an entitlement. To make progress on this debate, we'd need to answer the following question: Why are citizens entitled to the fulfilment of some needs—to be safe from attack, to have an efficient police force and a fair judicial system—while other needs fail to generate an entitlement?

CONCLUSION

It turns out that there are surprisingly few arguments for the conclusion that economic equality is intrinsically valuable. And concerns about leveling down have convinced most people that economic egalitarianism is not what we should be striving for. Rather, the animating spirit of economic egalitarianism seems to be better captured by the view that society in some way must give priority to the needs and interests of the poor, even if, in the end, there is still an unequal distribution of wealth and income. On this front, perhaps the most philosophically influential argument has been Rawls's argument for the difference principle. But many have sought to defend something closer to the status quo, thereby preserving the very large wealth and income gaps between rich and poor, by arguing that a substantial redistribution of wealth would infringe the rights of the better-off, wrongly reward those who make little effort at work, and mistakenly treat needs as entitlements. As we have seen, resolving these debates will in many cases require a more extensive investigation into the proper role and limits of government.

ESSENTIAL CONCEPTS

Anarchist: someone who rejects the legitimacy of all governments and thinks that government ought to be abolished.

Conservative: someone who wants to preserve the status quo and endorses policies designed to do so.

Difference principle: the principle that says that when distributing resources and opportunities, societies are required to give the greatest priority to the interests of the worst-off among us.

Distributive justice: justice in the social distribution of resources and opportunities.

Economic egalitarianism: the view that it is morally important to distribute wealth and income equally.

Economic inequality: the difference in economic well-being between different groups or between individuals within a group.

Estate tax: a tax paid by the estate of a person who has died.

Inheritance tax: a tax paid by the recipients who have inherited the wealth of the deceased.

Level down: to decrease the resources or benefits of the better-off.

Maximin principle: a principle of rational choice that tells us to survey all of the options, determine the worst-case scenario in each of them, and pick the option that has the best of the worst-case scenarios.

Net worth: a measure of wealth calculated by subtracting liabilities (i.e., debts or financial obligations) from assets (i.e., holdings regarded as having economic value).

Original position: John Rawls's term for the situation in which imaginary negotiators, stripped of all knowledge of the features that distinguish them from one another, come together to decide on social principles that will govern them.

Wealth inequality: a difference in wealth between groups or individuals within a group.

STAT SHOT

- Since 2015, the combined wealth of the richest 1 percent of people in the world (about 75 million people) exceeded the combined wealth of the other 99 percent (about 7.4 billion people).¹
- High-income populations are scarce outside of North America and Western Europe (Figure 16.1).

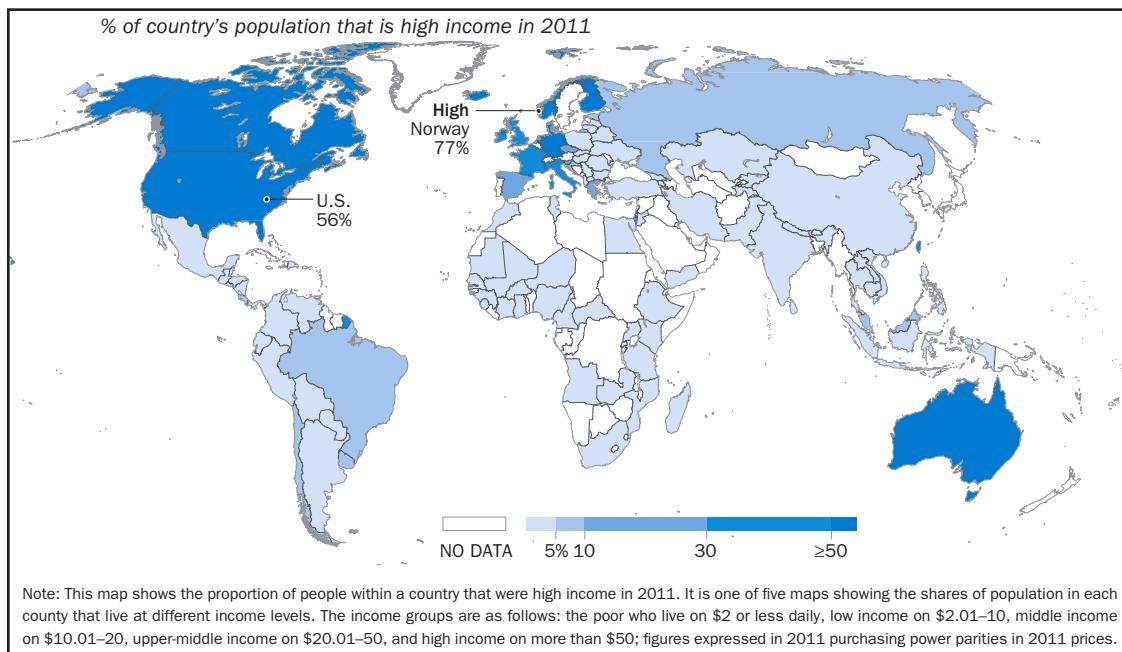


Figure 16.1.

Source: Pew Research Center analysis of data from the World Bank Povcal/Net database (Center for Global Development version available on the Harvard Dataverse Network) and the Luxembourg Income Study Center. <http://www.pewglobal.org/2015/07/08/mapping-the-global-population-how-many-live-on-how-much-and-where/>

- In 2015, the poorest 71 percent of people in the world owned just 3 percent of the wealth. The richest 0.7 percent owned 45.2 percent of the wealth (Figure 16.2).

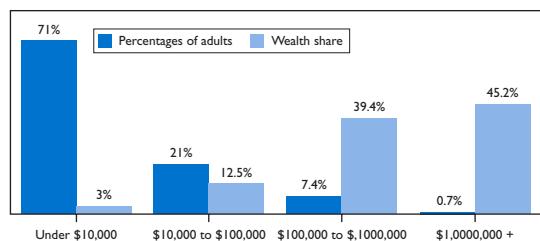


Figure 16.2. Global adult population and share of total wealth by wealth group, 2015.

Source: Credit Suisse Research Institute, Global Wealth Report 2015. <https://inequality.org/facts/global-inequality/>

continued

continued

4. In 2013, the top 10 percent of wealthiest Americans owned the overwhelming majority of wealth in the United States. The 51st to 90th percentiles owned about 15 percent. The bottom 50 percent owned somewhere in the vicinity of 1 percent of the wealth (Figure 16.3).

1. https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-economy-for-99-percent-160117-en.pdf

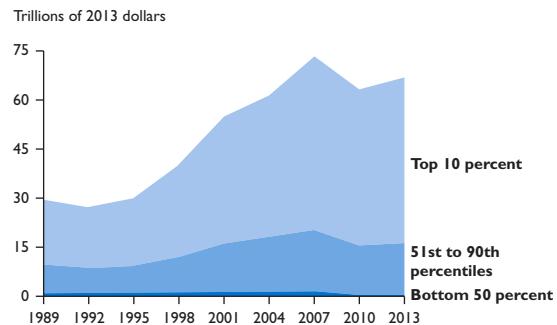


Figure 16.3.

Source: <https://www.cbo.gov/publication/51846>

Cases for Critical Thinking

Economic Inequality and Taxes

People often complain that the richest people in America get too many tax breaks from the government. But the richest Americans often point out that they pay significantly more taxes than anyone else.¹ For example, according to this graphic (Figure 16.4) from the Pew Research Center,² the richest 2.7 percent of Americans pay nearly 52 percent of all income tax. Americans making less than \$100,000 per year in income (84 percent of Americans) pay only 20.5 percent of the income tax collected by the US government. The poorest

24.3 percent of Americans pay only 0.1 percent of the nationally collected income taxes. These poorest Americans are the same ones that receive a host of benefits from the government in the form of welfare payments, disability payments, Medicaid, SNAP (also known as “food stamps”), and so on. The result is that, for the poorest Americans, the monetary value of the benefits they receive from the government far exceeds the amount of money that they pay to the government. Some people think that it’s unfair that poorer Americans receive more from the government than they pay in while richer Americans receive less from the government than they pay in.

1. <http://www.nationalreview.com/article/433887/tax-fairness-high-income-moral-fiscal>

2. <http://www.pewresearch.org/fact-tank/2016/04/13/high-income-americans-pay-most-income-taxes-but-enough-to-be-fair/>

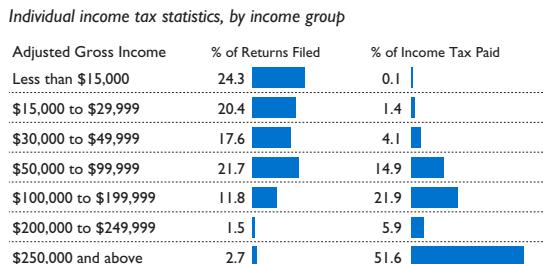


Figure 16.4.

Source: <http://www.pewresearch.org/fact-tank/2016/04/13/high-income-americans-pay-most-income-taxes-but-enough-to-be-fair/>

Questions

1. Do you think that the richest Americans should pay still more in income taxes, less, or is the income tax structure basically correct? What reasons can you offer in support of your view?
2. Economic conservatives often argue that giving big tax cuts to the rich helps the poor and the worst-off in society, because

this allows business owners to invest even more money back into their businesses, creating more jobs for poorer laborers. This is a highly controversial economic claim, but let's suppose for now that it's true—that tax cuts for the rich benefit the worst-off in society. Still, such a policy is likely to increase wealth inequality, since the result is further profits for businesses and their owners, only a fraction of which will be passed on to workers. Suppose, then, that we can help the worst-off in society only by increasing economic inequality. Should we do it? Or should we refrain from helping the worst-off so as to reduce economic inequality?

3. “Taxation is theft” is a slogan endorsed by some economic conservatives. The idea is that people who earn money in an honest way by making voluntary exchanges with other consenting adults ought to be able to use their earnings as they see fit. If, for example, I tried to take your hard-earned money by force in order to give it to a poorer person, that would be theft. I would have stolen from you. The same, some say, is true of the government. When it redistributes money from rich to poor via taxation, the government has committed theft. Is this line of reasoning correct? Why or why not? If not, what justifies the state in redistributing wealth from some citizens to others?

Global Versus Domestic Economic Inequality

In 2016, Vermont senator Bernie Sanders ran for the Democratic nomination for president, receiving 43 percent of votes in the primaries. One of the issues he was most passionate about was wealth inequality in America. He proposed thirteen strategies for combating such inequality. Here was his fourth strategy: “Reversing trade policies like [the free-trade agreements]

NAFTA, CAFTA, and PNTR with China that have driven down wages and caused the loss of millions of jobs. If corporate America wants us to buy their products, they need to manufacture those products in this country, not in China or other low-wage countries.”¹ In short, he proposed to constrain trade between nations to preserve American jobs.

Also in 2016, Republican presidential nominee Donald Trump proposed taking drastic measures—for example, building a wall between the United States and Mexico—to stop the flow of immigrants from Latin America. One of the stated justifications for this plan was that it would preserve American jobs from immigrants who wished to find employment in the United States.

Both candidates favored creating or preserving jobs for poorer Americans rather than for poorer people from other countries. The likely result is that wealth inequality in the United States would be, to some extent, lessened while global inequality would be increased (since even many of the poorest Americans are vastly richer than the poorest people elsewhere).

1. <https://berniesanders.com/issues/income-and-wealth-inequality>

Questions

1. To the extent that governments ought to try to reduce economic inequality, should they be more concerned about economic inequality *in their own country* or should they be more concerned with *global* economic inequality? Why?
2. Do owners of large businesses (e.g., Nike, Dell, Apple) have a moral obligation not to outsource jobs to other countries—or, at least to limit outsourcing—to preserve jobs for poorer citizens in their own country? Why or why not?
3. Every now and then, when a major company announces that it will eliminate several hundred local jobs and outsource them to workers in another country (e.g., India,

Mexico), consumers respond by trying to organize boycotts against those businesses. Do you, as a consumer, have an obligation to refrain from buying from businesses that eliminate local jobs to the benefit of workers in other countries? Why or why not?

Walmart

Walmart is the world's largest company by revenue and the largest private employer in the world. The company employs 1.4 million people in the United States alone—about 1 percent of the American workforce. The company also has a reputation for being a less-than-ideal place to work. The average pay for nonmanagement positions, as of 2017, is \$9.41 per hour. That's well below the \$13 per hour national average for other retail positions.¹ In 2005, a Walmart memo, sent by its board of directors, advised store managers to begin eliminating full-time positions in favor of hiring part-time employees because part-time employees were ineligible for the more expensive health insurance.² In 2010, the wealth of the Walton family (the family that owns Walmart) was valued at \$89.5 billion—equal, at the time, to the combined wealth of the poorest 41.5 percent of families in America. In response to Walmart's treatment of its employees, many have called on the government to force Walmart to pay higher wages and provide better health insurance programs for its employees. Others have called for consumers to boycott the company.

1. <https://www.glassdoor.com/Salary/Walmart-Salaries-E715.htm>
2. <http://www.nytimes.com/2005/10/26/business/walmart-memo-suggests-ways-to-cut-employee-benefit-costs.html>

Questions

1. Would the government be justified in forcing Walmart, and similar companies, to pay its employees higher wages or to provide health insurance for its uninsured or underinsured employees? Why or why not?
2. Many defenders of Walmart argue that its employees agree to the wages and benefits that they receive. Walmart doesn't force anyone to accept a job at their company; nor does Walmart prevent their employees from quitting if they so desire. If associates agree to work for the wages and benefits that Walmart provides, should we conclude that those wages and benefits are fair? Why or why not?
3. Walmart can provide a wide range of products at exceptionally low prices, in part because they pay their employees such low wages and provide such poor benefits. The result is that there are a wide range of low-price goods available for poor people to purchase—products that are significantly more expensive at stores like Whole Foods that pay their employees much higher wages. Given these facts, should we be glad that Walmart exists? Why or why not?

READINGS

A Theory of Justice**John Rawls**

In this selection, John Rawls sets out some of the basic elements of his famous theory of justice. Rawls, the most influential English-speaking political philosopher of the twentieth century, sought to identify the method for selecting principles of domestic justice. He tells us that we ought to choose principles that are fair, both in content and in their method of selection.

Rawls develops a social contract theory of justice, according to which principles of justice are those that would be selected by people who know nothing of the features that distinguish them from one another. Such people are rational, know the basic facts of human psychology, know that they have some conception of what is valuable, but don't know what that specific conception is. Nor do they know their economic or social status, their religion, their sex, their family history, or their skin color. This sort of widespread ignorance protects against bias and partiality in the selection of principles of justice.

When it comes to determining the principles that are to govern the basic economic structure of society, Rawls defends what he calls the *difference principle*. This principle recommends laws that give priority in the distribution of opportunities and resources to the worst-off members of society. He argues that the social contractors described earlier would select this principle because it is rational to do so. That claim, in turn, is defended by invoking the *maximin rule*—a principle about how to make decisions when you are uncertain of the chances or the value of the possible outcomes of your choice. The maximin rule tells us to maximize the minimum: we are to survey our options, identify the worst-case scenario associated with each option, and then select the one that yields the best of these worst-case scenarios. Rawls argues that since those selecting principles of justice don't know where they will end up in the social hierarchy, and since the difference principle gives priority to the worst-off in society, then rational contractors will select the difference principle. As a result, domestic economic policies are just only if they distribute greater resources and opportunities to the worst-off among us.

The Main Idea of the Theory of Justice

My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as

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found, say, in Locke, Rousseau, and Kant. In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of

equality as defining the fundamental terms of their association. These principles are to regulate all further agreements: they specify the kinds of social cooperation that can be entered into and the forms of government that can be established. This way of regarding the principles of justice I shall call justice as fairness.

Thus we are to imagine that those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits. Men are to decide in advance how they are to regulate their claims against one another and what is to be the foundation charter of their society. Just as each person must decide by rational reflection what constitutes his good, that is, the system of ends which it is rational for him to pursue, so a group of persons must decide once and for all what is to count among them as just and unjust. The choice which rational men would make in this hypothetical situation of equal liberty, assuming for the present that this choice problem has a solution, determines the principles of justice.

In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice. Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. For given the circumstances of the original position, the symmetry of everyone's

relations to each other, this initial situation is fair between individuals as moral persons, that is, as rational beings with their own ends and capable, I shall assume, of a sense of justice. The original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair. This explains the propriety of the name "justice as fairness": it conveys the idea that the principles of justice are agreed to in an initial situation that is fair. The name does not mean that the concepts of justice and fairness are the same, any more than the phrase "poetry as metaphor" means that the concepts of poetry and metaphor are the same.

Justice as fairness begins, as I have said, with one of the most general of all choices which persons might make together, namely, with the choice of the first principles of a conception of justice which is to regulate all subsequent criticism and reform of institutions. Then, having chosen a conception of justice, we can suppose that they are to choose a constitution and a legislature to enact laws, and so on, all in accordance with the principles of justice initially agreed upon. Our social situation is just if it is such that by this sequence of hypothetical agreements we would have contracted into the general system of rules which defines it. Moreover, assuming that the original position does determine a set of principles (that is, that a particular conception of justice would be chosen), it will then be true that whenever social institutions satisfy these principles those engaged in them can say to one another that they are cooperating on terms to which they would agree if they were free and equal persons whose relations with respect to one another were fair. They could all view their arrangements as meeting the stipulations which they would acknowledge in an initial situation that embodies widely accepted and reasonable constraints on the choice of principles. The general recognition of this fact would provide the basis for a public acceptance of the corresponding principles of justice. No society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense; each person finds himself placed at birth in some particular position in some particular society, and the nature of this position materially affects his life prospects. Yet a society satisfying the principles of justice as fairness comes

as close as a society can be to being a voluntary scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair. In this sense its members are autonomous and the obligations they recognize self-imposed.

One feature of justice as fairness is to think of the parties in the initial situation as rational and mutually disinterested. This does not mean that the parties are egoists, that is, individuals with only certain kinds of interests, say in wealth, prestige, and domination. But they are conceived as not taking an interest in one another's interests. They are to presume that even their spiritual aims may be opposed, in the way that the aims of those of different religions may be opposed. Moreover, the concept of rationality must be interpreted as far as possible in the narrow sense, standard in economic theory, of taking the most effective means to given ends. I shall modify this concept to some extent, as explained later, but one must try to avoid introducing into it any controversial ethical elements. The initial situation must be characterized by stipulations that are widely accepted.

In working out the conception of justice as fairness one main task clearly is to determine which principles of justice would be chosen in the original position. To do this we must describe this situation in some detail and formulate with care the problem of choice which it presents. These matters I shall take up in the immediately succeeding chapters. It may be observed, however, that once the principles of justice are thought of as arising from an original agreement in a situation of equality, it is an open question whether the principle of utility would be acknowledged. Offhand it hardly seems likely that persons who view themselves as equals, entitled to press their claims upon one another, would agree to a principle which may require lesser life prospects for some simply for the sake of a greater sum of advantages enjoyed by others. Since each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction. In the absence of strong and lasting benevolent impulses, a rational man would not accept a basic structure merely because it maximized the

algebraic sum of advantages irrespective of its permanent effects on his own basic rights and interests. Thus it seems that the principle of utility is incompatible with the conception of social cooperation among equals for mutual advantage. It appears to be inconsistent with the idea of reciprocity implicit in the notion of a well-ordered society. Or, at any rate, so I shall argue.

I shall maintain instead that the persons in the initial situation would choose two rather different principles: the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society. These principles rule out justifying institutions on the grounds that the hardships of some are offset by a greater good in the aggregate. It may be expedient but it is not just that some should have less in order that others may prosper. But there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved. The intuitive idea is that since everyone's well-being depends upon a scheme of cooperation without which no one could have a satisfactory life, the division of advantages should be such as to draw forth the willing cooperation of everyone taking part in it, including those less well situated. Yet this can be expected only if reasonable terms are proposed. The two principles mentioned seem to be a fair agreement on the basis of which those better endowed, or more fortunate in their social position, neither of which we can be said to deserve, could expect the willing cooperation of others when some workable scheme is a necessary condition of the welfare of all. Once we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in quest for political and economic advantage, we are led to these principles. They express the result of leaving aside those aspects of the social world that seem arbitrary from a moral point of view. . . .

Justice as fairness is an example of what I have called a contract theory. The merit of the contract terminology is that it conveys the idea that

principles of justice may be conceived as principles that would be chosen by rational persons, and that in this way conceptions of justice may be explained and justified. The theory of justice is a part, perhaps the most significant part, of the theory of rational choice. Furthermore, principles of justice deal with conflicting claims upon the advantages won by social cooperation; they apply to the relations among several persons or groups. The word "contract" suggests this plurality as well as the condition that the appropriate division of advantages must be in accordance with principles acceptable to all parties. The condition of publicity for principles of justice is also connoted by the contract phraseology. Thus, if these principles are the outcome of an agreement, citizens have a knowledge of the principles that others follow. It is characteristic of contract theories to stress the public nature of political principles. . . .

The Veil of Ignorance

The idea of the original position is to set up a fair procedure so that any principles agreed to will be just. The aim is to use the notion of pure procedural justice as a basis of theory. Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations.

It is assumed, then, that the parties do not know certain kinds of particular facts. First of all, no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the

level of civilization and culture it has been able to achieve. The persons in the original position have no information as to which generation they belong. These broader restrictions on knowledge are appropriate in part because questions of social justice arise between generations as well as within them, for example, the question of the appropriate rate of capital saving and of the conservation of natural resources and the environment of nature. There is also, theoretically anyway, the question of a reasonable genetic policy. In these cases too, in order to carry through the idea of the original position, the parties must not know the contingencies that set them in opposition. They must choose principles the consequences of which they are prepared to live with whatever generation they turn out to belong to.

As far as possible, then, the only particular facts which the parties know is that their society is subject to the circumstances of justice and whatever this implies. It is taken for granted, however, that they know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology. Indeed, the parties are presumed to know whatever general facts affect the choice of the principles of justice. There are no limitations on general information, that is, on general laws and theories, since conceptions of justice must be adjusted to the characteristics of the systems of social cooperation which they are to regulate, and there is no reason to rule out these facts. It is, for example, a consideration against a conception of justice that in view of the laws of moral psychology, men would not acquire a desire to act upon it even when the institutions of their society satisfied it. For in this case there would be difficulty in securing the stability of social operation. It is an important feature of a conception of justice that it should generate its own support. That is, its principles should be such that when they are embodied in the basic structure of society men tend to acquire the corresponding sense of justice. Given the principles of moral learning, men develop a desire to act in accordance with its principles. In this case a conception of justice is stable. This kind of general information is admissible in the original position. . . .

Thus there follows the very important consequence that the parties have no basis for bargaining in the usual sense. No one knows his situation in society nor his natural assets, and therefore no one is in a position to tailor principles to his advantage. We might imagine that one of the contractees threatens to hold out unless the others agree to principles favorable to him. But how does he know which principles are especially in his interests? The same holds for the formation of coalitions: if a group were to decide to band together to the disadvantage of the others, they would not know how to favor themselves in the choice of principles. Even if they could get everyone to agree to their proposal, they would have no assurance that it was to their advantage, since they cannot identify themselves either by name or description. . . .

The Rationality of the Parties

I have assumed throughout that the persons in the original position are rational. In choosing between principles each tries as best he can to advance his interests. But I have also assumed that the parties do not know their conception of the good. This means that while they know that they have some rational plan of life, they do not know the details of this plan, the particular ends and interests which it is calculated to promote. How, then, can they decide which conceptions of justice are most to their advantage? Or must we suppose that they are reduced to mere guessing? To meet this difficulty, I postulate. . . . that they would prefer more primary social goods rather than less [i.e., rights and liberties, powers and opportunities, income and wealth and self-respect]. . . . Of course, it may turn out once the veil of ignorance is removed, that some of them for religious or other reasons may not, in fact, want more of these goods. But from the standpoint of the original position, it is rational for the parties to suppose that they do want a larger share, since in any case they are not compelled to accept more if they do not wish to nor does a person suffer from a greater liberty. Thus even though the parties are deprived of information about their particular ends, they have enough knowledge to rank the alternatives. They know that in general they must try to protect their liberties, widen their opportunities,

and enlarge their means for promoting their aims whatever these are. Guided by the theory of the good and the general facts of moral psychology, their deliberations are no longer guesswork. They can make a rational decision in the ordinary sense. . . .

The assumption of mutually disinterested rationality, then, comes to this: the persons in the original position try to acknowledge principles which advance their system of ends as far as possible. They do this by attempting to win for themselves the highest index of primary social goods, since this enables them to promote their conception of the good most effectively whatever it turns out to be. The parties do not seek to confer benefits or to impose injuries on one another; they are not moved by affection or rancor. Nor do they try to gain relative to each other; they are not envious or vain. Put in terms of a game, we might say: they strive for as high an absolute score as possible. They do not wish a high or a low score for their opponents, nor do they seek to maximize or minimize the difference between their successes and those of others. The idea of a game does not really apply, since the parties are not concerned to win but to get as many points as possible judged by their own system of ends. . . .

Once we consider the idea of a contract theory it is tempting to think that it will not yield the principles we want unless the parties are to some degree at least moved by benevolence, or an interest in one another's interests. . . . Now the combination of mutual disinterest and the veil of ignorance achieves the same purpose as benevolence. For this combination of conditions forces each person in the original position to take the good of others into account. In justice as fairness, then, the effects of good will are brought about by several conditions working jointly. The feeling that this conception of justice is egoistic is an illusion fostered by looking at but one of the elements of the original position. . . .

THE PRINCIPLES OF JUSTICE

Two Principles of Justice

I shall now state in a provisional form the two principles of justice that I believe would be chosen in the original position. In this section I wish to make only the most general comments, and therefore the first formulation of these principles is tentative.

As we go on I shall run through several formulations and approximate step by step the final statement to be given much later. I believe that doing this allows the exposition to proceed in a natural way.

The first statement of the two principles reads as follows.

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.

There are two ambiguous phrases in the second principle, namely "everyone's advantage" and "equally open to all." Determining their sense more exactly will lead to a second formulation of the principle. . . .

By way of general comment, these principles primarily apply, as I have said, to the basic structure of society. They are to govern the assignment of rights and duties and to regulate the distribution of social and economic advantages. As their formulation suggests, these principles presuppose that the social structure can be divided into two more or less distinct parts, the first principle applying to the one, the second to the other. They distinguish between those aspects of the social system that define and secure the equal liberties of citizenship and those that specify and establish social and economic inequalities. The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights.

The second principle applies, in the first approximation, to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility, or chains of command. While the distribution of wealth and income need not be equal, it must be to everyone's advantage, and at the same time,

positions of authority and offices of command must be accessible to all. One applies the second principle by holding positions open, and then, subject to this constraint, arranges social and economic inequalities so that everyone benefits.

These principles are to be arranged in a serial order with the first principle prior to the second. This ordering means that a departure from the institutions of equal liberty required by the first principle cannot be justified by, or compensated for, by greater social and economic advantages. The distribution of wealth and income, and the hierarchies of authority, must be consistent with both the liberties of equal citizenship and equality of opportunity.

It is clear that these principles are rather specific in their content, and their acceptance rests on certain assumptions that I must eventually try to explain and justify. A theory of justice depends upon a theory of society in ways that will become evident as we proceed. For the present, it should be observed that the two principles (and this holds for all formulations) are a special case of a more general conception of justice that can be expressed as follows.

All social values—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage.

Injustice, then, is simply inequalities that are not to the benefit of all. Of course, this conception is extremely vague and requires interpretation.

As a first step, suppose that the basic structure of society distributes certain primary goods, that is, things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life. For simplicity, assume that the chief primary goods at the disposition of society are rights and liberties, powers and opportunities, income and wealth. These are the social primary goods. Other primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control. Imagine, then, a hypothetical initial arrangement in which all the social primary goods are equally distributed: everyone has similar rights and

duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and organizational powers would make everyone better off than in this hypothetical starting situation, then they accord with the general conception. . . .

Now the second principle insists that each person benefit from permissible inequalities in the basic structure. This means that it must be reasonable for each relevant representative man defined by this structure, when he views it as a going concern, to prefer his prospects with the inequality to his prospects without it. One is not allowed to justify differences in income or organizational powers on the ground that the disadvantages of those in one position are outweighed by the greater advantages of those in another. Much less can infringements of liberty be counterbalanced in this way. Applied to the basic structure, the principle of utility would have us maximize the sum of expectations of representative men (weighted by the number of persons they represent, on the classical view); and this would permit us to compensate for the losses of some by the gains of others. Instead, the two principles require that everyone benefit from economic and social inequalities. It is obvious, however, that there are indefinitely many ways in which all may be advantaged when the initial arrangement of equality is taken as a benchmark. How then are we to choose among these possibilities? . . .

Democratic Equality and the Difference Principle

The democratic interpretation [of the second principle] is arrived at by combining the principle of fair equality of opportunity with the difference principle. This principle singles out a particular position from which the social and economic inequalities of the basic structure are to be judged. Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate. . . .

To illustrate the difference principle, consider the distribution of income among social classes. Let us suppose that the various income groups correlate with representative individuals by reference to whose expectations we can judge the distribution. Now those starting out as members of the entrepreneurial class in a property-owning democracy, say, have a better prospect than those who begin in the class of unskilled laborers. It seems likely that this will be true even when the social injustices which now exist are removed. What, then, can possibly justify this kind of initial inequality in life prospects? According to the difference principle, it is justifiable only if the difference in expectation is to the advantage of the representative man who is worse off, in this case the representative unskilled worker. The inequality in expectation is permissible only if lowering it would make the working class even more worse off. Supposedly, given the rider in the second principle concerning open positions, and the principle of liberty generally, the greater expectations allowed to entrepreneurs encourages them to do things which raise the long-term prospects of the laboring class. Their better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on. Eventually the resulting material benefits spread throughout the system and to the least advantaged. I shall not consider how far these things are true. The point is that something of this kind must be argued if these inequalities are to be just by the difference principle. . . .

. . . And therefore, as the outcome of the last several sections, the second principle is to read as follows.

Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

THE REASONING LEADING TO THE TWO PRINCIPLES

. . . It is useful as a heuristic device to think of the two principles as the maximin solution to the problem of social justice. There is an analogy between

the two principles and the maximin rule for choice under uncertainty. This is evident from the fact that the two principles are those a person would choose for the design of a society in which his enemy is to assign him his place. The maximin rule tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others. The persons in the original position do not, of course, assume that their initial place in society is decided by a malevolent opponent. As I note below, they should not reason from false premises. The veil of ignorance does not violate this idea, since an absence of information is not misinformation. But that the two principles of justice would be chosen if the parties were forced to protect themselves against such a contingency explains the sense in which this conception is the maximin solution. And this analogy suggests that if the original position has been described so that it is rational for the parties to adopt the conservative attitude expressed by this rule, a conclusive argument can indeed be constructed for these principles. Clearly the maximin rule is not, in general, a suitable guide for choices under uncertainty. But it is attractive in situations marked by certain special features. My aim, then, is to show that a good case can be made for the two principles based on the fact that the original position manifests these features to the fullest possible degree, carrying them to the limit, so to speak.

Consider the gain-and-loss table below. It represents the gains and losses for a situation which is not a game of strategy. There is no one playing against the person making the decision; instead he is faced with several possible circumstances which may or may not obtain. Which circumstances happen to exist does not depend upon what the person choosing decides or whether he announces his moves in advance. The numbers in the table are monetary values (in hundreds of dollars) in comparison with some initial situation. The gain (g) depends upon the individual's decision (d) and the circumstances (c). Thus $g = f(d, c)$. Assuming that there are three possible decisions and three possible circumstances, we might have this gain-and-loss table.

Decisions	Circumstances		
	C_1	C_2	C_3
d_1	-7	8	12
d_2	-8	7	14
d_3	5	6	8

The maximin rule requires that we make the third decision. For in this case the worst that can happen is that one gains five hundred dollars, which is better than the worst for the other actions. If we adopt one of these we may lose either eight or seven hundred dollars. Thus, the choice of d_3 maximizes $f(d, c)$ for that value of c , which for a given d , minimizes f . The term "maximin" means the *maximum minimorum*; and the rule directs our attention to the worst that can happen under any proposed course of action, and to decide in the light of that.

Now there appear to be three chief features of situations that give plausibility to this unusual rule. First, since the rule takes no account of the likelihoods of the possible circumstances, there must be some reason for sharply discounting estimates of these probabilities. Offhand, the most natural rule of choice would seem to be to compute the expectation of monetary gain for each decision and then to adopt the course of action with the highest prospect. . . . Thus it must be, for example, that the situation is one in which a knowledge of likelihoods is impossible, or at best extremely insecure. . . .

The second feature that suggests the maximin rule is the following: the person choosing has a conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule. It is not worthwhile for him to take a chance for the sake of a further advantage, especially when it may turn out that he loses much that is important to him. This last provision brings in the third feature, namely, that the rejected alternatives have outcomes that one can hardly accept. The situation involves grave risks. Of course these features work most effectively in combination. The paradigm situation for following the maximin rule is when all three features are realized to the highest degree. This rule does not,

then, generally apply, nor of course is it self-evident. Rather, it is a maxim, a rule of thumb, that comes into its own in special circumstances. Its application depends upon the qualitative structure of the possible gains and losses in relation to one's conception of the good, all this against a background in which it is reasonable to discount conjectural estimates of likelihoods. . . .

Some Main Grounds for the Two Principles of Justice

. . . The first confirming ground for the two principles can be explained in terms of what I earlier referred to as the strains of commitment. I said that the parties have a capacity for justice in the sense that they can be assured that their undertaking is not in vain. Assuming that they have taken everything into account, including the general facts of moral psychology, they can rely on one another to adhere to the principles adopted. Thus they consider the strains of commitment. They cannot enter into agreements that may have consequences they cannot accept. They will avoid those that they can adhere to only with great difficulty. Since the original agreement is final and made in perpetuity, there is no second chance. In view of the serious nature of the possible consequences, the question of the burden of commitment is especially acute. A person is choosing once and for all the standards which are to govern his life prospects. Moreover, when we enter an agreement we must be able to honor it even should the worst possibilities prove to be the case. Otherwise we have not acted in good faith. Thus the parties must weigh with care whether they will be able to stick by their commitment in all circumstances. Of course, in answering this question they have only a general knowledge of human psychology to go on. But this information is enough to tell which conception of justice involves the greater stress.

In this respect the two principles of justice have a definite advantage. Not only do the parties protect their basic lights but they insure themselves against the worst eventualities. They run no chance of having to acquiesce in a loss of freedom over the course of their life for the sake of a greater good

enjoyed by others, an undertaking that in actual circumstances they might not be able to keep. Indeed, we might wonder whether such an agreement can be made in good faith at all.

. . . A second consideration invokes the condition of publicity as well as that of the constraints on agreements. . . . When the basic structure of society is publicly known to satisfy its principles for an extended period of time, those subject to these arrangements tend to develop a desire to act in accordance with these principles and to do their part in institutions which exemplify them. A conception of justice is stable when the public recognition of its realization by the social system tends to bring about the corresponding sense of justice. Now whether this happens depends, of course, on the laws of moral psychology and the availability of human motives. I shall discuss these matters later on. At the moment we may observe that the principle of utility seems to require a greater identification with the interests of others than the two principles of justice. Thus the latter will be a more stable conception to the extent that this identification is difficult to achieve. . . . Looking at the question from the standpoint of the original position, the parties recognize that it would be highly unwise if not irrational to choose principles which may have consequences so extreme that they could not accept them in practice. They would reject the principle of utility and adopt the more realistic idea of designing the social order on a principle of reciprocal advantage. We need not suppose, of course, that persons never make substantial sacrifices for one another, since moved by affection and ties of sentiment they often do. But such actions are not demanded as a matter of justice by the basic structure of society.

Furthermore, the public recognition of the two principles gives greater support to men's self-respect and this in turn increases the effectiveness of social cooperation. Both effects are reasons for choosing these principles. . . .

John Rawls: A Theory of Justice

1. Do you think that principles of justice ought to be selected by those who are ignorant of their distinguishing features? Why or why not?

2. Is the maximin rule well suited for helping to select principles of justice? If so, why? If not, what alternative principle would you suggest and why?
3. Does the maximin rule yield the result that Rawls thinks it does, or is there an alternative principle of justice that this rule would recommend?
4. Rawls thinks that principles of justice are fair only if they would earn the allegiance of all of those who have to live under them. Do you think that the difference principle meets this condition? Why or why not?
5. Utilitarians argue that giving equal consideration to everyone's interests is fair, and that economic resources and opportunities are therefore fairly distributed when they maximize overall happiness. Rawls disagrees. Who has the better of this disagreement, and why?

The Entitlement Theory of Justice

Robert Nozick

Robert Nozick argues that the justice of a distribution of resources can be determined only by looking to the past. If you acquired your goods in a way that violated no rights, then you justly possess them. This has a very important implication—one cannot look at a distribution of resources and tell, just by its current shape, whether it is just or not. This, in turn, implies that the existence of substantial wealth inequality is not in itself unjust. It all depends on how that inequality came to be.

Nozick introduces us to the notion of a *patterned distribution principle*, which specifies that justice in holdings is determined by whether people's possessions conform to a pattern that is based on some personal feature, such as economic need, moral merit, usefulness to society, or hours worked per week. Nozick thinks that all such principles are mistaken, because we will have to violate people's rights in order to ensure that the pattern is preserved. So long as people acquired their holdings in a just way, it would be wrong, he thinks, to take their resources in order to redistribute them and ensure that the relevant pattern is preserved.

To illustrate this, Nozick introduces a famous example—that of Wilt Chamberlain, the basketball great who played in the 1950s and 1960s. Suppose that the society in which he plays perfectly conforms to whatever patterned distribution principle you like. Now imagine that Chamberlain signs a contract that entitles him to a quarter from everyone who buys a ticket to a game he plays in. At the end of the season, a million ticket buyers who are eager to watch him play have voluntarily dropped a quarter into a separate box on entering the basketball stadium. So, at the end of the season, Chamberlain is \$250,000 richer. This new distribution of resources is going to stray from the perfect pattern that was in place at the beginning of the season. But there is no injustice here—indeed, because everyone was, by stipulation, entitled to his wealth at the start of the season, and because these million folks have given their money voluntarily, no rights have been violated. Chamberlain is entitled to his extra wealth, and it would be unjust to take it from him in order to reinstate the patterned distribution in place at the start of the season.

CHAPTER 7

DISTRIBUTIVE JUSTICE

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The term “**distributive justice**” is not a neutral one. Hearing the term “distribution,” most people presume that some thing or mechanism uses some principle or criterion to give out a supply of things. Into this process of distributing shares some error may have crept. So it is an open question, at least, whether *redistribution* should take place; whether we should do again what has already been done once, though poorly. However, we are not in the position of children who have been given portions of pie by someone who now makes last minute adjustments to rectify careless cutting. There is no *central* distribution, no person or group entitled to control all the resources, jointly deciding how they are to be doled out. What each person gets, he gets from others who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons. There is no more a distributing or distribution of shares than there is a distributing of mates in a society in which persons choose whom they shall marry. The total result is the product of many individual decisions which the different individuals involved are entitled to make. . . . We shall speak of people’s holdings; a principle of justice in holdings describes (part of) what justice tells us (requires) about holdings. I shall state first what I take to be the correct view about justice in holdings, and then turn to the discussion of alternate views.

The Entitlement Theory

The subject of justice in holdings consists of three major topics. The first is the *original acquisition of holdings*, the appropriation of unheld things. This includes the issues of how unheld things may come to be held, the process, or processes, by which unheld things may come to be held, the things that may come to be held by these processes, the extent of what comes to be held by a particular process, and so on. We shall refer to the complicated truth about this topic, which we shall not formulate here, as the principle of justice in acquisition. The second topic concerns the *transfer of holdings* from one

person to another. By what processes may a person transfer holdings to another? How may a person acquire a holding from another who holds it? Under this topic come general descriptions of voluntary exchange, and gift and (on the other hand) fraud, as well as reference to particular conventional details fixed upon in a given society. The complicated truth about this subject (with placeholders for conventional details) we shall call the principle of justice in transfer. (And we shall suppose it also includes principles governing how a person may divest himself of a holding, passing it into an unheld state.)

If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2.

The complete principle of distributive justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution.

A distribution is just if it arises from another just distribution by legitimate means. The legitimate means of moving from one distribution to another are specified by the principle of justice in transfer. The legitimate first “moves” are specified by the principle of justice in acquisition.¹ Whatever arises from a just situation by just steps is itself just. The means of change specified by the principle of justice in transfer preserve justice. As correct rules of inference are truth preserving, and any conclusion deduced via repeated application of such rules from only true premisses is itself true, so the means of transition from one situation to another specified by the principle of justice in transfer are justice preserving, and any situation actually arising from repeated transitions in accordance with the principle from a just situation is itself just. The parallel between justice-preserving transformations

and truth-preserving transformations illuminates where it fails as well as where it holds. That a conclusion could have been deduced by truth-preserving means from premisses that are true suffices to show its truth. That from a just situation a situation *could* have arisen via justice-preserving means does *not* suffice to show its justice. The fact that a thief's victims voluntarily *could* have presented him with gifts does not entitle the thief to his ill-gotten gains. Justice in holdings is historical; it depends upon what actually has happened. We shall return to this point later.

Not all actual situations are generated in accordance with the two principles of justice in holdings: the principle of justice in acquisition and the principle of justice in transfer. Some people steal from others, or defraud them, or enslave them, seizing their product and preventing them from living as they choose, or forcibly exclude others from competing in exchanges. None of these are permissible modes of transition from one situation to another. And some persons acquire holdings by means not sanctioned by the principle of justice in acquisition. The existence of past injustice (previous violations of the first two principles of justice in holdings) raises the third major topic under justice in holdings: the rectification of injustice in holdings. If past injustice has shaped present holdings in various ways, some identifiable and some not, what now, if anything, ought to be done to rectify these injustices? What obligations do the performers of injustice have toward those whose position is worse than it would have been had the injustice not been done? Or, than it would have been had compensation been paid promptly? How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but, for example, their descendants? Is an injustice done to someone whose holding was itself based upon an unrectified injustice? How far back must one go in wiping clean the historical slate of injustices? What may victims of injustice permissibly do in order to rectify the injustices being done to them, including the many injustices done by persons acting through their government? I do not know of a thorough or theoretically sophisticated treatment of such issues. Idealizing greatly, let us suppose theoretical investigation will produce

a principle of rectification. This principle uses historical information about previous situations and injustices done in them (as defined by the first two principles of justice and rights against interference), and information about the actual course of events that flowed from these injustices, until the present, and it yields a description (or descriptions) of holdings in the society. The principle of rectification presumably will make use of its best estimate of subjunctive information about what would have occurred (or a probability distribution over what might have occurred, using the expected value) if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions yielded by the principle, then one of the descriptions yielded must be realized.²

The general outlines of the theory of justice in holdings are that the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustice (as specified by the first two principles). If each person's holdings are just, then the total set (distribution) of holdings is just. To turn these general outlines into a specific theory we would have to specify the details of each of the three principles of justice in holdings: the principle of acquisition of holdings, the principle of transfer of holdings, and the principle of rectification of violations of the first two principles. I shall not attempt that task here. (Locke's principle of justice in acquisition is discussed below.)

Historical Principles and End-Result Principles

The general outlines of the entitlement theory illuminate the nature and defects of other conceptions of distributive justice. The entitlement theory of justice in distribution is *historical*; whether a distribution is just depends upon how it came about. In contrast, *current time-slice principles* of justice hold that the justice of a distribution is determined by how things are distributed (who has what) as judged by some *structural* principle(s) of just distribution. A utilitarian who judges between any two distributions by seeing which has the greater sum of utility and, if the sums tie, applies some fixed equality criterion to choose the more equal distribution,

would hold a current time-slice principle of justice. As would someone who had a fixed schedule of trade-offs between the sum of happiness and equality. According to a current time-slice principle, all that needs to be looked at, in judging the justice of a distribution, is who ends up with what; in comparing any two distributions one need look only at the matrix presenting the distributions. No further information need be fed into a principle of justice. It is a consequence of such principles of justice that any two structurally identical distributions are equally just. (Two distributions are structurally identical if they present the same profile, but perhaps have different persons occupying the particular slots. My having ten and your having five, and my having five and your having ten are structurally identical distributions.) Welfare economics is the theory of current time-slice principles of justice. The subject is conceived as operating on matrices representing only current information about distribution. This, as well as some of the usual conditions (for example, the choice of distribution is invariant under relabeling of columns), guarantees that welfare economics will be a current time-slice theory, with all of its inadequacies.

Most persons do not accept current time-slice principles as constituting the whole story about distributive shares. They think it relevant in assessing the justice of a situation to consider not only the distribution it embodies, but also how that distribution came about. If some persons are in prison for murder or war crimes, we do not say that to assess the justice of the distribution in the society we must look only at what this person has, and that person has, and that person has, . . . at the current time. We think it relevant to ask whether someone did something so that he *deserved* to be punished, deserved to have a lower share. Most will agree to the relevance of further information with regard to punishments and penalties. Consider also desired things. One traditional socialist view is that workers are entitled to the product and full fruits of their labor; they have earned it; a distribution is unjust if it does not give the workers what they are entitled to. Such entitlements are based upon some past history. No socialist holding this view would find it comforting to be told that because the actual distribution *A* happens

to coincide structurally with the one he desires *D*, *A* therefore is no less just than *D*; it differs only in that the “parasitic” owners of capital receive under *A* what the workers are entitled to under *D*, and the workers receive under *A* what the owners are entitled to under *D*, namely very little. This socialist rightly, in my view, holds onto the notions of earning, producing, entitlement, desert, and so forth, and he rejects current time-slice principles that look only to the structure of the resulting set of holdings. (The set of holdings resulting from what? Isn’t it implausible that how holdings are produced and come to exist has no effect at all on who should hold what?) His mistake lies in his view of what entitlements arise out of what sorts of productive processes.

We construe the position we discuss too narrowly by speaking of *current* time-slice principles. Nothing is changed if structural principles operate upon a time sequence of current time-slice profiles and, for example, give someone more now to counterbalance the less he has had earlier. A utilitarian or an egalitarian or any mixture of the two over time will inherit the difficulties of his more myopic comrades. He is not helped by the fact that *some* of the information others consider relevant in assessing a distribution is reflected, unrecoverably, in past matrices. Henceforth, we shall refer to such unhistorical principles of distributive justice, including the current time-slice principles, as *end-result principles* or *end-state principles*.

In contrast to end-result principles of justice, *historical principles* of justice hold that past circumstances or actions of people can create differential entitlement or differential deserts to things. An injustice can be worked by moving from one distribution to another structurally identical one, for the second, in profile the same, may violate people’s entitlements or deserts; it may not fit the actual history.

Patterning

The entitlement principles of justice in holdings that we have sketched are historical principles of justice. To better understand their precise character, we shall distinguish them from another subclass of the historical principles. Consider, as an example, the principle of distribution according to

moral merit. This principle requires that total distributive shares vary directly with moral merit; no person should have a greater share than anyone whose moral merit is greater. (If moral merit could be not merely ordered but measured on an interval or ratio scale, stronger principles could be formulated.) Or consider the principle that results by substituting “usefulness to society” for “moral merit” in the previous principle. Or instead of “distribute according to moral merit,” or “distribute according to usefulness to society,” we might consider “distribute according to the weighted sum of moral merit, usefulness to society, and need,” with the weights of the different dimensions equal. Let us call a principle of distribution *patterned* if it specifies that a distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions. And let us say a distribution is patterned if it accords with some patterned principle. (I speak of natural dimensions, admittedly without a general criterion for them, because for any set of holdings some artificial dimensions can be gimmicked up to vary along with the distribution of the set.) The principle of distribution in accordance with moral merit is a patterned historical principle, which specifies a patterned distribution. “Distribute according to I.Q.” is a patterned principle that looks to information not contained in distributional matrices. It is not historical, however, in that it does not look to any past actions creating differential entitlements to evaluate a distribution; it requires only distributional matrices whose columns are labeled by I.Q. scores. The distribution in a society, however, may be composed of such simple patterned distributions, without itself being simply patterned. Different sectors may operate different patterns, or some combination of patterns may operate in different proportions across a society. A distribution composed in this manner, from a small number of patterned distributions, we also shall term “patterned.” And we extend the use of “pattern” to include the overall designs put forth by combinations of end-state principles.

Almost every suggested principle of distributive justice is patterned: to each according to his moral merit, or needs, or marginal product, or how hard he tries, or the weighted sum of the foregoing, and

so on. The principle of entitlement we have sketched is *not* patterned. There is no one natural dimension or weighted sum or combination of a small number of natural dimensions that yields the distributions generated in accordance with the principle of entitlement. The set of holdings that results when some persons receive their marginal products, others win at gambling, others receive a share of their mate’s income, others receive gifts from foundations, others receive interest on loans, others receive gifts from admirers, others receive returns on investment, others make for themselves much of what they have, others find things, and so on, will not be patterned.

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How Liberty Upsets Patterns

It is not clear how those holding alternative conceptions of distributive justice can reject the entitlement conception of justice in holdings. For suppose a distribution favored by one of these nonentitlement conceptions is realized. Let us suppose it is your favorite one and let us call this distribution D_1 ; perhaps everyone has an equal share, perhaps shares vary in accordance with some dimension you treasure. Now suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction. (Also suppose contracts run only for a year, with players being free agents.) He signs the following sort of contract with a team: In each home game, twenty-five cents from the price of each ticket of admission goes to him. (We ignore the question of whether this is “gouging” the owners, letting them look out for themselves.) The season starts, and people cheerfully attend his team’s games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain’s name on it. They are excited about seeing him play; it is worth the total admission price to them. Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger even than anyone else has. Is he entitled to this income? Is this new distribution D_2 , unjust? If so, why? There is no question about whether each of the people was entitled

to the control over the resources they held in D_1 ; because that was the distribution (your favorite) that (for the purposes of argument) we assumed was acceptable. Each of these persons *chose* to give twenty-five cents of their money to Chamberlain. They could have spent it on going to the movies, or on candy bars, or on copies of *Dissent* magazine, or of *Monthly Review*. But they all, at least one million of them, converged on giving it to Wilt Chamberlain in exchange for watching him play basketball. If D_1 was a just distribution, and people voluntarily moved from it to D_2 , transferring parts of their shares they were given under D_1 (what was it for if not to do something with?), isn't D_2 also just? If the people were entitled to dispose of the resources to which they were entitled (under D_1), didn't this include their being entitled to give it to, or exchange it with, Wilt Chamberlain? Can anyone else complain on grounds of justice? Each other person already has his legitimate share under D_1 . Under D_2 , there is nothing that anyone has that anyone else has a claim of justice against. After someone transfers something to Wilt Chamberlain, third parties *still* have their legitimate shares; *their* shares are not changed. By what process could such a transfer among two persons give rise to a legitimate claim of distributive justice on a portion of what was transferred, by a third party who had no claim of justice on any holding of the others *before* the transfer?

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The general point illustrated by the Wilt Chamberlain example . . . is that no end-state principle or distributional-patterned principle of justice can be continuously realized without continuous interference with people's lives. Any favored pattern would be transformed into one unfavored by the principle, by people choosing to act in various ways; for example, by people exchanging goods and services with other people, or giving things to other people, things the transmitters are entitled to under the favored distributional pattern. To maintain a pattern one must either continually interfere to stop people from transferring resources as they wish to, or continually (or periodically) interfere to take from some persons resources that others for some reason chose to transfer to them.

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Locke's Theory of Acquisition

... [W]e must introduce an additional bit of complexity into the structure of the entitlement theory. This is best approached by considering Locke's attempt to specify a principle of justice in acquisition. Locke views property rights in an unowned object as originating through someone's mixing his labor with it. This gives rise to many questions. What are the boundaries of what labor is mixed with? If a private astronaut clears a place on Mars, has he mixed his labor with (so that he comes to own) the whole planet, the whole uninhabited universe, or just a particular plot? Which plot does an act bring under ownership? The minimal (possibly disconnected) area such that an act decreases entropy in that area, and not elsewhere? Can virgin land (for the purposes of ecological investigation by high-flying airplane) come under ownership by a Lockean process? Building a fence around a territory presumably would make one the owner of only the fence (and the land immediately underneath it).

Why does mixing one's labor with something make one the owner of it? Perhaps because one owns one's labor, and so one comes to own a previously unowned thing that becomes permeated with what one owns. Ownership seeps over into the rest. But why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't? If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice? Perhaps the idea, instead, is that laboring on something improves it and makes it more valuable; and anyone is entitled to own a thing whose value he has created. (Reinforcing this, perhaps, is the view that laboring is unpleasant. If some people made things effortlessly, as the cartoon characters in *The Yellow Submarine* trail flowers in their wake, would they have lesser claim to their own products whose making didn't cost them anything?) Ignore the fact that laboring on something may make it less valuable (spraying pink enamel paint on a piece of driftwood that you have found). Why should one's entitlement extend to the whole object rather than just to the *added value* one's labor has produced? (Such reference to

value might also serve to delimit the extent of ownership; for example, substitute “increases the value of” for “decreases entropy in” in the above entropy criterion.) No workable or coherent value-added property scheme has yet been devised, and any such scheme presumably would fall to objections (similar to those) that fell the theory of Henry George.

It will be implausible to view improving an object as giving full ownership to it, if the stock of unowned objects that might be improved is limited. For an object’s coming under one person’s ownership changes the situation of all others. Whereas previously they were at liberty (in Hohfeld’s sense) to use the object, they now no longer are. This change in the situation of others (by removing their liberty to act on a previously unowned object) need not worsen their situation. If I appropriate a grain of sand from Coney Island, no one else may now do as they will with *that* grain of sand. But there are plenty of other grains of sand left for them to do the same with. Or if not grains of sand, then other things. Alternatively, the things I do with the grain of sand I appropriate might improve the position of others, counterbalancing their loss of the liberty to use that grain. The crucial point is whether appropriation of an unowned object worsens the situation of others.

Locke’s proviso that there be “enough and as good left in common for others” (sect. 27) is meant to ensure that the situation of others is not worsened.

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Is the situation of persons who are unable to appropriate (there being no more accessible and useful unowned objects) worsened by a system allowing appropriation and permanent property? Here enter the various familiar social considerations favoring private property: it increases the social product by putting means of production in the hands of those who can use them most efficiently (profitably); experimentation is encouraged, because with separate persons controlling resources, there is no one person or small group whom someone with a new idea must convince to try it out; private property enables people to decide on the pattern and types of risks they wish to bear, leading to specialized types of risk bearing; private property protects future persons by leading some to hold back resources from current consumption for future markets; it

provides alternate sources of employment for unpopular persons who don’t have to convince any one person or small group to hire them, and so on. These considerations enter a Lockean theory to support the claim that appropriation of private property satisfies the intent behind the “enough and as good left over” proviso, *not* as a utilitarian justification of property. They enter to rebut the claim that because the proviso is violated no natural right to private property can arise by a Lockean process. The difficulty in working such an argument to show that the proviso is satisfied is in fixing the appropriate baseline for comparison. Lockean appropriation makes people no worse off than they would be *how*? This question of fixing the baseline needs more detailed investigation than we are able to give it here.

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The Proviso

Whether or not Locke’s particular theory of appropriation can be spelled out so as to handle various difficulties, I assume that any adequate theory of justice in acquisition will contain a proviso similar to the weaker of the ones we have attributed to Locke. A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened. It is important to specify *this* particular mode of worsening the situation of others, for the proviso does not encompass other modes. It does not include the worsening due to more limited opportunities to appropriate . . . , and it does not include how I “worsen” a seller’s position if I appropriate materials to make some of what he is selling, and then enter into competition with him. Someone whose appropriation otherwise would violate the proviso still may appropriate provided he compensates the others so that their situation is not thereby worsened; unless he does compensate the others, his appropriation will violate the proviso of the principle of justice in acquisition and will be an illegitimate one. A theory of appropriation incorporating this Lockean proviso will handle correctly the cases (objections to the theory lacking the proviso) where someone appropriates the total supply of something necessary for life.

A theory which includes this proviso in its principle of justice in acquisition must also contain a more complex principle of justice in transfer. Some reflection of the proviso about appropriation constrains later actions. If my appropriating all of a certain substance violates the Lockean proviso, then so does my appropriating some and purchasing all the rest from others who obtained it without otherwise violating the Lockean proviso. If the proviso excludes someone's appropriating all the drinkable water in the world, it also excludes his purchasing it all. (More weakly, and messily, it may exclude his charging certain prices for some of his supply.) This proviso (almost?) never will come into effect; the more someone acquires of a scarce substance which others want, the higher the price of the rest will go, and the more difficult it will become for him to acquire it all. But still, we can imagine, at least, that something like this occurs: someone makes simultaneous secret bids to the separate owners of a substance, each of whom sells assuming he can easily purchase more from the other owners; or some natural catastrophe destroys all of the supply of something except that in one person's possession. The total supply could not be permissibly appropriated by one person at the beginning. His later acquisition of it all does not show that the original appropriation violated the proviso. . . . Rather, it is the combination of the original appropriation *plus* all the later transfers and actions that violates the Lockean proviso.

Each owner's title to his holding includes the historical shadow of the Lockean proviso on appropriation. This excludes his transferring it into an agglomeration that does violate the Lockean proviso and excludes his using it in a way, in coordination with others or independently of them, so as to violate the proviso by making the situation of others worse than their baseline situation. Once it is known that someone's ownership runs afoul of the Lockean proviso, there are stringent limits on what he may do with (what it is difficult any longer unreservedly to call) "his property." Thus a person may not appropriate the only water hole in a desert and charge what he will. Nor may he charge what he will if he possesses one, and unfortunately it happens that all the water holes in the desert dry up, except for his. This unfortunate circumstance, admittedly no fault of his, brings into

operation the Lockean proviso and limits his property rights. Similarly, an owner's property right in the only island in an area does not allow him to order a castaway from a shipwreck off his island as a trespasser, for this would violate the Lockean proviso.

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The fact that someone owns the total supply of something necessary for others to stay alive does *not* entail that his (or anyone's) appropriation of anything left some people (immediately or later) in a situation worse than the baseline one. A medical researcher who synthesizes a new substance that effectively treats a certain disease and who refuses to sell except on his terms does not worsen the situation of others by depriving them of whatever he has appropriated. The others easily can possess the same materials he appropriated; the researcher's appropriation or purchase of chemicals didn't make those chemicals scarce in a way so as to violate the Lockean proviso. Nor would someone else's purchasing the total supply of the synthesized substance from the medical researcher. The fact that the medical researcher uses easily available chemicals to synthesize the drug no more violates the Lockean proviso than does the fact that the only surgeon able to perform a particular operation eats easily obtainable food in order to stay alive and to have the energy to work. This shows that the Lockean proviso is not an "end-state principle"; it focuses on a particular way that appropriative actions affect others, and not on the structure of the situation that results.

Intermediate between someone who takes all of the public supply and someone who makes the total supply out of easily obtainable substances is someone who appropriates the total supply of something in a way that does not deprive the others of it. For example, someone finds a new substance in an out-of-the-way place. He discovers that it effectively treats a certain disease and appropriates the total supply. He does not worsen the situation of others; if he did not stumble upon the substance no one else would have, and the others would remain without it. However, as time passes, the likelihood increases that others would have come across the substance; upon this fact might be based a limit to his property right in the substance so that others are not below their baseline position; for example, its bequest might be

limited. The theme of someone worsening another's situation by depriving him of something he otherwise would possess may also illuminate the example of patents. An inventor's patent does not deprive others of an object which would not exist if not for the inventor. Yet patents would have this effect on others who independently invent the object. Therefore, these independent inventors, upon whom the burden of proving independent discovery may rest, should not be excluded from utilizing their own invention as they wish (including selling it to others). Furthermore, a known inventor drastically lessens the chances of actual independent invention. For persons who know of an invention usually will not try to reinvent it, and the notion of independent discovery here would be murky at best. Yet we may assume that in the absence of the original invention, sometime later someone else would have come up with it. This suggests placing a time limit on patents, as a rough rule of thumb to approximate how long it would have taken, in the absence of knowledge of the invention, for independent discovery.

I believe that the free operation of a market system will not actually run afoul of the Lockean proviso. . . .

NOTES

1. Applications of the principle of justice in acquisition may also occur as part of the move from one distribution to another. You may find an unheld thing now and appropriate it. Acquisitions also are to be understood as included when, to simplify, I speak only of transitions by transfers.

2. If the principle of rectification of violations of the first two principles yields more than one description of holdings, then some choice must be made as to which of these is to be realized. Perhaps the sort of considerations about distributive justice and equality that I argue against play a legitimate role in *this* subsidiary choice. Similarly, there may be room for such considerations in deciding which otherwise arbitrary features a statute will embody, when such features are unavoidable because other considerations do not specify a precise line; yet a line must be drawn.

Robert Nozick: The Entitlement Theory of Justice

1. Nozick believes that the justice of a distribution of goods depends entirely on historical matters—on how that distribution came about. Do you find this plausible? Why or why not?
2. What are patterned principles of justice? Why does Nozick find them so problematic?
3. What is the point Nozick is trying to convey by means of the Wilt Chamberlain example? Do you find his analysis of the case compelling? Why or why not?
4. In the real world, a great deal of wealth derives from unjust acquisitions. How (if at all) does this affect the legitimacy of redistributing resources so as to diminish wealth inequality?
5. According to Nozick, what is each person entitled to, and why? What is the best argument he offers for his view? What is the best argument you can think of to criticize it?

Equality as a Moral Ideal

Harry Frankfurt

Harry Frankfurt argues that egalitarianism—the view that it's desirable for everyone to have an equal amount of wealth—is mistaken. Instead, he defends the doctrine of sufficiency—the view that what's important, when it comes to economic justice, is that each has enough. Indeed, he argues, the preoccupation many have with equality of wealth is pathological, because it distracts ordinary people and philosophers from what truly matters. Ordinary people, he argues, ought to be concerned with living

good lives, not monitoring how much their peers have. And philosophers ought to be concerned with the difficult task of offering a theory of what “enough” consists in.

Frankfurt considers several arguments that others have offered for egalitarianism. For example, some have thought that securing equality of wealth is the best way to maximize aggregate utility. Frankfurt argues that this is mistaken, since there are clear cases in which equality of resources demonstrably minimizes utility. Suppose, for example, that there are ten people who each need five units of resources to survive, and there are only forty units of resources to go around. It would be absurd, Frankfurt argues, to insist that each person get four units of resources. That would guarantee that everyone dies. Eight could survive—an obviously better outcome—if only they depart from egalitarianism.

Others argue for egalitarianism on intuitive grounds. To many, it just seems wrong that some live in mansions while others are homeless. Frankfurt argues that such cases derive their intuitive force not from the badness of inequality, but from the badness of some having too little. He argues that we are rarely concerned about economic inequality between, for example, the well-to-do and the extraordinarily rich.

Frankfurt then turns to the task of clarifying the notion of “enough.” On his view, to say that a person has enough is not to say that she has just enough to survive or that she has no preference for more resources. Instead, he argues that a person has enough if she is content, or it would be reasonable for her to be content, with having no more than she has.

First man: “How are your children?”

Second man: “Compared to what?”

Economic egalitarianism is, as I shall construe it, the doctrine that it is desirable for everyone to have the same amounts of income and of wealth (for short, “money”). Hardly anyone would deny that there are situations in which it makes sense to tolerate deviations from this standard. It goes without saying, after all, that preventing or correcting such deviations may involve costs which—whether measured in economic terms or in terms of noneconomic considerations—are by any reasonable measure unacceptable. Nonetheless, many people believe that economic equality has considerable moral value in itself. For this reason they often urge that efforts to approach the egalitarian ideal should be accorded—with all due consideration for the possible effects of

such efforts in obstructing or in conducting to the achievement of other goods—a significant priority.

In my opinion, this is a mistake. Economic equality is not, as such, of particular moral importance. With respect to the distribution of economic assets, what *is* important from the point of view of morality is not that everyone should have *the same* but that each should have *enough*. If everyone had enough, it would be of no moral consequence whether some had more than others. I shall refer to this alternative to egalitarianism—namely, that what is morally important with respect to money is for everyone to have enough—as “the doctrine of sufficiency.”

The fact that economic equality is not in its own right a morally compelling social ideal is in no way, of course, a reason for regarding it as undesirable. My claim that equality in itself lacks moral importance does not entail that equality is to be avoided. Indeed, there may well be good reasons for governments or for individuals to deal with problems of economic distribution in accordance with an egalitarian standard and to be concerned more with

attempting to increase the extent to which people are economically equal than with efforts to regulate directly the extent to which the amounts of money people have are enough. Even if equality is not as such morally important, a commitment to an egalitarian social policy may be indispensable to promoting the enjoyment of significant goods besides equality or to avoiding their impairment. Moreover, it might turn out that the most feasible approach to the achievement of sufficiency would be the pursuit of equality.

But despite the fact that an egalitarian distribution would not necessarily be objectionable, the error of believing that there are powerful moral reasons for caring about equality is far from innocuous. In fact, this belief tends to do significant harm. It is often argued as an objection to egalitarianism that there is a dangerous conflict between equality and liberty: if people are left to themselves, inequalities of income and wealth inevitably arise, and therefore an egalitarian distribution of money can be achieved and maintained only at the cost of repression. Whatever may be the merit of this argument concerning the relationship between equality and liberty, economic egalitarianism engenders another conflict which is of even more fundamental moral significance.

To the extent that people are preoccupied with equality for its own sake, their readiness to be satisfied with any particular level of income or wealth is guided not by their own interests and needs but just by the magnitude of the economic benefits that are at the disposal of others. In this way egalitarianism distracts people from measuring the requirements to which their individual natures and their personal circumstances give rise. It encourages them instead to insist upon a level of economic support that is determined by a calculation in which the particular features of their own lives are irrelevant. How sizable the economic assets of others are has nothing much to do, after all, with what kind of person someone is. A concern for economic equality, construed as desirable in itself, tends to divert a person's attention away from endeavoring to discover—within his experience of himself and of his life—what he himself really cares about and what will actually satisfy him, although this is the most basic and the

most decisive task upon which an intelligent selection of economic goals depends. Exaggerating the moral importance of economic equality is harmful, in other words, because it is alienating.

To be sure, the circumstances of others may reveal interesting possibilities and provide data for useful judgments concerning what is normal or typical. Someone who is attempting to reach a confident and realistic appreciation of what to seek for himself may well find this helpful. It is not only in suggestive and preliminary ways like these, moreover, that the situations of other people may be pertinent to someone's efforts to decide what economic demands it is reasonable or important for him to make. The amount of money he needs may depend in a more direct way on the amounts others have. Money may bring power or prestige or other competitive advantages. A determination of how much money would be enough cannot intelligently be made by someone who is concerned with such things except on the basis of an estimate of the resources available to those with whose competition it may be necessary for him to contend. What is important from this point of view, however, is not the comparison of levels of affluence as such. The measurement of inequality is important only as it pertains contingently to other interests.

The mistaken belief that economic equality is important in itself leads people to detach the problem of formulating their economic ambitions from the problem of understanding what is most fundamentally significant to them. It influences them to take too seriously, as though it were a matter of great moral concern, a question that is inherently rather insignificant and not directly to the point, namely, how their economic status compares with the economic status of others. In this way the doctrine of equality contributes to the moral disorientation and shallowness of our time.

The prevalence of egalitarian thought is harmful in another respect as well. It not only tends to divert attention from considerations of greater moral importance than equality. It also diverts attention from the difficult but quite fundamental philosophical problems of understanding just what these considerations are and of elaborating, in appropriately comprehensive and perspicuous detail,

a conceptual apparatus which would facilitate their exploration. Calculating the size of an equal share is plainly much easier than determining how much a person needs in order to have enough. In addition, the very concept of having an equal share is itself considerably more patent and accessible than the concept of having enough. It is far from self-evident, needless to say, precisely what the doctrine of sufficiency means and what applying it entails. But this is hardly a good reason for neglecting the doctrine or for adopting an incorrect doctrine in preference to it. Among my primary purposes in this essay is to suggest the importance of systematic inquiry into the analytical and theoretical issues raised by the concept of having enough, the importance of which egalitarianism has masked.

II

There are a number of ways of attempting to establish the thesis that economic equality is important. Sometimes it is urged that the prevalence of fraternal relationships among the members of a society is a desirable goal and that equality is indispensable to it. Or it may be maintained that inequalities in the distribution of economic benefits are to be avoided because they lead invariably to undesirable discrepancies of other kinds—for example, in social status, in political influence, or in the abilities of people to make effective use of their various opportunities and entitlements. In both of these arguments, economic equality is endorsed because of its supposed importance in creating or preserving certain noneconomic conditions. Such considerations may well provide convincing reasons for recommending equality as a desirable social good or even for preferring egalitarianism as a policy over the alternatives to it. But both arguments construe equality as valuable derivatively, in virtue of its contingent connections to other things. In neither argument is there an attribution to equality of any unequivocally inherent moral value.

A rather different kind of argument for economic equality, which comes closer to construing the value of equality as independent of contingencies, is based upon the principle of diminishing marginal utility. According to this argument, equality is desirable because an egalitarian distribution of

economic assets maximizes their aggregate utility. The argument presupposes: (a) for each individual the utility of money invariably diminishes at the margin and (b) with respect to money, or with respect to the things money can buy, the utility functions of all individuals are the same. In other words, the utility provided by or derivable from an *n*th dollar is the same for everyone, and it is less than the utility for anyone of dollar (*n* – 1). Unless *b* were true, a rich man might obtain greater utility than a poor man from an extra dollar. In that case an egalitarian distribution of economic goods would not maximize aggregate utility even if *a* were true. But given both *a* and *b*, it follows that a marginal dollar always brings less utility to a rich person than to one who is less rich. And this entails that total utility must increase when inequality is reduced by giving a dollar to someone poorer than the person from whom it is taken.

In fact, however, both *a* and *b* are false. Suppose it is conceded, for the sake of the argument, that the maximization of aggregate utility is in its own right a morally important social goal. Even so, it cannot legitimately be inferred that an egalitarian distribution of money must therefore have similar moral importance. For in virtue of the falsity of *a* and *b*, the argument linking economic equality to the maximization of aggregate utility is unsound.

So far as concerns *b*, it is evident that the utility functions for money of different individuals are not even approximately alike. Some people suffer from physical, mental, or emotional weaknesses or incapacities that limit the satisfactions they are able to obtain. Moreover, even apart from the effects of specific disabilities, some people simply enjoy things more than other people do. Everyone knows that there are, at any given level of expenditure, large differences in the quantities of utility that different spenders derive.

So far as concerns *a*, there are good reasons against expecting any consistent diminution in the marginal utility of money. The fact that the marginal utilities of certain goods do indeed tend to diminish is not a principle of reason. It is a psychological generalization, which is accounted for by such considerations as that people often tend after a time to become satiated with what they have been

consuming and that the senses characteristically lose their freshness after repetitive stimulation. It is common knowledge that experiences of many kinds become increasingly routine and unrewarding as they are repeated.

It is questionable, however, whether this provides any reason at all for expecting a diminution in the marginal utility of *money*—that is, of anything that functions as a generic instrument of exchange. Even if the utility of everything money can buy were inevitably to diminish at the margin, the utility of money itself might nonetheless exhibit a different pattern. It is quite possible that money would be exempt from the phenomenon of unrelenting marginal decline because of its limitlessly protean versatility. As Blum and Kalven explain: “In . . . analysing the question whether money has a declining utility it is . . . important to put to one side all analogies to the observation that particular commodities have a declining utility to their users. There is no need here to enter into the debate whether it is useful or necessary, in economic theory, to assume that commodities have a declining utility. Money is infinitely versatile. And even if all the things money can buy are subject to a law of diminishing utility, it does not follow that money itself is.”¹ From the supposition that a person tends to lose more and more interest in what he is consuming as his consumption of it increases, it plainly cannot be inferred that he must also tend to lose interest in consumption itself or in the money that makes consumption possible. For there may always remain for him, no matter how tired he has become of what he has been doing, untried goods to be bought and fresh new pleasures to be enjoyed.

There are in any event many things of which people do not, from the very outset, immediately begin to tire. From certain goods, they actually derive more utility after sustained consumption than they derive at first. This is the situation whenever appreciating or enjoying or otherwise benefiting from something depends upon repeated trials, which serve as a kind of “warming up” process: for instance, when relatively little significant gratification is obtained from the item or experience in question until the individual has acquired a special taste for it, has become addicted to it, or has begun in some other way to relate or respond to it

profitably. The capacity for obtaining gratification is then smaller at earlier points in the sequence of consumption than at later points. In such cases marginal utility does not decline; it increases. Perhaps it is true of everything, without exception, that a person will ultimately lose interest in it. But even if in every utility curve there is a point at which the curve begins a steady and irreversible decline, it cannot be assumed that every segment of the curve has a downward slope.

III

When marginal utility diminishes, it does not do so on account of any deficiency in the marginal unit. It diminishes in virtue of the position of that unit as the latest in a sequence. The same is true when marginal utility increases: the marginal unit provides greater utility than its predecessors in virtue of the effect which the acquisition or consumption of those predecessors has brought about. Now when the sequence consists of units of money, what corresponds to the process of warming up—at least, in one pertinent and important feature—is *saving*. Accumulating money entails, as warming up does, generating a capacity to derive, at some subsequent point in a sequence, gratifications that cannot be derived earlier.

The fact that it may at times be especially worthwhile for a person to save money rather than to spend each dollar as it comes along is due in part to the incidence of what may be thought of as “utility thresholds.” Consider an item with the following characteristics: it is nonfungible, it is the source of a fresh and otherwise unobtainable type of satisfaction, and it is too expensive to be acquired except by saving up for it. The utility of the dollar that finally completes a program of saving up for such an item may be greater than the utility of any dollar saved earlier in the program. That will be the case when the utility provided by the item is greater than the sum of the utilities that could be derived if the money saved were either spent as it came in or divided into parts and used to purchase other things. In a situation of this kind, the final dollar saved permits the crossing of a utility threshold.

It is sometimes argued that, for anyone who is rational in the sense that he seeks to maximize the

utility generated by his expenditures, the marginal utility of money must necessarily diminish. Abba Lerner presents this argument as follows:

The principle of diminishing marginal utility of income can be derived from the assumption that consumers spend their income in the way that maximizes the satisfaction they can derive from the good obtained. With a given income, all the things bought give a greater satisfaction for the money spent on them than any of the other things that could have been bought in their place but were not bought for this very reason. From this it follows that if income were greater the additional things that would be bought with the increment of income would be things that are rejected when income is smaller because they give less satisfaction; and if income were greater still, even less satisfactory things would be bought. The greater the income the less satisfactory are the additional things that can be bought with equal increases of income. That is all that is meant by the principle of the diminishing marginal utility of income.²

Lerner invokes here a comparison between the utility of $G(n)$ —the goods which the rational consumer actually buys with his income of n dollars—and “the other things that could have been bought in their place but were not.” Given that he prefers to buy $G(n)$ rather than the other things, which by hypothesis cost no more, the rational consumer must regard $G(n)$ as offering greater satisfaction than the others can provide. From this Lerner infers that with an additional n dollars the consumer would be able to purchase only things with less utility than $G(n)$; and he concludes that, in general, “the greater the income the less satisfactory are the additional things that can be bought with equal increases of income.” This conclusion, he maintains, is tantamount to the principle of the diminishing marginal utility of income.

It seems apparent that Lerner’s attempt to derive the principle in this way fails. One reason is that the amount of satisfaction a person can derive from a certain good may vary considerably according to whether or not he also possesses certain other goods. The satisfaction obtainable from a certain expenditure may therefore be greater if some other expenditure has already been made. Suppose that

the cost of a serving of popcorn is the same as the cost of enough butter to make it delectable, and suppose that some rational consumer who adores buttered popcorn gets very little satisfaction from unbuttered popcorn but that he nonetheless prefers it to butter alone. He will buy the popcorn in preference to the butter, accordingly, if he must buy one and cannot buy both. Suppose now that this person’s income increases so that he can buy the butter too. Then he can have something he enjoys enormously: his incremental income makes it possible for him not merely to buy butter in addition to popcorn but also to enjoy buttered popcorn. The satisfaction he will derive by combining the popcorn and the butter may well be considerably greater than the sum of the satisfactions he can derive from the two goods taken separately. Here, again, is a threshold effect.

In a case of this sort, what the rational consumer buys with his incremental income is a good— $G(i)$ —which, when his income was smaller, he had rejected in favor of $G(n)$ because having it alone would have been less satisfying than having only $G(n)$. Despite this, however, it is not true that the utility of the income he uses to buy $G(i)$ is less than the utility of the income he used to buy $G(n)$. When there is an opportunity to create a combination which is (like buttered popcorn) synergistic in the sense that adding one good to another increases the utility of each, the marginal utility of income may not decline even though the sequence of marginal items—taking each of these items by itself—does exhibit a pattern of declining utilities. . . .

IV

The preceding discussion has established that an egalitarian distribution may fail to maximize aggregate utility. It can also easily be shown that, in virtue of the incidence of utility thresholds, there are conditions under which an egalitarian distribution actually minimizes aggregate utility. Thus, suppose that there is enough of a certain resource (e.g., food or medicine) to enable some but not all members of a population to survive. Let us say that the size of the population is ten, that a person needs at least five units of the resource in question to live, and that forty units are available. If any members

of this population are to survive, some must have more than others. An equal distribution, which gives each person four units, leads to the worst possible outcome, namely, everyone dies. Surely in this case it would be morally grotesque to insist upon equality! Nor would it be reasonable to maintain that, under the conditions specified, it is justifiable for some to be better off only when this is in the interests of the worst off. If the available resources are used to save eight people, the justification for doing this is manifestly not that it somehow benefits the two members of the population who are left to die.

An egalitarian distribution will almost certainly produce a net loss of aggregate utility whenever it entails that fewer individuals than otherwise will have, with respect to some necessity, enough to sustain life—in other words, whenever it requires a larger number of individuals to be below the threshold of survival. Of course, a loss of utility may also occur even when the circumstances involve a threshold that does not separate life and death. Allocating resources equally will reduce aggregate utility whenever it requires a number of individuals to be kept below *any* utility threshold without ensuring a compensating move above some threshold by a suitable number of others.

Under conditions of scarcity, then, an egalitarian distribution may be morally unacceptable. Another response to scarcity is to distribute the available resources in such a way that as many people as possible have enough or, in other words, to maximize the incidence of sufficiency. This alternative is especially compelling when the amount of a scarce resource that constitutes enough coincides with the amount that is indispensable for avoiding some catastrophic harm—as in the example just considered, where falling below the threshold of enough food or enough medicine means death. But now suppose that there are available, in this example, not just forty units of the vital resource but forty-one. Then maximizing the incidence of sufficiency by providing enough for each of eight people leaves one unit unallocated. What should be done with this extra unit?

It has been shown above that it is a mistake to maintain that *where some people have less than enough, no one should have more than anyone else*. When resources are scarce, so that it is impossible

for everyone to have enough, an egalitarian distribution may lead to disaster. Now there is another claim that might be made here, which may appear to be quite plausible but which is also mistaken: *where some people have less than enough, no one should have more than enough*. If this claim were correct, then—in the example at hand—the extra unit should go to one of the two people who have nothing. But one additional unit of the resource in question will not improve the condition of a person who has none. By hypothesis, that person will die even with the additional unit. What he needs is not one unit but five. It cannot be taken for granted that a person who has a certain amount of a vital resource is necessarily better off than a person who has a lesser amount, for the larger amount may still be too small to serve any useful purpose. Having the larger amount may even make a person worse off. Thus it is conceivable that while a dose of five units of some medication is therapeutic, a dose of one unit is not better than none but actually toxic. And while a person with one unit of food may live a bit longer than someone with no food whatever, perhaps it is worse to prolong the process of starvation for a short time than to terminate quickly the agony of starving to death.

The claim that no one should have more than enough while anyone has less than enough derives its plausibility, in part, from a presumption that is itself plausible but that is nonetheless false: to wit, giving resources to people who have less of them than enough necessarily means giving resources to people who need them and, therefore, making those people better off. It is indeed reasonable to assign a higher priority to improving the condition of those who are in need than to improving the condition of those who are not in need. But giving additional resources to people who have less than enough of those resources, and who are accordingly in need, may not actually improve the condition of these people at all. Those below a utility threshold are not necessarily benefited by additional resources that move them closer to the threshold. What is crucial for them is to attain the threshold. Merely moving closer to it either may fail to help them or may be disadvantageous.

By no means do I wish to suggest, of course, that it is never or only rarely beneficial for those below a

utility threshold to move closer to it. Certainly it may be beneficial, either because it increases the likelihood that the threshold ultimately will be attained or because, quite apart from the significance of the threshold, additional resources provide important increments of utility. After all, a collector may enjoy expanding his collection even if he knows that he has no chance of ever completing it. My point is only that additional resources do not necessarily benefit those who have less than enough. The additions may be too little to make any difference. It may be morally quite acceptable, accordingly, for some to have more than enough of a certain resource even while others have less than enough of it.

V

Quite often, advocacy of egalitarianism is based less upon an argument than upon a purported moral intuition: economic inequality, considered as such, just seems wrong. It strikes many people as unmistakably apparent that, taken simply in itself, the enjoyment by some of greater economic benefits than are enjoyed by others is morally offensive. I suspect, however, that in many cases those who profess to have this intuition concerning manifestations of inequality are actually responding not to the inequality but to another feature of the situations they are confronting. What I believe they find intuitively to be morally objectionable, in the types of situations characteristically cited as instances of economic inequality, is not the fact that some of the individuals in those situations have *less* money than others but the fact that those with less have *too little*.

When we consider people who are substantially worse off than ourselves, we do very commonly find that we are morally disturbed by their circumstances. What directly touches us in cases of this kind, however, is not a quantitative discrepancy but a qualitative condition—not the fact that the economic resources of those who are worse off are *smaller in magnitude* than ours but the different fact that these people are *so poor*. Mere differences in the amounts of money people have are not in themselves distressing. We tend to be quite unmoved, after all, by inequalities between the well-to-do and the rich; our awareness that the former are substantially worse off than the latter does not

disturb us morally at all. And if we believe of some person that his life is richly fulfilling, that he himself is genuinely content with his economic situation, and that he suffers no resentments or sorrows which more money could assuage, we are not ordinarily much interested—from a moral point of view—in the question of how the amount of money he has compares with the amounts possessed by others. Economic discrepancies in cases of these sorts do not impress us in the least as matters of significant moral concern. The fact that some people have much less than others is morally undisturbing when it is clear that they have plenty.

It seems clear that egalitarianism and the doctrine of sufficiency are logically independent: considerations that support the one cannot be presumed to provide support also for the other. Yet proponents of egalitarianism frequently suppose that they have offered grounds for their position when in fact what they have offered is pertinent as support only for the doctrine of sufficiency. Thus they often, in attempting to gain acceptance for egalitarianism, call attention to disparities between the conditions of life characteristic of the rich and those characteristic of the poor. Now it is undeniable that contemplating such disparities does often elicit a conviction that it would be morally desirable to redistribute the available resources so as to improve the circumstances of the poor. And, of course, that would bring about a greater degree of economic equality. But the indisputability of the moral appeal of improving the condition of the poor by allocating to them resources taken from those who are well off does not even tend to show that egalitarianism is, as a moral ideal, similarly indisputable. To show of poverty that it is compellingly undesirable does nothing whatsoever to show the same of inequality. For what makes someone poor in the morally relevant sense—in which poverty is understood as a condition from which we naturally recoil—is not that his economic assets are simply of lesser magnitude than those of others. . . .

My suggestion that situations involving inequality are morally disturbing only to the extent that they violate the ideal of sufficiency is confirmed, it seems to me, by familiar discrepancies between the principles egalitarians profess and the way in which

they commonly conduct their own lives. My point here is not that some egalitarians hypocritically accept high incomes and special opportunities for which, according to the moral theories they profess, there is no justification. It is that many egalitarians (including many academic proponents of the doctrine) are not truly concerned whether they are as well off economically as other people are. They believe that they themselves have roughly enough money for what is important to them, and they are therefore not terribly preoccupied with the fact that some people are considerably richer than they. Indeed, many egalitarians would consider it rather shabby or even reprehensible to care, with respect to their own lives, about economic comparisons of that sort. And, notwithstanding the implications of the doctrines to which they urge adherence, they would be appalled if their children grew up with such preoccupations. . . .

VI

What does it mean, in the present context, for a person to have enough? One thing it might mean is that any more would be too much: a larger amount would make the person's life unpleasant, or it would be harmful or in some other way unwelcome. This is often what people have in mind when they say such things as "I've had enough!" or "Enough of that!" The idea conveyed by statements like these is that *a limit has been reached*, beyond which it is not desirable to proceed. On the other hand, the assertion that a person has enough may entail only that *a certain requirement or standard has been met*, with no implication that a larger quantity would be bad. This is often what a person intends when he says something like "That should be enough." Statements such as this one characterize the indicated amount as sufficient while leaving open the possibility that a larger amount might also be acceptable.

In the doctrine of sufficiency the use of the notion of "enough" pertains to *meeting a standard* rather than to *reaching a limit*. To say that a person has enough money means that he is content, or that it is reasonable for him to be content, with having no more money than he has. And to say this is, in turn, to say something like the following: the person does not (or cannot reasonably) regard

whatever (if anything) is unsatisfying or distressing about his life as due to his having too little money. In other words, if a person is (or ought reasonably to be) content with the amount of money he has, then insofar as he is or has reason to be unhappy with the way his life is going, he does not (or cannot reasonably) suppose that money would—either as a sufficient or as a necessary condition—enable him to become (or to have reason to be) significantly less unhappy with it.

It is essential to understand that having enough money differs from merely having enough to get along or enough to make life marginally tolerable. People are not generally content with living on the brink. The point of the doctrine of sufficiency is not that the only morally important distributional consideration with respect to money is whether people have enough to avoid economic misery. A person who might naturally and appropriately be said to have just barely enough does not, by the standard invoked in the doctrine of sufficiency, have enough at all.

There are two distinct kinds of circumstances in which the amount of money a person has is enough—that is, in which more money will not enable him to become significantly less unhappy. On the one hand, it may be that the person is suffering no substantial distress or dissatisfaction with his life. On the other hand, it may be that although the person is unhappy about how his life is going, the difficulties that account for his unhappiness would not be alleviated by more money. Circumstances of this second kind obtain when what is wrong with the person's life has to do with noneconomic goods such as love, a sense that life is meaningful, satisfaction with one's own character, and so on. These are goods that money cannot buy; moreover, they are goods for which none of the things money can buy are even approximately adequate substitutes. Sometimes, to be sure, noneconomic goods are obtainable or enjoyable only (or more easily) by someone who has a certain amount of money. But the person who is distressed with his life while content with his economic situation may already have that much money.

It is possible that someone who is content with the amount of money he has might also be content with an even larger amount of money. Since having

enough money does not mean being at a limit beyond which more money would necessarily be undesirable, it would be a mistake to assume that for a person who already has enough the marginal utility of money must be either negative or zero. Although this person is by hypothesis not distressed about his life in virtue of any lack of things which more money would enable him to obtain, nonetheless it remains possible that he would enjoy having some of those things. They would not make him less unhappy, nor would they in any way alter his attitude toward his life or the degree of his contentment with it, but they might bring him pleasure. If that is so, then his life would in this respect be better with more money than without it. The marginal utility for him of money would accordingly remain positive.

To say that a person is content with the amount of money he has does not entail, then, that there would be no point whatever in his having more. Thus someone with enough money might be quite *willing* to accept incremental economic benefits. He might in fact be *pleased* to receive them. Indeed, from the supposition that a person is content with the amount of money he has it cannot even be inferred that he would not *prefer* to have more. And it is even possible that he would actually be prepared to *sacrifice* certain things that he values (e.g., a certain amount of leisure) for the sake of more money.

But how can all this be compatible with saying that the person is content with what he has? What *does* contentment with a given amount of money preclude, if it does not preclude being willing or being pleased or preferring to have more money or even being ready to make sacrifices for more? It precludes his having an *active interest* in getting more. A contented person regards having more money as *inessential* to his being satisfied with his life. The fact that he is content is quite consistent with his recognizing that his economic circumstances could be improved and that his life might as a consequence become better than it is. But this possibility is not important to him. He is simply not much interested in being better off, so far as money goes, than he is. His attention and interest are not vividly engaged by the benefits which would be available to him if he had more money. He is just not very responsive

to their appeal. They do not arouse in him any particularly eager or restless concern, although he acknowledges that he would enjoy additional benefits if they were provided to him. . . .

Contentment may be a function of excessive dullness or diffidence. The fact that a person is free both of resentment and of ambition may be due to his having a slavish character or to his vitality being muffled by a kind of negligent lassitude. It is possible for someone to be content merely, as it were, by default. But a person who is content with resources providing less utility than he could have may not be irresponsible or indolent or deficient in imagination. On the contrary, his decision to be content with those resources—in other words, to adopt an attitude of willing acceptance toward the fact that he has just that much—may be based upon a conscientiously intelligent and penetrating evaluation of the circumstances of his life.

It is not essential for such an evaluation to include an *extrinsic* comparison of the person's circumstances with alternatives to which he might plausibly aspire, as it would have to do if contentment were reasonable only when based upon a judgment that the enjoyment of possible benefits has been maximized. If someone is less interested in whether his circumstances enable him to live as well as possible than in whether they enable him to live satisfactorily, he may appropriately devote his evaluation entirely to an *intrinsic* appraisal of his life. Then he may recognize that his circumstances do not lead him to be resentful or regretful or drawn to change and that, on the basis of his understanding of himself and of what is important to him, he accedes approvingly to his actual readiness to be content with the way things are. The situation in that case is not so much that he rejects the possibility of improving his circumstances because he thinks there is nothing genuinely to be gained by attempting to improve them. It is rather that this possibility, however feasible it may be, fails as a matter of fact to excite his active attention or to command from him any lively interest. . . .

NOTES

1. Blum and Kalven, pp. 57–58.
2. Lerner, pp. 26–27.

Harry Frankfurt: Equality as a Moral Ideal

- As Frankfurt notes, some egalitarians think that equality has inherent moral value, while others think that equality's value is derivative. What's the difference in these two views? Which do you find more plausible?
- Which argument for egalitarianism that Frankfurt considers do you find most compelling? Were you satisfied with Frankfurt's rebuttal? Why or why not?
- Frankfurt says that people often reflect on cases of inequality and find them objectionable. He argues that such cases derive their intuitive force—not from the badness of inequality, but from the badness of some having
- too little. Do you find this plausible? Why or why not?
- Frankfurt thinks that, in general, we aren't concerned with inequalities in wealth between people who have plenty of resources. Indeed, he says, we would find it "rather shabby" for our friends or children who have plenty to be concerned that others have still more than they do. Do you share Frankfurt's judgments? Why or why not?
- Frankfurt considers, but rejects, the view that people have enough resources, in his important sense, if they have enough to make their life marginally tolerable. Why does he reject this view? Is he correct to reject it?

How Not to Complain about Taxes

Elizabeth Anderson

In this selection, Elizabeth Anderson considers two common complaints people have about taxation. The first complaint is that, in taxing private citizens, the government takes what is rightfully a citizen's private property. This complaint is often inspired by John Locke's famous defense of the institution of private property in his *Second Treatise of Civil Government*. Anderson argues that Locke himself didn't oppose certain forms of taxation—even extensive taxation. For instance, Locke held that every person has duties of charity that the government can legitimately enforce. Thus, Anderson argues, appeals to Locke's work to oppose the kind of taxation now common in welfare states is unsuccessful.

The second complaint is that, in a capitalist society like the United States, earned income is deserved income. The idea is that the income a person makes by trading with others in the free market is owed to the one who earned it—not the government. If so, this would count strongly against taxation for redistributive purposes. Anderson argues that this thought is mistaken because it's implausible to think that the market distributes income and goods in proportion to a person's virtue or moral worth. She makes the case by considering the work of another famous defender of capitalism: Friedrich Hayek. Hayek argued that prices function to send signals to producers and consumers about the relative abundance or scarcity of goods in the market. If so, then, Anderson argues, there is virtually no connection between a person's moral excellence and the amount of money that person earns by selling his goods or labor in the free market.

From Elizabeth Anderson, "How Not to Complain about Taxes," Left2Right blog, January 6 and January 26, 2005.
http://left2right.typepad.com/main/2005/01/how_not_to_comp.html

Anderson proceeds to argue that, since capitalist economies are by their very nature volatile, having good insurance is necessary. Thus, there is good reason for the government to help protect its citizens from this predictable volatility. And providing this protection would require some taxation for redistributive purposes.

Governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it.

That's John Locke, the great defender of private property, writing (*Second Treatise of Government*, ch. XI, par. 140). It pays for defenders of private property to listen to Locke, so as to avoid silly complaints about taxation. Here's one common one I hear: that government, in taxing my property, is taking away what is really mine. This complaint is often conjoined with the accusation that liberals, in order to justify taxation, must believe that the government owns all property to begin with and by rights could confiscate it all. Two points should put these fallacies to rest.

First, a technical point: the fact that some property is mine does not entail that other people do not have rightful claims to some portion of it. I am entitled to my salary; it's mine. But my children have a rightful claim to support from my income. In some states, such as California, I have a legal obligation to support my parents out of my income, if they cannot support themselves. I have to pay my bills out of my income. If I negligently injure someone, I am liable to pay them damages from my income. The fact that this income is mine does not settle anything about who else might have legitimate claims to some portion of it, and on what grounds. Note also that I did not have to give my personal consent for some of these others to have a claim on it.

So far, I've just been talking about property as a legal institution. But perhaps the complaint I am criticizing is talking about supposed "natural" property rights, following theorists such as Locke. So here's my second point: unless one is a bomb-throwing anarchist, an advocate of natural property rights must concede the legitimacy and indeed necessity of a state, at least as an institution for

collective protection and impartial adjudication of claims—the so-called "minimal state." And such a state will have a legitimate claim on every member's property, to the extent necessary for everyone to pay their fair share for its maintenance, as Locke rightly insisted. Even in a minimal state, the fact that my income is mine does not constitute an argument against the taxation necessary to support the state.

In fact, Locke himself went much further than this minimal claim. In the Lockean mythology loved by libertarians, it is supposed that individuals, upon joining a minimal state, retain full claim to all of their natural property rights, except to the small extent needed to support a minimal state. The fallacy here is to suppose that, when people join together to form a state for the protection of their property, they are concerned only to protect their property from the encroachment of others. According to Locke, however, individuals form a state not just for protection against violations of their negative liberties but for the *preservation* of their lives (which are part of their property):

the first and fundamental natural law, which is to govern even the legislature itself, is the preservation of society, and (as far as will consist with the public good) of every person in it. (Locke, *Second Treatise*, ch. 11, par. 134)

Unless one could show, contrary to fact, that death rates under publicly funded health care systems are higher than under systems that leave people to pay for their health care with whatever resources are at their disposal, some kind of publicly funded health insurance entitlements are compatible with, and may even be required by, Locke's theory of natural property rights. Moreover, Locke insists on our obligation to provide for the poor:

God hath not left one man so to the mercy of another, that he may starve him if he please: God the Lord and Father of all, has given no one of his children such a property in his peculiar portion of the

things of this world, but that he has given his needy brother a *right* to the surplusage of his goods; so that it cannot justly be denied him, when his pressing wants call for it. . . . As justice gives every man a title to the product of his honest industry, and the fair acquisitions of his ancestors descended to him; so charity gives every man a *title* to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise: and a man can no more justly make use of another's necessity to force him to become his vassal, by with-holding that relief God requires him to afford to the wants of his brother, than he that has more strength can seize upon a weaker, master him to his obedience, and with a dagger at his throat, offer his death or slavery. (*First Treatise*, ch. 4, par. 42, emphasis mine)

Locke's point is not just that some kind of *entitlement*-based welfare system is required by morality and built into the structure of natural property rights (the poor have a *title* to what they need). It's also that, *to prevent a free property system from degenerating into feudalism, constraints on freedom of contract are required*. Just as contracts into slavery are invalid, contracts into vassalage are. People are not entitled to use their superior bargaining power to drive others to the wall, or into subjection.

So, you can't get an argument against a welfare state from Locke's theory of natural property rights. I won't pretend that Locke was as generous as modern welfare states; his preferred system of provision for the poor was in fact very harsh. And, given the primitive state of medicine in his day, no one at the time imagined it would have done much good to universalize access to it. But nothing in his system prevents a more generous welfare state. . . .

Does it follow that Locke, in accepting the legitimacy of taxation to promote the general welfare, including the establishment of welfare entitlements, really believes that the government owns everything and so could by rights dispose of all property arbitrarily? Of course not. He lays out the following constraints on legitimate taxation in ch. 11 of the *Second Treatise*:

1. It must be consistent with some system of private property or other (par. 138).

2. It cannot confiscate people's private property arbitrarily, but only in accordance with duly passed laws (par. 135–8).
3. The people must consent to these laws, *not* in the sense that they must obtain the personal consent of each individual, but in the sense that they have the consent of the majority of representatives in the legislature (taxation "must be with his own consent, i.e. the consent of the majority, giving it either by themselves, or their representatives chosen by them") (par. 140).
4. The laws must be for the common good of society, and in particular, promote the preservation of each member in it (par. 134–5).
5. The level of taxation cannot be so great as to reduce anyone to poverty or subjection ("It [the legislative power] . . . can never have a right to destroy, enslave, or designedly to impoverish the subjects" par. 135).

Although I'm no Lockean, I'm happy with these constraints, as I think all liberals are. (Personally, I would add another constraint, that requires the distribution of tax burdens to be fair. Locke may also implicitly be insisting on fairness in the quote that opens this post.)

So please, stop the silly rhetoric that liberals suppose that the government owns everything already. Stop the silly rhetoric that supposes that the fact that some property is mine offers any argument whatsoever against the legitimacy of taxing it.

I hasten to add that this still leaves plenty of room for reasonable dispute about proper levels of taxation. For all I've said so far, it's fine to argue that current levels of government spending are excessive, so that the levels of taxation required to support those levels are unjustified. It's fine to argue that the tax system we have unfairly distributes its burdens on the rich. It's fine to argue that our tax system stupidly rigs incentives in unproductive ways. . . . This post is simply a plea to focus on real arguments about taxation, not silly rhetoric.

II

The claim "I deserve my income," as applied to an individual's pretax income in free market economies, has considerable intuitive force. If true, it suggests a powerful moral claim against taxation

for redistributive purposes, on the intuitively plausible supposition that a just economic order ought to ensure that people get what they morally deserve.

But, however intuitive these claims may be, they are unjustified. In two of his important works of political economy, *The Constitution of Liberty* (see esp. ch. 6), and *Law, Legislation, and Liberty* (vol. 2), Hayek explained why free market prices cannot, *and should not*, track claims of individual moral desert.

1. Let's consider first Hayek's claim that prices in free market capitalism do not give people what they morally deserve. Hayek's deepest economic insight was that the basic function of free market prices is informational. Free market prices send signals to producers as to where their products are most in demand (and to consumers as to the opportunity costs of their options). They reflect the sum total of the inherently dispersed information about the supply and demand of millions of distinct individuals for each product. Free market prices give us our *only* access to this information, and then only in aggregate form. This is why centralized economic planning is doomed to failure: there is no way to collect individualized supply and demand information in a single mind or planning agency, to use as a basis for setting prices. Free markets alone can effectively respond to this information.

It's a short step from this core insight about prices to their failure to track any coherent notion of moral desert. Claims of desert are essentially backward-looking. They aim to reward people for virtuous conduct that they undertook in the past. Free market prices are essentially forward-looking. Current prices send signals to producers as to where the demand is *now*, not where the demand was when individual producers decided on their production plans. Capitalism is an inherently dynamic economic system. It responds rapidly to changes in tastes, to new sources of supply, to new substitutes for old products. This is one of capitalism's great virtues. But this responsiveness leads to volatile prices. Consequently, capitalism is constantly pulling the rug out from underneath even the most thoughtful, foresighted, and prudent production plans of individual agents. However virtuous they were,

by whatever standard of virtue one can name, individuals cannot count on their virtue being rewarded in the free market. For the function of the market isn't to reward people for past good behavior. It's to direct them toward producing for *current* demand, regardless of what they did in the past.

This isn't to say that virtue makes no difference to what returns one may expect for one's productive contributions. The exercise of prudence and foresight in laying out one's production and investment plans, and diligence in carrying them out, generally improves one's odds. But sheer dumb luck is also, ineradicably, a prominent factor determining free market returns. And nobody deserves what comes to them by sheer luck.

2. If free market prices don't give people what they morally deserve, should we try to regulate factor prices so that they *do* track producers' moral deserts? Hayek offered two compelling arguments against this proposal. First, if you fix prices on a backward-looking standard, they will no longer be able to perform their informational function. Producers will produce for what was demanded last quarter, even if it isn't demanded today. This creates enormous waste and generates huge opportunity costs. We'd be *much* poorer in an economy that worked like this.

One could imagine a way around this problem. Let prices move according to the free market. But set up a government agency to compensate people for their undeserved bad luck, from taxes raised on that part of people's property that they receive on account of their undeserved good luck. This way, prices would retain their informational function. This idea, which I have dubbed "luck egalitarianism," now dominates contemporary egalitarian thinking. I have argued in print that it's a very bad idea ("What is the Point of Equality?", *Ethics* 109 (1999): 287–337), for numerous reasons. One is that there is no coherent way to determine how much of what people get is due to luck, and how much is truly their responsibility. Hayek focused on a more fundamental reason: any attempt to regulate people's rewards according to judgments of

how much they morally deserve would destroy liberty. It would involve the state in making detailed, intrusive judgments of how well people used their liberty, and penalize them for not exercising their liberty in the way the state thinks best. This is no way to run a free society.

Hayek was right. It might *sound* like a compelling idea, to make sure that people receive the income they morally deserve. But orienting the economy around this goal, assuming it is achievable at all (and there are principled doubts about that), would doom us to poverty and serfdom. It would abolish capitalism, along with its chief virtues. It isn't worth the draconian costs.

3. Several implications follow from Hayek's insights into the nature of capitalism.

- (a)** The claim "I deserve my pretax income" is not generally true. Nor should the basic organization of property rules be based on considerations of moral desert. Hence, claims about desert have no standing in deciding whether taxation for the purpose of funding social insurance is just.
- (b)** The claim that people rocked by the vicissitudes of the market, or poor people generally, are getting what they deserve is also not generally true. To moralize people's misfortunes in this way is both ignorant and mean. Capitalism continuously and randomly pulls the rug out from under even the most prudent and diligent people. It is *in principle* impossible for even the most prudent to foresee all the market turns that could undo them. (If it were possible, then efficient socialist planning would be possible, too. But it isn't.)
- (c)** Capitalist markets are highly dynamic and volatile. This means that at any one time, lots of people are going under. Often, the consequences of this would be catastrophic, absent concerted intervention to avert the outcomes generated by markets. For example, the economist Amartya Sen has documented that sudden shifts in people's incomes (which are often due to market volatility), and not absolute food shortages, are a principal cause of famine.

- (d)** The volatility of capitalist markets creates a profound and urgent need for insurance, over and above the insurance needs people would have under more stable (but stagnant) economic systems. This need is increased also by the fact that capitalism inspires a love of personal independence, and hence brings about the smaller ("nuclear") family forms that alone are compatible with it. We no longer belong to vast tribes and clans. This sharply reduces the ability of individuals under capitalism to pool risks within families, and limits the claims they can effectively make on non-household (extended) family members for assistance. To avoid or at least ameliorate disaster and disruption, people need to pool the risks of capitalism.

This fact does not yet clinch the case for *social* insurance—that is, universal, compulsory, government-provided, tax-funded insurance. For all I've said so far, maybe private insurance would do a better job meeting people's needs for insurance in the event of unemployment, disability, loss of a household earner, sickness, and old age. That depends on the relative performance of social and private insurance with respect to each of these events. Or perhaps some kind of mixed system, combining social and private insurance, would be optimal (I'm inclined to this position).

I do think, however, that the arguments I have provided so far go a considerable way towards justifying the view that, whether the insurance provider is public or private, not all individuals can reasonably be expected to pay for their insurance premiums out of their pretax incomes. For the reasons just discussed, pretax incomes provide a morally arbitrary baseline for determining the means within which people may reasonably be expected to live. Equilibrium factor prices may well be below subsistence or a decent life for millions. (This doesn't mean we should seek to institute a morally deserved baseline. My goal is not to ensure that people get what they morally deserve. It's to avoid gratuitous suffering, and to ensure that everyone has effective access, over their whole lifespan, to the means needed for a decent life.) And so far, no argument that people have a moral claim to their

pretax incomes, sufficient to preclude taxing it for insurance purposes, has survived critical scrutiny. Certainly, “I deserve it” doesn’t.

Elizabeth Anderson: How Not to Complain about Taxes

1. Which of the complaints against taxation that Anderson considers do you find most compelling (even if, in the end, you don’t find it persuasive)?
2. Anderson distinguishes between legal property rights and natural property rights. What is the difference? Can you think of a legal property right that is not also a natural property right?

3. Anderson cites Locke, who thinks that we have moral duties to aid the poor. Do you agree that we have such duties? If so, is the government justified in ensuring, by means of taxation, that we live up to those duties?
4. Why doesn’t Anderson think that we necessarily deserve the income we make by trading our goods or labor in the free market? Do you agree with her? Why or why not?
5. Anderson argues that capitalist societies are more volatile than more socialistic societies. Why does she think this? Does the government have a duty to protect its citizens from such volatility?

Globalization and Immigration

JUST THE FACTS

There are about 7.5 billion people on the planet. Most of them are quite poor—much poorer than a typical poor person in a developed country. Developed countries provide many more, and better, jobs for low-skilled laborers and much more in the way of social welfare programs. Developed countries thus tend to provide a kind of economic prosperity and stability that is still quite uncommon in our world.

One way to improve the lot of the desperately poor who do not enjoy this kind of prosperity is to allow them to immigrate to developed countries where they could earn much higher wages. There are, however, at least two factors that make such immigration difficult. The first is that immigration often costs a nontrivial amount of money—precisely what the desperately poor lack. The second is that developed countries have immigration laws. Each year, these countries block tens of thousands of immigrants from entering, thereby denying them the opportunity to find work in their stronger economies. The result is that many of the world's desperately poor occupy an economic status that might be much improved were they allowed to work in a more affluent country.

When one is desperately poor, it's difficult to secure food, clean water, medical care, shelter, education, employment, and protection from theft and violence. Almost 3 billion people lack access to toilets and almost 1 billion lack access to clean drinking water; 179 million infants in the least developed countries fail to be protected from diseases by routine immunization; 3.2 million children under the age of fifteen currently live with HIV. And according to World

Health Organization estimates, there were 212 million cases of malaria and 429,000 deaths from that disease in 2015 alone.¹ Virtually all these deaths were preventable with the allocation of resources that those in developed countries take for granted.

One of the best ways to pull oneself out of crushing poverty is to get an education, but 161 million children in the developing world do not attend primary school, either because they cannot afford it, their community doesn't provide it, or they're forced to work to help their families survive.² Without an education, upward economic mobility is practically impossible.

The good news is that those of us in the developed world have the power to make a difference in the lives of the desperately poor. In 2008, the United Nations estimated that it would take about \$30 billion per year to end world hunger.³ This sounds like an enormous figure, but it's dwarfed by the \$737 billion the United States Congress spends each year on defense and the \$223 billion Americans spend each year on alcohol.⁴ In 2000, the United Nations estimated that the cost of supplying clean water to everyone on the planet was \$10 billion per year.⁵ Even if that

1. <http://www.who.int/mediacentre/factsheets/fs094/en/>

2. <https://borgenproject.org/global-poverty/>

3. <http://www.nytimes.com/2008/06/04/news/04iht-04food.13446176.html>

4. <https://www.statista.com/statistics/207936/us-total-alcoholic-beverages-sales-since-1990/>

5. <http://www.nytimes.com/2000/11/23/world/price-of-safe-water-for-all-10-billion-and-the-will-to-provide-it.html>

figure has doubled since then, Americans could pay for more than three years of clean water for everyone on the planet with the money they spend on lottery tickets each year—\$70 billion.⁶

Technology has made it easier than ever to give aid, too. Anyone can donate to traditional aid organizations like Oxfam or UNICEF in a matter of minutes by paying online. Smartphones have made donating easier still. Through an organization called GiveDirectly, one can, in a matter of seconds with a smartphone app, make a cash transfer from a personal bank account to a person in extreme poverty in East Africa. One can also (again, via smartphone) provide an interest-free loan to a poor entrepreneur via an organization called Kiva. The beauty of these advances in technology is that transaction costs are so low—much lower than traditional organizations with large bureaucracies. A much greater percentage of one’s donations thereby go to one’s intended recipients, rather than to pay for administrative costs.

While aid from people in developed countries can help the global poor, so too can the opportunity to immigrate. Some of the benefits of immigration are noneconomic—the opportunity, for instance, to live in a stable, well-ordered, relatively nonviolent society. In particular, immigration provides an opportunity for people to escape the horrors of war. While refugees often find it difficult (at least initially) to thrive in a new land, there is little doubt that they are much better off immigrating than remaining in their war-torn countries. In 2015, over 350,000 Syrians fled for Europe to escape the Syrian civil war, and over 175,000 Afghans fled the violence in Afghanistan.⁷ Nearly 1 million refugees applied for asylum in the European Union (EU) in 2015; less than a

third were successful in their application. This led many unsuccessful asylum seekers to apply elsewhere or to try to enter EU countries illegally. In 2016, an estimated 1 million unauthorized immigrants entered EU countries.⁸

Other benefits of immigration are economic. For example, according to 2015 UN estimates, about 12 million people living in the United States were born in Mexico. About half of them were undocumented.⁹ The majority of these immigrants come to find work in the United States, and many of them send a portion of their earnings back to Mexico to help support their families. The same is true of Indians immigrating to the United Arab Emirates (UAE). Annual migration of Indians to the UAE, which stood at 4,600 in 1975, rose to over 125,000 by 1985, nearly 200,000 in 1999, and now stands at 2.6 million. The increase is the result of the thriving UAE oil economy, and the beneficiaries are both native UAE citizens (who get a relatively cheap labor force) and the millions of Indian immigrants who are now much better able to support themselves and their families than they were in their home country.¹⁰

ARGUMENT ANALYSIS

In most ways, the world we live in now is more globally connected than ever. We can have cost-free conversations with people halfway around the world in real time. Information about the most distant events is available at the touch of a key or the click of a mouse. National markets are increasingly interconnected with one another. The number of international travelers continues to rise. The life we live is more than

6. <http://money.cnn.com/2015/02/11/news/companies/lottery-spending/index.html>

7. <https://www.theguardian.com/global-development/2015/jul/09/syria-refugees-4-million-people-flee-crisis-deepens>

8. https://www.washingtonpost.com/news/wonk/wp/2016/07/01/europes-immigration-crisis-is-just-beginning/?utm_term=.c1ce9325cfdd

9. <http://www.pewresearch.org/fact-tank/2016/05/18/5-facts-about-the-u-s-rank-in-worldwide-migration/>

10. <http://www.pewresearch.org/fact-tank/2016/05/18/5-facts-about-the-u-s-rank-in-worldwide-migration/>

ever influenced by events occurring outside our own borders.

These facts naturally raise questions about our duties to those who are not our compatriots. While our moral thinking is often focused quite close to home—on our relations to friends and family, our workmates, or fellow citizens—we take a broader perspective in this chapter and ask about our moral duties to distant strangers. While there is a host of issues that arise in this context, we will restrict ourselves to two: the desperate poverty suffered by tens of millions of the distant poor, and the immigration policies of the wealthier nations that are often designed to keep those people from coming to our shores.

Aid to Distant Strangers

The primary argument for offering aid to distant strangers is very simple: we are in a position to help, at relatively little cost to ourselves. So we should do so. All humans are of fundamentally equal moral importance. So it doesn't matter whether those needing help are my neighbors or distant strangers—if I can prevent their suffering, without causing myself to suffer much, then I should offer my help. This line of reasoning can be summarized in

The Reduction of Suffering Argument

1. If we can reduce the suffering of others without incurring significant sacrifice on our part, then we are morally obligated to do so.
2. We can reduce the suffering of the world's poor without incurring significant sacrifice on our part.

Therefore,

3. We are morally obligated to reduce the suffering of the world's poor—as much as we can, just shy of making a significant sacrifice.

Premise 2 is true of me, and perhaps of you, too. Of course, there are some citizens of the

wealthier nations who are themselves desperately poor, such that any aid they were to offer others *would* amount to a significant sacrifice. This argument doesn't apply to such people—for them, the argument is unsound, because its second premise is false. But the rest of us cannot get off so easily. According to a recent study, it costs about \$50 to feed a school-aged girl for an entire year in many developing countries.¹¹ That's about \$4 per month. Though the boundaries for what qualifies as a *significant* sacrifice are unspecified, this amount easily qualifies as insignificant for me, and for most of you who are reading this book. Think of what you can buy at your local store for \$4. Now think of having to forgo that purchase. Not a significant loss, most likely.

Premise 1 also seems sensible, and can be supported by a famous example offered by one of our authors, Peter Singer.¹² Imagine you are taking a walk and see a child drowning nearby in a shallow pond. You don't spot anyone near him. Though it would cost you something—wet shoes, a couple of minutes of your time—you are nevertheless morally required to save the child, even though (we are assuming) he's a complete stranger to you. Morally speaking, it would be wrong just to walk away. Nor would it suffice to call 9-1-1, since (let's assume) you can tell that the child would drown well before any emergency assistance would arrive on the scene. What explains your moral duty in this case? Premise 1 seems to do a very nice job.

Some say, however, that premise 1 is too demanding—we needn't do everything we can, shy of significant sacrifice, to help others in need. Instead, we must only do our *fair share*. The idea remains that the needs of others, including strangers, impose some duty of assistance on us. But to determine the extent of our

11. "Hunger Price Tags." www.wfp.org. World Food Programme, May 18, 2012.

12. The example appears in Singer's "Famine, Affluence and Morality," *Philosophy and Public Affairs* 2 (1972).

duty, we first need to understand what it would take to fully meet the need, and then figure out how many people are in a position to help. Then we do a calculation. To make things far simpler than they are in practice, suppose we could prevent starvation and malnutrition around the world at a cost of \$50 billion a year. (We can't; just suppose, though, that money alone could solve these problems and that \$50 billion is the required amount.) Next, suppose that there are a billion people in so-called first-world countries, people who are significantly more affluent than those who are in danger of starvation. Now divide \$50 billion by a billion, and you've arrived at each person's fair share—\$50. On this line of thinking, even if you're quite rich and could easily make a \$1,000 contribution to an aid agency without incurring any significant sacrifice, you are morally required to give only \$50.

Defenders of the Reduction of Suffering Argument have a standard reply: giving only one's fair share will leave many, many people to die preventable deaths. After all, very few of us do give our fair share to aid distant strangers. To modify Singer's example, suppose that I live in a community whose members take turns on a neighborhood patrol watch. We each have to do a shift once per month, walking the streets and offering help where needed. I did my service last Monday. But today I'm the one who happens upon the drowning child. The fact that I've already done my fair share does not let me off the hook, morally speaking. I need to do more than my fair share, precisely because someone else desperately needs my help right now.

A different kind of argument takes no stand on whether the needs of others, all by themselves, impose duties of aid. Instead, the motivating idea here is that people are morally bound to right the wrongs they have committed. Injustice requires **reparations**—repairing the harm done to those who have suffered from our injustice. The United States and other major economic powers in the world have become as rich as they are in part because of some quite

terrible behavior that includes colonizing other countries and exploiting their resources without adequate compensation (or, in many cases, any compensation at all). This checkered history naturally gives rise to

The International Reparations Argument

1. If Country A has perpetrated extensive injustices against Country B, then A has a duty to B to repair the harms caused by those injustices.
2. Most of the wealthiest countries of the West have perpetrated extensive injustices against poorer countries.

Therefore,

3. Most of the wealthiest countries in the West have a duty to repair the harms caused by those injustices.¹³

Premise 2 is true. This is not the place to record the many unsavory examples of the more powerful countries exploiting weaker ones—one can consult any number of sources to confirm its truth. I'm not saying that that all or even most of a wealthy country's riches are a result of such exploitation—that is a more complex and controversial matter that we can't, and don't need to, enter here. But so long as wealthier countries have indeed exploited weaker ones, then, if premise 1 is also true, the wealthier nations have a duty to repair those wrongs.

Premise 1 is a direct application, to countries, of the basic principle of reparation—that wrongdoers must repair the damage they've done to their victims. It is hard to argue with this principle. It's true that the principle, and the argument's conclusion, do not specify the precise ways in which reparations are to be made. So, for all this argument says, reparations could take the form of direct monetary aid, providing

13. Reparations also figure importantly in Chapter 18; for instructive comparison, have a look at the Reparations Argument in that chapter.

infrastructure support, sending needed medical supplies, or other methods.

There are critics, of course, of giving aid to distant strangers. One common objection of such aid is that it is often extremely wasteful and sometimes counterproductive. This criticism is correct. In many cases, donations to aid agencies go primarily to administrative costs, rather than to help the intended recipients. In other cases, aid agencies spend millions of dollars on projects that are doomed to fail, owing to a lack of understanding of the local culture and the conditions that have caused the problems in the first place.

While this objection is legitimate, it ultimately fails to undermine the moral case for giving aid. For example, there are now reliable websites that help potential donors track the efficiency of aid organizations, so that one can have a much more informed take on the benefits that different agencies actually bring to the desperate poor.¹⁴

Interestingly, the ethical outlook behind the Reduction of Suffering Argument—a utilitarian one, concerned primarily to minimize long-term suffering—can be used as a basis for a skeptical argument about the merits of providing famine relief and other forms of aid to distant strangers. The idea, articulated in an influential article by the population biologist Garrett Hardin,¹⁵ is that saving the lives of famine victims will bring great short-term good, but at the cost of far greater long-term harm. We can present the details after laying out the basics of

The Utilitarian Argument

1. We are morally required to do something only if it will improve long-term

happiness or reduce overall long-term suffering.

2. Providing famine relief will fail to do either—in fact, it will only increase long-term suffering.

Therefore,

3. We are not morally required to provide famine relief.

Hardin doesn't argue for the first premise—he just assumes the truth of utilitarianism, which is a very controversial doctrine among moral philosophers. We can't revisit those controversies here; for the many benefits of utilitarianism, as well as some of its drawbacks, see Chapter 5. Let's suppose, though, that utilitarianism is true. Why think that premise 2 is also true?

Hardin answered that question by introducing the notion of a **ratchet effect**. This refers to an exponential increase in a population over time, occurring in poor communities with scarce resources. Hardin believes that if we spare the lives of famine victims, by delivering life-sustaining aid, then they will procreate at an exponential rate. If, for instance, we save a million famine victims now, then a generation from now we can expect the population of that famine-stricken area to have increased to (say) 3 million. Now suppose that the area is once again hit by famine, and we once again come to the rescue of the local population. Then, two generations from now, we are likely to encounter a population of about 9 million people. This cycle will lead eventually to a population so large that no one will be able to provide enough resources to sustain it. At that point—many years down the road, but an inevitable consequence of the ratchet effect, and the fact that we cannot increase resources exponentially—the next famine or natural disaster will lead to the deaths of *many* millions of people. But the lives of those who live in the future are no less valuable than our own. If we have to choose

14. These include GiveWell (<http://www.givewell.org/>), The Life You Can Save (<https://www.thelifeyoucansave.org/>), and Giving What We Can (<https://www.givingwhatwecan.org/>).

15. "Lifeboat Ethics: The Case Against Helping the Poor," *Psychology Today* (September 1974), 800–814.

between letting a million people die now, or letting many millions die in the future—and this is indeed our choice, says Hardin—then, with regret, we must let the million die now.

There is much evidence to support Hardin's predictions about population growth. In the decades since the publication of his article (in 1974), the population of hard-hit countries such as Bangladesh or Somalia has increased dramatically. In 1974, Bangladesh had a population of 70 million. In 2016 it had more than doubled, to 163 million.¹⁶ Somalia had a population of 3.6 million in 1974; in 2016, the number had increased by about 400%, to 14.3 million.¹⁷ The question, though, is whether the ratchet effect can be avoided, and whether we are able to increase resources in ways that meet the greater demands caused by population growth. Optimists will answer both questions with yes; pessimists, such as Hardin, will say no. The correct answers are matters well beyond a philosopher's expertise—political economists, geographers, biologists, environmental scientists, and food experts are the ones whose research will provide these answers.

Immigration

People opposed to immigration often rely on ugly stereotypes and appeals to fear in order to gain political support for their cause. This is as true nowadays as it was a century ago, when loud cries could be heard in support of closing the borders against the grandparents of many of today's fiercest critics of immigration. We will leave the ugliness aside—after all, one might entirely avoid crude caricatures of immigrants, and sympathize with their plight, but still believe that a nation has a right to restrict entry to its own territory. After considering some of the better arguments for immigration restriction,

16. <https://www.google.com/search?q=1970+bangladesh+population+statistics&ie=utf-8&oe=utf-8>

17. <https://www.google.com/search?q=1970+somalia+population+statistics&ie=utf-8&oe=utf-8>

we'll then turn to some of the arguments for open borders.

One reason to oppose immigration stems from the desire to protect the economic interests of a country's citizens. This can be expressed in terms of

The Economics Argument

1. Nations have a right to protect their economic interests.
2. Restricting immigration will protect the interests of wealthier countries.

Therefore,

3. Wealthier countries have a right to restrict immigration.

Premise 1 is highly plausible. There are limits to this right, of course—nations are not allowed to promote their economic interests by violating treaties, exploiting weaker nations, or fraudulently manipulating markets. But such cases aside, nations are morally entitled to protect their own economic interests. So let's focus on premise 2. On its behalf, we should note that the poorest workers are usually those threatened the most by immigrants, since immigrants are usually willing to work for lower wages. Sometimes this displaces local workers; at other times, though it doesn't do that, it nevertheless drives down their pay. It's also the case that providing social benefits—medical care, housing subsidies, free education to immigrant children—can be quite costly, especially for smaller nations or communities that are asked to take in substantial numbers of immigrants.

But that is not the entire story. Frequently, a lower paid workforce increases profits for businesses—their owners and shareholders. It also enables businesses to lower the price of goods and services, thereby benefitting consumers as well. Immigrants are often needed to cover domestic worker shortages or to do work that locals are unwilling to do. So there

are economic benefits as well as harms associated with immigration. Further, the government could offset the harms to displaced workers by offering them unemployment compensation and vocational retraining. It's also the case that many immigrants are highly skilled workers—doctors, professors, engineers, and so on—and that the presence of these new citizens usually has substantial economic benefits to society at large, in addition to the immigrants themselves. And policies could be designed so that various social benefits are conferred only after an immigrant has paid into the system for a specified amount of time, helping to defray the costs associated with these benefits. So, while immigration certainly has its economic costs, it also has its benefits, and it's far from clear that the former always outweigh the latter.

Another concern about permissive immigration policies is that they open the door to foreign terrorists. This worry gives rise to

The Security Argument

1. States have a moral duty to protect their citizens against dangerous attack.
2. Restricting immigration is required to offer that protection.

Therefore,

3. States have a moral duty to restrict immigration.

Premise 1 is true. A government's legitimacy depends on its effectively protecting its citizens from preventable threats of substantial harm. Premise 2, though, is more controversial.

It is true that if a state entirely excluded foreigners from its shores, then it would thereby prevent all attacks by foreigners. But the relevance of this observation for premise 2 is unclear. Very few foreign terrorists would be deterred by anti-immigration laws. If they are intent on risking their lives to kill the citizens of another country, then they will (try to) enter the country illegally or will enter legally as a visitor, rather than by application as an

immigrant. So it's unclear just how effective a wholesale immigration ban would be in preventing terrorism.

Of course, a country has the right to deny entry to those it reasonably suspects of being dangerous. But it is not reasonable to suppose that a person is a likely terrorist just because he or she is a citizen of a certain country. President Donald Trump sought in 2017 to ban entry to the United States of all citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. Between 1975 and 2015, six Iranians, six Sudanese, two Somalis, two Iraqis, and one Yemeni were convicted of perpetrating acts of terrorism on US soil. (No Syrians or Libyans have been convicted of such crimes during that time.) In those four decades, the United States allowed entry to 3.25 million refugees; twenty of them have been convicted of attempting or committing a terrorist act on US soil.¹⁸ I am not trying to minimize the horror of terrorist actions. But these figures challenge the view that one's passport is good evidence of terrorist intentions.

Another argument for restricting immigration comes from a basic moral and political principle: we have the right to determine how our lives are going to go, at least so long as we do not violate the rights of others along the way. The thought is that nations, as well as individuals, have this right. This is the basis of

The National Self-Determination Argument

1. Nations have a right to political self-determination.
2. The right to self-determination includes a right to refuse to associate with others.
3. A nation's right to refuse to associate with others includes the right to close its borders to potential immigrants and others.

18. <https://www.theatlantic.com/international/archive/2017/01/trump-immigration-ban-terrorism/514361/>

Therefore,

4. Nations have a right to close their borders to potential immigrants and others.

Premise 1 is highly plausible, at least when it comes to morally legitimate states. One thing it means for a state to be a sovereign nation is that it gets to decide for itself how to run its affairs. Premise 2 is also plausible. Think about the individual case—if you have a right to self-determination, then others can't force you to be their friend or lover. The right includes a right to say no to the company of those you prefer to distance yourself from. Premise 3 looks like a direct application of premise 2—just as a nation's right to self-determination allows it to refuse to enter into economic or military alliances with other nations, it also entitles it to refuse to associate with individuals who are not citizens of the country. And that may amount to a closing of its borders.

The right to self-determination, like most and perhaps all other rights, has its limits. Two are most relevant here. First, the needs of others may sometimes limit our right to self-determination. Think of the case of the drowning child. I have a right to determine how I'm going to live my life. But if I am the only one who can save the drowning child, then it seems that his needs create a moral duty on my part to save him, whether I want to do so or not. If this is correct, then perhaps the need for refugees to gain life-saving entry to our shores creates a moral duty to take a great many of them in. Second, the need to offer reparations limits one's right to self-determination. Wealthy people cannot refuse to right their wrongs by claiming that their right to self-determination entitles them to ignore the harm they've done. So, too, with countries: if a wealthy nation has exploited a weaker one and caused some of the harms that are now prompting its citizens to emigrate, then the wealthy nation may morally have to accept those immigrants as a way of discharging its duty to repair the wrongs it has committed.

Let's now consider some arguments in favor of permissive immigration policies. Supporters of such policies often cite a different fundamental freedom as the basis for their view. This is the freedom of movement, which morally allows us to go where we like, without impediment. The core idea can be put simply:

The Freedom of Movement Argument

1. Freedom of movement is a human right, and so had by all humans.
2. Freedom of movement entails going where you like.

Therefore,

3. Every human has a right to go wherever he or she likes.

Therefore,

4. Nations are morally required to open their borders to anyone who wants to gain entry.

Premise 1 is plausible. And so is premise 2—to the extent that we have freedom of movement, we are allowed to go where we like. Together, premises 1 and 2 provide strong support for 3. But the move from 3 to 4 is invalid. That's because the right to go where you like is not absolute or unlimited. I may really want to attend a celebrity's wedding, or a closed business meeting, but am not entitled to do so without an invitation. I may very much want to enter your home, but my freedom of movement doesn't entitle me to do so if you don't permit it. If, in these personal contexts, we are allowed to bar our homes and businesses from unwanted outsiders, it's not clear why a state should be forbidden from doing so as well.

Now if you do not legitimately occupy a house—if, for instance, you are squatting there—then you don't have a right to exclude others from that property. So, too, if a government is morally illegitimate, as many governments are, then it lacks a right to exclude

others from its territory. In that case, an emigrant's freedom of movement may well entitle her to entry to a given land. But when a nation's government is morally legitimate, it has a right to control who may and may not enter its territory.

Another argument in favor of open borders begins by reflecting on the very different opportunities for a good life had by people in different parts of the world. If you were lucky enough to have been born into a stable, democratic, and prosperous country, then you have a far better chance of living a good life than if you were born in Syria or Somalia. And this disparity seems not only deeply unfortunate but also, in a way, unfair, since those who live in such desperate conditions have done nothing to deserve their poor life chances. We can put this thought to work in

The Anti-Luck Argument

1. Nations are morally required to give everyone an equal chance at a good life if their poor prospects are due to bad luck (i.e., circumstances beyond their control).
2. Wealthy nations are able to give everyone such an equal chance only if they allow open borders.

Therefore,

3. Wealthy nations are morally required to allow open borders.

The thought behind premise 1 is that nations are morally required to be just; justice requires giving people what they deserve; giving people what they deserve requires correcting for cases in which people suffer undeservedly; some emigrants from unstable and poverty-stricken countries are suffering undeservedly; so justice requires that such suffering be eased, if it can be.

Critics of this argument may well agree to the line of reasoning sketched in the previous paragraph. However, they may claim that the duties of a government are limited to addressing

the undeserved suffering of its own citizens and the suffering of foreigners that it has wrongly caused. But if a nation is not responsible for the undeserved suffering of a potential immigrant, then it has no duty to try to ease that suffering. It would, of course, be nice were a nation to undertake to do this. But doing so is not morally required.

Defenders of the Anti-Luck Argument point to cases in which nations are morally required to intervene in other countries solely for humanitarian purposes. If any such intervention really is morally required, then the moral duties of nations are not limited to meeting the needs of its own citizens and redressing the wrongs it has done to the citizens of other countries.

Suppose for now that we accept premise 1. Still, critics of the Anti-Luck Argument might take issue with premise 2, and claim that there are other ways to ease the undeserved suffering of foreigners. A wealthy nation could, for instance, offer various forms of support designed to strengthen the institutions and economy of the impoverished country. So long as this is a genuine possibility, it's not clear why wealthy nations are also required to open their borders in order to improve lives of foreigners who have been born in dire, undeserved circumstances.

The final argument that we'll consider on behalf of open borders is the most popular. It is very like the Reduction of Suffering Argument we considered earlier, only in this case as applied specifically to immigration, rather than to the general unmet needs of the distant poor:

The Humanitarian Aid Argument

1. If we are able to drastically improve someone's life at relatively little cost to ourselves, then we are morally obligated to do so.
2. Opening our borders to immigrants would drastically improve their lives at relatively little cost to ourselves.

Therefore,

3. We are morally obligated to open our borders to immigrants.

We needn't say much about this argument, as it relies on various claims that we have already discussed. We could enlist the drowning child example in support of premise 1. On the other side, most people deny that I am required to feed you, pay for your surgery, or let you sleep the night in my home just because you need me to do one of these things.

Regarding premise 2, there is no doubt that opening our borders to many immigrants would indeed drastically improve their lives. The question is whether that benefit comes at an acceptable cost. There will certainly be economic costs. But as we've seen earlier with the Economic Argument for closing borders, there are often substantial economic benefits to opening one's borders as well. That said, there may be other, noneconomic costs associated with a liberal immigration policy—for instance, the possible erosion of a national culture.

It's true that mass immigration may change a culture in various ways. But, first, that change may sometimes be for the better—many aspects of many cultures are morally problematic. Second, it's unclear how important the preservation of culture is when weighed against meeting the basic needs of desperate people. Third, the culture of many immigrants will be significantly similar to that of a host country, so this worry isn't that serious in those cases. Finally, even in harder cases—for instance, where immigrants bring with them a deeply sexist and religiously intolerant outlook—their entry can be tied to an education program that provides history and context about the host culture, its value, and the importance of partial assimilation to the core values of a country that has extended itself in opening its borders.

CONCLUSION

We live in a globally interconnected world. We are aware of events happening in real time across the world in a way that was hardly possible until very recently. This greater awareness raises questions about the scope of our moral duty to aid distant strangers in need.

The needs can be very acute, and we can meet many of those needs at relatively little cost. Many think that this decides the matter, morally: we are under obligation to meet those needs and to offer such aid. Those who disagree argue that the needs of others do not impose duties on us unless we have either agreed to fulfill those needs or have acted wrongly in ways that require us to repair the damage we've done. When neither condition is met, they say, then we are under no moral duty to offer any assistance.

In many cases, the most good we can do for such people is to allow them to immigrate to our country (so long as our country is stable, democratic, and prosperous). The worries about opening our borders—incurred economic costs, endangering our citizenry, violating our right to national self-determination, threatening the preservation of our culture—are countered by those who cite the human right to freedom of movement, the need to correct for undeserved suffering, and the moral importance of preventing humanitarian crises. I think it safe to say that we have yet to see a decisive argument for closing our borders against all would-be immigrants, but neither has there been a decisive argument for opening our borders to all who would like to come.

ESSENTIAL CONCEPTS

Ratchet effect: an exponential increase of a population over time, occurring in poor communities confronted with scarce resources.

Reparations: repairing the harm one has done to the victims of one's unjust conduct.

STAT SHOT

1. Worldwide, 3 billion people lack access to toilets and almost 1 billion lack access to clean drinking water.¹
2. The percentage of people living in extreme poverty (defined in 2011 as earning less than \$1.90 per day) has been steadily decreasing since 1990 (Figure 17.1).

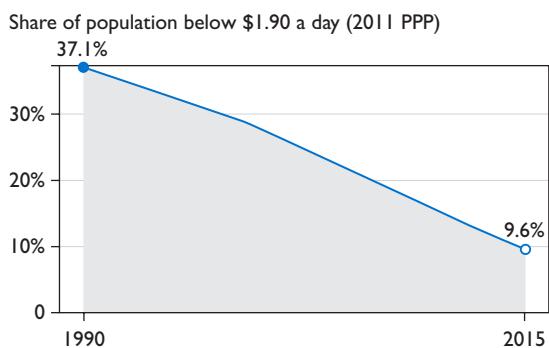


Figure 17.1.

Source: The World Bank and <https://www.weforum.org/agenda/2016/01/has-the-world-overlooked-a-major-achievement/>

3. As of 2015, 13.4 percent of the United States population was foreign-born. That's

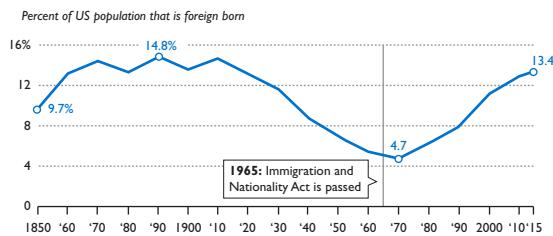


Figure 17.2.

Source: US Census Bureau, "Historical Census Statistics on the Foreign-Born Population of the United States: 1850-2000" and Pew Research Center tabulations of 2010 and 2015 American Community Survey (IPUMS). http://www.pewresearch.org/fact-tank/2017/05/03/key-findings-about-u-s-immigrants/ft_17-04-10_immigrant_share/

up significantly from 1970, when it was just 4.7 percent (Figure 17.2).

4. As of 2015, there were 44.7 million foreign-born people in the United States. About 1 in every 4 was an unauthorized immigrant (Figure 17.3).

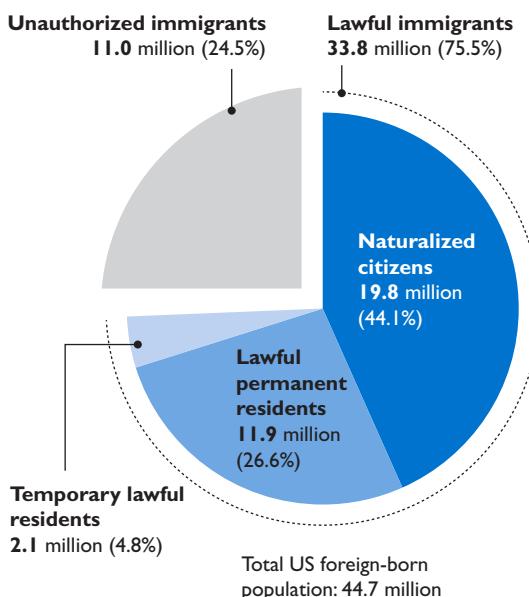


Figure 17.3. Foreign-born population estimates, 2015. All numbers are rounded independently and are not adjusted to sum to US total or other totals.

Source: Pew Research Center estimates for 2015 based on augmented American Community Survey (IPUMS). http://www.pewresearch.org/fact-tank/2017/05/03/key-findings-about-u-s-immigrants/ft_16-06-02_foreign-bornbreakdown/

1. <https://borgenproject.org/global-poverty/>

Cases for Critical Thinking

GiveDirectly

GiveDirectly is a nonprofit organization operating in East Africa—specifically Kenya, Uganda, and Rwanda. They help families living in extreme poverty by facilitating unconditional cash transfers to them from donors via mobile phone. Every year since 2012, GiveDirectly has been a top-rated charity according to Give Well—a nonprofit organization that grades charities according to their cost-effectiveness. GiveDirectly's website allows donors to quickly make a direct transfer to an extremely poor person with almost no transaction costs. If you're reading this text, then you're likely the kind of person who has enough disposable income to make a big difference in the life of a very poor person. For example, a transfer of \$50—what many spend on a pair of blue jeans—would be more than what many GiveDirectly recipients make in a month.¹

1. <https://www.givedirectly.org/>

Questions

1. Do you have a moral obligation to give at least something to GiveDirectly or a similar organization? Why or why not?
2. If you think that you do have an obligation to give, at what point would you no longer be obligated to give?
3. If you think that you don't have an obligation to give, why not? Does anyone have such an obligation (e.g., the very rich)? Why or why not?
4. Some people think that you have an obligation to give to the global poor for the following reason: You're relatively rich only because you were born into a relatively rich country. And the only reason that the desperately poor are poor is that they were born into a desperately poor country. But neither

of you had a say about where you were born. The only difference between you and the desperately poor is luck—good luck for you, bad luck for them. And no one should have to suffer while others live in comfort if the only difference between them is luck. Is this line of reasoning correct? Why or why not?

Citizenship for Children Born to Undocumented Immigrants

The Fourteenth Amendment to the US Constitution states that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” Thus, children born in the United States (besides children of foreign diplomats) are US citizens, regardless of their parents’ nationality. This amendment was originally intended to make the children of slaves into US citizens, even if their parents weren’t born in the United States. But the law also made it possible for undocumented immigrants to enter the country illegally, give birth on US soil, and claim US citizenship for their newborn children. These children would then have the legal rights to public education and public assistance for health care, retirement, and so on. US citizenship for a child can also make it easier for the undocumented parents to gain citizenship through family reunification programs. Thus, millions of people who have not paid into the United States tax system could wind up benefiting from programs paid for by US taxpayers.

Opponents of the citizenship-by-birth provisions in the Constitution argue that these measures encourage undocumented immigration because it creates an easier alternative to the standard, and much more difficult, immigration procedures. Further, these protections create an incentive for already present undocumented immigrants to expand their families, thereby exacerbating the problem of paying for welfare

programs for people who have paid nothing, or very little, into those programs. These opponents argue that such rights and privileges should not be given to families whose members have already violated law.

Proponents of the citizenship-by-birth protections, on the other hand, argue that punishing children for illegal acts committed by their parents is unjust. Children have no say about where they are born, and returning them to their parents' home country may be highly traumatic for them once they've been integrated into a community in the United States. And to deprive these children of education, health care, and the other benefits of citizenship in what to them has always been their home threatens to create a population of second-class people. Due to deportation or other circumstances, children of illegal immigrants are somewhat more likely to grow up without a stable family or become orphaned. Removing citizenship provisions would jeopardize these children's protection from social services organizations. If children of illegal immigrants born in the United States were not granted citizenship, the US government would be in the awkward position of keeping and protecting young noncitizens within its borders or deporting them to a country that has never had anything to do with them. Neither option holds out much hope for a child's future.

Questions

1. Is it unjust to taxpaying citizens to make it easy for undocumented immigrants and their children to gain access to social welfare benefits when they haven't paid much or anything into those programs? Why or why not?
2. Is it unjust to children born in the United States to undocumented immigrants to deport them, when they haven't themselves broken any laws and have lived most of their lives in the United States? Why or why not?

3. Should children born in the United States to undocumented immigrants be granted citizenship? Why or why not?
4. What is the point of laws restricting who can and cannot enter, or reside in, a country? How does your answer to this question bear on your answer to Question 3?

Asylum for Refugees

In early 2011, over 30,000 Tunisian refugees arrived on the island of Lampedusa, Italy's southernmost point. Following the outbreak of the Libyan Civil War a few weeks later, thousands more Libyan refugees escaped to Italy. The number of refugees continued to swell as refugees from Somalia, Ethiopia, Egypt, and Eritrea joined other African refugees making their way to Italy. European Union law requires the country where refugees first arrive to carry out the asylum process. Italy, overwhelmed by refugees and its own high unemployment rate, asked for help from the other twenty-six EU countries, particularly in resettling refugees who have family members in other EU countries. The other EU member states responded that Italy had the resources and the responsibility to deal with the crisis on its own.¹

Italy responded to the European Union's refusal to accept the refugees by issuing six-month temporary residency papers and travel permits, granting 25,000 Tunisian refugees the right to travel to other EU countries. Many of the French-speaking Tunisians set their sights on France. French riot police met scores of Tunisian refugees at the French-Italian border and turned them back, preventing ten trains from crossing the border and closing ancient footpaths between France and Italy. French officials insisted that they were not trying to undermine the agreement between EU countries to allow freedom of movement between member countries but were instead responding to threats to public order.

1. <http://www.nytimes.com/2011/03/31/world/europe/31italy.html>

Questions

1. Did Italy have a responsibility to receive and offer asylum to the refugees, as the leaders of the other EU countries claimed? Why?
2. Would it have been justified for Italy or France to accept some refugees that they deemed useful to them (e.g., doctors, metallworkers) while turning the rest away? Or should they have accepted refugees without reference to judgments about who would best serve their country's interests?
3. Once Italy did offer asylum to the refugees, did the other EU countries have a duty to aid Italy in accommodating them? Why or why not?
4. The United States allowed six hundred Tunisian refugees to settle in its territory. It was, at the time, more prepared than most EU countries to absorb an influx of refugees. Did the United States, and similarly prepared countries (such as Canada), have a duty to assist Italy by taking in refugees, or was this above and beyond the call of their moral duty? Why?

READINGS

The Singer Solution to World Poverty

Peter Singer

Peter Singer argues that our ordinary patterns of spending money on ourselves are immoral. Such spending involves the purchase of many things that are not essential to preserving our lives or health. The money we spend on fancy dinners, new clothes, or vacations could instead be sent to relief agencies that save people's lives. We don't know our potential beneficiaries, but that is morally irrelevant. Our decision not to spend money to save their lives is morally inexcusable.

Singer offers us a series of fascinating examples in which people have the opportunity to prevent an innocent person's death but fail to do so. We regard the person in each example as having done something extremely immoral. Singer argues that we who spend money on inessential personal pleasures are no better.

But what if most of the people we know are also failing to give anything to famine relief or aid agencies? That doesn't let us off the hook—it just means that they are also behaving in a deeply immoral way.

Perhaps the money sent overseas will not do as much good as advertised? Singer mentions some very reliable aid agencies (and provides contact information) that will not squander your money. For a couple hundred dollars, you can save a child's life, or purchase a few new additions to your wardrobe. If Singer is right,

then choosing to spend that money on yourself means knowingly allowing an innocent person to die. Given the relatively small sacrifice you would be making if you sent that money overseas, and given the great benefit you would be providing if you did, morality gives you no choice. World poverty could largely be solved if we in the wealthier nations did our moral duty and gave much more than we currently do to those in greatest need.

In the Brazilian film *Central Station*, Dora is a retired schoolteacher who makes ends meet by sitting at the station writing letters for illiterate people. Suddenly she has an opportunity to pocket \$1,000. All she has to do is persuade a homeless 9-year-old boy to follow her to an address she has been given. (She is told he will be adopted by wealthy foreigners.) She delivers the boy, gets the money, spends some of it on a television set, and settles down to enjoy her new acquisition. Her neighbor spoils the fun, however, by telling her that the boy was too old to be adopted—he will be killed and his organs sold for transplantation. Perhaps Dora knew this all along, but after her neighbor's plain speaking, she spends a troubled night. In the morning Dora resolves to take the boy back.

Suppose Dora had told her neighbor that it is a tough world, other people have nice new TVs too, and if selling the kid is the only way she can get one, well, he was only a street kid. She would then have become, in the eyes of the audience, a monster. She redeems herself only by being prepared to bear considerable risks to save the boy.

At the end of the movie, in cinemas in the affluent nations of the world, people who would have been quick to condemn Dora if she had not rescued the boy go home to places far more comfortable than her apartment. In fact, the average family in the United States spends almost one-third of its income on things that are no more necessary to them than Dora's new TV was to her. Going out to nice restaurants, buying new clothes because the old ones are no longer stylish, vacationing at beach

resorts—so much of our income is spent on things not essential to the preservation of our lives and health. Donated to one of a number of charitable agencies, that money could mean the difference between life and death for children in need.

All of which raises a question: In the end, what is the ethical distinction between a Brazilian who sells a homeless child to organ peddlers and an American who already has a TV and upgrades to a better one—knowing that the money could be donated to an organization that would use it to save the lives of kids in need?

Of course, there are several differences between the two situations that could support different moral judgments about them. For one thing, to be able to consign a child to death when he is standing right in front of you takes a chilling kind of heartlessness; it is much easier to ignore an appeal for money to help children you will never meet. Yet for a utilitarian philosopher like myself—that is, one who judges whether acts are right or wrong by their consequences—if the upshot of the American's failure to donate the money is that one more kid dies on the streets of a Brazilian city, then it is, in some sense, just as bad as selling the kid to the organ peddlers. But one doesn't need to embrace my utilitarian ethic to see that, at the very least, there is a troubling incongruity in being so quick to condemn Dora for taking the child to the organ peddlers while, at the same time, not regarding the American consumer's behavior as raising a serious moral issue.

In his 1996 book, *Living High and Letting Die*, the New York University philosopher Peter Unger presented an ingenious series of imaginary examples designed to probe our intuitions about whether it is wrong to live well without giving

substantial amounts of money to help people who are hungry, malnourished or dying from easily treatable illnesses like diarrhea. Here's my paraphrase of one of these examples:

Bob is close to retirement. He has invested most of his savings in a very rare and valuable old car, a Bugatti, which he has not been able to insure. The Bugatti is his pride and joy. In addition to the pleasure he gets from driving and caring for his car, Bob knows that its rising market value means that he will always be able to sell it and live comfortably after retirement. One day when Bob is out for a drive, he parks the Bugatti near the end of a railway siding and goes for a walk up the track. As he does so, he sees that a runaway train, with no one aboard, is running down the railway track. Looking farther down the track, he sees the small figure of a child very likely to be killed by the runaway train. He can't stop the train and the child is too far away to warn of the danger, but he can throw a switch that will divert the train down the siding where his Bugatti is parked. Then nobody will be killed—but the train will destroy his Bugatti. Thinking of his joy in owning the car and the financial security it represents, Bob decides not to throw the switch. The child is killed. For many years to come, Bob enjoys owning his Bugatti and the financial security it represents.

Bob's conduct, most of us will immediately respond, was gravely wrong. Unger agrees. But then he reminds us that we, too, have opportunities to save the lives of children. We can give to organizations like UNICEF or Oxfam America. How much would we have to give one of these organizations to have a high probability of saving the life of a child threatened by easily preventable diseases? (I do not believe that children are more worth saving than adults, but since no one can argue that children have brought their poverty on themselves, focusing on them simplifies the issues.) Unger called up some experts and used the information they provided to offer some plausible estimates that include the cost of raising money, administrative expenses and the cost of delivering aid where it is most needed. By his calculation, \$200 in donations would help a sickly 2-year-old transform into a healthy 6-year-old—offering safe passage through childhood's most dangerous years. To show how practical

philosophical argument can be, Unger even tells his readers that they can easily donate funds by using their credit card and calling one of these toll-free numbers: (800) 367-5437 for UNICEF; (800) 693-2687 for Oxfam America. [<http://supportunicef.org/forms/whichcountry2.html> for UNICEF and <http://www.oxfam.org/eng/donate.htm> for Oxfam—PS.]

Now you, too, have the information you need to save a child's life. How should you judge yourself if you don't do it? Think again about Bob and his Bugatti. Unlike Dora, Bob did not have to look into the eyes of the child he was sacrificing for his own material comfort. The child was a complete stranger to him and too far away to relate to in an intimate, personal way. Unlike Dora, too, he did not mislead the child or initiate the chain of events imperiling him. In all these respects, Bob's situation resembles that of people able but unwilling to donate to overseas aid and differs from Dora's situation.

If you still think that it was very wrong of Bob not to throw the switch that would have diverted the train and saved the child's life, then it is hard to see how you could deny that it is also very wrong not to send money to one of the organizations listed above. Unless, that is, there is some morally important difference between the two situations that I have overlooked.

Is it the practical uncertainties about whether aid will really reach the people who need it? Nobody who knows the world of overseas aid can doubt that such uncertainties exist. But Unger's figure of \$200 to save a child's life was reached after he had made conservative assumptions about the proportion of the money donated that will actually reach its target.

One genuine difference between Bob and those who can afford to donate to overseas aid organizations but don't is that only Bob can save the child on the tracks, whereas there are hundreds of millions of people who can give \$200 to overseas aid organizations. The problem is that most of them aren't doing it. Does this mean that it is all right for you not to do it?

Suppose that there were more owners of priceless vintage cars—Carol, Dave, Emma, Fred, and so on, down to Ziggy—all in exactly the same situation as Bob, with their own siding and their own switch, all

sacrificing the child in order to preserve their own cherished car. Would that make it all right for Bob to do the same? To answer this question affirmatively is to endorse follow-the-crowd ethics—the kind of ethics that led many Germans to look away when the Nazi atrocities were being committed. We do not excuse them because others were behaving no better.

We seem to lack a sound basis for drawing a clear moral line between Bob's situation and that of any reader of this article with \$200 to spare who does not donate it to an overseas aid agency. These readers seem to be acting at least as badly as Bob was acting when he chose to let the runaway train hurtle toward the unsuspecting child. In the light of this conclusion, I trust that many readers will reach for the phone and donate that \$200. Perhaps you should do it before reading further.

Now that you have distinguished yourself morally from people who put their vintage cars ahead of a child's life, how about treating yourself and your partner to dinner at your favorite restaurant? But wait. The money you will spend at the restaurant could also help save the lives of children overseas! True, you weren't planning to blow \$200 tonight, but if you were to give up dining out just for one month, you would easily save that amount. And what is one month's dining out, compared to a child's life? There's the rub. Since there are a lot of desperately needy children in the world, there will always be another child whose life you could save for another \$200. Are you therefore obliged to keep giving until you have nothing left? At what point can you stop?

Hypothetical examples can easily become farcical. Consider Bob. How far past losing the Bugatti should he go? Imagine that Bob had got his foot stuck in the track of the siding, and if he diverted the train, then before it rammed the car it would also amputate his big toe. Should he still throw the switch? What if it would amputate his foot? His entire leg?

As absurd as the Bugatti scenario gets when pushed to extremes, the point it raises is a serious one: only when the sacrifices become very significant indeed would most people be prepared to say that Bob does nothing wrong when he decides not

to throw the switch. Of course, most people could be wrong; we can't decide moral issues by taking opinion polls. But consider for yourself the level of sacrifice that you would demand of Bob, and then think about how much money you would have to give away in order to make a sacrifice that is roughly equal to that. It's almost certainly much, much more than \$200. For most middle-class Americans, it could easily be more like \$200,000.

Isn't it counterproductive to ask people to do so much? Don't we run the risk that many will shrug their shoulders and say that morality, so conceived, is fine for saints but not for them? I accept that we are unlikely to see, in the near or even medium-term future, a world in which it is normal for wealthy Americans to give the bulk of their wealth to strangers. When it comes to praising or blaming people for what they do, we tend to use a standard that is relative to some conception of normal behavior. Comfortably off Americans who give, say, 10 percent of their income to overseas aid organizations are so far ahead of most of their equally comfortable fellow citizens that I wouldn't go out of my way to chastise them for not doing more. Nevertheless, they should be doing much more, and they are in no position to criticize Bob for failing to make the much greater sacrifice of his Bugatti.

At this point various objections may crop up. Someone may say: "If every citizen living in the affluent nations contributed his or her share I wouldn't have to make such a drastic sacrifice, because long before such levels were reached, the resources would have been there to save the lives of all those children dying from lack of food or medical care. So why should I give more than my fair share?" Another, related, objection is that the Government ought to increase its overseas aid allocations, since that would spread the burden more equitably across all taxpayers.

Yet the question of how much we ought to give is a matter to be decided in the real world—and that, sadly, is a world in which we know that most people do not, and in the immediate future will not, give substantial amounts to overseas aid agencies. We know, too, that at least in the next year, the United States Government is not going to meet even the very modest United Nations-recommended target

of 0.7 percent of gross national product; at the moment it lags far below that, at 0.09 percent, not even half of Japan's 0.22 percent or a tenth of Denmark's 0.97 percent. Thus, we know that the money we can give beyond that theoretical "fair share" is still going to save lives that would otherwise be lost. While the idea that no one need do more than his or her fair share is a powerful one, should it prevail if we know that others are not doing their fair share and that children will die preventable deaths unless we do more than our fair share? That would be taking fairness too far.

Thus, this ground for limiting how much we ought to give also fails. In the world as it is now, I can see no escape from the conclusion that each one of us with wealth surplus to his or her essential needs should be giving most of it to help people suffering from poverty so dire as to be life-threatening. That's right: I'm saying that you shouldn't buy that new car, take that cruise, redecorate the house or get that pricey new suit. After all, a \$1,000 suit could save five children's lives.

So how does my philosophy break down in dollars and cents? An American household with an income of \$50,000 spends around \$30,000 annually on necessities, according to the Conference Board, a nonprofit economic research organization. Therefore, for a household bringing in \$50,000 a year, donations to help the world's poor should be as close as possible to \$20,000. The \$30,000 required for necessities holds for higher incomes as well. So a household making \$100,000 could cut a yearly check for \$70,000. Again, the formula is simple: whatever money you're spending on luxuries, not necessities, should be given away.

Now, evolutionary psychologists tell us that human nature just isn't sufficiently altruistic to make it plausible that many people will sacrifice so much for strangers. On the facts of human nature, they might be right, but they would be wrong to draw a moral conclusion from those facts. If it is the case that we ought to do things that, predictably, most of us won't do, then let's face that fact head-on. Then, if we value the life of a child more than going to fancy restaurants, the next time we dine out we will know that we could have done

something better with our money. If that makes living a morally decent life extremely arduous, well, then that is the way things are. If we don't do it, then we should at least know that we are failing to live a morally decent life—not because it is good to wallow in guilt but because knowing where we should be going is the first step toward heading in that direction.

When Bob first grasped the dilemma that faced him as he stood by that railway switch, he must have thought how extraordinarily unlucky he was to be placed in a situation in which he must choose between the life of an innocent child and the sacrifice of most of his savings. But he was not unlucky at all. We are all in that situation.

Peter Singer: The Singer Solution to World Poverty

1. Was it morally wrong of Bob to refrain from throwing the switch, thus allowing the child to die? Is there any moral difference between Bob's decision and the decision of well-off people to spend money on luxuries rather than the alleviation of poverty?
2. One difference between the case of Bob and the case of someone not giving to charity is that Bob is the only person in a position to prevent the child's death, while many people are in a position to give to charity. Why doesn't Singer think that this is a morally relevant difference? Do you agree with him?
3. How much of our income does Singer think we are morally required to give away? Do you find his standard reasonable?
4. How does Singer respond to the objection that his theory is too demanding, and that people will never make the sacrifices he suggests? Do you find his response convincing?
5. One might respond to Singer's proposals by claiming that instead of individuals contributing money to alleviate world poverty, governments should be responsible for handling such efforts. Why doesn't Singer think that this undermines his view that middle-class people should give large percentages of their income to charity?

A Kantian Approach to Famine Relief

Onora O'Neill

Onora O'Neill opens this selection by providing a very helpful summary of the central ideas of Kant's principle of humanity, which calls on us to treat human beings as ends, and never as mere means. These dual notions require interpretation, as O'Neill (one of the preeminent scholars of Kantian ethics in the last several decades) well recognizes. To treat someone as a means is innocent enough—it is simply to rely on her to help you to achieve one of your goals. But to treat someone as a mere means is to treat her in a way that she cannot in principle consent to. Treating someone as an end is to show her the respect that she is due, owing to her rationality and autonomy. This amounts to treating her in ways that she *can* consent to.

The question here is whether, in spending money on our own pleasures rather than on giving to aid agencies that will save the lives of famine victims, we are thereby violating our moral obligations. O'Neill applies the rudiments of the Kantian ethic to provide an answer. Our moral obligations to aid others are discretionary—we must do some good, but we are allowed to choose the times and the ways in which we offer such help. Of course, we must treat no such victims as mere means—we must not coerce or deceive them, for instance. But how much (if anything) must we do for them?

In addressing this question, O'Neill contrasts the Kantian view with a utilitarian one, which requires that we give such aid until the point at which, were we to give any more, we would become as badly off as our intended beneficiaries. The Kantian view is less demanding. As O'Neill indicates, the Kantian can offer no precise formula for specifying the amount and kind of aid that one must give to victims of famine relief. Still, because of its emphasis on the importance of developing one's capacities for autonomous choice, and because of the severe ways in which famine threatens those capacities, Kantian ethics places a high priority on providing such aid.

THE FORMULA OF THE END IN ITSELF

Kant states the Formula of the End in Itself as follows:

Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means but always at the same time as an end.

To understand this we need to know what it is to treat a person as a means or as an end. According to Kant, each of our acts reflects one or more *maxims*. The maxim of the act is the principle on

which one sees oneself as acting. A maxim expresses a person's policy, or if he or she has no settled policy, the principle underlying the particular intention or decision on which he or she acts. Thus, a person who decides "This year I'll give 10 percent of my income to famine relief" has as a maxim the principle of tithing his or her income for famine relief.

Whenever we act intentionally, we have at least one maxim and can, if we reflect, state what it is. When we want to work out whether an act we propose to do is right or wrong, according to Kant, we should look at our maxims. We just have to check that the act we have in mind will not use anyone as a mere means, and, if possible, that it will treat other persons as ends in themselves.

From Onora O'Neill, "A Kantian Approach to Famine Relief," in Tom Regan, ed., *Matters of Life and Death*, second edition (New York: Random House, 1986), pp. 322–329.

USING PERSONS AS MERE MEANS

To use someone as a *mere means* is to involve them in a scheme of action *to which they could not in principle consent*. Kant does not say that there is anything wrong about using someone as a means. Evidently we have to do so in any cooperative scheme of action. If I cash a check I use the teller as a means, without whom I could not lay my hands on the cash; the teller in turn uses me as a means to earn his or her living. But in this case, each party consents to her or his part in the transaction. Kant would say that though they use one another as means, they do not use one another as *mere* means. Each person assumes that the other has maxims of his or her own and is not just a thing or a prop to be manipulated.

But there are other situations where one person uses another in a way to which the other could not in principle consent. For example, one person may make a promise to another with every intention of breaking it. If the promise is accepted, then the person to whom it was given must be ignorant of what the promisor's intention (maxim) really is. Successful false promising depends on deceiving the person to whom the promise is made about what one's real maxim is. And since the person who is deceived doesn't know that real maxim, he or she can't in principle consent to his or her part in the proposed scheme of action. The person who is deceived is, as it were, a prop or a tool—a mere means—in the false promisor's scheme. In Kant's view, it is this that makes false promising wrong.

In Kant's view, acts that are done on maxims that require deception or coercion of others, and so cannot have the consent of those others, are wrong. When we act on such maxims, we treat others as mere means, as things rather than as ends in themselves. If we act on such maxims, our acts are not only wrong but unjust: such acts wrong the particular others who are deceived or coerced.

TREATING PERSONS AS ENDS IN THEMSELVES

To treat someone as an end in him or herself requires in the first place that one not use him or her as mere means, that one respect each as a rational person

with his or her own maxims. But beyond that, one may also seek to foster others' plans and maxims by sharing some of their ends. To act beneficently is to seek others' happiness, therefore to intend to achieve some of the things that those others aim at with their maxims. Beneficent acts try to achieve what others want. However, we cannot seek everything that others want; their wants are too numerous and diverse, and, of course, sometimes incompatible. It follows that beneficence has to be selective.

There is a sharp distinction between the requirements of justice and of beneficence in Kantian ethics. Justice requires that we act on *no* maxims that use others as mere means. Beneficence requires that we act on *some* maxims that foster others' ends, though it is a matter for judgment and discretion which of their ends we foster. Kantians will claim that they have done nothing wrong if none of their acts is unjust, and that their duty is complete if in addition their life plans have been reasonably beneficent.

KANTIAN DELIBERATIONS ON FAMINE PROBLEMS

The theory I have just sketched may seem to have little to say about famine problems. For it is a theory that forbids us to use others as mere means but does not require us to direct our benevolence first to those who suffer most. A conscientious Kantian, it seems, has only to avoid being unjust to those who suffer famine and can then be beneficent to those nearer home. He or she would not be obliged to help the starving, even if no others were equally distressed.

Kant's moral theory does make less massive demands on moral agents than utilitarian moral theory. On the other hand, it is somewhat clearer just what the more stringent demands are, and they are not negligible. We have here a contrast between a theory that makes massive but often indeterminate demands and a theory that makes fewer but less unambiguous demands and leaves other questions, in particular the allocation of beneficence, unresolved.

KANTIAN DUTIES OF JUSTICE IN TIMES OF FAMINE

In famine situations, Kantian moral theory requires unambiguously that we do no injustice. We should not act on any maxim that uses another as mere

means, so we should neither deceive nor coerce others. Such a requirement can become quite exacting when the means of life are scarce, when persons can more easily be coerced, and when the advantage of gaining more than what is justly due to one is great.

First, where there is a rationing scheme, one ought not to cheat and seek to get more than one's share—any scheme of cheating will use someone as mere means. Nor may one take advantage of others' desperation to profiteer or divert goods onto the black market or to accumulate a fortune out of others' misfortunes. Transactions that are outwardly sales and purchases can be coercive when one party is desperate. All the forms of corruption that deceive or put pressure on others are also wrong: hoarding unallocated food, diverting relief supplies for private use, corruptly using one's influence to others' disadvantage. Such requirements are far from trivial and frequently violated in hard times. In severe famines, refraining from coercing and deceiving may risk one's own life and require the greatest courage.

Second, justice requires that in famine situations one still try to fulfill one's duties to particular others. For example, even in times of famine, a person has duties to try to provide for dependents. These duties may, tragically, be unfulfillable. If they are, Kantian ethical theory would not judge wrong the acts of a person who had done her or his best. A conscientious attempt to meet the particular obligations one has undertaken may also require of one many further maxims of self-restraint and of endeavor—for example, it may require a conscientious attempt to avoid having (further) children; it may require contributing one's time and effort to programs of economic development. Where there is no other means to fulfill particular obligations, Kantian principles may require a generation of sacrifice.

The obligations of those who live with or near famine are undoubtedly stringent and exacting; for those who live further off it is harder to see what a Kantian moral theory demands. Might it not, for example, be permissible to do nothing at all about those suffering famine? Might one not ensure that one does nothing unjust to the victims of famine by adopting no maxims whatsoever

that mention them? To do so would, at the least, require one to refrain from certain deceptive and coercive practices frequently employed during the European exploration and economic penetration of the now underdeveloped world and still not unknown. For example, it would be unjust to "purchase" valuable lands and resources from persons who don't understand commercial transactions or exclusive property rights or mineral rights, and so do not understand that their acceptance of trinkets destroys their traditional economic pattern and way of life. The old adage "trade follows the flag" reminds us to how great an extent the economic penetration of the less-developed countries involved elements of coercion and deception, so was on Kantian principles unjust (regardless of whether or not the net effect has benefited the citizens of those countries).

Few persons in the developed world today find themselves faced with the possibility of adopting on a grand scale maxims of deceiving or coercing persons living in poverty. But at least some people find that their jobs require them to make decisions about investment and aid policies that enormously affect the lives of those nearest to famine. What does a commitment to Kantian moral theory demand of such persons?

It has become common in writings in ethics and social policy to distinguish between one's *personal responsibilities* and one's *role responsibilities*. So a person may say, "As an individual I sympathize, but in my official capacity I can do nothing"; or we may excuse persons' acts of coercion because they are acting in some particular capacity—e.g., as a soldier or a jailer. On the other hand, this distinction isn't made or accepted by everyone. At the Nuremberg trials of war criminals, the defense "I was only doing my job" was disallowed, at least for those whose command position meant that they had some discretion in what they did. Kantians generally would play down any distinction between a person's own responsibilities and his or her role responsibilities. They would not deny that in any capacity one is accountable for certain things for which as a private person one is not accountable. For example, the treasurer of an organization

is accountable to the board and has to present periodic reports and to keep specified records. But if she fails to do one of these things for which she is held accountable she will be held responsible for that failure—it will be imputable to her as an individual. When we take on positions, we *add* to our responsibilities those that the job requires; but we do not lose those that are already required of us. Our social role or job gives us, on Kant's view, no license to use others as mere means.

If persons are responsible for all their acts, it follows that it would be unjust for aid officials to coerce persons into accepting sterilization, wrong for them to use coercive power to achieve political advantages (such as military bases) or commercial advantages (such as trade agreements that will harm the other country). Where a less-developed country is pushed to exempt a multinational corporation from tax laws, or to construct out of its meager tax revenues the infrastructure of roads, harbors, or airports (not to mention executive mansions) that the corporation—but perhaps not the country—needs, then one suspects that some coercion has been involved.

The problem with such judgments—and it is an immense problem—is that it is hard to identify coercion and deception in complicated institutional settings. It is not hard to understand what is coercive about one person threatening another with serious injury if he won't comply with the first person's suggestion. But it is not at all easy to tell where the outward forms of political and commercial negotiation—which often involve an element of threat—have become coercive.

KANTIAN DUTIES OF BENEFICENCE IN TIMES OF FAMINE

The grounds of duties of beneficence are that such acts develop or promote others' ends and, in particular, foster others' capacities to pursue ends, to be autonomous beings.

Clearly there are many opportunities for beneficence. But one area in which the *primary* task of developing others' capacity to pursue their own ends is particularly needed is in the parts of the world where extreme poverty and hunger leave people

unable to pursue *any* of their other ends. Beneficence directed at putting people in a position to pursue whatever ends they may have, for Kant, a stronger claim on us than beneficence directed at sharing ends with those who are already in a position to pursue varieties of ends. It would be nice if I bought a tennis racquet to play with my friend who is tennis mad and never has enough partners; but it is more important to make people able to plan their own lives to a minimal extent. It is nice to walk a second mile with someone who requests one's company; better to share a cloak with someone who may otherwise be too cold to make any journey. Though these suggestions are not a detailed set of instructions for the allocation of beneficence by Kantians, they show that relief of famine must stand very high among duties of beneficence.

THE LIMITS OF KANTIAN ETHICS: INTENTIONS AND RESULTS

Kantian ethics differs from utilitarian ethics both in its scope and in the precision with which it guides action. Every action, whether of a person or of an agency, can be assessed by utilitarian methods, provided only that information is available about all the consequences of the act. The theory has unlimited scope, but, owing to lack of data, often lacks precision. Kantian ethics has a more restricted scope. Since it assesses actions by looking at the maxims of agents, it can only assess intentional acts. This means that it is most at home in assessing individuals' acts; but it can be extended to assess acts of agencies that (like corporations and governments and student unions) have decision-making procedures.

It may seem a great limitation of Kantian ethics that it concentrates on intentions to the neglect of results. It might seem that all conscientious Kantians have to do is to make sure that they never intend to use others as mere means, and that they sometimes intend to foster others' ends. And, as we all know, good intentions sometimes lead to bad results, and correspondingly, bad intentions sometimes do no harm, or even produce good. If Hardin is right, the good intentions of those who feed the starving lead to dreadful results in the

long run. If some traditional arguments in favor of capitalism are right, the greed and selfishness of the profit motive have produced unparalleled prosperity for many.

But such discrepancies between intentions and results are the exception and not the rule. For we cannot just *claim* that our intentions are good and do what we will. Our intentions reflect what we expect the immediate results of our action to be. Nobody credits the “intentions” of a couple who practice neither celibacy nor contraception but still insist “we never meant to have (more) children.” Conception is likely (and known to be likely) in such cases. Where people’s expressed intentions ignore the normal and predictable results of what they do, we infer that (if they are not amazingly ignorant) their words do not express their true intentions. The Formula of the End in Itself applies to the intentions on which one acts—not to some prettified version that one may avow. Provided this intention—the agent’s real intention—uses no other as mere means, he or she does nothing unjust. If some of his or her intentions foster others’ ends, then he or she is sometimes beneficent. It is therefore possible for people to test their proposals by Kantian arguments even when they lack the comprehensive causal knowledge that utilitarianism requires. Conscientious Kantians can work out whether they will be doing wrong by some act even though they know that their foresight is limited and that they may cause some harm or fail to cause some benefit.

UTILITARIANISM AND RESPECT FOR LIFE

Utilitarians value happiness and the absence or reduction of misery. As a utilitarian one ought (if conscientious) to devote one’s life to achieving the best possible balance of happiness over misery. If one’s life plan remains in doubt, this will be because the means to this end are often unclear. But whenever the causal tendency of acts is clear, utilitarians will be able to discern the acts they should successively do in order to improve the world’s balance of happiness over unhappiness.

This task is not one for the faint-hearted. First, it is dauntingly long, indeed interminable. Second,

it may at times require the sacrifice of happiness, and even of lives, for the sake of a greater happiness. As our control over the means of ending and preserving human life has increased, analogous dilemmas have arisen in many areas for utilitarians. Should life be preserved at the cost of pain when modern medicine makes this possible? Should life be preserved without hope of consciousness? Should triage policies, because they may maximize the number of survivors, be used to determine who should be left to starve? All these questions can be fitted into utilitarian frameworks and answered *if* we have the relevant information. And sometimes the answer will be that human happiness demands the sacrifice of unwilling lives. Further, for most utilitarians, it makes no difference if the unwilling sacrifices involve acts of injustice to those whose lives are to be lost. Utilitarians do not deny these possibilities, though the imprecision of our knowledge of consequences often blurs the implications of the theory. If we peer through the blur, we see that the utilitarian view is that lives may indeed be sacrificed for the sake of a greater good even when the persons are not willing. There is nothing wrong with using another as a mere means provided that the end for which the person is so used is a happier result than could have been achieved any other way, taking into account the misery the means have caused. In utilitarian thought, persons are not ends in themselves. Their special moral status derives from their being means to the production of happiness. Human life has therefore a high though derivative value, and one life may be taken for the sake of greater happiness in other lives, or for ending of misery in that life. Nor is there any deep difference between ending a life for the sake of others’ happiness by not helping (e.g., by triaging) and doing so by harming.

Utilitarian moral theory has then a rather paradoxical view of the value of human life. Living, conscious humans are (along with other sentient beings) necessary for the existence of everything utilitarians value. But it is not their being alive but the state of their consciousness that is of value. Hence, the best results may require certain lives to be lost—by whatever means—for the sake of the

total happiness and absence of misery that can be produced.

KANT AND RESPECT FOR PERSONS

Kantians reach different conclusions about human life. Human life is valuable because humans (and conceivably other beings, e.g., angels or apes) are the bearers of rational life. Humans are able to choose and to plan. This capacity and its exercise are of such value that they ought not to be sacrificed, for anything of lesser value. Therefore, no one rational or autonomous creature should be treated as mere means for the enjoyment or even the happiness of another. We may in Kant's view justifiably—even nobly—risk or sacrifice our lives for others. For in doing so we follow our own maxim and nobody uses us as mere means. But no others may use either our lives or our bodies for a scheme that they have either coerced or deceived us into joining. For in doing so they would fail to treat us as rational beings; they would use us as mere means and not as ends in ourselves.

Onora O'Neill: A Kantian Approach to Famine Relief

1. O'Neill contrasts the Kantian and utilitarian views about the nature and extent of our moral obligations to famine victims. Which elements of these views do you find especially attractive or objectionable?
2. The Kantian offers people a lot of discretion about how to fulfill their general obligation to benefitting others. How appealing do you find such discretion?
3. Contrast the Kantian and utilitarian views about respect for life. Which do you find more attractive and why?
4. O'Neill does not discuss the Kantian principle of universalizability (see Chapter 6). What are the implications of this principle for our duties to give to famine relief?
5. How does the importance of autonomy and rationality figure into the Kantian picture of our obligations to famine victims?

Human Rights and Global Wrongs

Thomas Pogge

Thomas Pogge opens this brief selection by recounting many sobering details of the extent of global poverty, the growing inequality among rich and poor, and the relatively small contributions made by developing countries to improving the situation. As Pogge makes clear, the world's wealthier countries have fallen short even relative to their stated commitments to relieving the suffering of the world's poor—and these commitments, he finds, are themselves woefully inadequate.

Many people in richer countries argue that their obligation to relieve poverty is restricted to so-called negative duties—duties not to harm or interfere with the rights of others. On this view, we fulfill our duties so long as we keep a hands-off policy, and refrain from making a bad situation any worse. One might reject this restriction, and argue that human rights include, for instance, the right not to starve, or the right to receive inexpensive life-saving medical treatment. On such a view, we have positive duties to the poor—duties to improve their lives by giving help where it is most needed.

Pogge argues that even if we reject the existence of such positive duties, those in wealthy countries are not off the hook. If we look at all carefully at how the wealth of

these countries was acquired, we see a long track record of exploitation and injustice. Rich countries owe a great deal of their wealth to a terrible history that has involved massive violations of human rights—violations that have included theft, fraud, wars of aggression, colonialism, enslavement and genocide. True, very few of our contemporaries are involved in such behavior; they are not responsible for these injustices. But neither, says Pogge, are they entitled to benefit by them. We who are comparatively wealthy enjoy our status because of past injustices; as a result, we are morally obligated to relieve the suffering of those whose poverty results from that injustice.

Half of humankind is poor, living on less than 3 percent of global household income, as against 69 percent captured by the top tenth. Even on the narrowest conception of (“extreme”) poverty, the number of poor is somewhere around the 1.02 billion counted as chronically undernourished (2009)¹ or the 1.377 billion counted in 2005 as living below the World Bank’s international poverty line of \$1.25 per person per day at 2005 PPPs (Purchasing Power Parities).² About one third of all human deaths—eighteen million per annum—are due to poverty-related causes, mostly diseases that cause little or no damage in more affluent populations.³

Surprisingly, the world poverty problem—so unimaginably large in human terms—is also tiny in economic terms. The World Bank quantifies the collective shortfall in 2005 of all those living in extreme poverty at 0.33 percent (at PPPs) of the sum of all gross domestic products.⁴ At currency exchange rates this shortfall is merely \$76 billion or one-sixth of one percent of world income or about one-ninth of current U.S. military spending.⁵ And even the collective shortfall of the 3.085 billion whom the World Bank counts as living on less than twice its poverty line have a collective shortfall from this line (\$2.50 per person per day at 2005 PPPs) of only \$506 billion or 1.13 percent of world income or about two-thirds of U.S. military spending.⁶

Though modest institutional reforms, affecting just over 1 percent of the global income distribution, could overcome severe poverty, existing institutional arrangements drive this distribution in the opposite direction: they induce greater inequality.

From Thomas Pogge, “Human Rights and Global Wrongs,” *Reflections* (Yale Divinity School, Fall 2010), pp. 44–46.

The nearby table shows how humanity’s top few percentiles are growing their share of global household income while the remainder, and especially the bottom quarter, are losing ground.⁷

This pattern manifests itself in the evolution of hunger. The number of chronically undernourished people has not declined from the 800-million level reported in the mid-1990s. In fact, a spike in global food prices (2006–08) and the recent global financial crisis have caused this number to break above the one-billion mark for the first time in human history⁸—even while the ranks of the hungry are continuously thinned by millions of deaths each year from poverty-related causes.

The rich countries’ response to world poverty is mainly rhetorical. Though official development assistance (ODA) has in the aftermath of 9/11 reversed its long-term decline, it is still only \$120 billion annually or 0.3 percent of Gross National Income (2008) as compared to the 0.7 percent target promised over thirty years ago.⁹ More importantly, only \$15 billion of annual ODA is earmarked for basic social services.¹⁰

And even the rhetoric is appalling. At the 1996 World Food Summit in Rome, the world’s governments pledged themselves “to reducing the number of undernourished people to half their present level no later than 2015,”¹¹ implicitly accepting 25,000 daily poverty deaths in 2015 and some 250 million such deaths in the interim. In the 2000 *UN Millennium Declaration*, they substituted a diluted promise “to halve, by the year 2015, the proportion of the world’s people” living in extreme poverty.¹² Because of 2000–15 population growth, this promise requires only a 40 percent reduction in the number of poor. The poverty promise was diluted

Segment of World Population	% Share World of Global Household Income 1988	% Share of Global Household Income 2005	Absolute % Change in Income Share	Relative % Change in Income Share
Richest 5%	42.87%	46.36%	+3.49%	+8.1%
Next 20%	46.63	43.98	-2.65	-5.7%
Second Quarter	6.97	6.74	-0.23	-3.3%
Third Quarter	2.37	2.14	-0.23	-9.8%
Poorest Quarter	1.15	0.77	-0.38	-32.9%

again in the final formulation of the first Millennium Development Goal (MDG-1), which defines poverty as a “proportion of people in the developing world”¹³ and thus takes advantage of even faster population growth in the reference group (denominator of the proportion). MDG-1 also backdates the baseline to 1990. It thereby counts China’s poverty reduction in the 1990s toward the goal and, by lengthening the plan period, doubles population growth in the reference group. The 50-percent reduction in the number of extremely poor people promised in Rome for the 1996-2015 period has thus been twisted into a 20-percent reduction of this number; and 496 million were thereby added to the number of those whose extreme poverty in 2015 will be deemed consistent with having kept the grand poverty promise. Half a billion additional extremely poor people mean about six million additional deaths from poverty-related causes in 2015 and each subsequent year.¹⁴

HELPING AND HURTING THE POOR

Confronted with such facts, citizens of the rich countries may concede that we affluent should do more to help the poor. But they see this as a demand of humanity or charity—not as a demand of justice and certainly not as a moral duty imposed on us by the human rights of the poor. As the U.S. government declared after the World Food Summit: “the attainment of any ‘right to adequate food’ or ‘fundamental right to be free from hunger’ is a goal or aspiration to be realized progressively that does not give rise to any international obligations.”¹⁵

The presumption behind this denial is that, internationally at least, human rights entail only negative duties: they require that one not deprive foreigners

of secure access to the objects of their human rights. They do not require that one help them attain such secure access by protecting them against other threats. This presumption can be attacked by arguing that human rights do impose positive duties toward foreigners. But, even if the presumption is accepted, it shields the rich from human-rights-based obligations only insofar as they bear no responsibility for the existing ever-more-radically unequal global economic distribution. And this claim to innocence is highly dubious at best.

For one thing, the existing radical inequality is deeply tainted by how it accumulated through one historical process that was deeply pervaded by enslavement, colonialism, even genocide. The affluent are quick to point out that they cannot inherit their ancestor’s sins. Indeed. But how can they then be entitled to the fruits of these sins: to their huge inherited advantage in power and wealth over the rest of the world? If we are not so entitled, then we are, by actively excluding the global poor from our lands and possessions, contributing to their deprivations.

RULES OF THE GAME

Moreover, even the causes of the current persistence of severe poverty are by no means exclusively domestic to the countries in which it occurs. The asymmetries inherent in the current global economic (World Trade Organization) regime are well documented: it allows the rich countries to favor their own companies through tariffs, quotas, anti-dumping duties, export credits and huge subsidies. The United Nations Conference on Trade and Development estimates that the latter market distortions cost the developing countries \$700 billion annually in lost export revenue—a huge amount relative

to the needs of their poor.¹⁶ And the constrained trading opportunities the rich countries afford the poor do not come for free. To obtain them, poor countries must spend large amounts on enforcing the intellectual property rights of the rich, thereby depriving their own populations of access to cheap generic versions of patented life-saving medicines, seeds, and clean green technologies.

To be sure, many developing countries are run by corrupt and incompetent leaders, unwilling or unable to make serious poverty-eradication efforts. But their ability to rule, often against the will and interests of the population, crucially depends on outside factors. It depends, for instance, on their being recognized by the rich countries as entitled to borrow in their country's name, to confer legal title to its natural resources, and with the proceeds to buy the weapons they need to stay in power. By assigning these privileges to such rulers, on the basis of their effective power alone, the rich countries support their banks and secure their resource imports. But they also greatly strengthen the staying power of oppressive rulers and the incentives toward coup attempts and civil wars, especially in the resource-rich countries.

More generally, bad leadership, civil wars, and widespread corruption in the developing countries are not wholly homegrown, but strongly encouraged by the existing international rules and extreme inequalities. The rulers and officials of these countries have vastly more to gain from catering to the interests of wealthy foreign governments, corporations, and tourists than from meeting the basic needs of their impoverished compatriots.

Are the rich countries violating human rights when they, in collaboration with Southern elites, impose a global institutional order under which, foreseeably and avoidably, hundreds of millions cannot attain "a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care" (*Universal Declaration of Human Rights*, §25)? The *Declaration* itself makes quite clear that they do when it proclaims that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (*ibid.*, §28).

The existing international institutional order fails this test. It aggravates extreme poverty through

protectionism and aggressive enforcement of intellectual property rights in seeds and essential medicines. And it fosters corrupt and oppressive government in the poorer countries by recognizing any person or group holding effective power—regardless of how they acquired or exercise it—as entitled to sell the country's natural resources and to dispose of the proceeds of such sales, to borrow in the country's name and thereby to impose debt service obligations upon it, to sign treaties on the country's behalf and thus to bind its present and future population, and to use state revenues to buy the means of internal repression.

Some parts of international law contain inspiring affirmations of human rights. Other parts contribute massively to the underfulfillment of these same rights. These contributions are foreseeable and avoidable. To avoid them, human rights must be mainstreamed to constrain the design of all global institutional arrangements.

NOTES

1. FAO (Food and Agriculture Organization of the United Nations). "1.02 Billion People Hungry" News Release. June 19, 2009. www.fao.org/news/story/en/item/20568/icode/ (accessed July 31, 2010).
2. Shaohua Chen and Martin Ravallion. "The Developing World Is Poorer than We Thought, But No Less Successful in the Fight against Poverty," World Bank Policy Research Working Paper WPS 4703 (Washington DC, 2008), <http://econ.worldbank.org/docsearch>. The World Bank counts as poor only those living on less, per person per day, than what \$1.25 could buy in the US in 2005. The UN follows this definition.
3. WHO (World Health Organization). *The Global Burden of Disease: 2004 Update* (WHO Publications, 2008), table A₁, pp. 54–9.
4. Chen and Ravallion (n.2), p. 27.
5. Thomas Pogge. *Politics as Usual: What Lies Behind the Pro-Poor Rhetoric* (Polity, 2010), pp. 69–70.
6. *Ibid.*
7. Data kindly supplied by Branko Milanovic of the World Bank in a personal e-mail of April 25, 2010.
8. FAO (Food and Agriculture Organization of the United Nations). "1.02 Billion People Hungry" News Release. June 19, 2009. www.fao.org/news/story/en/item/20568/icode/ (accessed July 31, 2010).

9. See <http://mdgs.un.org/unsd/mdg/SeriesDetail.aspx?srid=569&crid=> (accessed August 1, 2010) for ODA allocations. The corresponding CNIs can be found in World Bank, *World Development Report 2010* (The World Bank, 2010), pp. 378–9.
10. See <http://mdgs.un.org/unsd/mdg/SeriesDetail.aspx?srid=592&crid=> (accessed Aug. 1, 2010).
11. *Rome Declaration on World Food Security*. November 1996. www.fao.org/wfs.
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13. United Nations. *The Millennium Development Goals Report 2008* (UN Department of Economic and Social Affairs, 2008), p. 6.
14. Pogge, pp. 58–62.
15. Rome Declaration (n.11), Annex II to the *Final Report of the World Food Summit*.
16. UNCTAD, *Trade and Development Report: Fragile Recovery and Risks* (UN Publications 1999), p. IX. Available at www.unctad.org/en/docs/tdr1999_en.pdf.

Thomas Pogge: Human Rights and Global Wrongs

1. What are human rights, and how might the existence of such rights be justified?
2. Do human rights include any positive rights? If so, which ones? If not, why not?
3. Historically, wealthy countries have become wealthy in substantial part by having exploited poorer countries. Does this impose obligations on the wealthier countries to improve the conditions of the poorer ones?
4. Pogge claims that many *current* practices supported by wealthy countries work to enforce and increase poverty in poorer ones. He believes that this imposes a duty of the wealthy countries to relieve the poverty that they are now causing. Do you agree with his claim? Why or why not?
5. One argument for giving aid is that many people desperately need it to survive, and the wealthy can provide it at relatively little cost to themselves. Is this a good argument? Why or why not?

Is There a Right to Immigrate?

Michael Huemer

Michael Huemer argues that restricting immigration is (for the most part) morally unjustified. He begins by arguing that restrictions on immigration constitute a *prima facie* violation of would-be immigrants' rights. Thus, he thinks that there is a strong presumption in favor of open borders. He argues that those who wish to restrict immigration bear the burden of offering strong opposing reasons in favor of such restrictions. Huemer considers several considerations to which advocates of immigration restrictions might appeal, but argues that none is successful.

Huemer makes his case by appealing to our shared judgments about simple scenarios. For example, in support of the claim that restrictions on immigration are *prima facie* rights violations, Huemer considers the case of starving Marvin. Marvin is heading to the market to get food, which he desperately needs, when Sam stops him and forcibly turns him away. Marvin has no choice but to return home, where he subsequently

starves to death. Huemer thinks that it's clear that Sam has violated Marvin's rights. He then argues that, very often, when a government turns away a would-be immigrant, it does something just as bad as Sam did.

Huemer is open to the suggestion that there are strong enough reasons to justify these *prima facie* rights violations. For instance, perhaps a government's restricting immigration is justified if doing so preserves jobs in that government's country. Or perhaps a state has a duty to look after the interests of its citizens, and those interests would be threatened if there were open borders. Or perhaps immigrants would unfairly take advantage of welfare benefits to which they haven't contributed, thereby depleting funds for those who have paid into those programs. To rebut these claims, Huemer considers variations on Marvin's case, arguing that careful analysis shows that these grounds for restricting immigration fail to justify closing our borders to those who seek to immigrate to our shores.

I. THE IMMIGRATION QUESTION

Every year, close to one million individuals from foreign nations migrate to the United States legally. But many more are turned away. Individuals seeking to enter without the permission of the U.S. government are regularly barred at the border, and those discovered in the territory without authorization are forcibly removed. The government expels over one million people from the country each year. Hundreds of thousands continue to try to smuggle themselves in, occasionally dying in the attempt. On the face of it, this raises ethical questions. Is it right to forcibly prevent would-be immigrants from living in the United States? Those excluded seem, on the face of it, to suffer a serious harm. Why are we justified in imposing this harm?

Some reason that, just as a private club may exercise its discretion as to whom to admit or exclude, so a nation-state has the right to choose whom to admit or exclude. Some believe that we must exclude most would-be immigrants in order to maintain the integrity of our national culture. Others argue that immigrants cause economic hardship for existing citizens—that they take jobs from American workers, depress wages, and place an undue burden on social services provided by the state. . . .

From Michael Huemer, "Is There a Right to Immigrate?"
Social Theory and Practice 36, no. 3 (2010), pp. 429–445.
Notes have been abridged.

I shall assume that we are considering ordinary, noncriminal migrants who wish to leave their country of origin for morally innocent reasons, whether to escape persecution or economic hardship, or simply to join a society they would prefer to live in. Though I shall conduct the discussion in terms of the situation of the United States, most of my arguments apply equally well to other countries.

My strategy is to argue, first, that immigration restriction is at least a *prima facie* violation of the rights of potential immigrants. This imposes a burden on advocates of restriction to cite some special conditions that either neutralize or outweigh the relevant *prima facie* right. I then examine the most popular justifications offered for restricting immigration, finding that none of them offers a credible rationale for claiming either that such restriction does not violate rights or that the rights violation is justified. This leaves immigration restrictions ultimately unjustified. . . .

2. IMMIGRATION RESTRICTION AS A PRIMA FACIE RIGHTS VIOLATION

In this section, I aim to show that immigration restriction is a *prima facie* rights violation. A *prima facie* rights violation is an action of a sort that *normally*—that is, barring any special circumstances—violates some one's rights. For example, killing a human being is a *prima facie* rights violation: in normal circumstances, to kill someone is to violate his rights. But there are special circumstances that may alter

this verdict: euthanasia and self-defense killings do not violate rights, for instance. Furthermore, even when an action violates rights, it may sometimes be justified nevertheless, because the victim's rights may be *outweighed* by competing moral considerations. Thus, killing one innocent person may be justified, though a violation of the victim's right to life, if it is necessary to prevent the deaths of one million others. Or so it seems to me.

The claim that an action is a *prima facie* rights violation, then, is not a very strong claim. It does not entail that the action is wrong all things considered, for there may be special circumstances that prevent the action from being an actual rights violation, or that render it justified despite its violation of rights. But nor is the claim entirely without force: to accept that an action is a *prima facie* rights violation has the effect of shifting a normative presumption. It becomes the burden of those who advocate the act in question to identify the special exculpatory or justificatory circumstances that make what tends to be a wrongful rights violation either not a rights violation in this case, or a justified rights violation. Those who oppose the act in question need only rebut such efforts.

Now before we turn to the case of immigration, consider the following scenario. Marvin is in desperate need of food. Perhaps someone has stolen his food, or perhaps a natural disaster destroyed his crops; whatever the reason, Marvin is in danger of starvation. Fortunately, he has a plan to remedy the problem: he will walk to the local marketplace, where he will buy bread. Assume that in the absence of outside interference, this plan would succeed: the marketplace is open, and there are people there who are willing to trade food to Marvin in exchange for something he has. Another individual, Sam, is aware of all this and is watching Marvin. For some reason, Sam decides to detain Marvin on his way to the marketplace, forcibly preventing him from reaching it. As a result, Marvin returns home empty-handed, where he dies of starvation.

What is the proper assessment of Sam's action? Did Sam harm Marvin? Did he violate Marvin's rights? Was Sam's action wrong?

It seems to me that there are clear answers to these questions. Sam's behavior in this scenario was

both extremely harmful to Marvin and a severe violation of Marvin's rights. Indeed, if Marvin's death was reasonably foreseeable, then Sam's act was an act of murder. Unless there obtained some unusual circumstances not mentioned in the preceding description, Sam's behavior was extremely wrong.

Intuitively, Sam's behavior would still be wrong if the harm suffered by Marvin were less severe. Suppose that, rather than dying soon after returning home, Marvin foreseeably suffers from serious malnutrition. Again, assume that this misfortune would have been avoided had Marvin been able to trade in the marketplace, but Sam forcibly prevented him from doing so. In this case, again, it seems that Sam violates Marvin's rights and wrongfully harms Marvin.

What do these examples show? I think they show, to begin with, that individuals have a *prima facie*, negative right not to be subjected to seriously harmful coercion. Sam's behavior in the scenario was, by stipulation, coercive—it involved a use or threat of physical force against Marvin, significantly restricting his freedom of action. It was also extremely harmful, resulting in Marvin's starvation. These facts seem to explain why Sam's action was a violation of Marvin's rights, and why it was wrong.

How do we know that Sam harmed Marvin? A "harm" is commonly understood as a setback to someone's interests. Marvin's death by starvation certainly sets back his interests. Moreover, in my view, no philosophical *theory* of harm is required in this case. Perhaps there are borderline cases in which one would need to appeal to a theory to determine whether an event counted as a harm or not. But the story of starving Marvin presents no such difficult case. Marvin's death is a paradigm case of a harm....

Sam's action might be justified if there were special circumstances not previously specified, circumstances that either cancelled the right that Marvin normally has not to be harmfully coerced, or that morally outweighed Marvin's rights. Likewise, what we have said so far does not establish that the U.S. government's restrictions on immigration are wrong *tout court*, but only that those defending the policy incur a burden of providing a justification

for these restrictions. In light of the seriousness of the harms involved in this case, the justification for immigration restrictions must be correspondingly clear and powerful.

3. REASONS FOR RESTRICTION

... Given that immigration restriction is a *prima facie* rights violation, the burden of proof falls on advocates of restriction. Thus, we may proceed by considering the reasons they have offered for restricting immigration. If it turns out that all of these reasons fall into the category of things that clearly do not count as valid justifications for harmful coercion, then it is fair to draw the conclusion that immigration restrictions are unjustified.

3.1. Immigration and Employment

In popular discourse, the most common sort of argument for limiting or eliminating immigration is economic. It is said that immigrants take jobs away from American workers, and that they cause a lowering of wage rates due to their willingness to work for lower wages than American workers. At the same time, economists are nearly unanimous in agreeing that the overall economic effects of immigration on existing Americans are positive. These claims are mutually consistent: there are certain industries in which immigrants are disproportionately likely to work. Preexisting workers in those industries are made worse off due to competition with immigrant workers. According to one estimate, immigration during the 1980s may have reduced the wages of native-born workers in the most strongly affected industries by about 1–2 % (5% for high school dropouts). At the same time, employers in those industries and customers of their businesses are made better off due to lower production costs, and the economic gains to these latter groups outweigh the economic losses to the workers. Some economists have accused immigration opponents of overlooking the economic benefits of immigration due to a bias against foreigners or members of other races.

Let us leave aside the question of the overall effects of immigration on the economy, and focus instead on the following question. Granted that immigration makes some American workers economically worse off, does this show that

immigration restriction does not violate the rights of would-be immigrants, or that if it does, the rights violation is nevertheless justified? More generally, does the following constitute a valid justification for harmful coercion: that the coercive action is necessary to prevent someone else from suffering slight to moderate economic disadvantage through marketplace competition?

It seems to me that it does not. Consider two related examples. In the first example, I am being considered for a particular job, for which I know that Bob is the only other candidate. I also know that Bob is willing to work for a lower salary than the salary that I could obtain if I were the only candidate. On the day Bob is scheduled to have his job interview, I accost him and physically restrain him from going to the interview. When confronted about my seemingly unacceptable conduct, I explain that my action was necessary to protect myself against Bob's taking the job that I would otherwise have, or my being forced to accept a lower salary in order to get the job. Does this provide an adequate justification for my behavior? Does it show that, contrary to initial appearances, my harmful coercion does not really violate Bob's rights? Alternatively, does it show that my action, though a rights violation, was an ethically justified rights violation?

Certainly not. The mere fact that Bob is competing with me for a job that I desire, or that Bob is willing to accept a lower salary than I could obtain if I did not have to compete with him, does not invalidate or suspend Bob's right not to be subjected to harmful coercion. Nor does my interest in having less economic competition *outweigh* Bob's right not to be coercively harmed. If my need for the job in question were very much greater than Bob's need, then some might argue that I would be justified in overriding Bob's rights. We need not decide exactly when a right may be overridden, nor whether a greater economic need could constitute an adequate basis for overriding a competitor's right to be free from harmful coercion; we need not decide these things here, because we can simply stipulate that Bob has at least as much need for the job for which we are competing as I do. In such a case, no one would say that Bob's right to be free from coercive harms is suspended or outweighed.

My second example is a modified version of the story of Sam and Marvin. As before, Marvin plans to walk to the local marketplace to obtain life-sustaining food. Due to his economic circumstances, Marvin will have to buy the cheapest bread available at the market. Sam's daughter, however, also plans to go to the market, slightly later in the day, to buy some of this same bread. This bread is often in short supply, so that the vendor may run out after Marvin's purchase. Sam's daughter could buy more expensive bread, but she would prefer not to. Knowing all this, Sam fears that if Marvin is allowed to go to the market, his daughter will be forced to pay a slightly higher price for bread than she would like. To prevent this from happening, he accosts Marvin on the road and physically restrains him from traveling to the market. Is Sam's action permissible?

Suppose Sam claims that his harmful coercion does not violate Marvin's rights, because it is necessary to protect his daughter from economic disadvantage. Certainly this defense falls flat. A person's right to be free from harmful coercion is not so easily swept aside. Likewise for the suggestion that Sam's action, though a rights violation, is justified because his daughter's interest in saving money outweighs Marvin's rights. No one would accept such feeble justifications.

Yet this seems analogous to the common economic argument for immigration restriction. The claim seems to be that we are justified in forcibly preventing individuals—many of whom are seeking escape from dire economic distress—from entering the American labor market, because American workers would suffer economic disadvantage through price competition. No one claims that American workers would be disadvantaged to anything like the degree that potential immigrants are disadvantaged by being forcibly excluded from the market. Nevertheless, the prospect of a modest lowering of American wages and narrowing of employment opportunities is taken to either suspend or outweigh the rights of needy foreigners. The ethical principle would have to be that a person's right to be free from extremely harmful coercion is sometimes held in abeyance simply by virtue of the fact that such coercion is necessary to protect third parties from modest economic disadvantage resulting

from marketplace competition. The implausibility of this principle is shown by the examples of Bob and Marvin above.

3.2. The State's Duty to Its Citizens

Perhaps immigration restriction can be justified by reflection on the special obligations governments owe to their own citizens, as distinct from foreign nationals. Few doubt that there are such duties. States must provide their citizens protection from criminals and hostile foreign governments. A state does not have the same obligation to protect foreign citizens from criminals or other governments. Those who endorse a social contract theory of political authority may explain this by appeal to the idea that noncitizens of a given state are not party to the social contract with that state; the state therefore lacks the contractual obligations to noncitizens that it bears to citizens.

Perhaps this leads to a rationale for immigration restriction. Perhaps the state has a general duty to serve the interests of its own citizens, including their economic interests, and no such duty, or no duty nearly as strong, to further the interests of foreign nationals. As a result, when the interests of American citizens come into conflict with those of foreigners, the American government must side with its own citizens, even when this results in a lowering of global social utility. Limitations on migration into the United States run contrary to the interests of would-be immigrants, but since those would-be immigrants are not presently U.S. citizens, the U.S. government has either no duty or a much weaker duty to consider their interests, as compared to the interests of its own citizens. Perhaps this gives some traction to the argument that American workers are disadvantaged because of competition with immigrants. Alternatively, one might argue that immigrants impose a financial burden on government providers of social services, such as health care, education, and law enforcement. Since these social programs are financed through revenues collected from existing U.S. citizens, the government's consideration for the interests of its current citizens dictates that it limit the amount of immigration into the country.

Begin with the observation that immigration disadvantages American workers through labor

market competition. There are two obstacles to regarding this as a justification for immigration restriction, even if we accept that the state has a much stronger obligation to protect the interests of its own citizens than it has to protect the interests of others. First, only some current citizens would be disadvantaged by increased immigration—those citizens who work in industries that immigrants are disproportionately likely to join. This is a relatively small portion of the population. All other current citizens would either fail to be significantly affected or actually be benefited by increased immigration. As mentioned earlier, most economists believe that the overall economic impact of immigration on current citizens is positive. Thus, if we consider only the interests of current citizens, it is at best unclear that immigration restrictions are beneficial. If we also give *some* weight to the interests of the immigrants themselves, it seems that the case for free immigration is clear.

Second, there are some obligations that any moral agent owes to other persons, merely in virtue of their status as persons. The special obligations that governments owe to their citizens, whatever these obligations may consist in, do not eliminate the obligation to respect the human rights of non-citizens. In particular, the government's duty to give special consideration to its own citizens' interests cannot be taken to imply that the government is entitled to coercively impose grave harms on noncitizens for the sake of securing small economic benefits for citizens.

Consider again the case of starving Marvin. In the last version of the story, Sam coercively prevented Marvin from reaching the local marketplace, on the grounds that doing so was necessary to prevent his daughter from having to pay a higher than normal price for her bread. This action seems unjustified. Would Sam succeed in defending his behavior if he pointed out that, as a father, he has special obligations to his daughter, and that these imply that he must give greater weight to her interests than to the interests of non-family members? Certainly the premise is true—if anything, parents have even stronger and clearer duties to protect the interests of their offspring than a government has to protect its citizens' interests. But this does not negate the rights

of non-family members not to be subjected to harmful coercion. One's special duties to one's offspring imply that if one must choose between giving food to one's own child and giving food to a non-family member, one should generally give the food to one's own child. But they do not imply that one may use force to stop non-family members from obtaining food, in order to procure modest economic advantages for one's own children.

Next, consider the charge that immigrants create a fiscal burden due to their consumption of social services. On the whole, immigrants pay slightly less in taxes than the cost of the social services they consume. This is mainly because immigrants tend to have lower-than-average incomes, and thus pay relatively low taxes. Some economists believe, however, that in the long run (over a period of decades), increased immigration would have a net positive fiscal impact.

Assume that immigrants impose a net fiscal burden on government. Would this fact justify forcibly preventing a large number of potential immigrants from entering the country? To answer this, first we must ask whether the state presently has an obligation to provide social services to potential immigrants, even at a net cost to the state. On some theories of distributive justice, it could be argued that the state has such an obligation, even though these potential immigrants are not presently citizens. If so, then the state obviously may not exclude potential immigrants for the purpose of shirking this duty.

Suppose, on the other hand, that the state has no such obligation to provide social services to potential immigrants, at least not without collecting from them sufficient revenues to cover the expenditure. If this is true, the state would perhaps be justified in denying social services to immigrants, raising taxes on immigrants, or charging special fees to immigrants for the use of social services. But it remains implausible that the state would be justified in excluding potential immigrants from the territory entirely. It is not typically a satisfactory defense for a harmful act of coercion to say that because of a policy one has voluntarily adopted, if one did not coerce one's victim in this way, one would instead confer a benefit on the person that one does not wish to confer.

Suppose, for example, that Sam runs a charity organization. He has made a policy of offering free food to all poor people who enter the local marketplace. Unfortunately, the organization is running short on cash, so Sam is looking for ways to cut costs. When he learns that Marvin is heading to the market to buy some food, he decides to save money by forcibly preventing Marvin from reaching the market. Marvin would be better off being allowed into the marketplace, even without free food, since he could still buy some inexpensive food with his limited funds. But Sam has already made a policy of offering free food to all poor people in the marketplace, so he would in fact offer free food to Marvin, were Marvin to make it there. Is it permissible for Sam to coercively inflict a serious harm on Marvin, in order to avoid having to either break his policy or give free food to Marvin?

Surely not. Perhaps Sam would be justified in altering his policy and refusing to give free food to Marvin when he arrives at the marketplace—this would be permissible, provided that Sam has no humanitarian obligation to assist Marvin. But whether or not Sam has any such humanitarian duties, he surely has no right to actively prevent Marvin from getting his own food. If Marvin had been coming to the market to *steal* Sam's food, perhaps then again Sam would be justified in excluding him. Even this claim would be controversial; if Marvin's condition of need were sufficiently urgent, some would say that Sam must let him take the food. But whatever one thinks about that question, surely Sam cannot justify barring Marvin from the opportunity to *buy* food from others, merely on the grounds that if Sam permits him to do so, then Sam will also voluntarily give him some food.

I have considered the possibilities both that the state owes potential immigrants a duty to help them satisfy their needs, and that the state owes them no such duty. But perhaps the situation is more complex. Perhaps the state presently owes no duty to aid potential immigrants, but if and when they become residents in its territory, the state will *then* owe them a duty to provide the same level of services as it provides to native-born citizens. If so, the state could not, ethically, protect its financial interests by opening the borders and simply providing lower levels of social services to the mass of incoming immigrants.

In assessing this view, we must take account of the distinction between residents and citizens. It is much more plausible that states are obligated to help citizens satisfy their needs, than that states are obligated to help all *residents* do so. So it is not clear that the suggestion of the preceding paragraph could justify preventing foreigners from residing in the United States, as opposed to justifying a refusal to grant citizenship. Nevertheless, let us assume that the state has a duty to offer equal levels of social services to all residents, once they are here. Even if mere residency somehow entitles one to equal levels of social services with native-born citizens, it is not plausible that this entitlement is *inalienable*, that is, that it cannot be voluntarily waived. The state therefore has at least one available strategy, apart from immigration restriction, for protecting its financial interests. This is to make a grant of legal residency or citizenship to potential immigrants contingent on the immigrants' agreement to waive their right to receive certain social services. Alternatively, the state could require new immigrants to agree to pay a higher tax rate, sufficient to cover the government's expected costs. The availability of these alternatives undercuts any justification the state could plausibly be claimed to have, in virtue of its fiscal interests, for excluding most potential immigrants from the country.

It could be questioned whether the policy suggested in the preceding paragraph is permissible. If foreigners have a *right* to immigrate, one could argue, then the state must allow them to exercise that right, whether or not they agree to waive other rights (including rights that they may come to have in the future). This may be correct. But whether or not it is correct, my argument of the preceding paragraph stands. For my claim was not that the state in fact ought to require potential immigrants to waive their (future) right to receive social services. I claim only that the state ought *not* to prohibit potential immigrants from entering the country, given that there is an alternative method of achieving the same goal, and that this alternative is less coercive and less harmful. It may of course be that *neither* alternative is permissible. But in any event, the unnecessarily coercive alternative is not permissible. In general, whether one may coercively harm innocent others to protect one's economic interests is

open to debate. Perhaps there are circumstances in which one may do so. But even if one may do so, surely one may not employ *more* harmful coercion than is necessary to achieve one's goal. . . .

3.4. Cultural Preservation

In the views of some thinkers, states are justified in restricting the flow of immigration into their territories for the purposes of preserving the distinctive cultures of those nations. Joseph Heath argues that citizens have an interest in preserving their culture because the culture helps them form values and decide how to live. If too many immigrants from other cultures arrive, they could disrupt our culture; thus, Heath believes, we have a right to restrict immigration. David Miller argues that existing citizens have an interest in seeking to *control* how their culture does or does not develop, and this requires the ability to limit external influence; thus, again, we have a right to restrict immigration.

To see this as a persuasive reason for restricting American immigration, we must accept two premises, one empirical and the other ethical. The empirical premise is that American culture is in danger of extinction or at least severe alteration if immigration is not restricted. The ethical premise is that the need to preserve one's culture constitutes a legitimate justification for harmful coercion of the sort involved in immigration restrictions.

Both premises are open to question. Empirically, it is doubtful whether apprehensions about the demise of American culture are warranted. Around the world, American culture, and Western culture more generally, have shown a robustness that prompts more concern about the ability of other cultures to survive influence from the West than vice versa. For example, Coca-Cola now sells its products in over 200 countries around the world, with the average human being on Earth drinking 4.8 gallons of Coke per year. McDonald's operates more than 32,000 restaurants in over 100 countries. The three highest grossing movies of all time, worldwide, were *Avatar*, *Titanic*, and *The Lord of the Rings: The Return of the King*. All three were made by American companies, but 70% of the box office receipts came from outside the United States. The television show *Who Wants to Be a Millionaire?* has

been franchised in over 100 countries worldwide, including such diverse places as Japan, Nigeria, Venezuela, and Afghanistan. Whether one sees the phenomenon as desirable, undesirable, or neutral, Western culture has shown a remarkable ability to establish roots in a variety of societies around the world, including societies populated almost entirely by non-Western people. This robustness suggests that American culture is in no danger of being eradicated from America, even if America should drastically increase its rate of immigration. Other societies may have cause to fear the loss of their cultures due to foreign influence, but America does not.

Turning to the ethical premise of the argument for restriction, is the desire to preserve American culture a valid justification for immigration restriction? More generally, can one be justified in harmfully coercing others, solely because doing so is necessary to prevent those others from altering the culture of one's society? Miller is on plausible ground in maintaining that people have a strong interest in controlling their culture. But not everything in which one has an *interest* is something that one may, ethically, secure through harmful coercion of others, even if such coercion is required to protect one's interest. For instance, I have an interest in having my lawn mowed, but I may not force anyone to mow it, even if this is the only method I have available to secure the desired result. Even when one has a *right* to something, it is not always permissible to protect one's enjoyment of the right through coercion. Suppose that I am in need of a liver transplant, but there are no willing donors available. To preserve my life, I must take a liver by force from an unwilling donor. Even though I have both a strong interest in living and a right to life, this does not imply that I may coerce an unwilling donor.

Why, then, should we assume that our admittedly strong interest in preserving our culture entitles us to harmfully coerce others in the name of cultural preservation? Proponents of the cultural preservation argument have neglected this question. Two hypothetical examples, however, may help us to address it.

First, suppose that a number of your neighbors have been converting to Buddhism or selling their homes to Buddhists. Because of this, your

neighborhood is in danger of being changed from a Christian to a Buddhist community. The Buddhists do not coercively interfere with your practice of your own religion, nor do they do anything else to violate your rights; still, you object to the transformation, because you would prefer to live among Christians. If you catch on to what is happening in the early stages, are you ethically entitled to use force to stop your neighborhood from becoming Buddhist? Consider a few ways in which you might go about this. You might forcibly interfere with your neighbors' practice of their religion. You could go to their houses, destroy their Buddha statues, and replace them with crucifixes. You could force your neighbors to attend Christian churches. You could forcibly expel all Buddhists from the neighborhood. Or you could forcibly prevent any Buddhists from moving in. All of these actions seem unacceptable. Hardly anyone would accept the suggestion that your interest in preserving a Christian neighborhood either negates or outweighs your neighbors' rights not to be harmfully coerced by you.

A society's dominant religion is an important part of its culture, though not the only important part. But similar intuitions can be elicited with respect to other aspects of culture. You may not forcibly prevent your neighbors from speaking different languages, wearing unusual clothes, listening to unfamiliar music, and so on. This suggests that the protection of one's interest in cultural preservation is not a sufficient justification for harmful coercion against others.

Second, consider another variant of the story of Marvin. Again, imagine that Sam has coercively prevented Marvin from reaching the local marketplace, where he would have bought food needed to sustain his life. His earlier justifications for his behavior having fallen flat, Sam mentions that he had yet another reason. Marvin practices very different traditions from most of the other people in the marketplace. For instance, he wears unusual clothing, belongs to a minority religion, speaks a different language from most others (though he is able to get along well enough to purchase food), and admires very different kinds of art. Sam became concerned that, if Marvin went to the marketplace and interacted with the people gathered there,

he might influence the thinking and behavior of others in the marketplace. He might convert others to his religion, for example, or induce more people to speak his language. Because Sam did not want these things to happen, he decided to forcibly prevent Marvin from reaching the marketplace.

Sam had a real interest in preventing the sort of changes that Marvin might have induced. The question is whether this interest is of such a kind that it justifies the use of harmful coercion against innocent others to protect that interest. Intuitively, the answer is no. Sam's desire to be surrounded by people who think and behave in ways similar to himself does not overrule Marvin's right to be free from harmful coercion.

Is this case a fair analogy to the case of immigration restriction? One difference is that Marvin is only one person, and it seems unlikely that he could single-handedly bring about a drastic change in the culture of Sam's society. In contrast, if the United States were to open its borders, *millions* of people would come across, making drastic cultural change a much more realistic possibility.

This difference between the two cases would invalidate my argument, if the reason why Sam's action was impermissible were that Marvin would not in fact have had the effects that Sam feared. But this is not the case. In both of my examples, it should be stipulated that the agent's fears are realistic: in the first example, you have well-founded fears that your neighborhood is becoming Buddhist; in the second example, Sam had well-founded fears that Marvin would have a large impact on the other people in the marketplace. (Perhaps the marketplace is small enough that a single person can significantly influence it.) My contention, with regard to these examples, is not that the cultural change would not happen, but that the avoidance of cultural change does not seem an adequate justification for harmful coercion against innocent others.

3.5. The Immigrant Flood and the Collapse of America

The last reason for restriction that we have to consider appeals to the catastrophic consequences that allegedly would result from the ocean of immigrants that would flood over America if the borders

were opened. Brian Barry believes that at least one *billion* immigrants would pour into America if given the chance. The result would be severe overcrowding; the collapse of government social programs, including educational and health services; ethnic violence; the collapse of liberal democracy; environmental devastation; and a reduction of the U.S. standard of living to Third World levels.¹

Each of these predictions merits a lengthy discussion on its own, but limitations of space preclude this. Here, I can make only a few observations about some of Barry's concerns. To begin with, consider Barry's prediction of one billion immigrants coming to the United States. Although he considers this "surely . . . quite a conservative estimate, the estimate seems to be the reverse of conservative. Barry bases the estimate on the assumption that a person will leave his home country whenever "there is at least one other place with a material standard of living higher enough to offset the cultural differences between the two places." Barry figures that there must be at least a billion people around the world whose material standard of living is much lower than what they would have in the U.S., sufficiently so to offset the disadvantage represented by the cultural differences between the two societies.

In practice, however, most people are much more reluctant to move than Barry's remarks would suggest. Even though migration among U.S. cities and states is legally unconstrained, 57% of Americans have never lived outside their current state of residence, and 37% have never lived outside the city in which they were born. It seems unlikely that this is because such a large number of Americans were born in the city that offers them the greatest economic opportunities of any city in the country. This seems especially unlikely when one considers that those born in rural areas, which tend to have the most limited economic opportunities, are also those *least* likely to move. Nor would these Americans be likely to suffer cultural shock were they to leave their home towns or home states. Rather, those who have remained stationary most commonly cite family reasons for not moving. An individual who leaves his home town must generally leave behind his current neighbors, friends, and family (including extended family). This is extremely important to most

people. In addition, most people feel an emotional attachment to the place in which they were born and raised. Most people also exhibit a kind of inertia; they do not survey all the alternative life paths possible to them at each moment, ready to switch paths whenever they identify one with greater expected utility; rather, they remain on their present path until something pushes them out of it. These are the main reasons why most Americans do not move within America. For foreigners, these same reasons would apply. In the case of people considering movement from one country to another, however, family considerations would be even more weighty than for people considering movement within the United States, because visiting family who live in another country is more difficult than visiting family who merely live in another city or state within the U.S. Foreigners also have additional reasons for not moving to America, deriving from language and other cultural barriers, as well as the sense of loyalty that most people feel to their native country. . . .

In addition to overestimating the supply of potential immigrants to the United States, Barry may have underestimated the capacity of the U.S. to assimilate immigrants. As a percentage of total population, the U.S. has coped with immigration rates far higher than the current rate. Though Barry worries about overcrowding, the U.S. appears to have room for many more people. The population density of the United States in 2009 was about 34 persons per square kilometer. For comparison, the world average is 45 per square kilometer, and China has 144 per square kilometer, more than four times the American density. This suggests that, at the least, we are not likely to soon run out of land.

In my view, Barry's speculations about the effects of open immigration are overly alarmist. For my part, however, I can offer little more than alternative speculation. No one knows what the full effects of a policy of open borders would be, since it has been a very long time since U.S. borders have been open. Perhaps Barry is correct that the result would be disastrous for American society. If so, this is the sort of extremely negative consequence that, it might be argued, outweighs the rights of potential immigrants to freedom of movement. As I have suggested above, it is not plausible that the rights of

potential immigrants are outweighed by such relatively small considerations as modest economic disadvantages to American workers, or the aversion of some Americans to cultural change; it is, however, plausible that the rights of potential immigrants are outweighed by the need to preserve American society from the sort of devastation envisioned by Barry.

Therefore, I grant that it may be wise to move only gradually towards open borders. The United States might, for example, increase immigration by one million persons per year, and continue increasing the immigration rate until either everyone who wishes to immigrate is accommodated, or we start to observe serious harmful consequences. My hope and belief would be that the former would happen first. But in case the latter occurred, we could freeze or lower immigration levels at that time. . . .

4. CONCLUSION

The main argument of this paper ran as follows:

1. Individuals have a *prima facie* right to immigrate (that is, a right not to be prevented from immigrating). This is because:
 - a. Individuals have a *prima facie* right to be free from harmful coercion.
 - b. Immigration restrictions are harmful and coercive.
2. The *prima facie* right to immigrate is not overridden. In particular:
 - a. It is not overridden because of immigrants' effects on the labor market.
 - b. It is not overridden because of the fiscal burden of providing social services to immigrants.
 - c. It is not overridden because of the state's special obligations to its citizens in general, nor its special obligations to its poorest citizens.
 - d. It is not overridden because of the threat immigrants pose to the nation's culture.
3. Therefore, immigration restrictions are wrongful rights violations. . . .

Why do most citizens of Western democratic countries oppose the opening of their borders? I believe the best explanation is that most of us suffer from a bias that makes it easy for us to forget about the rights and interests of foreigners. Racial bias once caused white persons to view members of their

race as more important than those of other races, and to ignore the rights of members of other races. Sexist bias caused men to view themselves as more important than women and to ignore the rights of women. In modern times, great progress has been made in overcoming these biases. But some prejudices remain socially acceptable today, not even recognized by most as prejudices. Among these privileged prejudices is *nationalist bias*, the prejudice that causes us to view our countrymen as more important than citizens of other countries, and to ignore the rights of the foreign-born.

When Americans today recall the unabashed racism of earlier generations, we may easily feel ashamed of our forebears. Most of us would cringe at the suggestion that our race is better than other races. We feel that we cannot understand what it would be like to be so prejudiced. How could one not see the injustice in slavery, or racial segregation? But most Americans, like most human beings around the world, in fact have easy access to what it was like to be an unabashed racist. It was to feel about one's race the way most of us now feel about our country. Today's Americans do not cringe when we hear the statement that America is the greatest country on Earth, any more than white people a century ago would have cringed to hear that whites were the best race. We do not cringe to hear that American businesses should hire native-born Americans rather than immigrants, any more than Americans three generations ago would have cringed to hear that white-owned businesses should hire white people in preference to blacks. Naturally, nationalists may attempt to devise explanations for why nationality is different from race, and why nationalism is really justified. This is not the place to attempt to argue that point. I would like simply to put forward for consideration the thought that perhaps we have no right to feel ashamed of our ancestors, and that our descendants may feel about us the way we feel about our ancestors.

Be that as it may, the question of immigration is surely underemphasized in contemporary philosophy, given its human importance. Literally *millions* of lives are affected in a serious and long-term manner by immigration restrictions. Were these restrictions lifted, millions of people would see greatly expanded opportunities and would take the

chance to drastically alter their lives for the better. This makes immigration law a strong candidate for the most harmful body of law in America today. In view of this, it is partially troubling that these restrictions appear to have so little justification.

NOTE

1. Brian Barry. "The Quest for Consistency: A Sceptical View," in Brian Barry and Robert E. Goodin (eds.), *Free Movement: Ethical Issues in the Transnational Migration of People and Money* (University Park: Pennsylvania State University Press, 1992), pp. 279-87.

Michael Huemer: Is There a Right to Immigrate?

1. What is a *prima facie* right? What is a *prima facie* rights violation?

2. Huemer's argument depends heavily on there being a strong analogy between the starving Marvin case and immigration restriction practices. Do you see a relevant difference between them?
3. Can you think of a reason to restrict immigration that Huemer doesn't consider?
4. Which argument for immigration restrictions do you find most plausible? Do you accept Huemer's criticism of that argument? Why or why not?
5. Suppose the United States adopted something approaching an open borders policy, as Huemer thinks the United States ought to do. What do you think would be the likely consequences? Do these results count in favor or count against such an open borders policy?

Immigration: The Case for Limits

David Miller

David Miller attempts to both justify and qualify the rights of nation-states to adopt policies restricting immigration. He begins his discussion by considering and rejecting three possible justifications for an unlimited right of migration between states.

The first argument relies on the principle that people have a basic human right to freedom of movement. Miller responds by noting that this right exists primarily to protect peoples' vital needs and their ability to live overall decent lives. Thus, so long as people are able to live decent lives in their home countries, they cannot claim a right to immigrate based on freedom of movement. Moreover, we already acknowledge restrictions on movement *within* states (e.g., laws against trespassing), so this right cannot be absolute.

The second argument claims that people have a right to exit their home countries. However, if there is nowhere for one to immigrate to, this right will be "practically meaningless." In response, Miller notes that, for certain rights, their exercise is contingent on finding a willing partner. The right to marry, for example, requires finding someone else willing to marry you. On Miller's view, the right to exit is similar to this.

The third argument claims that wealthy nations have an obligation of distributive justice to allow those from poorer nations to immigrate, since one's opportunities are often determined by where one is born. However, Miller doubts whether distributive justice requires absolute equality of opportunity. He also notes that unlimited

immigration could have the opposite of the intended effect, draining poorer countries of their most talented citizens and leaving behind those who cannot afford to immigrate.

After rejecting these arguments, Miller gives two positive arguments for the rights of states to restrict immigration. First, nations have an interest in preserving a shared cultural heritage among its citizens. But rapid foreign immigration in large numbers can lead to failure to assimilate, or even to the destruction of the host nation's culture. Second, both global and national considerations justify the aim of restricting population size. And this would be impossible for states to implement without substantial powers to restrict immigration.

... In this chapter, I shall explain why nation-states may be justified in imposing restrictive immigration policies if they so choose. The argument is laid out in three stages. First, I canvass three arguments that purport to justify an unlimited right of migration between states and show why each of them fails. Second, I give two reasons, one having to do with culture, the other with population, that can justify states in limiting immigration. Third, I consider where states nonetheless have a duty to admit a special class of potential immigrants—namely refugees—and also how far they are allowed to pick and choose among the immigrants they do admit. The third section, in other words, lays down some conditions that an ethical immigration policy must meet. But I begin by showing why there is no general right to choose one's country of residence or citizenship.

CAN THERE BE AN UNLIMITED RIGHT OF MIGRATION BETWEEN STATES?

Liberal political philosophers who write about migration usually begin from the premise that people should be allowed to choose where in the world to locate themselves unless it can be shown that allowing an unlimited right of migration would have harmful consequences that outweigh the value of freedom of choice. In other words, the central value appealed to is simply freedom itself. Just as I should

be free to decide who to marry, what job to take, what religion (if any) to profess, so I should be free to decide whether to live in Nigeria, or France, or the USA. Now these philosophers usually concede that in practice some limits may have to be placed on this freedom—for instance, if high rates of migration would result in social chaos or the breakdown of liberal states that could not accommodate so many migrants without losing their liberal character. In these instances, the exercise of free choice would become self-defeating. But the presumption is that people should be free to choose where to live unless there are strong reasons for restricting their choice.

I want to challenge this presumption. Of course there is always *some* value in people having more options to choose between, in this case options as to where to live, but we usually draw a line between *basic* freedoms that people should have as a matter of right and what we might call *bare* freedoms that do not warrant that kind of protection. It would be good from my point of view if I were free to purchase an Aston Martin tomorrow, but that is not going to count as a morally significant freedom—my desire is not one that imposes any kind of obligation on others to meet it. In order to argue against immigration restrictions, therefore, liberal philosophers must do more than show that there is some value to people in being able to migrate, or that they often *want* to migrate (as indeed they do, in increasing numbers). It needs to be demonstrated that this freedom has the kind of weight or significance that could turn it into a right, and that should therefore prohibit states from pursuing immigration policies that limit freedom of movement.

From David Miller, "The Case for Limits," in Andrew Cohen and Christopher Wellman, eds., *Contemporary Debates in Applied Ethics*, second edition (Wiley, 2014), pp. 193–204. References and notes have not been reprinted.

I shall examine three arguments that have been offered to defend a right to migrate. The first starts with the general right to freedom of movement, and claims that this must include the freedom to move into, and take up residence in, states other than one's own. The second begins with a person's right to *exit* from her current state—a right that is widely recognized in international law—and claims that a right of exit is pointless unless it is matched by a right of entry into other states. The third appeals to international distributive justice. Given the huge inequalities in living standards that currently exist between rich and poor states, it is said, people who live in poor states have a claim of justice that can only be met by allowing them to migrate and take advantage of the opportunities that rich states provide.

The idea of a right to freedom of movement is not in itself objectionable. We are talking here about what are usually called basic rights or human rights, and I shall assume (since there is no space to defend the point) that such rights are justified by pointing to the vital interests that they protect. They correspond to conditions in whose absence human beings cannot live decent lives, no matter what particular values and plans of life they choose to pursue. Being able to move freely in physical space is just such a condition, as we can see by thinking about people whose legs are shackled or who are confined in small spaces. A wider freedom of movement can also be justified by thinking about the interests that it serves instrumentally: if I cannot move about over a fairly wide area, it may be impossible for me to find a job, to practice my religion, or to find a suitable marriage partner. Since these all qualify as vital interests, it is fairly clear that freedom of movement qualifies as a basic human right.

What is less clear, however, is the physical extent of that right, in the sense of how much of the earth's surface I must be able to move to in order to say that I enjoy it. Even in liberal societies that make no attempt to confine people within particular geographical areas, freedom of movement is severely restricted in a number of ways. I cannot, in general, move to places that other people's bodies now occupy (I cannot just push them aside). I cannot move on to private property without the consent of

its owner, except perhaps in emergencies or where a special right of access exists—and since most land is privately owned, this means that a large proportion of physical space does not fall within the ambit of a *right* to free movement. Even access to public space is heavily regulated: there are traffic laws that tell me where and at what speed I may drive my car, parks have opening and closing hours, the police can control my movements up and down the streets, and so forth. These are very familiar observations, but they are worth making simply to highlight how hedged about with qualifications the existing right of free movement in liberal societies actually is. Yet few would argue that because of these limitations, people in these societies are deprived of one of their human rights. Some liberals might argue in favor of expanding the right—for instance, in Britain there has been a protracted campaign to establish a legal right to roam on uncultivated privately owned land such as moors and fells, a right that will finally become effective by 2005. But even the advocates of such a right would be hard-pressed to show that some vital interest was being injured by the more restrictive property laws that have existed up to now.

The point here is that liberal societies in general offer their members *sufficient* freedom of movement to protect the interests that the human right to free movement is intended to protect, even though the extent of free movement is very far from absolute. So how could one attempt to show that the right in question must include the right to move to some other country and settle there? What vital interest requires the right to be interpreted in such an extensive way? Contingently, of course, it may be true that moving to another country is the only way for an individual to escape persecution, to find work, to obtain necessary medical care, and so forth. In these circumstances the person concerned may have the right to move, not to any state that she chooses, but to *some* state where these interests can be protected. But here the right to move serves only as a remedial right: its existence depends on the fact that the person's vital interests cannot be secured in the country where she currently resides. In a world of decent states—states that were able to secure their citizens' basic rights to security, food,

work, medical care, and so forth—the right to move across borders could not be justified in this way.

Our present world is not, of course, a world of decent states, and this gives rise to the issue of refugees, which I shall discuss in the final section of this chapter. But if we leave aside for the moment cases where the right to move freely across borders depends upon the right to avoid persecution, starvation, or other threats to basic interests, how might we try to give it a more general rationale? One reason a person may want to migrate is in order to participate in a culture that does not exist in his native land—for instance he wants to work at an occupation for which there is no demand at home, or to join a religious community which, again, is not represented in the country from which he comes. These might be central components in his plan of life, so he will find it very frustrating if he is not able to move. But does this ground a right to free movement across borders? It seems to me that it does not. What a person can legitimately demand access to is an *adequate* range of options to choose between—a reasonable choice of occupation, religion, cultural activities, marriage partners, and so forth. Adequacy here is defined in terms of generic human interests rather than in terms of the interests of any one person in particular—so, for example, a would-be opera singer living in a society which provides for various forms of musical expression, but not for opera, can have an adequate range of options in this area even though the option she most prefers is not available. So long as they adhere to the standards of decency sketched above, all contemporary states are able to provide such an adequate range internally. So although people certainly have an *interest* in being able to migrate internationally, they do not have a basic interest of the kind that would be required to ground a human right. It is more like my interest in having an Aston Martin than my interest in having access to *some* means of physical mobility.

I turn next to the argument that because people have a right to leave the society they currently belong to, they must also have a right to enter other societies, since the first right is practically meaningless unless the second exists—there is no unoccupied space in the world to exit to, so unless the

right to leave society A is accompanied by the right to enter societies B, C, D, etc., it has no real force.

The right of exit is certainly an important human right, but once again it is worth examining why it has the significance that it does. Its importance is partly instrumental: knowing that their subjects have the right to leave inhibits states from mistreating them in various ways, so it helps to preserve the conditions of what I earlier called “decency.” However, even in the case of decent states the right of exit remains important, and that is because by being deprived of exit rights individuals are forced to remain in association with others whom they may find deeply uncongenial—think of the militant atheist in a society where almost everyone devoutly practices the same religion, or the religious puritan in a society where most people behave like libertines. On the other hand, the right of exit from state A does not appear to entail an unrestricted right to enter any society of the immigrant’s choice—indeed, it seems that it can be exercised provided that at least one other society, society B say, is willing to take him in. It might seem that we can generate a general right to migrate by iteration: the person who leaves A for B then has the right to exit from B, which entails that C, at least, must grant him the right to enter, and so forth. But this move fails, because our person’s right of exit from A depended on the claim that he might find continued association with the other citizens of A intolerable, and he cannot plausibly continue making the same claim in the case of each society that is willing to take him in. Given the political and cultural diversity of societies in the real world, it is simply unconvincing to argue that only an unlimited choice of which one to join will prevent people being forced into associations that are repugnant to them.

It is also important to stress that there are many rights whose exercise is contingent on finding partners who are willing to cooperate in the exercise, and it may be that the right of exit falls into this category. Take the right to marry as an example. This is a right held against the state to allow people to marry the partners of their choice (and perhaps to provide the legal framework within which marriages can be contracted). It is obviously not a right to have a marriage partner provided—whether any

given person can exercise the right depends entirely on whether he is able to find someone willing to marry him, and many people are not so lucky. The right of exit is a right held against a person's current state of residence not to prevent her from leaving the state (and perhaps aiding her in that endeavor by, say, providing a passport). But it does not entail an obligation on any other state to let that person in. Obviously, if no state were ever to grant entry rights to people who were not already its citizens, the right of exit would have no value. But suppose states are generally willing to consider entry applications from people who want to migrate, and that most people would get offers from at least one such state: then the position as far as the right of exit goes is pretty much the same as with the right to marry, where by no means everyone is able to wed the partner they would ideally like to have, but most have the opportunity to marry *someone*.

So once the right of exit is properly understood, it does not entail an unlimited right to migrate to the society of one's choice. But now, finally, in this part of the chapter, I want to consider an argument for migration rights that appeals to distributive justice. It begins from the assumption of the fundamental moral equality of human beings. It then points out that, in the world in which we live, a person's life prospects depend heavily on the society into which she happens to be born, so that the only way to achieve equal opportunities is to allow people to move to the places where they can develop and exercise their talents, through employment and in other ways. In other words, there is something fundamentally unfair about a world in which people are condemned to relative poverty through no fault of their own when others have much greater opportunities, whereas if people were free to live and work wherever they wished, then each person could choose whether to stay in the community that had raised him or to look for a better life elsewhere.

The question we must ask here is whether justice demands equality of opportunity at the global level, as the argument I have just sketched assumes, or whether this principle only applies *inside* societies, among those who are already citizens of the same political community. Note to begin with that embracing the moral equality of all human

beings—accepting that every human being is equally an object of moral concern—does not yet tell us what we are required to do for them as a result of that equality. One answer *might* be that we should attempt to provide everyone with equal opportunities to pursue their goals in life. But another, equally plausible, answer is that we should play our part in ensuring that their basic rights are respected, where these are understood as rights to a certain minimum level of security, freedom, resources, and so forth—a level adequate to protect their basic interests, as suggested earlier in this chapter. These basic rights can be universally protected and yet some people have greater opportunities than others to pursue certain aims, as a result of living in more affluent or culturally richer societies.

Is it nonetheless unfair if opportunities are unequal in this way? That depends upon what we believe about the *scope* of distributive justice, the kind of justice that involves comparing how well different people are faring by some standard. According to Michael Walzer, “the idea of distributive justice presupposes a bounded world within which distributions take place: a group of people committed to dividing, exchanging, and sharing social goods, first of all among themselves.” The main reason that Walzer gives for this view is that the very goods whose distribution is a matter of justice gain their meaning and value within particular political communities. Another relevant consideration is that the stock of goods that is available at any time to be divided up will depend on the past history of the community in question, including decisions about, for example, the economic system under which production will take place. These considerations tell against the view that justice at global level should be understood in terms of the equal distribution, at any moment, of a single good, whether this good is understood as “resources” or “opportunity” or “welfare.” The basic rights view avoids these difficulties, because it is plausible to think that whatever the cultural values of a particular society, and whatever its historical record, no human being should be allowed to fall below the minimum level of provision that protects his or her basic interests.

But what if somebody does fall below this threshold? Does this not give him the right to

migrate to a place where the minimum level is guaranteed? Perhaps, but it depends on whether the minimum *could* be provided in the political community he belongs to now, or whether that community is so oppressive, or so dysfunctional, that escape is the only option. So here we encounter again the issue of refugees, to be discussed in my final section. Meanwhile, the lesson for other states, confronted with people whose lives are less than decent, is that they have a choice: they must either ensure that the basic rights of such people are protected in the places where they live—by aid, by intervention, or by some other means—or they must help them to move to other communities where their lives will be better. Simply shutting one's borders and doing nothing else is not a morally defensible option here. People everywhere have a right to a decent life. But before jumping to the conclusion that the way to respond to global injustice is to encourage people whose lives are less than decent to migrate elsewhere, we should consider the fact that this policy will do little to help the very poor, who are unlikely to have the resources to move to a richer country. Indeed, a policy of open migration may make such people worse off still, if it allows doctors, engineers, and other professionals to move from economically undeveloped to economically developed societies in search of higher incomes, thereby depriving their countries of origin of vital skills. Equalizing opportunity for the few may diminish opportunities for the many. Persisting global injustice does impose on rich states the obligation to make a serious contribution to the relief of global poverty, but in most instances they should contribute to improving conditions of life on the ground, as it were, rather than bypassing the problem by allowing (inevitably selective) inward migration.

JUSTIFICATIONS FOR LIMITING IMMIGRATION

I have shown that there is no general right to migrate to the country of one's choice. Does it follow that states have a free hand in choosing who, if anyone, to admit to membership? One might think that it does, using the analogy of a private club. Suppose that the members of a tennis club decide

that once the membership roster has reached 100, no new members will be taken in. They do not have to justify this decision to would-be members who are excluded: if they decide that 100 members is enough, that's entirely their prerogative. But notice what makes this argument convincing. First, the benefit that is being denied to new applicants is the (relatively superficial) benefit of being able to play tennis. Second, it's a reasonable assumption that the rejected applicants can join another club, or start one of their own. It would be different if the tennis club occupied the only site within a 50-mile radius that is suitable for laying tennis courts: we might then think that they had some obligation to admit new members up to a reasonable total. In the case of states, the advantages that they deny to would-be immigrants who are refused entry are very substantial; and because states monopolize stretches of territory, and in other ways provide benefits that cannot be replicated elsewhere, the “go and start your own club” response to immigrants is not very plausible.

So in order to show that states are entitled to close their borders to immigrants, we have to do more than show that the latter lack the human right to migrate. Potential immigrants have a *claim* to be let in—if nothing else they usually have a strong *desire* to enter—and so any state that wants to control immigration must have good reasons for doing so. In this section, I shall outline two good reasons that states may have for restricting immigration. One has to do with preserving culture, the other with controlling population. I don't claim that these reasons will apply to every state, but they do apply to many liberal democracies that are currently having to decide how to respond to potentially very large flows of immigrants from less economically developed societies (other states may face larger flows still, but the political issues will be different).

The first reason assumes that the states in question require a common public culture that in part constitutes the political identity of their members, and that serves valuable functions in supporting democracy and other social goals. There is no space here to justify this assumption in any detail, so I must refer the reader to other writings where I have tried to do so. What I want to do here is to

consider how the need to protect the public culture bears upon the issue of immigration. In general terms we can say (a) that immigrants will enter with cultural values, including *political* values, that are more or less different from the public culture of the community they enter; (b) that as a result of living in that community, they will absorb some part of the existing public culture, modifying their own values in the process; and (c) that their presence will also change the public culture in various ways—for instance, a society in which an established religion had formed an important part of national identity will typically exhibit greater religious diversity after accepting immigrants, and as a consequence religion will play a less significant part in defining that identity.

Immigration, in other words, is likely to change a society's public culture rather than destroy it. And since public cultures always change over time, as a result of social factors that are quite independent of immigration (participation in the established religion might have been declining in any case), it doesn't on the face of it seem that states have any good reason to restrict immigration on that basis. They might have reason to limit the *flow* of immigrants, on the grounds that the process of acculturation outlined above may break down if too many come in too quickly. But so long as a viable public culture is maintained, it should not matter that its character changes as a result of taking in people with different cultural values.

What this overlooks, however, is that the public culture of their country is something that people have an interest in controlling: they want to be able to shape the way that their nation develops, including the values that are contained in the public culture. They may not of course succeed: valued cultural features can be eroded by economic and other forces that evade political control. But they may certainly have good reason to try, and in particular to try to maintain cultural continuity over time, so that they can see themselves as the bearers of an identifiable cultural tradition that stretches backward historically. Cultural continuity, it should be stressed, is not the same as cultural rigidity: the most valuable cultures are those that can develop and adapt to new circumstances, including

the presence of new subcultures associated with immigrants.

Consider the example of language. In many states today the national language is under pressure from the spread of international languages, especially English. People have an incentive to learn and use one of the international languages for economic and other purposes, and so there is a danger that the national language will wither away over the course of two or three generations. If this were to happen, one of the community's most important distinguishing characteristics would have disappeared, its literature would become inaccessible except in translation, and so forth. So the states in question adopt policies to insure, for instance, that the national language is used in schools and in the media, and that exposure to foreign languages through imports is restricted. What effect would a significant influx of immigrants who did not already speak the national language have in these circumstances? It is likely that their choice of second language would be English, or one of the other international languages. So their presence would increase the incentive among natives to defect from use of the national language in everyday transactions, and make the project of language-preservation harder to carry through. The state has good reason to limit immigration, or at least to differentiate sharply among prospective immigrants between those who speak the national language and those who don't, as the government of Quebec has done in recent years.

Language isn't the only feature to which the argument for cultural continuity applies. There is an internal relationship between a nation's culture and its physical shape—its public and religious buildings, the way its towns and villages are laid out, the pattern of the landscape, and so forth. People feel at home in a place in part because they can see that their surroundings bear the imprint of past generations whose values were recognizably their own. This doesn't rule out cultural change, but again it gives a reason for wanting to stay in control of the process—for teaching children to value their cultural heritage and to regard themselves as having a responsibility to preserve the parts of it that are worth preserving, for example. The "any public

culture will do" position ignores this internal connection between the cultural and physical features of the community.

How restrictive an immigration policy this dictates depends on the empirical question of how easy or difficult it is to create a symbiosis between the existing public culture and the new cultural values of the immigrants, and this will vary hugely from case to case (in particular the experience of immigration itself is quite central to the public cultures of some states, but not to others). Most liberal democracies are now multicultural, and this is widely regarded as a source of cultural richness. But the more culturally diverse a society becomes, the greater need it has for a unifying public culture to bind its members together, and this culture has to connect to the history and physical shape of the society in question—it can't be invented from scratch. So a political judgment needs to be made about the scale and type of immigration that will enrich rather than dislocate the existing public culture.

The second reason for states to limit immigration that I want to consider concerns population size. This is a huge, and hugely controversial, topic, and all I can do here is to sketch an argument that links together the issues of immigration and population control. The latter issue really arises at two different levels: global and national. At the global level, there is a concern that the carrying capacity of the earth may be stretched to breaking point if the total number of human beings continues to rise as it has over the last half century or so. At national level, there is a concern about the effect of population growth on quality of life and the natural environment. Let me look at each level in turn.

Although there is disagreement about just how many people the earth can sustain before resource depletion—the availability of water, for example—becomes acute, it would be hard to maintain that there is *no* upper limit. Although projections of population growth over the century ahead indicate a leveling off in the rate of increase, we must also expect—indeed should welcome—increases in the standard of living in the developing world that will mean that resource consumption per capita will also rise significantly. In such a world it is in all our interests that states whose populations

are growing rapidly should adopt birth control measures and other policies to restrict the rate of growth, as both China and India have done in past decades. But such states have little or no incentive to adopt such policies if they can "export" their surplus population through international migration, and since the policies in question are usually unpopular, they have a positive incentive not to pursue them. A viable population policy at global level requires each state to be responsible for stabilizing, or even possibly reducing, its population over time, and this is going to be impossible to achieve if there are no restrictions on the movement of people between states.

At national level, the effects of population growth may be less catastrophic, but can still be detrimental to important cultural values. What we think about this issue may be conditioned to some extent by the population density of the state in which we live. Those of us who live in relatively small and crowded states experience daily the way in which the sheer number of our fellow citizens, with their needs for housing, mobility, recreation, and so forth, impacts on the physical environment, so that it becomes harder to enjoy access to open space, to move from place to place without encountering congestion, to preserve important wildlife habitats, and so on. It's true, of course, that the problems arise not simply from population size, but also from a population that wants to live in a certain way—to move around a lot, to have high levels of consumption, and so on—so we could deal with them by collectively changing the way that we live, rather than by restricting or reducing population size. Perhaps we should. But this, it seems to me, is a matter for political decision: members of a territorial community have the right to decide whether to restrict their numbers, or to live in a more ecologically and humanly sound way, or to do neither and bear the costs of a high-consumption, high-mobility lifestyle in a crowded territory. If restricting numbers is part of the solution, then controlling immigration is a natural corollary.

What I have tried to do in this section is to suggest why states may have good reason to limit immigration. I concede that would-be immigrants may have a strong interest in being admitted—a strong

economic interest, for example—but in general they have no obligation-conferring *right* to be admitted, for reasons given in the previous section. On the other side, nation-states have a strong and legitimate interest in determining who comes in and who does not. Without the right to exclude, they could not be what Michael Walzer has called “communities of character”: “historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life.” It remains now to see what conditions an admissions policy must meet if it is to be ethically justified.

CONDITIONS FOR AN ETHICAL IMMIGRATION POLICY

I shall consider two issues. The first is the issue of refugees, usually defined as people who have fled their home country as a result of a well-founded fear of persecution or violence. What obligations do states have to admit persons in that category? The second is the issue of discrimination in admissions policy. If a state decides to admit some immigrants (who are not refugees) but refuses entry to others, what criteria can it legitimately use in making its selection?

As I indicated in the first section of this chapter, people whose basic rights are being threatened or violated in their current place of residence clearly do have the right to move to somewhere that offers them greater security. *Prima facie*, then, states have an obligation to admit refugees, indeed “refugees” defined more broadly than is often the case to include people who are being deprived of rights to subsistence, basic healthcare, etc. But this need not involve treating them as long-term immigrants. They may be offered temporary sanctuary in states that are able to protect them, and then be asked to return to their original country of citizenship when the threat has passed. Moreover, rather than encouraging long-distance migration, it may be preferable to establish safety zones for refugees close to their homes and then deal with the cause of the rights-violations directly—whether this means sending in food and medical aid or intervening to remove a genocidal regime from power. There is obviously a danger that the temporary solution

becomes semi-permanent, and this is unacceptable because refugees are owed more than the immediate protection of their basic rights—they are owed something like the chance to make a proper life for themselves. But liberals who rightly give a high moral priority to protecting the human rights of vulnerable people are regrettably often unwilling to countenance intervention in states that are plainly violating these rights.

If protection on the ground is not possible, the question then arises *which* state should take in the refugees. It is natural to see the obligation as shared among all those states that are able to provide refuge, and in an ideal world one might envisage some formal mechanism for distributing refugees among them. However, the difficulties in devising such a scheme are formidable. To obtain agreement from different states about what each state’s refugee quota should be, one would presumably need to start with simple and relatively uncontroversial criteria such as population or per capita GNP. But this leaves out of the picture many other factors, such as population density, the overall rate of immigration into each state, cultural factors that make absorption of particular groups of refugees particularly easy or difficult, and so forth—all factors that would differentially affect the willingness of political communities to accept refugees and make agreement on a scheme very unlikely. Furthermore, the proposed quota system pays no attention to the choices of the refugees themselves as to where to apply for sanctuary, unless it is accompanied by a compensatory scheme that allows states that take in more refugees than their quota prescribes to receive financial transfers from states that take in less.

Realistically, therefore, states have to be given considerable autonomy to decide on how to respond to particular asylum applications: besides the refugee’s own choice, they are entitled to consider the overall number of applications they face, the demands that temporary or longer-term accommodation of refugees will place on existing citizens, and whether there exists any special link between the refugee and the host community—for instance, similarities of language or culture, or a sense of historical responsibility on the part of the

receiving state (which might see itself as somehow implicated among the causes of the crisis that has produced the refugees). If states are given this autonomy, there can be no guarantee that every bona fide refugee will find a state willing to take him or her in. Here we simply face a clash between two moral intuitions: on the one hand, every refugee is a person with basic human rights that deserve protection; on the other, the responsibility for insuring this is diffused among states in such a way that we cannot say that any particular state *S* has an obligation to admit refugee *R*. Each state is at some point entitled to say that it has done enough to cope with the refugee crisis. So the best we can hope for is that informal mechanisms will continue to evolve which make all refugees the *special* responsibility of one state or another.

The second issue is discrimination among migrants who are not refugees. Currently, states do discriminate on a variety of different grounds, effectively selecting the migrants they want to take in. Can this be justified? Well, given that states are entitled to put a ceiling on the numbers of people they take in, for reasons canvassed in the previous section, they need to select somehow, if only by lottery (as the USA began to do in 1995 for certain categories of immigrant). So what grounds can they legitimately use? It seems to me that receiving states are entitled to consider the benefit they would receive from admitting a would-be migrant as well as the strength of the migrant's own claim to move. So it is acceptable to give precedence to people whose cultural values are closer to those of the existing population—for instance, to those who already speak the native language. This is a direct corollary of the argument in the previous section about cultural self-determination. Next in order of priority come those who possess skills and talents that are needed by the receiving community. Their claim is weakened, as suggested earlier, by the likelihood that in taking them in, the receiving state is also depriving their country of origin of a valuable resource (medical expertise, for example). In such cases, the greater the interest the potential host country has in admitting the would-be migrant, the more likely it is that admitting her will make life worse for those she leaves behind. So although

it is reasonable for the receiving state to make decisions based on how much the immigrant can be expected to contribute economically if admitted, this criterion should be used with caution. What cannot be defended in any circumstances is discrimination on grounds of race, sex, or, in most instances, religion—religion could be a relevant criterion only where it continues to form an essential part of the public culture, as in the case of the state of Israel.

If nation-states are allowed to decide how many immigrants to admit in the first place, why can't they pick and choose among potential immigrants on whatever grounds they like—admitting only red-haired women if that is what their current membership prefers? I have tried to hold a balance between the interest that migrants have in entering the country they want to live in, and the interest that political communities having in determining their own character. Although the first of these interests is not strong enough to justify a right of migration, it is still substantial, and so the immigrants who are refused entry are owed an explanation. To be told that they belong to the wrong race, or sex (or have hair of the wrong color) is insulting, given that these features do not connect to anything of real significance to the society they want to join. Even tennis clubs are not entitled to discriminate among applicants on grounds such as these.

Let me conclude by underlining the importance of admitting all long-term immigrants to full and equal citizenship in the receiving society (this does not apply to refugees who are admitted temporarily until it is safe to return to their country of origin, but it does apply to refugees as soon as it becomes clear that return is not a realistic option for them). Controls on immigration must be coupled with active policies to insure that immigrants are brought into the political life of the community, and acquire the linguistic and other skills that they require to function as active citizens. In several states immigrants are now encouraged to take citizenship classes leading up to a formal admissions ceremony, and this is a welcome development insofar as it recognizes that becoming a citizen isn't something that just happens spontaneously. Precisely because they aim to be “communities of character,” with distinct public cultures to which new immigrants

can contribute, democratic states must bring immigrants into political dialogue with natives. What is unacceptable is the emergence of a permanent class of non-citizens, whether these are guest workers, illegal immigrants, or asylum seekers waiting to have their applications adjudicated. The underlying political philosophy which informs this chapter sees democratic states as political communities formed on the basis of equality among their members, and just as this gives such states the right to exclude, it also imposes the obligation to protect the equal status of all those who live within their borders.

David Miller: Immigration: The Case for Limits

1. Miller argues that immigration restrictions are consistent with the right to exit one's country by comparing that right to the right to marry: Just because I have the right to marry doesn't mean I have the right to be provided a spouse. Is this an apt analogy? If not, how might the two cases be different?
2. Some argue that distributive justice requires unlimited immigration, because justice requires that we secure equality of opportunity for those born in less wealthy countries. Do you agree with Miller that it is instead enough to secure a "minimum level" of basic needs

and rights for these people? Or does fairness require the right to immigrate to, and seek opportunities in, wealthier nations?

3. According to Miller, states have a right to restrict immigration to preserve their culture and national character. However, Miller also says, "What cannot be defended in any circumstances is discrimination on grounds of race, sex, or, in most instances, religion." Can Miller consistently hold both of these claims? Why or why not?
4. Imagine that there are two nations with very similar, almost identical cultures. (For example, suppose Germany and Austria became even more similar than they already are.) Assuming that unlimited immigration between the two would not significantly increase population density, does Miller's view imply that citizens of one country should have an unlimited right to immigrate to the other? Is this a problem for his view? If so, how might Miller respond?
5. In recent years, many Western nations have had to face the prospect of either accepting or turning away large numbers of refugees from war-torn countries. Given Miller's views on immigration, what should countries facing these situations do? What sorts of factors would be relevant to answering that question?

The Legacy of Racism

JUST THE FACTS

It's no secret that the United States has a long history of **racism** (the view that members of a given race are inferior by virtue of their racial identity). We couldn't possibly tell that full history here. The best we can do is make a start. We'll focus on the racial discrimination endured by minorities at the hands of the US government, passing over, almost entirely, the horrific treatment endured by minorities at the hands of private citizens.

Slave traders began bringing kidnapped Africans to the Americas as early as 1619, around the time the first British colonists settled in Jamestown, Virginia. The practice continued for the next 246 years, until it was abolished in 1865 with the passing of the Thirteenth Amendment. In total, close to 400,000 Africans were forcibly taken from their homes and thrown into dark, cramped transport ships.¹ They were given little food and water, and they had little idea what would happen to them. Many died in transit. Once in North America, they were sold to white colonists (American citizens, after 1776) as slaves. Many were sold separately from their family members, never to be reunited again. The products of their labor were taken by their owners and sold for profits that slaves would never see. Slaves enjoyed virtually no legal protections. If they attempted to escape, they were hunted down and their punishment was left to the discretion of their owners. For perceived bad behavior or lack of productivity, slaves were,

among many other things, beaten, whipped, isolated, starved, and burned.

The abolition of slavery in 1865 made it illegal to buy, sell, or own slaves, but it would still be a long time before African Americans would be granted anything approaching legal equality. In the 1880s, state and local governments began passing **Jim Crow laws** mandating racial segregation in public facilities such as schools, restaurants, and restrooms in the states of the former Confederacy. These laws were judged not to violate the Fourteenth Amendment requiring equal protection under the law for all citizens, on the grounds that blacks and whites were entitled to "separate but equal" services. So long as the facilities provided to each race were equally available and of roughly equal quality, state and local governments could require that public facilities be segregated by race. Of course, in practice, things were anything but equal. Black schools and public facilities were clearly underfunded and understaffed relative to their white counterparts, but little was done about it. Legally, the downfall of Jim Crow laws came only in 1954, when the US Supreme Court ruled (in the landmark case *Brown v. Board of Education*) that state laws mandating segregation in public schools were unconstitutional.

Though school segregation was legally prohibited in 1954, government-sanctioned racism did not immediately disappear. In 1934, the US government created the Federal Housing Administration (FHA) to assist people in becoming homeowners by insuring their loans. The FHA, however, explicitly refused to back loans to black people or people who lived near black people until 1964—a practice called **redlining**.

1. <http://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/how-many-slaves-landed-in-the-us/>

The result was that many black people were unable to buy homes, and any attempt to improve their neighborhoods with even small-scale business ventures was obstructed by lenders refusing to underwrite loans to potential investors. Those ventures were judged to be too risky; the lack of businesses led to the reduction of property values in black neighborhoods, and declining property values discouraged new businesses from entering the neighborhood—a vicious cycle that has yet to right itself in many minority communities.

In the 1980s and 1990s, crack cocaine became a cheaper alternative to the powder cocaine that was popular in the 1970s. In 1986, Congress passed the Anti-Drug Abuse Act as part of the War on Drugs. The new law mandated a minimum sentence of five years in prison without parole for possession of five grams of crack cocaine, which was more likely to be used by African Americans. For powder cocaine, more frequently used by wealthier white Americans, it took possession of five hundred grams for a minimum sentence of five years. The stated justification for this enormous disparity was that crack had a much higher association with violent crime than powder cocaine. The result, however, was predictable: African Americans were incarcerated for crack-related crimes at a much higher rate than whites were for cocaine-related crimes. Black Americans also received much harsher sentences for comparable drug offenses. In 2010, nearly twenty-five years after the Anti-Drug Abuse Act's passage, President Barack Obama signed the Fair Sentencing Act into law, thereby reducing the disparity between the amount of crack cocaine and powder cocaine needed to trigger federal criminal penalties. He also eliminated the mandatory five-year minimum sentence for simple crack possession.

In the mid-1990s, psychologists began performing experiments to test subjects' implicit attitudes—those they aren't consciously aware of—toward all kinds of things, such as foods, brands, clothes, and political views.

Psychologists also began to conduct experiments about attitudes taken toward racial and ethnic minorities. The most common way to measure such implicit attitudes is to use the Implicit Association Test (IAT). In a standard IAT, subjects attempt to sort words or pictures into categories as fast as possible without making any errors. An IAT score is computed by comparing speed and error rates on the "blocks" (or trials) in which the pairing of concepts is consistent with common stereotypes (e.g., "black" and "bad," "white" and "good") to the blocks in which the pairing of the concepts is inconsistent with common stereotypes. A review in 2007 that tested over 700,000 subjects on the race-evaluation IAT found that over 70 percent of white subjects associated black faces with negative words (e.g., war, bad) and white faces with positive words (e.g., peace, good).

Researchers are worried that these **implicit biases** will translate into discrimination against minorities, and there's some reason to think that this worry is well founded. In 2003, researchers mailed thousands of résumés to employers with job openings and measured which ones were selected for callbacks for interviews.² Before sending them, however, researchers randomly used stereotypically African American names (e.g., "Jamal") on some and stereotypically white names (e.g., "Connor") on others. The same résumé was roughly 50 percent more likely to result in a callback for an interview if it had a stereotypically white name. In another study, white state legislators (both Republican and Democrat) were found to be less likely to respond to calls or emails by constituents with stereotypically African American names.³ And in yet another study, emails sent to faculty members at universities, asking to talk about research

2. <https://www.aeaweb.org/articles?id=10.1257/0002828042002561>

3. <http://onlinelibrary.wiley.com/doi/10.1111/j.1540-5907.2011.00515.x/full>

opportunities, were more likely to get a reply if a stereotypically white name was used.⁴

To be free from many of the consequences of these implicit biases and to be part of a racial group that does not have a history of crushing oppression can be quite an advantage. Peggy McIntosh has given a name to this kind of advantage: **white privilege**.⁵ Here are a few of her examples of such privilege. White people can turn on the television or open to the front page of the paper and see white people widely represented. When white people are told about their national heritage or about “civilization,” they are shown people of their own color. White people do not have to educate their children to be aware of systemic racism for their own daily physical protection. They can swear, or dress in second-hand clothes, or not answer letters, without having people attribute these choices to the bad morals, or the poverty, or the illiteracy of their race. If a traffic cop pulls a white person over or if the IRS audits his tax return, he can be sure he hasn’t been singled out because of his race.⁶ The striking thing about these advantages is that white people are often completely unaware that they enjoy them.

African Americans are just one of many groups that have been the victims of implicit and explicit discrimination in the United States. In addition to having their population decimated by disease and war, Native Americans have repeatedly had their land forcibly taken from them. For example, in 1830, the federal Indian Removal Act called for the removal of the “Five Civilized Tribes”—the Cherokee, Chickasaw, Choctaw, Creek, and Seminole—from their homelands in the southern United States. Between 1830 and 1838, government officials,

working on behalf of white cotton growers, forced nearly 100,000 Native Americans to so-called Indian Territory in Oklahoma. Along the way, some 4,000 Cherokee people died of cold, hunger, and disease—an event now known as the “Trail of Tears.”⁷

After the Japanese attacks on Pearl Harbor, Hawaii, in December 1941, many Americans were suspicious about the loyalty of Japanese residents and citizens of the United States. There were rumors that many Japanese Americans knew of the attacks before they happened but remained silent. The FBI knew that these rumors were false but did nothing to rebut them. In 1942, emboldened by these suspicions common among the public, the US government began forcing Japanese and Japanese Americans citizens into **internment camps**—crowded and uncomfortable barracks surrounded by barbed wire, located in remote areas far from their homes. In total, 110,000 Japanese and Japanese Americans living on the West Coast were forced into camps for two and half years—from 1942 to 1944.⁸

The sort of explicit and implicit discrimination we’ve been discussing is race based. Recently, though, work by philosophers and biologists on the concept of race has cast some doubt on whether races really exist. The skepticism about the biological reality of race is motivated by the realization that it is extraordinarily difficult to characterize the essence of, or the necessary and sufficient conditions for, membership in a particular race. For example, what biological feature is shared by Spaniards and Russians that makes them both white, but is not shared by Russians and Mongolians, making the former white and the latter Asian? There have been many attempts to answer this (and similar) kinds of questions, but there have been few satisfying answers.

4. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2063742

5. McIntosh, “White Privilege: Unpacking the Invisible Knapsack,” *Independent School* (Winter 1990).

6. http://people.westminstercollege.edu/faculty/jsibbett/readings/White_Privilege.pdf

7. <http://www.cherokee.org/About-The-Nation/History/Trail-of-Tears/A-Brief-History-of-the-Trail-of-Tears>

8. <https://www.pbs.org/childofcamp/history/>

ARGUMENT ANALYSIS

Racism is immoral. As a result, we are not going to follow the usual procedure and offer arguments for and against the main topic of the chapter. There are no good arguments for racist attitudes and practices.

While the immorality of racism is clear, the best way to respond to racism is anything but. Here we enter into difficult and controversial territory. As usual, there are many more topics and arguments than can be canvassed, so we have to be selective. Here we will focus on just two large topics: **affirmative action** and the wisdom of **reparations**.

Affirmative Action

Affirmative action is a social policy that increases a qualified applicant's chances in hiring or admissions on the basis of his or her status as a member of a group that has suffered extensive discrimination. Affirmative action is often applied to women and to the disabled, as well as to racial and ethnic minorities, but we will focus here just on affirmative action as it applies to the latter groups.

Many people object to affirmative action because they regard it as essentially unfair. At its most extreme, the charge is that affirmative action is a form of racism in reverse. Since racism is wrong, and since two wrongs don't make a right, affirmative action is immoral. This line of reasoning can be put in the form of

The Racism Argument

1. Racism is immoral.
2. Affirmative action is a form of racism.

Therefore,

3. Affirmative action is immoral.

Premise 1 is true. But premise 2 is false. Affirmative action policies are not motivated by, and do not convey, the view that whites are inferior in any way to minorities. Affirmative action policies do not stigmatize whites, do not express any form of hatred or condemnation toward white

people, and do not claim any kind of moral, emotional, or spiritual superiority for minorities. Affirmative action gives preference in hiring and admissions to members of minority groups, but does not stereotype white citizens thereby and does not contribute to the reinforcement of **oppression**. Racism is a form of oppression: a system of unjust and unequal social forces that systematically limit opportunities and impose other harms on members of a given population. Whites as a group are not oppressed—there is no systemic limitation of their opportunities just because they are white. Of course many white people suffer great disadvantages of one kind or another. But the color of their skin in almost all contexts affords them privilege, rather than a thoroughgoing disadvantage.

Another criticism of affirmative action policies is that they violate the **principle of merit**: positions should be awarded on the basis of qualifications. If one person is better qualified than another for a job, then the better qualified candidate should get the position. If one student has better grades and a higher SAT score than a second student, and if there's not room for both in a college's entering class, then the first student should gain admission and the second shouldn't. But affirmative action policies give those who are somewhat less qualified priority over the more qualified. That is unfair:

The Qualifications Argument

1. Fairness requires that positions should be awarded solely on the basis of merit, that is, of who is best qualified for the position.
2. Affirmative action does not award positions solely on the basis of an applicant's qualifications, but instead partly on the basis of racial or ethnic identity.

Therefore,

3. Affirmative action is unfair.

Let's start with premise 2. Recall that affirmative action is not designed to give unqualified applicants a leg up. Affirmative action is restricted to

qualified applicants who, by the ordinary measures of merit, are somewhat less qualified than whites who are competing for the same spots. I think premise 2 is usually true. Your skin color or ethnic background is not usually something that makes you better at a given job. But there are exceptions; racial or ethnic identity can *sometimes* be a further qualification of a position. Given the long history of police violence within minority neighborhoods, an African American community liaison officer will be more likely than a white officer to be effective in such a neighborhood. An African American actress is better qualified than a white one to portray Rosa Parks in a new bio-pic. But these are exceptions to the rule. Being white only rarely makes applicants better qualified for a job—it doesn't make them likely to be better farmers, cashiers, or insurance agents. The same goes for members of minority groups.

Premise 1 is very plausible. Suppose a less qualified white person gets a job over a much better qualified black person, owing to the prejudices of an employer. That is unfair. It is unfair because the black person deserved the job. She deserved it by virtue of her superior qualifications. This seems to make perfect sense. If it does, then it lends strong support to premise 1.

Suppose premise 1 is true, and suppose, too, that premise 2 is true for most cases. Then it is also true that affirmative action is ordinarily unfair. But, perhaps surprisingly, that does not settle the issue of whether affirmative action is morally acceptable. That is because we are sometimes morally allowed to sacrifice fairness in order to achieve other valuable goals.

Consider three examples, each designed to illustrate the general point that fairness is not the supreme moral value. Here's the first. Suppose I need my house repaired and I receive bids from several contractors to do the work. One of these stands out as the best. But just before I hire this person, I hear that one of the contractors who submitted a competing bid—a good one, just not the best—needs this job in order

to avoid bankruptcy. So I hire him instead. He's certainly qualified, but not the best qualified. I thereby violated the principle of merit. But my decision is still morally permitted—the job was mine to bestow, and in denying the job to the most qualified person, I did not disqualify him on immoral grounds (for instance, sexism, racism, or anti-Semitism).

Here is a second example. The United States gives veterans preferential treatment in employment and college admissions and financial aid decisions. These policies allow institutions to hire or admit veterans who are qualified, but less qualified than some other applicants. This policy thus violates the principle of merit. But the policy might be justified by pointing to the important social goals it achieves—rewarding veterans for their service to the country and providing incentive to others to enlist.

A third example comes from college admissions. Almost every institution of higher learning gives preferential treatment to children of alumni and of large donors, and to very talented athletes and musicians—even when such students are not as academically qualified as other applicants who are rejected. The justification for these practices is straightforward. One legitimate goal of colleges and universities is to build strong alumni support. One way of achieving that goal is to give some admissions preference to qualified children of alumni. These institutions also see themselves as providing a well-rounded education, and so offering opportunities to grow and excel in athletics and the arts. These, too, are legitimate goals that can be secured by giving preferential treatment—in these cases, to stellar athletes and artists.

What these examples show is that it is permissible to violate the principle of merit in a range of cases, including those where valuable goals (such as building alumni support or honoring our veterans) are achieved by doing so. Affirmative action, too, is designed to achieve a laudable goal—the reduction of oppression and the increase of equal opportunity for those

who are members of historically disadvantaged groups. So even if affirmative action is unfair, that unfairness might be outweighed by the good it can do.

Many defenders of affirmative action make this claim. They argue that in the face of lots of evidence (some of it provided earlier) that employers are either overtly racist or, perhaps more commonly nowadays, subject to implicit bias (prejudice that we do not realize we have), we need affirmative action in order to improve the likelihood that minority applicants will stand an equal chance of success in the job market and in college. This is the basis for

The Equal Opportunity Argument

1. A society is morally required to provide its citizens with equal opportunity to gain valuable resources and positions.
2. If a policy helps society to meet its moral requirements, then the policy is morally legitimate.
3. Affirmative action helps to achieve such equal opportunity.

Therefore,

4. Affirmative action is morally legitimate.

Look at the conclusion. It does not say that affirmative action is itself morally required, just that it is legitimate. Its defenders hope that one day there will be no need for affirmative action, because minorities, women, and other oppressed groups will in fact stand an equal chance of fulfilling their potential. Should such a day ever come, affirmative action will no longer be morally legitimate. But in the meantime, its defenders claim that it can move us closer to the point at which the historically disadvantaged are as likely to enjoy the same opportunities for education, health care, and wealth as their fellow citizens.

Premises 1 and 2 are quite plausible. One critique of premise 3 comes from the thought that affirmative action is not needed for helping us gain conditions of equal opportunity, because we *already live in a society of equal opportunity*. The

thought here is that equal opportunity exists so long as laws are not discriminatory. Federal and state laws no longer allow racial discrimination, and in many contexts explicitly forbid it. So, the thought goes, we live in a land of equal opportunity. But this overlooks a distinction, taken from the law, between **de jure equality** and **de facto equality**. De jure equality is equality in the content of the law. In the United States, there is now de jure equality among all citizens. De facto equality refers to the situation on the ground, the real, lived experience of citizens. It is deeply implausible to suppose that the United States, or nearly any other country, offers de facto equality of opportunity to its citizens.

To appreciate the point here, imagine someone saying the following: everyone has an equal opportunity to buy a yacht. No person, and no law, is preventing you from doing so. True, you only have a few hundred dollars in your bank account, and Bill Gates has billions. But you and he have the same opportunity to buy a yacht.

In one sense this is true. There is de jure equality of opportunity here. If I were to plunk down the millions needed to buy the boat, and do so before Bill Gates managed to do the deal, then I would own that ship. But in another sense there is no such equality, since I lack the funds to buy the yacht. The real chance that he and I would make the purchase isn't equal; I have no chance at all, no real opportunity. Now given the disparities of wealth and education between whites, on the one hand, and blacks and Native Americans, on the other, we are far from a situation of de facto equality of opportunity. Affirmative action is designed to help remedy that.

Another criticism of premise 3—probably the one most often heard—comes from the worries about unfairness that were the focus of the Qualifications Argument. The thought is that if you give someone other than the most qualified person a job, then that violates equal opportunity. That thought might seem appealing. But things are actually more complicated than they at first appear.

That's because the status quo is not itself a level playing field. Think of college admissions. These are based partly on SAT or ACT results, scores in Advanced Placement courses, and extracurricular activities. Students from better educated and wealthier families have a huge advantage with respect to these criteria. Wealthy parents can afford tutors to prep their children for these standardized tests. AP classes are rarely offered in poor communities. If your after-school and summer jobs are essential to keeping your family financially afloat, you won't be able to afford the sorts of costly summer activities—volunteer work in a distant country, intensive language school, unpaid internships at the local hospital or the big law firm run by a relative or family friend—that make the applications of so many affluent students so strong. These students have a huge leg up in the competition for social advantages. Their wealth means that they are very likely to be white. Of course there are affluent members of minority groups, and millions of very poor whites. But white households, on average, have 20 times the wealth of African American households. On average, schools in African American, Native American, and Hispanic neighborhoods pay teachers less and are far less well equipped than schools in predominantly white neighborhoods. (More information about the vast inequalities in the United States between whites and blacks is available in Chapter 16.)

This isn't at all to place blame on affluent white families for being wealthy or for providing their children with excellent opportunities. The Equal Opportunity Argument says nothing about enacting affirmative action as a means to harm whites or to punish them for wrongdoing. Rather, it is designed to help to equalize a playing field that is very uneven. It's not that whites need to be "put in their place," but rather that minorities ought to have an equal chance at the valuable things in life. No one believes that affirmative action alone will secure this. But the claim is that without affirmative action, there's

even less reason to suppose that the current state of deep inequality will correct itself.

The Equal Opportunity Argument is consequentialist: it seeks to justify affirmative action by claiming that it will help bring about a great good down the road—a society of true equality of opportunity. Other defenders, though, think that affirmative action is justified not necessarily because of the good results it might have, but instead because of what has happened in the past. Specifically, they see affirmative action as one element in a package of reparations for past injustices.

Reparations

Reparations are a special form of **compensation**. Compensation involves improving the condition of a victim of harm. Ordinary compensation does not require a wrongdoer, and need not be paid by the perpetrator of the harm. For example, compensation could be provided by an insurance company for property damage suffered by flood victims. Reparations, though, are triggered by someone having acted immorally; the justification of reparations is to *repair* the relationship between victims and perpetrators. This in turn requires an acknowledgment by the blameworthy parties that they have done wrong, and demands that the wrongdoers, rather than some innocent third party such as an insurance company, provide their victims with the needed repair.

As applied to the legacy of racism, the core idea is that the US government has committed terrible and extensive injustices in its dealings with certain communities—most notably (though not exclusively) Native Americans and African Americans. As a result, it must seek to repair these wrongs, and so offer reparations to victims in these communities. One possible means of doing so is to enact affirmative action policies that give preference in hiring and admissions. But this is just one option. It could be combined with, or replaced by, other possible policies, such as a substantial financial

payment over several years, accompanied by official expressions of apology. This serves as the basis of

The Reparations Argument

1. If one party has imposed systemic harms on members of a targeted group, then the wrongdoer is morally required to provide reparations to the victims.
2. The US government has imposed systemic harms on members of at least two targeted groups: Native Americans and African Americans.

Therefore,

3. The US government owes reparations to Native Americans and African Americans.

Though this argument (like our broader discussion) is couched in terms of the United States, its central point applies to any other country that has targeted segments of its population for discriminatory treatment. (See Chapter 17 for further discussion of international reparations claims.)

Premise 2 is true. This is not the place to engage in a history lesson, but a quick glance (if needed) at the Just the Facts section should suffice to establish its plausibility.

Premise 1 is also very plausible. You must right your wrongs; you are not permitted to ignore your harmful conduct and pretend that it never happened. Nor are you allowed merely to pay someone else to aid your victim—that might provide compensation, but not reparation. And you must discharge your duty to your victim, specifically—you are not off the hook if you ignore your victim but offer the money you would have given him to a charity instead. Premise 1 does a fine job of explaining why claims like these are true.

Still, opponents of the Reparations Argument will rightly point out that premise 1, as it stands, is incomplete. To see this, note that there can be genuine repair of a relationship between perpetrator and victim only if both parties are

alive. It's an obvious point, but one that critics have seized on in order to resist this argument.

One might object that those who perpetrated the evils of slavery and the forced resettlement of native tribes are long dead. And the administrations that allowed and perpetrated such harms are different from the current administration. These points are correct. Still, governments do inherit the obligations of their predecessors. The United States cannot simply cancel its foreign debt, for instance, whenever a new administration is voted into office. So if past governments acted wrongly and did not repair those wrongs—and there can be little doubt that the US government has in fact failed to repair the horrific damage it did in allowing and enforcing slavery and in violently resettling native tribes—then there is a case to be made that today's government inherits those duties of repair.

Rather than argue that reparations are unjustified because the wrongdoers are no longer around to repair their harms, one can argue instead that the *victims* of these injustices are long dead. As a result, the relations between them and the government cannot be repaired. Hence there is no call for reparations.

There is something clearly right about this criticism. Chattel slavery in the United States, for instance, was outlawed over 150 years ago. The Choctaw nation was forcibly removed from its lands in 1830; the Cherokee nation was resettled at gunpoint in 1838, when several thousand tribal members lost their lives on the Trail of Tears. The United States can do nothing for these victims.

But there are two points of complication here. The first is that it might make sense to speak of today's members of the African American and Native American communities as victims of these past injustices. Although today's African Americans are not enslaved, and Native Americans are under no threat of being forcibly removed from their reservations, there is a sense in which the poor life prospects of so many members of these communities are due to

the legacy of racism that their communities have suffered for generations.

That said, the claim of victimhood weakens as generations pass. Consider: if I kill some guy, it makes sense to regard his children as victims, too. Even though I didn't kill them, they have been victimized by my immoral action. *Perhaps* the victim's grandchildren are also victims of my crime. But things get very shaky when we trace this down to the fourth, fifth, or sixth generation. Both slaves and the Native Americans whose land was taken from them were clearly victimized, and it's sensible to speak of their children as victims, too. But we are now several generations away from these events, so it is less plausible to speak of today's African American and Native American citizens as victims of these historic injustices. If that is so, then the government does not owe them reparations for those injustices.

The second complication is that the injustices done to these communities did not end in the mid-nineteenth century. For instance, many older members of the African American community alive today suffered the injustices of Jim Crow laws, of federally mandated housing discrimination, and of federal "urban redevelopment" projects that destroyed middle-class black communities. Neither the federal government nor the state governments responsible for such policies have done much (and in some cases, have done nothing) to repair these wrongs.

In other words, claims to reparations need not be based on wrongs done before anyone today was alive. Racism has persisted in the decades since slavery was abolished and native communities were forced at gunpoint from their tribal lands. So perhaps reparations are owed after all—not in order to repair wrongs done over a century ago, but rather more recent wrongs.

Even if this were so, however, there is the extremely difficult question of what is required in order to repair the wrongs done. Many defenders of reparations argue that reparation should

take the form of compensation for harms suffered. To know how much compensation is required, you ask a question: how well off would the victim be had the harm not occurred? This is what is called a **counterfactual question**. It asks about an outcome that would have occurred if, *contrary to fact*, some other event did not take place. In this case, the thought is that governments are morally required to restore the victims of government-sponsored and government-tolerated racism to the level of well-being they would have enjoyed if, contrary to fact, they had not been the victims of racist policies and practices.

The problem with this approach is obvious. Racism has been a pervasive feature of US society for centuries. It is simply impossible to tell how well off African Americans and Native Americans would be today in the absence of the long history of racism. A quick and glib reply is: much better! But if we erase racism from the history of the United States, most of today's African Americans would never have been born, since their enslaved ancestors would never have met one another. So for all of these people, there is no way to answer the question: how well off would you be if slavery had never existed? And there are hundreds of different scenarios, each equally plausible, that might have arisen had US government policies toward native tribes been respectful rather than racist. As a result, there is no fact of the matter about what our world would look like if racism were removed from history. We know that racism has done a huge amount of harm. What we don't, and can't, know is how the world would be if all that harm never happened. But that is what we need to know in order to make sense of a claim to compensation. As a result, there is no measure, really, for determining the nature and extent of reparations that governments might owe to citizens who have suffered from racist oppression.

If these reflections are correct, then focusing on past injustices, and so on reparation, may not be a good guide to determining a government's

responsibilities to correct for racism. This does not mean that the government is off the hook. As we indicated earlier, the government has a responsibility for creating conditions of equal opportunity. This responsibility may impose substantial obligations to change policies and practices so as to level the playing field and ensure that African American and Native Americans—and other members of historically disadvantaged groups—have an equal chance at living a good life.

CONCLUSION

Racism has been a deep moral stain on a country built on a premise of equal freedom. Nor is racism of only historical interest; racism persists, despite *de jure* equality. The difficulty of eradicating racism naturally invites us to reflect on how best to respond to it.

Some argue that policies of affirmative action are one element of a legitimate response. Against this, some critics mistakenly claim that affirmative action policies are racist; others take a subtler approach, and level their criticisms on the basis of the unfairness that comes from violating the principle of merit. But as we have seen, this principle, though important, is not absolute—there can be justified exceptions to it, cases in which we are morally allowed to assign positions of advantage to people even if they are not the best qualified for those positions. The strongest cases are ones in which a very important goal is gained by violating the principle of merit. Many would argue that advancing *de facto* equality of opportunity qualifies as such a goal.

Others defend affirmative action as a form of reparations that the government owes to the citizens of groups that have been targeted for discriminatory treatment. Reparations are justified, when they are, as a way of righting wrongs, of correcting for past injustices. There are complicated questions to do with the identities of the perpetrators and the victims, but even if we set them aside, the hardest question is how to

determine what might be owed by way of reparations. The difficulty stems from our having to answer a question that seems to admit of no answer, namely: how well off would African American and Native American citizens be today if there were no legacy of racism? Perhaps there are ways around this difficulty. But even if there are not, appeals to equal opportunity may be able to justify the distribution of greater advantages to members of these historically disadvantaged groups.

ESSENTIAL CONCEPTS

Affirmative action: a social policy that increases the chances of hiring or admissions on the basis of an applicant's status as a member of a group that has suffered extensive discrimination.

Compensation: the means of restoring those who have been harmed to the condition they were in prior to the harm having occurred. Compensation does not require a wrongdoer, and it need not be paid by the perpetrator of the harm.

Counterfactual question: a question that asks what would have occurred if, contrary to fact, something else had not taken place.

De facto equality: equality in real, lived experience.

De jure equality: equality in the content of the law.

Implicit bias: prejudice that we do not realize we have.

Internment camps: barbed-wire-enclosed living quarters where thousands of Japanese and Japanese American people were forced to live for two and half years during World War II.

Jim Crow laws: state and local laws passed in the 1880s, in the southern United States, enforcing segregation between white and black people in public places such as schools, restrooms, and restaurants.

Oppression: a system of unjust and unequal social forces that systematically limit opportunities and impose other harms on members of a given population.

STAT SHOT

1. An estimated 10 million Native Americans were living in the territory that is the present-day United States when European settlers first arrived. Fewer than 300,000 were living in 1900. In the 2010 census, 5.2 million claimed to be Native American or Alaska Native.¹
2. White people in America are significantly less likely than black people to believe that blacks are treated less fairly than whites (Figure 18.1).

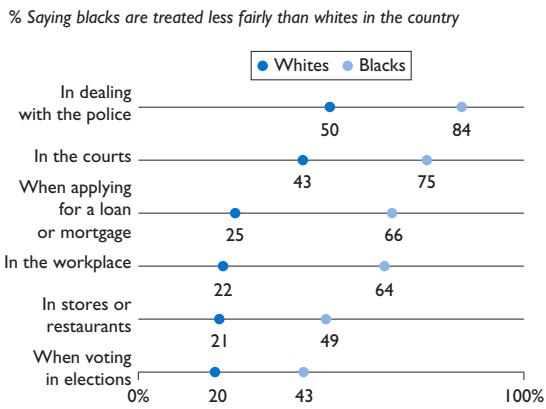


Figure 18.1.

Source: <http://www.pewsocialtrends.org/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart/>

3. White people are more likely to use drugs, but black people are more likely to be arrested and sentenced for a drug offense (Figure 18.2).
4. Only 36 percent of white Americans said that racial discrimination was a major reason that blacks in the United States may have a harder time getting ahead than whites (Figure 18.3).

1. <http://endgenocide.org/learn/past-genocides/native-americans/>

Prisoners under state jurisdiction sentenced for drug offenses by race, December 31, 2011



Percent who have ever used these drugs, by race, 2011

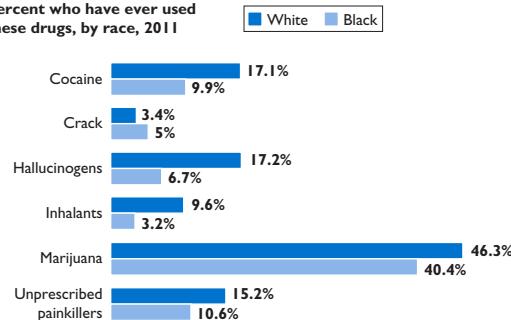


Figure 18.2.

Source: National Survey on Drug Use and Health, Bureau of Justice Statistics, and The Huffington Post http://www.huffingtonpost.com/2014/07/02/civil-rights-act-anniversary-racism-charts_n_5521104.html

% saying each of these is a major reason that blacks in the U.S. may have a harder time getting ahead than whites

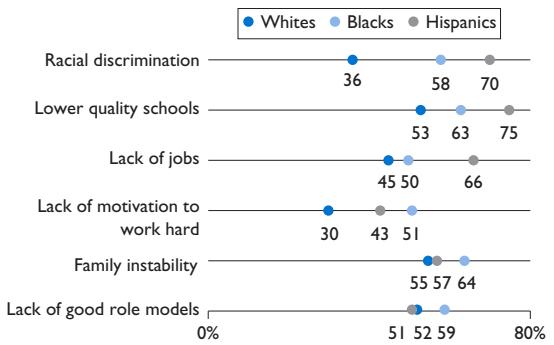


Figure 18.3.

Source: <http://www.pewsocialtrends.org/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart/>

Principle of merit: positions should be awarded on the basis of qualifications.

Racism: the belief that members of a given race are inferior by virtue of their racial identity.

Redlining: the practice of denying services to residents of certain areas based on their racial or ethnic identities.

Reparations: repairing a wrong one has done to a victim. This requires acknowledgment that one has done wrong, and it requires that the wrongdoer provide the victim with the needed repair.

White privilege: the set of social, political, and economic advantages enjoyed by white people in Western countries that are not enjoyed by other racial or ethnic groups in those countries.

Cases for Critical Thinking

Piscataway School Board v. Taxman

Deborah Williams, a black woman, and Sharon Taxman, a white woman, were business teachers at Piscataway High School in New Jersey in the 1980s. Their school district was forced to make budget cuts, and the board decided to lay off one of the business teachers. In ordinary circumstances, the board's policy is to lay off the teacher with the least seniority. In this case, however, Williams and Taxman had the same seniority—both were hired on the same day. The board eventually chose to lay off Taxman. When Taxman inquired into the reason for her being laid off rather than Williams, she found that she was not laid off for being less qualified, or for inferior job performance, or the like. It was rather that Williams, being black, would help preserve the racial diversity of the teaching staff in a way that Taxman would not. Taxman proceeded to file a complaint with the Employment Opportunity Commission. Her case eventually came before the US District Court in Newark in 1993. She won her case and was awarded \$144,000. The school board appealed the decision, but lost again. The

US Court of Appeals, in its opinion following the case, argued that the school board had violated the Civil Rights Act of 1964 outlawing discrimination on the basis of race, color, religion, sex, or national origin. Diversity alone, they argued, could never justify hiring and firing on the basis of race. The US Supreme Court agreed to hear the case, but Taxman and the Piscataway School Board settled the suit. Taxman received \$433,500 in back pay, legal fees, and damages.¹

1. <http://www.nytimes.com/1997/11/22/nyregion/affirmative-action-settlement-overview-settlement-ends-high-court-case.html>

Questions

1. What value, if any, is there in having a racially diverse faculty at a high school?
2. Did the school board make the right decision to lay off Taxman rather than Williams? Why or why not? If not, what would have been a better way to choose which teacher to lay off?
3. Is it ever morally justified for a government organization to use considerations of racial diversity for hiring and firing purposes? If so, when? If not, why not? What about for private businesses: is it ever morally justified for them to hire and fire on the basis of considerations of racial diversity?

The Georgetown 272

In the fall of 1838, Georgetown College (later Georgetown University) was deep in debt and in danger of closing its doors. To prevent this, the college sold 272 slaves for the equivalent of \$3.3 million in today's dollars. Georgetown was thus able to pay all its debts and keep its doors open.

The slaves were shipped to the port of New Orleans. Until recently, almost nothing was known about what had become of them. Thanks to generous private funding, however, a team of genealogists has been able to trace more than two hundred of the slaves from Maryland to Louisiana. They believe that there may be

thousands of the slaves' living descendants in Louisiana today—many of them in the town of Maringouin, Louisiana.

In 2016, Georgetown students organized protests and sit-ins, using the hashtag #GU272 on Twitter to put pressure on the university to acknowledge its connection to slavery and to make amends in some way. In November 2016, the university issued a formal apology and agreed to remove the names of the Rev. Thomas F. Mulledy and the Rev. William McSherry, the college presidents involved in the sale, from two campus buildings. It was also announced that descendants of the Georgetown 272 would be granted the legacy status—a kind of preferential, but not guaranteed, admission—that relatives of the school's faculty, staff, and alumni enjoy.^{1,2}

1. <https://www.nytimes.com/2016/04/17/us/georgetown-university-search-for-slave-descendants.html>

2. http://www.theadvocate.com/baton_rouge/news/communities/westside/article_b221befc-0f26-11e7-8783-330932e2f352.html

Questions

1. Was Georgetown University morally required to do something to acknowledge and make amends for an event that happened 178 years ago in the university's history—a time when no one who is now associated with the university or the Georgetown 272 was alive? Why or why not?
2. Did Georgetown University do *enough* to respond to this event in their past? Why or why not? If you think they should have done more, what else should they have done?
3. Once news of the Georgetown 272 came to light, the Georgetown University administration responded relatively quickly. Many attribute this quick response to the hundreds of Georgetown student activists who called for Georgetown to respond appropriately. Do college students and faculty who know of grave injustices perpetrated by their universities have a duty to hold their universities accountable for responding

appropriately, or is such activism above and beyond the call of moral duty? Why or why not?

Statues of Historically Significant Racists

A statue of Andrew Jackson, the president who ordered the forcible resettlement of thousands of Native Americans on the Trail of Tears, leading many to their deaths, stands prominently in Jackson Square in New Orleans, Louisiana. In 1960, the square was declared a National Historic Landmark. In 2012, the American Planning Association named Jackson Square one of America's "Great Public Spaces." In the Tennessee state capitol building in Nashville, there is a large statue of Nathan Bedford Forrest, commander in the Confederate army and former Grand Wizard of the Ku Klux Klan. Eight statues of Confederate leaders currently reside in the National Statuary Hall Collection on Capitol Hill in Washington, DC. Among them are Confederate president Jefferson Davis, vice president Alexander Stephens, and general Robert E. Lee. In Monroe, Michigan, there stands a statue honoring George Armstrong Custer, who oversaw the killing of thousands of Native Americans as a commander in the US Army.

Many are convinced that statues and monuments to known racists, such as the ones described here, have no place in America. It would obviously be wrong for there to be statues of historically significant Nazi leaders displayed all over present-day Germany. It is equally out of place, many say, for there to be standing monuments to men like Jackson, Forrest, and Lee in present-day America.

Others think that, for better or worse, such monuments represent America's history. As such, they ought to be left alone. On behalf of this proposal, some claim that none of us would look very good if we were judged by the standards of people hundreds of years in the future. Further, if we had to topple the statue of every person guilty of something terrible, there would

be very few statues standing at all. No one is unambiguously good, and that includes the notable people of the past.

Questions

1. What do you say: Should monuments to such people be taken down? Why or why not?
2. In your estimation, what is the best argument, or strongest consideration,

against your position? What do you say in response?

3. What is the purpose of displaying statues in public places such as parks and government buildings? To remind us of our history? To honor the people represented in the statue? Something else? How does your answer to this question support your answer to Question 1?

READINGS

• Reparations to Native Americans?

J. Angelo Corlett

J. Angelo Corlett argues that the US government morally ought to pay reparations to Native Americans. How much? As much as is humanly possible. His central argument has two key claims. The first is that clear historic rights violations morally ought to be rectified, as much as humanly possible, by reparations. The second is that the US government has committed clear historic rights violations against Native Americans. His conclusion follows directly from these claims.

Corlett focuses the bulk of his efforts defending the first key claim from objections. Among these is the worry that the historical details of the injustices perpetrated against Native Americans are too complex to serve as the basis of determinate reparations claims. How could anyone know exactly who was harmed, who harmed them, who ought to pay for those harms now, and how much they ought to pay? If these details are too complex, the objection goes, then paying reparations is not the proper response to these injustices. Corlett argues that we don't need to know all these details. We know that the United States played a key role in these injustices and that it harmed the ancestors of present-day Native Americans. On his view, that's enough. Moreover, he argues, we know that the lands now inhabited by most Americans or owned by the federal government were, for the most part, stolen from Native Americans. If so, then few who currently own those lands have a moral claim to them. Indeed, it is Native Americans who have such a claim.

Corlett also considers the objection that paying reparations would have terrible consequences. For instance, if the United States were to return all of the land stolen from Native Americans, this would likely be devastating to land-owning citizens and businesses. Corlett concedes that this is likely correct, but argues that if that is what morality and justice require, then we must live with these consequences.

Corlett concludes by canvassing several practical proposals for how the US government might pay the reparations it owes. He argues that none of the proposals

would, if executed, be sufficient to rectify the injustices that Native Americans have suffered. Nevertheless, he thinks that some proposals are clearly better than others, insofar as they more closely approximate what justice requires.

North American history is replete with accounts of atrocities being inflicted by members of one group on members of another. Some such examples include the seizure by the French, the British, the Spanish, the Dutch governments (and later by the United States and Canadian governments, respectively) of millions of acres of land inhabited by Native (North) Americans; the genocide (or attempt therein) of various Native American nations¹ by the U.S. military at the order of, among others, former U.S. president Andrew Jackson; the enslavement of several Native Americans in the United States, and other acts of oppression. These and other significant harms have found little justice in the form of reparations. This chapter seeks to clarify the nature of reparations and analyzes philosophically objections to policies of reparations to historically and seriously wronged groups with the primary focus being on the Native American experiences in the United States.

It is an embarrassing fact that major Western political philosophies by and large ignore (or, at best, give short shrift to) the claims of Native Americans to property. And given the importance of the concept of private property rights in historic and contemporary Western political philosophy, it is vital to delve into problems which, among other things, question who ought to be seen as having the overriding moral claim or right to, say, the lands on which entire countries and their respective citizens reside, such as with the United States. For the moral legitimacy of a country, it is assumed, is contingent on at least the extent to which that country acquires justly the land on which it and its citizens reside. The problem of reparations to Native Americans raises queries concerning the fundamental moral legitimacy of the United States. For it challenges the moral basis of putative U.S. rights to lands which, it

is assumed, are necessary for its economic and political survival.

What *are* reparations? And are reparations to Native Americans by the U.S. government morally required? This chapter seeks to answer these and related questions as they concern the Native American lives and lands lost to the United States by means of crimes committed against various Native American nations by the U.S. government and its military.

Reparations, according to *Black's Law Dictionary*, involve "payment for an injury; redress for a wrong done." They are payments "made by one country to another for damages done during war." Reparations involve restitution, which is the "act of restoring . . . anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury and indemnification. . . . A person who has been unjustly enriched at the expense of another is required to make restitution to the other."² Those receiving reparations are typically groups, though there seems to be no moral or logical preclusion to individuals receiving them. Often the evils perpetrated are such that there is no "just" or genuinely sufficient manner by which to rectify matters between the wrongdoer (or her descendants) and the party wronged (or her descendants): *Reparative compensation* is the main form of reparations. It seeks to rectify severe wrongs of the distant past by providing the wronged parties or their descendants a sum of money (often collected by general tax revenues), property, and other tangible goods that might be (roughly) proportional to the harms experienced by them. *Reparative punishment*, if it is ever morally justified, should be reserved for those who are themselves guilty of intentionally not paying substantial compensatory reparations. Moreover, reparative compensation/punishment must, I argue, always conform to the principle of proportional compensation and/or punishment: *Compensation and/or punishment for significant wrongdoing is always to be meted out*

From J. Angelo Corlett, "Reparations to Native Americans?" In *Responsibility and Punishment* (Kluwer Academic Publishers, 2001).

in (albeit rough) proportion to the wrongdoing(s) committed.

Although reparations are for the most part a compensatory matter, they share much in common with some of the “expressive functions” of punishment articulated by Joel Feinberg.³ Feinberg describes four expressive functions of punishment as “hard treatment.” Punishment involves “authoritative disavowal” of a society of a criminal act. It says publicly that the criminal had no right to act as she did, that she did not truly represent society’s best aims and aspirations in committing the criminal deed. Punishment also involves a society’s “symbolic nonacquiescence” or its speaking in the name of the people (when it is a democratic society) against the criminal’s wrongful deed. Punishment involves “vindication of the law” as a society goes on record by way of its statutes to reinforce the genuine standards of law. Finally, punishment “absolves the innocent” of blame for what a criminal does. Reparations, I argue, share with punishment these expressive features. Like punishment, reparations disavow the wrong(s) committed and charges that the wrongdoers had no right to perform such evil(s). Reparations, like punishment, say publicly that wrongdoings do not represent society’s highest aims and aspirations. In democratic regimes, reparations speak in the name of the people against the wrongdoings in question, and they uphold the genuine standards of law in the face of past failures of the legal system to carry out true justice. In addition, reparations alienate a reasonably just society from its corrupt past, absolving society of its historic evils. These are some of the specific expressive functions of reparations. Some of these expressive functions of reparations are articulated by Feinberg when he states that “reparation can express sympathy, benevolence, and concern, but, in addition, it is always the acknowledgment of a past wrong, a ‘repayment of a debt,’ and hence, like an apology, the redressing of the moral balance or the restoring of the *status quo ante culpum*.⁴

More generally, the expressive feature of reparations is to make public society’s *own* liability concerning the wrongs it has wrought upon a group or individuals. It is to offer an unqualified and unambiguous *apology* to the wronged parties (or their

successors) without presumption of forgiveness or mercy. Moreover, it is to acknowledge, in a public way, the moral wrongness of the act(s) in question and to never forget them. For as George Santayana encourages, those who do not remember the errors of the past are doomed to repeat them. . . .

The foregoing suggests the following reparations argument:

1. As much as is humanly possible, instances of clear and substantial historic rights violations ought to be rectified by way of reparations;
2. The U.S. government has clearly committed substantial historic rights violations against millions of Native Americans.
3. Therefore, the historic rights violations of the U.S. government against Native Americans ought to be rectified by way of reparations, as much as humanly possible.

The basis for (1) might be a desert-based (retributivist) one that insists that there is either a perfect duty or an imperfect duty to rectify past injustices of a substantial nature. Or, to the extent that it is humanly possible to rectify substantial wrongs for which a wrongdoer is responsible, the wrongdoer ought to rectify the wrongdoing. The locution, “as much as humanly possible” in (1) and (3) is meant to capture the idea of reparations being proportional to the harms they are meant to rectify.

OBJECTIONS TO THE REPARATIONS ARGUMENT AND REPLIES

If the reparations argument is plausible, then wherever there is significant injustice there is at least a *prima facie* reason to believe that such injustice deserves compensation or rectification. Moreover, where the facts of the guilt, fault, harm, and identity of the perpetrators and victims are clear reparations ought to be pursued for the sake of corrective justice. Hence, there is a presumptive case in favor of reparations to Native Americans by the U.S. government, given the substantial wrongs many Native Americans have experienced at the hands of the United States.

Precisely what is/was the harm perpetrated against Native Americans? . . . The campaigns against various Native American nations by the U.S.

military serve as examples here. One specific instance of U.S. crimes against the Lakota Sioux was the massacre at Wounded Knee, which in turn culminated in the retaliatory violence against the U.S. military at Little Big Horn. Examples of U.S. torts against Native Americans are the fraudulent takings of lands, often followed by the U.S. government's refusal to honor its treaties made with various Native American nations. Yet for all of the several instances of unjustified violence and other crimes, torts and contract violations committed by the U.S. against various Native Americans, few, if any, apologies or reparations have been issued by the U.S. government. These are some reasons that form the presumptive case for reparations to Native Americans. But such a presumption can be overridden if it can be shown that considerations against such reparations outweigh the strength of the *prima facie* case for them where the instances in question are not "hard cases."⁵ Hence it is important to consider the plausibility of various of the strongest objections to reparations to Native Americans . . .

THE OBJECTION FROM HISTORICAL COMPLEXITY

Given the above understanding of the nature of reparations, are reparations to Native Americans by the U.S. government morally required? Ought the U.S. government to provide reparations to Native Americans? A number of arguments can be marshaled against the imposition of reparations, and they deserve close scrutiny. First, there is the *objection from historical complexity*. This objection avers that history contains far too many and complex situations of conflict such that it would be impossible to figure out all of the injustices that would putatively require reparations. Where the perpetrators of the evils are dead and cannot be punished for their horrors it would be sheer dogmatic idealism to think that respecting rights requires or even permits the kind of complex legal casework that would be required to rectify all past wrongs. To award reparations to the wronged party or her descendants would end up forcing innocent parties (perhaps the descendants of the wrongdoers) to pay for what they themselves did not do. Among other things,

the objection from historical complexity seems to assume that past injustices should not forever burden future putatively "innocent" generations. The objection from historical complexity challenges (1) of the reparations argument, suggesting that there are some instances of historic injustice that ought not to be rectified by way of reparations.

THE PRINCIPLE OF MORALLY JUST ACQUISITIONS AND TRANSFERS

In response to this objection to the reparations argument, it might be pointed out that the inability to figure out with precise accuracy *all there is to know* about *every case* that putatively involves reparations hardly prohibits a juridical system from awarding some measure of significant reparations where cases are clear (based on unambiguous historical records, for example). Even if it were true that a full-blown policy of reparations would involve reparations to Native Americans by not only the U.S. government, but by the governments of Spain, Portugal, England, France, the Netherlands, among others, and even if it proved overly difficult to figure out the extent to which each said government contributed to harms against Native Americans, this would hardly show that clear cases of U.S. harms to Native Americans ought not to be compensated by the United States. Moreover, though the parties to a putative case of reparations would involve those who themselves did no harm to the victims in question, such "innocent" parties who currently reside on or "own" lands that were once resided on by Native Americans are in violation of the principle of morally just acquisitions and transfers:

Whatever is acquired or transferred by morally just means is itself morally just; whatever is acquired or transferred by morally unjust means is itself morally unjust.⁶

Basically, the intended meaning of this principle is that to the extent that property is acquired or transferred in a morally justified way (i.e., without force, fraud, or other kinds of coercion or deceit), the acquisition or transfer of that property carries with it a genuine moral claim or entitlement to occupy it without interference from others. To the extent that the

principle of morally just acquisitions and transfers is violated, there is no legitimate claim or entitlement to occupy the property being acquired or transferred. . . .

Although the locutions “morally just” and “morally unjust” are somewhat vague, relatively clear cases of unjust acquisition or transfer, for instance, exist: when such acquisitions or transfers occur as the result of significant nonvoluntariness (the violent use of force, for example) on the part of those relinquishing property, when acquisitions or transfers involve fraud, or severe misunderstanding between principal parties. In the case of Native American lands (then a part of the United States) most of which were taken from them forcibly by the U.S. military at the direction of the U.S. president Andrew Jackson and other U.S. officials (many of which lands were encroached upon illegally by U.S. citizens or civilians), there is no question who the wrongdoer was (the U.S. government, along with its citizen trespassers) and who the harmed parties were (Native Americans of various nations). In other cases, Native Americans were believed to have “given away” their land to invaders, interpreted as such, presumably, because of the hospitality of the Native peoples toward the invaders. In such cases, the questions are not who is the guilty party and who was the victim, but precisely how ought the victims to be “repaired” for the wrongdoings. In still other instances, such as our own, U.S. citizens have purchased in good faith lands from other non-Native peoples to which the former may not in fact have an overriding moral right. That a person purchased in good faith a stolen item in no wise entitles him to that item, as even the law stipulates. She who is truly entitled to the item has a right to it, and that right must be respected by all who take seriously what morality requires. Note that this argument is *not* contingent on the status of wellbeing of either the perpetrators or the victims of the evils inflicted that might require reparations. For reparations are morally required even if, say, the United States and its citizens were not well-off and if Native Americans were indeed relatively better-off. Reparative justice does not depend on the ability of perpetrators of wrongdoings to enrich their lives by inflicting wrongdoings

on others. It is concerned primarily with rectifying past injustices regardless of whether or not perpetrators have been enriched at all by their wrong-doings. Thus the attempt of the objection from historical complexity to defeat (1) fails.

THE OBJECTION TO COLLECTIVE RESPONSIBILITY

This raises the issue of collective moral retrospective liability responsibility of, say, the U.S. government for severe wrongs committed in *its* name or on *its* behalf against Native Americans. *The objection to collective responsibility* challenges the morality of reparations to Native Americans on the grounds that it is problematic to hold the current U.S. government and its citizenry morally accountable for wrongs committed by previous generations of people who acted or failed to act, as the case may be, to harm Native Americans and on behalf of the U.S. government, its agencies, and/or on behalf of themselves as actual or putative U.S. citizens. Thus the objection to collective responsibility challenges (2) of the reparations argument insofar as (2) seeks to hold the U.S. government responsible for certain substantial wrongs against Native Americans.

However, the objection to collective responsibility falls prey to at least two weaknesses. First, the fundamental documents that form at least the basis of U.S. government are still those which govern the United States. Even though the atrocities committed against Native Americans generations ago were not the direct responsibility of today’s U.S. citizens, the fact is that the U.S. government has persisted over time, and still exists.

Furthermore, it is plausible to think that when the U.S. army and government committed genocidal acts of violence against various Native American nations they rendered the United States collectively guilty and at fault because such acts were committed knowingly, intentionally, and voluntarily. Thus *we* (since it is *our* government, acting on *our* behalves) *are* justified in inferring that they were both causally responsible and morally liable (culpable) for those harms committed by them against the Native American nations. Additionally, though legally speaking it is not required that a guilty party apologize to the victim(s) of its

wrongdoing(s), the extent of the harms committed by the U.S. government against various Native American nations would seem to suggest that an apology is needed. If this is true, then it would appear that both U.S. governmental (collective) feelings and expressions of guilt and remorse are suggested. That is, we would expect that the U.S. government would, in some official manner, express its genuine feelings of guilt and remorse to Native Americans, publicly renouncing its history of racially motivated oppression and holocaust against Native Americans and vowing that it never occur again. Of course, a clear record of governmental policies should reflect a support for such genuine feelings of guilt and remorse.

It is reasonable, then, to hold *it* (the U.S. government) accountable for its past wrongdoings, pending some adequate argumentation in support of the morality of a statute of limitations on trying and punishing/compensating such crimes. If it was just “discovered” that a corporation committed a gross wrongdoing (including murders) in 1900, would not justice dictate that the courts seek rectification in such a case, especially if that corporation is still in operation? The reasoning behind this might be either that the putatively guilty corporation is simply deserving of being forced to compensate some parties for the wrongdoing in question (a retributivist rationale) and/or that the corporation has gained an unfair advantage in committing such acts. In either case, where matters are clear, past wrongs of such magnitude as what happened to many Native Americans require that justice be realized and there appears to be no adequate reason why past wrongs against Native Americans by U.S. governmental representatives should not be treated in a similar manner as those in which we treat gross corporate wrongdoings that result from corporate representatives’ actions or inactions. As for the individuals or aggregate mobs who committed theft, violent crimes, and other illegal acts against Native Americans, in some cases some criminals’ transfers of assets/fortunes can be traced to current U.S. citizens or institutions, thereby providing a source of reparations. Of course, one who inherits what has been acquired or transferred to her hardly deserves

what she inherits if possession of it is in violation of the principle of morally just acquisitions and transfers. The burden of argument, then, seems to be on those who would suggest that there is a moral statute of limitations on injustice. Furthermore, this burden of argument must be satisfied absent question-begging and/or self-serving reasoning.

A second problem with the objection to collective responsibility is that the principle of morally just acquisitions and transfers renders irrelevant the issue of whether or not the current U.S. government and its citizenry can legitimately be held accountable for the past injustices committed against Native Americans. In other words, the principle of morally just acquisitions and transfers renders otiose the objection to collective responsibility. And the principle does this in the following way: if, say, most or all of the lands currently occupied by the U.S. government and its citizens are in fact occupied in violation of the principle, then it matters not whether current occupants of those lands are actually liable for the illegitimate transfer of the lands. What truly matters here is whether or not the lands in question have indeed been transferred legitimately. Since most or all of them have not been legitimately transferred to current occupants, then no such occupants can have a legitimate and overriding moral claim to the lands they occupy. The problem of collective responsibility simply does not affect this fact. It is a red herring given the plausibility of the principle of morally just acquisitions and transfers. This rebuttal to the objection to collective responsibility relies on a “weak” form of compensation.

The significance of these replies to the objection to collective responsibility is that one provides a line between the U.S. government and many of the serious wrongs committed against Native Americans satisfying the legal criteria . . . [that are] necessary to establish a legal case for reparations. The second reply renders the objection to collective responsibility impotent insofar as Native Americans’ moral rights to the lands in question are concerned. Thus the objection to collective responsibility fails to defeat (2) of the reparations argument, unless, of course, it can be shown by way of independent argument that there is a moral statute of limitations on injustice. . . .

THE AFFIRMATIVE ACTION OBJECTION

There is another objection to reparations: the *affirmative action objection*. This argument states that reparations are otiose given the existence of affirmative action in the hiring of underrepresented groups in the United States, typically, those which have been victimized by racial discrimination. Such support of historically wronged/underrepresented groups takes the form of affirmative action programs. With affirmative action programs in place, there is no need for reparations policies to Native Americans since Native Americans qualify for affirmative action programs.

However, affirmative action legislation is designed to assist in the providing of equal opportunities in employment and education for Native Americans, African Americans, and other minority groups. Yet in the case of employment opportunities, it would seem that affirmative action alone serves as a cruel form of mockery when construed as compensation for the numerous and harsh civil rights violations of these groups by the U.S. government and its citizens. Moreover, if distributive justice is the reason for the grounding of affirmative action, then affirmative action cannot serve as a challenge to reparations. For the recipients of such programs earn the wages or salaries they receive. This can hardly be seen as a legitimate form of compensation for damages. Affirmative action programs, whatever their legitimacy status, cannot and should not be construed as a form of reparations. As pointed out in previous chapters, to think that affirmative action programs can take the place of reparations to Native and African Americans is to commit a category mistake by conflating two essentially distinct policies with distinct functions. . . .

THE OBJECTION FROM THE INDETERMINACY OF NATIVE AMERICAN IDENTITY

Another objection to the awarding of reparations to Native Americans is the *objection from the indeterminacy of Native American identity*. This argument states that, even if there is no moral statute of limitations on otherwise legitimate Native

American claims to reparations, such reparations are unwarranted because of the overly difficult task of determining the boundaries of ethnic group membership in general, and of Native American tribal affiliations in particular. For example, does it make moral sense to provide reparations to those who are, say, 10 percent Cherokee and 90 percent European American? What are the boundaries of ethnic group identity for purposes of reparations in particular and corrective justice more generally?

However, the objection from the indeterminacy of Native American identity is too pessimistic concerning the abilities of history, the law, and Native Americans themselves to trace ethnic ties within and between Native peoples. Today's Native American nations (such as the Navajo or Diné nation in Window Rock, Arizona, or Six Nations in Brantford, Ontario, Canada) keep reasonably successful or accurate track of membership within their respective nations. Thus to the extent that a person is able to be clearly identified as someone belonging to a particular Native American nation (or to more than one nation, for that matter), and to the extent that that nation (or members of it) are owed reparations, that is the extent to which each member of the nation, as a descendant of the victims of gross forms of wrongdoing, are deserving of reparations. It is irrelevant to the moral status of reparations (or the moral desert notion of reparations) that such reparations might impinge on the privacy of persons in regards to their ethnicities, or that a "Balkanization" of ethnic groups might ensue. Insofar as the boundaries of Native American identity are concerned, perhaps these possible problems are, in the end, insoluble in any absolutely precise or totally uncontroversial sense. But these factors hardly render unrequired reparations to Native Americans. For many Native Americans are 50 percent or greater Native Americans of one or more such nations. And the fact that some people's Native American identity is dubious in no way serves as a reasonable consideration to refuse reparations to those who are clearly of substantially Native American ethnicity and who are otherwise deserving of them. . . .

THE HISTORICAL REPARATIONS OBJECTION

Yet another objection to reparations to Native Americans is that reparations have already been paid to Native American nations in the past for wrongs committed by the U.S. government. I shall refer to this objection as the *historical reparations objection*. In the case of those awarded to Native Americans by the United States, there are the examples of the state of Georgia's restoration of many Cherokee landmarks, a newspaper plant, and other buildings in New Echota, and the state of Georgia's repealing of its repressive anti-Native American laws of 1830. (It took until 1962 for this to occur, however.) Moreover, in 1956 the Pawnees were awarded more than \$1 million in a suit they brought before the Indian Claims Commission for land taken from them in Iowa, Kansas, and Missouri. In 1881, the Poncas were compensated by Congress for their ill-treatment by the Court of Omaha, Kansas. For the illegal seizure of the Black Hills in 1876, then owned by the Sioux, compensation was paid. In 1927, the Shoshonis were paid over \$6 million for land illegally seized from them (the amount was for the appraised value of *half* of their land, however). There are a few other instances of reparations to Native Americans, as history tells us.⁷

However, the historical reparations objection is based on evidence of reparations to a few Native American nations for property rights violations. There is a threefold difficulty here. First, such reparations were hardly sufficient to serve as anywhere close to adequate compensations for the property, "maltransfers," damages, and other malfeasances in question. Furthermore, the objection ignores completely the question of reparations for undeserved violence in the form of human rights violations against Native Americans, much of such violence was inflicted on various Native Americans by the U.S. military. Finally, it ignores the fact that the vast majority of property rights violations and civil rights violations against Native Americans in general are as of yet *uncompensated*. Not unlike the objection from historical progress, the historical reparations objection, then, seems to be more of a non sequitur than a genuine concern.

THE OBJECTION FROM SOCIAL UTILITY

There is another objection to the argument for reparations to Native Americans, and it concerns whether or not the awarding of reparations to Native Americans by the United States would significantly decrease overall social utility, it would render the United States and its citizens—not to mention Native Americans themselves—worse off. For, as Locke argues, the European-based commercial system makes life better for everyone than the primitive hunting and gathering ways of life enjoyed by the Native American nations.⁸ I shall refer to this as the *objection from social utility*. This utilitarian-based concern is that, strictly speaking, the awarding to Native Americans of the lands that were acquired from them in violation of the principle of morally just acquisitions and transfers would surely mean the dissolution of the United States as we know it, as mostly each U.S. citizen resides on land which would, presumably, be relinquished to Native peoples should reparations be enforced. The economic, political, and social implications of this action would be unthinkable, even if the awarding of reparations in this fashion were required by the balance of human reason. So social utility requires that reparations not be awarded because of the undue disruption that would certainly be experienced by the majority of citizens of each of the countries in question. Where would such citizens go if forced by, say, international law, to vacate the premises? Which countries would be in economic and political positions to admit these newly homeless persons? Thus reparations to Native Americans are morally unjustified, it is argued, because they would violate some acceptable principle of social utility.

However, the objection from social utility does not take seriously what people deserve and what retributive justice requires. For even if, strictly speaking, the balance of human reason permitted or required reparations that would then force U.S. citizens from the land on which they reside, this would not mean that the moral prerogative of the reparations in question would lead to the disbanding of the current citizens of the United States. For Native peoples might very well settle for sovereignty rights to the existing lands, yet lease such lands to the rest of the inhabitants.

This mode of reparations would most likely dissolve the United States as we know it. But perhaps the United States, insofar as it was founded on the clear, repeated, and intentional violations of the content of the principle of morally just acquisitions and transfers, deserves to be dissolved in favor of taking much more seriously (than it currently does) morality and justice. Nonetheless, the sovereignty over certain lands by Native Americans to others satisfies the concern for morality and justice in that it gives back to Native peoples the lands to which they had and have ultimate (“trumping”) moral rights. But it also does not unduly affect those currently living on those lands in violation of the principle of morally just acquisitions and transfers. For they are not left without a place of residence, evading the aforementioned concern. (But they would be alienated from what is not really theirs to begin with, morally speaking.) Thus the objection from social utility does not pose an insoluble problem for reparations to Native Americans, though at least one strict form of reparations to Native Americans does imply the dissolution of the United States as we know it. . . .

SOME POSSIBLE REPARATIONS POLICIES

What sorts of specific compensatory measures ought to be imposed and against whom? Let us consider the plausibility of a range of possible policies of U.S. reparations to Native Americans. I will consider a number of such possible policies, from some of the more demanding ones to some of the least demanding. I assume that the crimes of unjust land takings, murders, and political repression by the U.S. government contain a minimal amount of moral and historical ambiguity: that the identities of the collective perpetrators, victims, and those targeted for reparations are knowable within reasonable clarity and precision.

Strict Justice, the Complete Restitution of Lands and Compensation for Personal Injuries/Loss of Personal Property

It might be argued that, strictly speaking, morality and justice require the complete return of the lands of North America that were gotten from Native peoples in violation of the principle of morally just

acquisitions and transfers. Such a measure of reparations would not only return all such lands outright to Native peoples, but would require the U.S. government (along with British, Dutch, Spanish, French and Canadian governments, among others) to pay native peoples significant sums of money as compensation for damages for the crimes (murders, rapes, mayhem, and robbery by the thousands) committed against Native Americans in the “settling” of the “New World.” It is plausible to believe that at least trillions of dollars would be rightly owed to Native Americans by these governments (perhaps respectively, especially considering punitive damages, unpaid interest accrued, and penalties!), each of which participated in the massacre and near complete genocide of all Native Americans over periods of generations. This form of reparations to surviving Native American nations would surely bring to economic demise each of the governments paying such reparations and would tilt rather severely the balance of global economic power in favor of Native Americans (and other indigenous peoples receiving similar such settlements).

In response to this proposed policy of reparations, it might be argued that a certain utilitarian consideration outweighs strict retributive justice, namely, that the millions of U.S. citizens not be made significantly worse-off in the process of rectifying past wrongs committed against native peoples. This is especially true since those who would be made worse-off are the clear numerical majority of people residing in the United States. Considerations of utility require that a less extreme and demanding policy of reparations be adopted. Thus the argument from social utility, refuted above, is reinvoked here.

But one question is whether or not such U.S. citizens are in a moral position to deny the legitimacy of a policy that would place them in economic ruins. The reason why such citizens are not in a moral position is that they are residing on lands to which they have no genuine and overriding moral right, that is, a moral right that (all things considered) trumps other competing moral claims to and/or interests in the lands in question. Does Andrew, who knowingly or unknowingly purchases or otherwise receives stolen property, have a moral claim to it? If so, does Andrew’s moral claim trump the

moral right of the victim (the original moral right holder of the property) to the same? Consider the following example of a wealthy person whose *entire* fortune was contingent on and amounted to that which she inherited in violation of the principle of morally just acquisitions and transfers. Even if she is not morally entitled to that which was obtained unjustly, is she not entitled to the fruits of her labor/investments above and beyond the basic value of the inheritance. Even if it is true that she mixed her labor with some of the ill-gotten fortune to increase the fortune over time, her increase in fortune might be offset by the balance of leasing or interest payments owed for the land ill-acquired or the fortune acquired unjustly. Yet we would not think it correct that she remain in possession of “her” fortune but that she return it to the rightful heir or owner, namely the person who has a valid moral claim to the fortune.

Complete Restitution of Lands

Another policy of reparations to Native Americans would be the complete restitution of lands to them. Although it is impossible to return to particular Native American nations the lands that were theirs originally due to the fact that some such nations no longer exist, it would be possible to provide Native American nations, *as a coalition*, all such lands that were acquired or transferred in violation of the principle of morally just acquisitions and transfers. Presumably, this would mean that most or all U.S. occupied lands would be transferred to Native American nations, and that Native Americans would, as a coalition, become a sort of “landlord” over those who currently reside on the lands.

One difficulty with this proposed policy of reparations is that it does not account for the crimes against persons and is thus an insufficient form of reparations to Native Americans who as a group not only lost their native lands, but also were in many cases enslaved, killed, suffered severe damage to forms of livelihood, and so forth. So the restitution of lands to Native Americans simply repays them for the lands which is theirs by moral right. However, it does not compensate them for the damage to the land and resources, nor for the crimes against persons committed against them by the U.S. government.

Complete Compensation for Harms to Persons and Property

Another policy of reparations to Native Americans would involve complete compensation for harms against Native Americans and their personal property. This would surely entail the payment of billions of dollars over several years, especially in light of the millions of such native persons who were murdered, mutilated, tortured, and enslaved, and those who survived but often had their belongings and livelihoods ruined by marauding U.S. citizens (even by the U.S. army!). A complete compensation program for Native Americans would likely involve a continual payment of a substantial sum of money to Native American nations, with the idea that such payments would in themselves hardly serve as adequate compensation for the crimes perpetrated.

The difficulty with this form of reparations is that it does nothing to provide restitution to native peoples for their land that was taken from them in violation of the principle of morally just acquisitions and transfers. In fact, such a “complete” compensation policy leaves untouched the very social structure and government and forces that subdued the Native Americans in the first place, standing as a continual reminder of how evil can mock true justice. Even compensation with restitution of lands is hardly adequate for justice in this case. The same would follow, then, regarding policies of partial compensation for harms to persons and property, partial restitution of lands, partial compensation for harms to persons and property, and partial compensation for lands.

The “Buffalo Commons” Proposal

Short of complete restoration of lands and/or compensation for personal injuries of Native Americans, there lies another proposal. It is the partial but significant restoration of lands to Native Americans, lands that have, it is argued, never played an important role in the economic viability of the United States. Thus the restoring of such lands to Native Americans by way of reparations would pose no real threat to the U.S. economy. This is what has been referred to as the “Buffalo Commons” proposal.⁹

What you end up with is a huge territory lying east of Denver, west of Lawrence, Kansas, and extending from the Canadian border to southern Texas,

all of it “outside the loop” of United States business as usual.

The bulk of this area is unceded territory owned by the Lakota, Pawnee, Arikara, Hidatsa, Mandan, Crow, Shoshone, Assiniboine, Cheyenne, Arapaho, Kiowa, Comanche, Jicarilla, and Mescalero Apache nations. There would be little cost to the United States, and virtually no arbitrary dispossession or dislocation of non-Indians, if the entire Commons were restored to these peoples.¹⁰

The reasons given in favor of this proposal are two-fold. First, it provides Native Americans a means of tangible sovereignty and self-determination. Secondly, it provides “alternative socioeconomic models” for possible adaptation by those who are not Native Americans.

Of course, this proposal, however reasonable in its attempt to not disrupt the lives of U.S. citizens, is grossly inadequate as a form of reparations for the remainder of the territories taken by force and fraud from Native Americans. Nor does it begin to compensate Native Americans for the murders and other personal injuries indicted on them by the U.S. government. Nonetheless, the Buffalo Commons proposal is a reasonable attempt to balance the application of some plausible principle of utility to current U.S. society over against the demand for some degree of rectification for injustice to Native Americans. Although reasonable, the Buffalo Commons proposal is insufficient as a means for providing adequate reparations to Native Americans.

Substantial Reparations Tax

The previously discussed policies of reparations to Native Americans would come in the form of court-ordered settlements. But that is not the only way in which such reparations might be made. Instead, a tax might be levied on U.S. citizens, one that would be paid to various Native American nations. A substantial tax might amount to, say, 25 percent of each non-Native American’s annual gross income in perpetuity.

An objection to this substantial reparations tax might be that it is overly substantial and demanding on U.S. citizens. However, it is hard to understand

this concern in light of the fact that current U.S. citizens are residing on lands to which they have no moral right, given the foregoing arguments. Sometimes justice and morality demand what we in our less honorable moments find too difficult to do. If anything is problematic about the nature and scope of the substantial reparations tax, it is rather that it is insufficiently substantial, not that it is overly substantial.

Minimal Reparations Tax

A minimal reparations tax might amount to, say, 1 percent of each U.S. citizen’s gross annual income. But if the substantial reparations tax is properly deemed as insufficient to adequately compensate for the harms committed against Native Americans by the U.S. government, then surely this minimal reparations tax would be nothing more than an insult to Native Americans and to justice and fairness itself.

The points of criticism of each of the above sketched reparations policies are meant to convey the idea that the fact that the U.S. citizenry does not desire to compensate Native Americans for the wrongs that the U.S. Government has committed against the latter shows a certain amount of moral ineptitude on the part of the U.S. citizenry in general. Moreover, if the principle of morally just acquisitions and transfers is correct in regards to the Native American experiences, then one is hardly in a moral position to deny the plausibility of any of these policies of reparations so long as they are acceptable to Native Americans. For neither policy is adequate to compensate Native Americans for the wrongs their people have suffered at the hands of the very government that persists today. Yet one wonders why, except for reasons of racism and lack of moral character, even today most U.S. citizens would balk at even the hint of a *minimal* reparations tax to cover a fraction of the costs of arguably the worst evils ever perpetrated by a modern government.

If the arguments against reparations to Native Americans in the United States are defeasible for the reasons given herein, then the presumptive case in favor of reparations to Native Americans gains strength. Barring further argumentation

that would render morally problematic such reparations, then, a case for such reparations has been made along the following lines. To the extent that history is unambiguous concerning the extent of guilt, fault, wrongdoing, and the identities of perpetrators and victims of historic injustices, policies of reparations to Native Americans should be enacted according to some fundamentally sound principle of proportional compensation.

If the foregoing analysis is sound, then one hope that the United States has of dragging itself out of the mire of its own perpetration of historic injustices against Native Americans is for it to institute adequate policies of reparations to Native Americans. Even so, such policies must receive far more commitment by the U.S. government than the treaties made by the U.S. government with Native American nations had received in the past. What is also needed is a national sense of shame-based guilt and collective remorse for the roles that the U.S. government and its citizenry played in founding the United States. Yet if such shame requires a higher-level self-consciousness, this might well be precisely what U.S. society lacks, providing its critics with ammunition for claims of the fundamental immorality of the United States in general. For a society that is based on unrectified injustice is itself unjust. But a society that simply refuses to admit its unjust history toward others not only remains unjust on balance, but serves as a stark reminder of the unabashed arrogance of its unspeakable badness.

NOTES

1. Similar points might well apply to Native Americans in Central and South America. Indeed, Native Americans in (former) island nations of the Americas, for example, the Hawai’ian islands were victimized (accompanied in the end by threat of military force) by unjust takings by the United States and others.
2. Note that nothing in this conception of reparations requires that the reparations be “paid” or rendered by the perpetrators of wrongdoing only.
3. Feinberg, *Doing and Deserving* (Princeton: Princeton University Press, 1970), chapter 5.
4. Feinberg, *Doing and Deserving*, p. 76.

5. For a discussion of hard cases in the context of law, see Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978), chapter 4.
6. This principle bears a keen resemblance to the principle of just acquisitions, transfers and rectification found in Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 150. However, the principle of morally just acquisitions and transfers makes no particular theoretical commitments to Nozick’s entitlement theory or its implications.
7. Debo, *A History of the Indians in the United States* (Norman, OK: The University of Oklahoma Press, 1970).
8. Locke, *Second Treatise on Government*, sections 34, 37, 40–43.
9. Ward Churchill, *From a Native Son* (Boston: South End Press, 1996), pp. 528–30.
10. *Ibid.*, p. 529.

J. Angelo Corlett: Reparations to Native Americans?

1. Corlett argues that reparative compensation or punishment must always be “meted out in (albeit rough) proportion to the wrongdoing(s) committed.” Do you agree that wrongdoings must always be compensated? If so, must that compensation be proportional to the wrongdoing committed? Why or why not?
2. Corlett compares paying reparations to punishment. How is paying reparations similar to punishment? How is it different?
3. Which objection to paying reparations to Native Americans do you find most compelling? Which do you find least compelling? Why?
4. Corlett says that if the United States paid Native Americans what they are owed in reparations, it would likely “dissolve the United States as we know it.” Why does he think this? Is this too high a price? Why or why not?
5. Which proposal for paying reparations to Native Americans do you think is most reasonable, all things considered? Which do you think is least reasonable? Why?

Affirmative Action: Bad Arguments and Some Good Ones

Daniel M. Hausman

In this paper, Daniel Hausman sets himself two goals. First, he wants to reveal the flaws of some popular arguments for and against policies of preferential hiring and admissions (PHA). Second, he offers an argument in favor of PHA that he believes is successful in showing that the practice can be justified.

Many people favor or oppose PHA on the basis of their view of its results. But, as Hausman notes, the actual results of PHA programs are difficult to determine and are highly disputed. Hausman does not take a stand, for instance, on whether PHA has actually improved or damaged the self-esteem of minorities, reduced or increased prejudice, etc. The evidence, he thinks, is inconclusive. But we can still assess the merits of arguments for and against PHA even in the absence of such evidence.

One classic argument opposing PHA claims that it is “racism in reverse.” Hausman rejects this line of reasoning, pointing out that PHA is not grounded in assumptions of racial inferiority or racial hatred, and that it is not designed to oppress, humiliate, and exclude. Hausman also rejects arguments against PHA that assume that it is morally wrong in hiring or admissions to take into account anything other than the applicant’s qualifications.

On the other side, defenders of PHA often rely on arguments from rectification or reparation to make their case. Many defenders think that harms should be rectified (remedied); racist acts are harmful; so they must be rectified, and PHA will do a good job of that. Hausman agrees that harms should be remedied, but by those who have actually done the harm. The harms of slavery, for instance, can no longer be rectified by those who perpetrated them, so this is a poor basis on which to justify PHA.

Arguments from reparations fare no better. Reparations are compensation owed by the government for wrongs that it has done or permitted. Hausman agrees that the U.S. and state governments were indeed responsible for many racist harms. But he offers a variety of reasons for thinking that PHA is not a good way of correcting for those harms.

Hausman concludes with an argument in favor of PHA. Ensuring equality of opportunity is a fundamental government responsibility. Hausman argues that PHA will help to advance this important goal. PHA won’t by itself solve all of the problems that our long legacy of racism has created. But it will to some degree level a playing field that unjustly favors white males.

Affirmative action has many aspects. Some, such as requiring that job openings be advertised so that minorities can learn of them, are not controversial. Other aspects, such as preferential hiring and admissions (PHA), with which this essay is

concerned, are hotly disputed. PHA takes minority status to increase an applicant’s chance of getting a job or getting admitted to a university. Though the policy favors applicants with minority status, it does not imply that minority status

should determine hiring or admission all by itself. (Nobody is proposing hiring blind bus drivers because they are minorities.) The idea is to favor otherwise qualified applicants who belong to disadvantaged groups. Because the pool of qualified minority applicants is often small, the direct benefits of PHA are also rather small. To limit the discussion, I shall focus in this essay largely on preferential hiring and admissions of African Americans, because they have a special history of slavery and oppression—even though the greatest beneficiaries of PHA have in fact been women.

There are many arguments defending preferential hiring and admissions and many criticizing it. Many of these arguments depend crucially on facts about the consequences. So, for example, critics have argued that PHA harms those it intends to benefit by undermining their self-confidence or by putting them in positions beyond their abilities in which they are bound to fail. Critics have also argued that those favored by PHA are often incompetent, and PHA thus undermines the credentials of beneficiaries, incites racism, and diminishes economic efficiency. Defenders argue that PHA has changed the American population's conception of what minorities and women can aspire to and that PHA has lessened racial disparities. These arguments would be powerful if their factual premises were true. But it is hard to know what the effects of PHA have been, and there is little evidence supporting any of these claims about the consequences of PHA. Heartwarming tales of successes of recipients of PHA and horror stories of harms and abuses are not serious evidence.¹

The most prominent arguments do not rely on controversial factual premises. Critics argue that PHA is racism in reverse: discrimination is wrong, regardless of whether it is directed against or for African Americans. Defenders argue that PHA helps to rectify past injustices committed against African Americans. These are the arguments one most often hears. But they are not good arguments. Defenders and critics should stop making them.

“RACISM IN REVERSE”

If it was morally impermissible to exclude African Americans from universities and jobs on the basis of

their race, how can it be morally permissible to exclude whites on the basis of their race? Lisa Newton, a philosopher at Fairfield University, enunciates this criticism as follows: “The quota system, as employed by the University of California’s medical school at Davis or any similar institution, is unjust, for all the same reasons that the discrimination it attempts to reverse is unjust.”² Louis Pojman writes in this volume that PHA is a racist policy.

Let us formulate this argument precisely. The word “discrimination” causes confusion, because it has both a neutral and a negative sense. In the neutral sense, discrimination is simply drawing distinctions, which may be a good or a bad thing to do. An admissions office does nothing wrong when it discriminates (in this sense) among candidates on the basis of factors such as test scores and high school grade averages. In the negative sense, discrimination consists in drawing distinctions unjustly. In the neutral sense, PHA obviously involves discriminating among candidates. Does it also discriminate in the negative sense—that is, unjustly? To avoid confusing the two meanings, it is best to avoid the word “discrimination” altogether, and ask instead whether the distinctions PHA draws among candidates are unjust.

Why might it be unjust to allow an applicant’s race to influence hiring or admissions? Perhaps injustice lies simply in allowing race to influence choices. But it is not always wrong to take race into account. A director making a movie of the life of Martin Luther King commits no injustice in refusing to consider white actors for the lead role. Refusing to hire a white short-order cook is, on the other hand, harder to justify. What’s the difference? The answer seems to be that race is relevant to playing Martin Luther King, while it is not relevant to frying eggs.

One way to capture the racism in reverse argument is as follows:

1. It is wrong in hiring or admissions to take into account anything other than the applicant’s qualifications.
2. PHA takes the applicant’s race into account.
3. Race is almost always not a qualification.
4. Thus, PHA is almost always wrong.

I hope the reader agrees that this is a good way to formulate the racism in reverse argument, because I am trying to get at the truth rather than to win points in a political debate by misrepresenting the critic's position.

Crucial to this argument is the notion of a "qualification." A qualification is any fact about an applicant that is relevant to how successfully the applicant can promote the legitimate goals of the organization to which the applicant is applying. For example, high school class rank and ACT scores are qualifications, because they are correlated with academic performance in college. Running the 100-meter dash in under ten seconds is also a qualification for admission if the success of its athletic teams is among the legitimate goals of a university. For universities without sports teams, like those in Europe, it is not a qualification. The race of applicants would be relevant to a university devoted to white racial supremacy, but the promotion of racial supremacy is not a legitimate goal. Since, as the Martin Luther King movie example illustrates, race is sometimes a qualification, this argument does not conclude that PHA is always wrong, just that it is almost always wrong. On the view that this argument makes precise, what was wrong with the exclusion and special hurdles faced by African Americans during the Jim Crow era was that their prospects were not determined exclusively by their qualifications.

The argument formulated above is a valid argument. The conclusion follows logically from the premises. To assert all three of the premises and at the same time deny the conclusion is to contradict oneself. Constructing valid arguments can be very helpful. If those whom you are trying to persuade grant the premises, then, on pain of contradiction, they must accept the conclusion. Alternatively, if those you are attempting to persuade reject the conclusion, then they must reject at least one of the premises.

Let us examine whether the argument is also sound—that is, whether as well as being valid, all its premises are true. Premise 2 is obviously true: preferential hiring and admission of African Americans takes race into account. Premise 3 in contrast is

debatable, because diversity among students and employees arguably serves legitimate goals of universities and some firms. Among the objectives of universities is to train business and political leaders who can interact with and understand people from many different backgrounds. Diversity within the student body serves this purpose.

More can be said about premise 3 and the importance of diversity, but let us focus on premise 1, which says that hiring and admissions should depend exclusively on qualifications. Premise 1 may seem plausible. It apparently explains why the racist exclusion of African Americans from schools, unions, and many professions was wrong: those exclusions were not based on qualifications. But premise 1 is false, and it does not correctly identify what was wrong with racist exclusions of African Americans. Consider three examples of hiring or admissions that depend on more than just qualifications:

- Case 1: Veterans are given preferences on civil service examinations and in college admissions.
- Case 2: An owner of a small grocery store hires his teenage daughter (rather than a more responsible teenager) to deliver groceries after school because he wants to keep an eye on her.
- Case 3: My father, who owned his own small company, often hired ex-convicts rather than applicants without criminal records because he thought that people who had served their time deserved a second chance. He did not hire ex-convicts because he had any illusions that they would be better workers.

Are the hiring or admissions policies in these three examples wrong?

Before answering, it is important to set aside unrelated reasons why the conduct may be wrong. Suppose, for example, that instead of owning his own company, my father was the personnel officer in a corporation, and he was instructed to hire the most qualified employees. If he then hired less qualified ex-cons because of his concern about their plight, he would be failing in his duties to the company that pays his salary. His actions would be wrong,

because they violated company policy, whether or not it is permissible to take factors other than qualifications into account. If instead he had instructions to give preferences to ex-cons and refused to follow them, he would be equally at fault. Second, if the grocery store owner were to put out a sign saying "Help wanted. I shall hire whoever is most qualified," and he then hired his daughter even though he knew there were more qualified applicants, he would be acting wrongly. The wrong consists in deceiving the applicants, not in taking into account his personal relationship to his daughter.

There is no defensible general principle that requires hiring and admissions to depend only on qualifications. It is not automatically wrong to take into account a veteran's past service to the nation when providing education or hiring, even when having patrolled the streets of Baghdad or losing a limb is not a qualification. I'm proud of my father's hiring, even though it was not based only on qualifications. If PHA is wrong, it is not because it takes into account factors other than qualifications.

If it is sometimes acceptable to take factors other than qualifications into account, does that mean that it was okay to exclude blacks from universities, from unions, from neighborhoods, swimming pools, even bathrooms? Of course not! Those policies were despicable, but what explains those wrongs is not that they took factors other than qualifications into account. Consider segregated bathrooms, which are of no economic importance and superficially appear to treat the races equally. (I was with my father almost sixty years ago, when he was thrown out of a "whites only" bathroom in Florida.) What's wrong with having separate bathrooms for different races? Is it only that the bathrooms for whites were nicer? If the bathrooms had been equally nice and the restrictions had been symmetrical, with whites not allowed into the "colored only" bathrooms as blacks were not allowed into the "whites only" bathroom, how could the policy be unjust or harmful to blacks?

Social context is crucial. In a racist black nation where there was a widespread view that contact with whites was defiling, segregated bathrooms

would be a racist insult to whites. In the U.S., segregated bathrooms, hotels, train cars, and so forth were a humiliating insult to blacks, not to whites. In 1941, when Marian Anderson, the great African-American contralto, gave a concert at Lawrence University, she could not spend the night in Appleton, Wisconsin, where I used to live. In the 1940s, Appleton did not allow African Americans to reside within city limits. Fortunately, Anderson could stay in a hotel in a nearby town. The inconvenience was not enormous, but the insult was. Think about how it feels to be treated as if you were "unclean"—as if mere contact was defiling.

As these examples suggest, the mistreatment of African Americans that constituted Jim Crow consisted in their systematic denigration by white society, which resulted in their poverty, oppression, and exclusion. It relied on intimidation, beatings, humiliation, and murder. It was deeply wrong because of how it treated African Americans, not because it picked its victims by their race. If those mistreated were chosen not because of their skin color but via lottery and then marked as inferior, perhaps with a tattoo on their foreheads, the mistreatment would be no less repugnant and unjust.

In contrast, preferential hiring and admissions policies—whatever their virtues or vices—are not grounded in hatred of whites. PHA does not denigrate or oppress whites, or exclude them from the mainstream of American life. The admissions offices at universities are not full of white-hating racists out to keep whites from soiling their universities. Lisa Newton is wrong: PHA is not unjust "for all the same reasons that the discrimination it attempts to reverse is unjust." If PHA is unjust, it is not for any of the reasons that racial discrimination against blacks is unjust.

The failure of this common criticism of preferential hiring and admissions does not mean that PHA is fair or advisable. There may be other and better criticisms. But there is no moral prohibition on taking factors other than qualification into account in hiring and admissions, and in any case race is sometimes a qualification. PHA is not reverse racism.

RECTIFICATION, REPARATIONS, AND PHA

The main argument in defense of PHA fares no better. It maintains that PHA is a good way of rectifying past injustices perpetrated against African Americans. Rectification is a familiar idea. If my neighbor, Henry, were to steal my bicycle, justice would require that Henry give it back to me and compensate me for the inconvenience. When rights have been violated, justice requires that, as far as possible, the injustice be “rectified”—that the world be restored to how it would have been if there had been no injustice. African Americans have over the past centuries been the victims of incalculable injustices. They were enslaved, kidnapped, beaten, raped, tortured, and murdered and, after the Civil War brought slavery to an end, African Americans suffered more than a century of lynching, peonage, and relegation to the status of second-class citizens. Though racism persists, things are obviously better now. But these past injustices have not been rectified. Accordingly, many argue that PHA is justified as a form of rectification.

One might state the core of their argument as follows:

1. Those who commit injustices owe their victims damages.
2. Massive injustices have been perpetrated against African Americans.
3. Thus, those who committed these injustices owe damages to their African-American victims.

If intended to justify PHA, this argument has three problems. First, to rectify past injustice, one needs to identify the perpetrators of injustices and the victims of injustices and to determine the magnitude of the damages the perpetrators should pay to the victims. With respect to slavery, both perpetrators and victims are long dead. Descendants of victims of crimes may have claims to particular goods stolen from parents or grandparents, but their claims are limited. Children are not responsible for their parents' and grandparents' crimes, and members of a race are not responsible for injustices committed by other members

of their race. How could PHA constitute the compensation that perpetrators of past injustices owe to their victims?

Second, rectification of an injustice is designed to restore people and their circumstances to that condition that would have obtained if no injustice had been done. Rectification in this sense for the wrongs of slavery is impossible. There is no way to know how the world would have been if there had been no slavery. Life in this country would have been utterly different. Few of our parents or more distant ancestors would have met, and consequently only a small portion of contemporary Americans would have existed in a hypothetical world without slavery. How can we possibly envision how things would have been under circumstances so different that they do not even contain the same people?

Third, identifying those who should pay compensation and those to whom compensation is owed would lead to a divisive inquiry into the virtues and vices of our ancestors, when they came to the United States, whether they conserved or squandered ill-gotten gains, and so forth. This is not a road that those who hope to improve race relations should want to follow.

Although widely misunderstood, invoking reparations rather than rectification solves the problem of identifying the responsible party. Reparations are a form of compensation provided by the government (and hence ultimately taxpayers) to acknowledge and partly to rectify past injustices perpetrated or permitted by the government. For example, the U.S. government provided \$20,000 in reparations to Japanese-Americans who were interned during World War II, or to their immediate descendants. The funds were raised through taxation of all Americans, including Japanese-Americans. There was no distinction between those people who may have profited from the internment and the great majority who did not benefit from it, because reparations are a civic responsibility for a civic wrong, rather than a personal responsibility for personal wrongs. Because government at all levels perpetrated injustices toward African Americans and acquiesced in many other injustices that could and should

have been prevented, it bears a great responsibility for past injustices toward African Americans.

Conceptualizing PHA as the paying of reparations rather than as rectifying individual injustices should thus in principle avoid divisive inquiries into the vices of our ancestors. But public discussion tramples subtle distinctions, and, unfortunately, proponents and critics misunderstand reparations and turn discussion of the issue into acrimonious finger pointing concerning the intergenerational transmission of personal guilt. A few years ago David Horowitz placed advertisements criticizing reparations in a number of college newspapers. These advertisements led to violent protests by those concerned about the disadvantages that African Americans must deal with. Among Horowitz's ten reasons to oppose reparations were: (1) we cannot identify the descendants of the perpetrators of the crimes of slavery; (2) few Americans owned slaves, and (3) most Americans have no clear connection to slavery. Since reparations are a civic responsibility for the wrongs government caused or permitted, these claims are irrelevant, but neither Horowitz nor most of his readers appear to have understood that. Supporters of reparations are just as confused. For example, in an op-ed piece in the *New York Times* (April 23, 2010), Henry Louis Gates takes the most vexing problem of reparations to be "how to parcel out blame to those directly involved in the capture and sale of human beings for immense economic gain," and he believes that historical research now makes it possible "to publicly attribute responsibility and culpability where they truly belong, to white people and black people."

Even if reparations did not cause such confusions, other problems with rectification apply equally to reparations. How much should be paid? To whom should reparations be paid? Though there are powerful reasons to diminish the huge racial disparities that divide our nation, those policies should not be regarded as reparations. The risks of misunderstanding, the problems in identifying the recipients, and the problems in determining how much should be paid are reasons not to invoke reparations to justify policies that diminish racial disparities.

Furthermore, even if reparations could be ascertained without provoking confused racial animosity, preferential hiring and admissions policies are not a defensible way of paying reparations. PHA does not focus on those who have been most harmed by past injustices, and it does not distribute the costs of paying reparations in a justifiable way. It unfairly imposes the cost of reparations—a civic responsibility—entirely on non-minority college applicants and job seekers, who bear no more responsibility for past injustices than anyone else. These costs, like the benefits PHA provide, are generally small, but it is still unjust both to make one group in society pay all the costs and arbitrarily to benefit just one group. If PHA were only one of a set of programs whose costs were distributed throughout the population, this objection would not be cogent. But apart from PHA, public policy does little to address racial disparities.

I am not arguing that Americans should forget past injustices. Without understanding the past, how could we understand the present and know what to do about it? Moreover, the fact that the problems of the present arose through past injustices creates a special obligation to address them. But it is impossible to undo the past or rectify old and large-scale injustices. We have no idea what would constitute rectification, and could not carry it out if we did. Although we need to look to the past for understanding, our moral concern should focus on the future. How can we free it of racism and of the disparities that racism has caused?

PREFERENTIAL ADMISSIONS AND EQUAL OPPORTUNITY

The other major arguments that do not depend on factual knowledge of details of the consequences of PHA invoke the value of equal opportunity. Critics maintain that equal opportunity condemns PHA. Defenders maintain that PHA promotes equal opportunity. Obviously, both cannot be right.

Consider an analogy. Suppose that in the local elementary school there are two first-grade and two second-grade classes. One of the first-grade teachers is excellent, and one is terrible. One of the second-grade teachers is also excellent, and one is

terrible. The socioeconomic status of the families in this community is uniform, and the children have had similar preschool experiences. The school board assigns students to first-grade teachers by lottery on the grounds that the fairest policy gives every student an equal chance at a good first-grade experience.

There is disagreement, however, about how to assign children to the second-grade teachers. Some school board members argue that every child should have one good and one bad teacher. Those children who had the good first-grade teacher should get the bad second-grade teacher and vice versa. These board members say, "If every child has both a good teacher and a bad teacher, then the children's schooling and overall future opportunities will be as close to equal as we can make them." Other school board members argue for a second lottery. They say, "Why should students be punished for having had a good teacher in first grade? Equal opportunity demands that every child should have an equal chance of having a good second-grade teacher."

This analogy is helpful in several regards. First, it explains why it can appear that PHA both promotes and impedes equal opportunity. If one is thinking narrowly about the chance of getting a good second-grade teacher, then a second lottery equalizes opportunity, just as (if there were no racism) the absence of PHA would equalize the chances of being hired or admitted of otherwise equally qualified applicants of different races. On the other hand, if one is concerned with opportunities over a lifetime, insuring that every child has one good teacher and one bad one promotes equality of opportunity, just as PHA does (on the assumption that the opportunities and resources available previously to black applicants have, on average, been worse than those available to white applicants). Those concerned with equal opportunity should be concerned with lifetime opportunities, not opportunities to acquire one or another immediate benefit or burden. Because of past inequalities and continued racism, PHA lessens inequalities in opportunity.

The school analogy also makes clear that PHA does not punish white applicants, just as assigning children who had the good first-grade teacher to the bad second-grade teacher does not punish

them. These kids have done nothing wrong. Indeed, it may be that nobody has done anything wrong. The policy of making sure that each student has one good and one bad teacher is not a way of rectifying in second grade an injustice done in first grade, because no injustice has been done. The justification for the second-grade teacher assignments is to provide children with similar overall opportunities, not to restore children to where they would have been if they had not previously been treated unjustly. In the case of PHA, unlike the elementary school analogy, some of the past inequalities in opportunity have been the result of injustices, but the point is to diminish inequality rather than to rectify injustice.

It is important to distinguish between compensation as rectifying injustice and compensation as equalizing opportunity. The former does not justify PHA, because, as I argued earlier, it is unfair to impose the costs of reparations or rectification on white applicants, since reparations are a social responsibility, and rectification is the responsibility of individual wrongdoers. By contrast, equalizing opportunity can justify PHA, because it is not unjust to diminish the chances of applicants whose prospects have on average been inflated by previous inequalities. The relevant question for a rejected white applicant is not "With my qualifications, would I have been admitted or hired if there were no PHA policy?" Nor is it "With my qualifications, would I have been admitted or hired if I were black?" The relevant question is "If the qualifications of all the applicants (including me) had not been skewed by past inequalities in opportunity and if there were no continuing racism, would I have been admitted or hired?"

Given previous inequalities and continuing discrimination, PHA brings us on average closer to equal opportunity.³ Like the children who had the good first-grade teacher, white applicants on average have had previous advantages. PHA diminishes these inequalities and counteracts some of the continued racist discrimination in hiring.

This argument assumes that the opportunities for black applicants have been in fact on average worse than the opportunities for white applicants. But there can be no serious doubt about its truth.

According to the Pew Research Center, the median wealth of African Americans in 2009 was one-twentieth that of whites. There is no plausible explanation of inequalities in outcomes that are this enormous other than unequal opportunities, and such large inequalities in outcomes obviously translate into inequalities in opportunity. A far higher percentage of black children live in poverty and in single-parent homes. On average the parents of African-American children are likely to have had less education, and the schools African-American children attend typically have worse facilities, lower-paid teachers, and larger class sizes. Some black applicants are highly privileged and many white applicants have grown up in dire circumstances, but on average, black applicants have had to cope with greater poverty, more difficult environments, and worse schooling. Their opportunities have been on average considerably worse, and they face the additional burden of continued discrimination.⁴ PHA does a little to lessen these inequalities in opportunity. Valuing equal opportunity (not equal results) is a reason to support it, not to oppose it.

CONCLUSIONS

This essay has focused on the most popular arguments concerning PHA. Their popularity does not reflect well on the subtlety of public discourse, because they are not good arguments. PHA is not racism in reverse. It is not racist. It does not aim to denigrate, exclude, oppress, or punish whites. The main argument in defense of PHA is just as weak. PHA is not justified as a form of rectification or of reparations. Reparations and rectification are impractical, racially divisive, and incapable of justifying a policy that imposes costs arbitrarily on only one segment of the population.

As we have seen, there are good arguments to be made in defense of PHA as promoting diversity and equal opportunity, but it could turn out that other consequences of PHA are so harmful that there is good reason to abandon the policies. If we knew the effects of PHA on racial animosity, on the self-conception and status of the minorities it aims to benefit, and on the extent to which they and others are successful, we would be in a better position to reach a definite conclusion concerning whether

PHA is beneficial. But we do not know its effects well enough.

One other consideration should be mentioned. Preferential hiring and admissions policies are more or less the only social policies in the United States that acknowledge the special handicaps disadvantaged minorities face and, in a small way, concretely aim to lessen them. Disadvantaged minorities would inevitably see the abandonment of PHA, without putting something substantial in its place, as white America turns its back on a disgracefully unjust situation. The deck is stacked, and white America gets to shuffle the cards. Will it do anything about the poor hands that minorities have been dealt?

NOTES

1. There have been serious investigations of the effects, which I cannot summarize here. In my view, the results have been inconclusive.
2. *National Forum* 58.1 (Winter 1978), pp. 22–23.
3. For example, in one study mailed applications with common African-American names were only half as likely to get callbacks as applications with names that are not associated with African Americans. See “Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination” by Marianne Bertrand and Sendhil Mullainathan (2004) (<http://www.economics.harvard.edu/faculty/mullainathan/files/emilygreg.pdf>).
4. This conclusion does not rest on the silly view that all differences in outcomes among members of different social groups result from differences in opportunities.

Daniel M. Hausman: Affirmative Action: Bad Arguments and Some Good Ones

1. Why isn’t it racist for schools to offer preferential admissions to blacks and Hispanics? What’s the difference between not admitting someone because they are black or Hispanic and not admitting someone because they are white?
2. If what was wrong with slavery and “Jim Crow” laws was not their racial basis, then what was wrong with them?

3. Suppose that the United States government were to pay reparations to the descendants of slaves. Why should people who are not descended from slave holders (such as recent immigrants) have to pay taxes to support paying these reparations?
4. What is the point of the parable of the two first-grade and two second-grade classes? Is it a good analogy to the circumstances in which preferential hiring or admissions might be called for?
5. What other arguments can you think of supporting or criticizing preferential hiring and admissions? Can you provide logically valid formulations of these arguments?

The Future of Racial Integration

Elizabeth Anderson

Elizabeth Anderson argues for the importance of racial integration as an ideal that should govern the development of our social and legal policies. She begins by identifying four stages of integration: (1) formal desegregation, which occurs when explicitly racist laws and social policies are abolished; (2) spatial integration, which occurs when members of all races are able to share public spaces on terms of equality; (3) formal social integration, which requires that members of different races fully cooperate with well-defined social roles that are not themselves racially identified; and (4) informal social integration, which occurs when members of different races engage with one another on the basis of trust, intimacy, familiarity, and ease. Anderson focuses her article on conditions in the United States, where only the first stage of integration has been largely achieved.

To make her case for racial integration, Anderson describes the many different kinds of harms that racial segregation imposes, mostly on members of minority groups. Failures of integration threaten the dignity of racial minorities, impose huge costs in terms of unequal social and economic opportunities, and undermine our democratic institutions, whose success is based on cooperative decision-making by equal citizens.

Anderson argues that these failures generate a moral obligation to foster racial integration in our society. Four reasons explain this moral obligation. First, citizens are entitled to social institutions that treat them with respect, rather than demean their dignity. Second, societies have a duty to ensure that a citizen's racial identity is not a pervasive liability when trying to make use of social and economic opportunities and public goods. Third, citizens are entitled to real, effective participation in democratic decision-making. Finally, public institutions in the United States bear a great deal of responsibility for past racial injustices and for many of the current racial disparities in opportunities, and so are morally required to remedy the harms they have done.

Anderson then critiques anti-integrationist arguments from both the political right and left. On the right, opponents of racial integration argue that current failures of integration are largely the result of voluntary self-segregation on the part of black citizens, rather than of racist attitudes and practices on the part of white citizens. On the left, Anderson distinguishes three strands of identity politics that deny the importance of racial integration. According to the first, proponents argue that racial

self-segregation is required in order for black citizens to develop psychologically mature and healthy racial identities. The second asserts that such self-segregation fosters mutual aid and the building of a distinctive racial culture that implies no animosity toward white majority citizens. In a third model, self-segregated communities, such as those represented by all-black college houses, help to generate knowledge from racially distinctive perspectives, knowledge of just the sort needed to counter racism. Anderson allows that there are valid points to each of these arguments but denies that they are sufficient to justify anti-integrationist practices.

Racial integration was once the rallying cry of the civil rights movement. Today, a half-century after *Brown v. Board of Education* declared public school segregation unconstitutional, integration is barely mentioned as an issue in the major media or by politicians. Conservatives tend to argue that whites now welcome integration and that current patterns of segregation are due to the voluntary choices of minority groups to stay apart. As if to confirm this argument, many activists on the Left express disillusionment with integration and defend the virtues of self-segregation. It is time to put integration back on the public agenda, and to reorient policies from voting rights and housing to affirmative action toward integrationist goals.

I. THE STATE OF INTEGRATION TODAY

Racial integration consists in the full inclusion and participation as equals of the members of all races in all aspects of social interaction, especially in the main institutions of society that define its opportunities for recognition, educational and economic advancement, access to public goods, and political influence. It takes place in four stages: (1) formal desegregation, (2) spatial integration, (3) formal social integration, and (4) informal social integration. Formal desegregation consists in the abolition of laws and policies enforcing separation of public facilities and accommodations on racial grounds. Spatial integration consists in the common use of facilities and public spaces on terms of equality by

substantial numbers of all races. A spatially integrated neighborhood may still be socially segregated, in that neighbors of different races may not interact in neighborly ways—welcome them to the neighborhood, engage in small talk, do small favors for one another. Similarly, a school may be spatially but not socially integrated if students of different races attend different “tracked” classes, participate in different school clubs, sit apart at the lunch table, and, in residential schools, inhabit different halls or dormitories. As Glenn Loury has stressed (2002: 95–6), even when people observe anti-discrimination laws, and so avoid “discrimination in contract,” they may still practice “discrimination in contact,” which often amounts to the shunning of marginalized groups by avoiding neighborly, collegial, or friendly relationships with them.

Social integration requires genuine cooperation on terms of racial equality. It can be formal or informal. Formal social integration occurs when members of different races fully cooperate in accordance with institutionally defined social roles, and all races occupy all roles in enough numbers that roles are not racially identified. It happens when white privates obey orders issued to them by black lieutenants, with the same degree of alacrity as they would have had the orders been issued by white lieutenants. It happens when white students and Latino students cooperate as equal lab partners, or as members of the school football team. Informal social integration involves forms of cooperation, ease, welcome, trust, affiliation, and intimacy that go beyond the official requirements of organizationally defined roles. It happens when members of different races form friendships, date, marry, bear children, or adopt different race children. At school

From Elizabeth Anderson, “The Future of Racial Integration,” in Laurence Thomas, ed., *Contemporary Debates in Social Philosophy* (Blackwell, 2008), pp. 229–240.

and at work, it happens when members of different races share conversations at the lunch table, hobnob over the coffee break, and play together at recess.

I call these “stages” of integration because they are ordered by degree of difficulty, and attaining the easier ones is typically a prerequisite to substantial attainment of the harder ones. Measured by these stages, how far have Americans gone up the ladder of integration? The first stage, formal desegregation, has largely been attained. This was the signal achievement of the civil rights movement. It immediately enabled spatial integration of public accommodations—the common use by all races of restaurants, buses, hotels, drinking fountains, restrooms, and other facilities generally open to the public.

But formal desegregation did not bring about spatial integration in neighborhoods, and only partially achieved it in public schools and workplaces. Even in the workplace, however, social integration is far from complete. Even when blacks have “made it” to managerial and professional positions, they still report high levels of discriminatory and disrespectful treatment.

Informal social integration lags far behind formal social integration. Only 1.9 percent of married couples and 4.3 percent of unmarried cohabiting couples are interracial. Asians have the highest rate of interracial coupling, at 19 percent, followed by Hispanics at 18 percent, and blacks at 5 percent (Fields and Casper 2001: 15). Racially mixed families, in which at least one parent is of a different race from at least one child, are more common: 17 percent of adoptees are of a different race from at least one of their parents. Here again, Asian children are most integrated with other-race households, black children by far the least (Kreider 2003: 13, 14). Informal social integration, especially of blacks, is a largely unfinished agenda.

2. THE HARMS OF SEGREGATION

Notwithstanding dramatic progress in integration since the Jim Crow era, substantial levels of segregation, especially of blacks, and especially at later stages, remain. Should we care? I think we must. Integration is needed to realize three types of goods: dignity, socioeconomic opportunity for

marginalized racial groups, and democracy for us all. Each stage of integration has its own role to play in advancing these goods.

2.1 Dignity

Racial segregation by law or policy has a fundamental expressive point: to constitute the excluded group as an untouchable caste. Formal desegregation is therefore necessary to remove the dignitary harm entailed by official segregation. But it is not sufficient. Habits of racial aversion, conceits of racial superiority, and stigmatizing fears of disorder stemming from interracial contact persist for generations after their official props have been removed. If, as a result of entrenched residential, school, and workplace segregation, dominant groups have hardly any contact with marginalized ones, how are they to learn more respectful habits of interracial interaction? Habits cannot be taught like a creed. They can only be learned by practice. Spatial integration provides the opportunities needed for practicing the first stage of respectful interaction: extending the common courtesies of civil society to other races—observing queues, yielding the right of way, manifesting the demeanor and bearing of one who accepts the sharing of public facilities with other races as a matter of course. The demands of respect go beyond those of bare civility, however. They include a readiness to welcome others as eligible equal partners in cooperative projects. Formal social integration is needed to learn and express such respect.

It might be thought that the demands of respect fall short of informal social integration. Can’t people get along respectfully without being more intimately involved? The answer depends on what is keeping them apart. If it is just a lack of personal chemistry, no disrespect is involved. But the causes of informal social segregation in the US are inextricable from racial stigma. About 12 percent of whites openly reject integration with blacks (Patterson 1997: 47). This factor should not be exaggerated, however. The main problem is not the small hard core of self-avowed racists, but the mismatch between whites’ sincerely avowed beliefs and their habits of the heart. Conscious beliefs are the first, easiest, and most superficial thing to change, because they

are most fully under our rational control, and most responsive to arguments and evidence. Such beliefs often have relatively weak connections to our feelings, unconscious habits, and somatic responses. To change the latter takes steady practice and a transformation of the conditions that trigger them.

Multiple independent lines of evidence point to a systematic mismatch between whites' conscious non-racist beliefs and their unconscious aversive attitudes toward blacks. Survey research has consistently found a dramatic gap between whites' support for antiracist principles and their opposition to doing anything that would put these principles into practice. Experiments show that people who avow antiracist beliefs nevertheless help blacks less than whites, especially when the blacks occupy higher-status social roles (Gaertner and Dovidio 1986). They also favor whites over blacks when their relative qualifications are ambiguous (Dovidio and Gaertner 2000). Psychological tests demonstrate pervasive unconscious associations of blacks with negative attributes, even on the part of people who explicitly reject racist beliefs and behavior. Such associations are correlated with negative social interactions with blacks (McConnell and Leibold 2001).

This evidence suggests that, while lack of social integration need not in principle express disrespect for others, the particular antipathy whites display toward social integration with blacks does express stigmatizing attitudes toward blacks. The social segregation of blacks therefore manifests a dignitary harm to blacks. Policies aimed at facilitating social integration in settings conducive to reducing prejudice would reduce this harm.

2.2 Socioeconomic Opportunity

Spatial segregation has profound material implications. Predominantly black neighborhoods are isolated from areas of job growth. This "spatial mismatch" of residence and jobs causes high unemployment in urban black neighborhoods, and high commuting costs for employed residents of poor and middle-class black neighborhoods. It also deprives black neighborhoods of commercial property and hence of a decent tax base. Residents of black neighborhoods therefore pay higher taxes for public services than their equal-income

counterparts in predominantly white neighborhoods. Consulting firms advise banks, retailers, and chain restaurants to avoid black neighborhoods, even when their middle-class status indicates a high density of spending power per block. Thus, black neighborhoods enjoy relatively poor shopping, restaurants, and other commercial services (Cashin 2004: 117–23).

White flight tends to suppress demand for houses in neighborhoods with many blacks, leading to low housing appreciation. This deprives blacks of home investment opportunities, the chief source of middle-class wealth. Low housing values limit blacks' access to the credit they need to start businesses. Racial segregation also leads the black middle class to be far more integrated with lower classes than the white middle class. In fragmented metropolitan areas, the black middle class therefore carries a higher burden of taxation for local public services to the poor than the white middle class, leaving even less money to support the kinds of public services that the middle class demands—for example, decent parks, well-maintained streets, and good schools. The black middle class is also less able to escape crime, even when moving to the suburbs.

The black poor suffer additional disadvantages when they are spatially segregated and hence live in neighborhoods with concentrated poverty. Segregation multiplies and spreads the effects of unemployment by filling poor blacks' social networks with people who have been similarly shut out of job opportunities. Concentrated poverty depresses the prospects of local businesses. It also depresses children's school performance: poor children do better in middle-class schools than in schools where most of their peers are poor (Brooks-Gunn et al. 1993).

Social segregation produces disadvantages over and above spatial segregation. It isolates marginalized groups from the mostly white social networks that govern access to jobs. Moreover, access to opportunities for human development is a function not simply of where one lives but of who one knows, both formally and informally. Discrimination in contact generates "development bias" in disadvantaged communities segregated from the mainstream. If the people in one's community have suffered disadvantages in the acquisition of human

capital, one will tend to inherit those same disadvantages (Borjas 1992; Loury 2002: 99–104).

Every organization works through informal as well as formal channels. Managers, for instance, typically have particularly trusted subordinates, whose advice they especially solicit and rely on. Such informal relationships provide critical opportunities for the development and demonstration of highly valued but objectively unmeasurable personal traits, such as loyalty, judgment, and leadership. Even when blacks assume the privileges and responsibilities of their formal titles, they are still often shut out from these informal relationships. Consequently, they tend to be confined to narrow, highly formalized paths to promotion, based on objective criteria such as degrees earned and years of experience, while whites enjoy additional access to informal paths to promotion based on mentoring and impressionistic criteria (Wilson et al. 1999).

Competence in interracial interaction is a two-way street. Disadvantaged racial groups suffer from others' lack of interracial skills. When white teachers and managers feel uncomfortable around blacks and Latinos, instinctively take the side of white students and employees in conflicts, and otherwise manifest unconscious racial aversion, they are rarely the ones to suffer. Whites can acquire interracial interpersonal skills only through practice, which requires that they be socially integrated with other racial groups.

Social integration of dominant and subordinate groups in institutionally supported cooperative settings works to reduce dominant group prejudice and incompetence in interracial interaction. This is known as the "contact hypothesis." It has been updated and confirmed in light of recent research on unconscious biases (Gaertner and Dovidio 2000; Dovidio et al. 2001; Wright et al. 1997). Thus, while social segregation is a major cause of continuing black disadvantage, social integration is a cure.

2.3 Democracy

Segregation harms us all, by undermining democracy. Democracy is a form of collective self-governance based on discussion among equal citizens. Democratic discussion involves reciprocal claim-making, in light of which citizens from

all walks of life, through their representatives, work out the rules for living together and decide which collective projects to pursue. The legitimacy of decisions in a democracy depends on their responsiveness to the reasonable concerns of all. This discussion takes place in civil society as well as in the institutions of government. Segregation undermines democratic discussion in both domains.

Consider first civil society, the spaces in which citizens come together to communicate and thereby shape the contours of public opinion. For this process to work democratically, citizens from all walks of life need to share their experiences and concerns, to work out a sense of the problems they share that need a collective response, and what those responses might look like. Political opinions drawn up in ignorance of or indifference to the interests, needs, and concerns of others are defective from a democratic point of view. This is why the "capacity to regard oneself from the perspective of the other ... is the foundation of the critical interaction necessary for active and effective citizenship" (Post 1998: 23). Segregation obstructs the development and exercise of this capacity. Racial segregation and stigmatization put people of different races in different walks of life: their life circumstances and prospects, the ways they and others view them, are different in politically significant ways. Yet spatial segregation prevents these citizens from different walks of life from communicating; social segregation makes them averse to and awkward in interaction.

The same difficulties arise for discussions among the representatives who occupy political offices. Spatial segregation, exacerbated by racial and partisan gerrymandering of legislative districts, produces a large group of overwhelmingly white districts, along with a handful of majority black, Latino, and integrated districts. Since the residents of the overwhelmingly white districts don't benefit from public spending in the other districts, the ordinary competition among districts for public goods acquires a racial cast. The same lack of benefit means that segregated blacks are less able to find coalition partners of other races (Massey and Denton 1993: 154–5). Even when politics is not overtly racially divisive, it is still likely to be racially negligent, in the sense that policies may be developed

and advanced without significant responsiveness to the impact of those policies on racially segregated groups. A politician in an overwhelmingly white district is free to advance policies that have a grossly differential negative impact on disadvantaged racial groups, without being held to account for the costs imposed on other racial groups, and possibly without even knowing the costs.

3. THE IMPERATIVE OF INTEGRATION

We have seen that racial integration is needed to undo the dignitary, socioeconomic, and democratic harms of segregation. Promoting integration is not simply a good thing; it is an obligation. This is so for four reasons. First, citizens are entitled to the social bases of self-respect—that is, to social arrangements that recognize rather than demean their dignity. Second, citizens are entitled to a basic structure of society that satisfies at least the following weak principle of racial equality of opportunity: that their racial status not constitute a pervasive liability in gaining access to socioeconomic opportunity and publicly provided goods. Third, citizens are entitled to effective inclusion in democratic discussion, so that democratic processes are actually responsive to the reasonable articulated concerns and claims of people from all walks of life. Since segregation undermines all three entitlements, society has an obligation to undo it.

These reasons would provide a compelling case for the state and other central institutions to promote integration, even if segregation had been produced by purely private choices. A fourth reason for holding these institutions responsible for promoting integration is that they created segregation through systematic historical wrongdoing. Current patterns of residential and school segregation are largely the product of a century of concerted unconstitutional social engineering by all levels of government: state policies promoting racially exclusive zoning and racial covenants, underwriting mortgages only in all-white neighborhoods, redlining black and integrated neighborhoods to discourage banks from making loans there, locating public housing exclusively in dominantly black neighborhoods, destroying thriving black business districts in the name of urban renewal, deliberately

driving highways between black and white neighborhoods to reinforce residential segregation, and locating public schools so as to encourage segregated settlement patterns (Massey and Denton 1993: 17–59). Wrongdoers are obligated not merely to cease engaging in such practices, but to remedy the continuing effects of their past wrongdoing. This is not a matter of compensating for past wrongs, but of dismantling a mechanism—segregation—put in place by past illegal state action that continues to perpetuate injustice.

Given the compelling interest in promoting integration, how is this interest to be advanced? Critics of integration imagine that it must proceed by interfering with freedom of association and destroying black institutions (MacDonald 2000: 212; Young 2000: 216, 226). This confuses means with ends. Of course, informal social integration cannot be forced; this would violate people's rights to freedom of association and be self-defeating besides. But integration can be facilitated, by creating more occasions for interracial cooperation in settings conducive to reducing prejudice.

The integrationist agenda proceeds on four fronts: political, residential, educational, and economic. Political integration aims to redraw political boundaries and powers so that different racial groups share public resources and services, and work together to solve their problems. They urge the formation of cross-border metropolitan regional authorities to deal cooperatively with issues such as public transportation, urban sprawl, and regional planning (Cashin 2004). Political integrationists also urge that state and federal legislative districts be drawn, where possible, to include substantial numbers of each racial group. The aim is to insure that politics proceeds on the basis of interracial engagement, and that politicians, even in majority white districts, have to compete for minority votes and so listen seriously to the concerns of members of disadvantaged racial groups.

On the residential front, the integrationist agenda includes, but looks beyond, vigorous enforcement of housing discrimination laws. For example, the zoning power currently enables municipalities to prohibit the construction of housing affordable to the poor and working class.

Because this power is used most frequently by towns close to concentrations of poor blacks, the class-exclusionary zoning power functions as an effective proxy for racial exclusion. From an integrationist point of view, it is high time that the class-exclusionary zoning power be sharply limited, both for the sake of blacks and Latinos and for the sake of the poor of all races.

At selective schools and at work, affirmative action is a primary tool of racial integration. Because work settings enforce cooperation among their participants, they bring about significant formal social integration, which creates a bridge to informal social integration and interracial civic engagement. In selective schools, affirmative action aims to produce a racially integrated and hence democratically responsive and legitimate elite.

The integrationist rationale for affirmative action differs from the standard compensatory and diversity rationales in several ways. The compensatory rationale is backward-looking, and focuses on delivering benefits to the targets of affirmative action preferences, conceived as victims of past discrimination. Integrationist affirmative action is forward-looking: it aims to dismantle current obstacles to racial equality and democracy, and views the targets of affirmative action as agents of this mission rather than victims. While not neglecting the benefits that targets receive from affirmative action, the integrationist perspective stresses the benefits these agents bring to others: expanding the social networks, human capital, and access to employment and professional services of their less integrated same-race associates; stimulating awareness of racial disadvantage and enabling the development of competence in interracial interaction on the part of racially isolated whites doing their part to realize the promise of democracy, especially in constituting a competent, legitimate, representative elite. The integrationist perspective thereby avoids a standard objection to compensatory affirmative action: the mismatch between those targeted for preferences and those most victimized by discrimination.

The integrationist rationale shares with the diversity rationale a forward-looking focus on the ways affirmative action targets bring benefits to

others. Unlike the diversity rationale, it does not confine its vision to the ways diversity advances the internal educational mission of schools, but looks to its effects in the wider world. It also resists the capture of affirmative action by identity politics operating under the guise of multiculturalism. It thereby avoids many standard objections to diversity-based affirmative action: that it amounts to a racial spoils system, conflates race with culture, places grossly excessive weight on race compared to other dimensions of diversity, and unjustifiably uses race as a proxy for the diversity features, such as political ideology, that really matter. When racial integration rather than diversity is the goal, the relevance of racial means to achieving it is evident; indeed, race-based selection is inherently the most narrowly tailored means to integration. Moreover, integration raises not merely differences in rationale but in the implementation of affirmative action. Where the diversity rationale tends to favor the preservation and celebration of racial group differences, integration favors conditions that bring people together across racial divides. As I shall discuss later, this means that integrationists look skeptically upon the voluntarily segregated college residential halls that were established by the partisans of identity politics.

4. THE ORDEAL OF INTEGRATION (I): CONSERVATIVE VIEWS

The dramatic costs to disadvantaged racial groups and to democracy of racial segregation make a compelling case for adopting racial integration as a major political imperative. Racial integration is an indispensable means to promoting the dignity of marginalized racial groups, advancing their access to the goods enjoyed in other neighborhoods, developing their social and human capital, enhancing everyone's competence in interracial interaction, reducing racial prejudice, and realizing democracy.

Despite the harms of segregation and the benefits of integration, a surprising confluence of opinion between conservatives and left-wing advocates of identity politics has arisen to rationalize segregation and resist active pro-integration policies. Their views highlight some problems with integration that must be addressed. Their recommendations,

however, misunderstand the dynamics of racial segregation and integration, and neglect the material and social conditions for the realization of their own professed goals.

Consider first the conservative view, exemplified by Stephan and Abigail Thernstrom (1997). Their position reflects a pattern typical of white opinion in America: support in principle for racial integration, combined with resolute opposition to any active policies for achieving this end. It rests on two arguments: that segregation is due to voluntary black self-segregation, and that attempts to actively promote integration are self-defeating.

The idea that black segregation is voluntary grounds the Thernstroms' complacency about integration. They argue that most whites are willing to accept substantial numbers of blacks in their neighborhoods. If whites avoid neighborhoods with many blacks, this is because these neighborhoods have other undesirable qualities, such as high crime and low-income neighbors. Since this aversion is based on color-blind considerations, whites' avoidance of neighborhoods with many blacks does not reflect racial antipathy. The Thernstroms infer that any segregation that exists today is the result of voluntary black self-segregation (1997: 220–31). Indeed, few blacks are willing to be the first entrants into an all-white neighborhood, and most prefer a neighborhood that is evenly divided between blacks and whites, or one with a predominance of blacks.

The Thernstroms' interpretation of white preferences fails to grasp the changed character of white antipathy for blacks, from overt hatred to unconscious stigmatization. While most whites do not feel hatred for individual blacks, they still hold demeaning stereotypical views about settings in which blacks are numerous or visibly increasing (Ellen 2000). “There goes the neighborhood.” This is not a color-blind attitude, nor is it innocent. Such racial profiling of neighborhoods helps create the very conditions—declining property values in “blackening” neighborhoods, with cascading negative consequences—that “justify” it.

Nevertheless, the Thernstroms are right to claim that black self-segregation is a factor in the perpetuation of spatial segregation. But *why* do blacks prefer self-segregation to being pioneers in nearly

all-white communities? Is this due to racial solidarity, or fear of an unwelcome reception from whites? Many blacks express pride in controlling their own communities and feel more at home in black majority neighborhoods. The obverse of this is that they *don't* feel at home in majority white neighborhoods. Many blacks who work in majority white settings report “integration fatigue,” a response to the constant stresses of exposure to the conscious and unconscious racial prejudice, aversion, and interracial incompetence of whites. To them, going back home to a majority black neighborhood, where they will be welcomed wholeheartedly, their dignity will not be affronted, and their right to be there will be taken for granted, is a blessed refuge from the strains and humiliations of integration. By contrast, commuting back home to an overwhelmingly white neighborhood, where their children may be shunned by some of the neighbors, or suspected as hoodlums by the local police, where a small but hard core of neighbors may actively express hostility to their presence, and most of the others may be cordial but distant, hardly provides the same comfort and affirmation.

Conservatives observe high levels of racial conflict (Rothman et al. 2003) and self-segregation on more racially integrated campuses, and infer from these facts that “socially engineered” integration doesn't work. Indeed, they argue that it is self-defeating, in that it arouses racial discord and resentment (Schuck 2003). Integrationists argue that racial conflict and self-segregation are symptoms of habits established in students' prior segregated lives. Given that most students come from segregated backgrounds, it is no wonder that their interactions at first are marred by stereotypes and prejudice, that they are relatively incompetent at respectful interracial interaction, and that they self-segregate at first, out of habit and comfort, when they enter an integrated setting. The question is whether experience with integration enables them to *learn* how to manage interracial interactions in more positive ways.

This can be tested. If the conservative argument is right, then racial conflict would drive out positive experiences of interracial interaction, and people's tendencies to self-segregate would be stable

or increase over time. If the integrationist argument is right, then integration in settings of institutionalized support for cooperation increases opportunities for both negative *and positive* interracial interaction. Over time, people learn to better manage interracial relationships, and thereby lead more integrated lives. Studies consistently confirm the integrationist hypothesis. Students who attend more racially integrated schools lead more racially integrated lives after graduation: they have more racially diverse co-workers, neighbors, and friends than students who attend less diverse schools (Brad-dock et al. 1994; Gurin 1999: 133).

The facts of unconscious racial stigma and the dynamics of racial interaction highlight the unreality of conservative insistence on “color-blind” policies. On the Thernstroms’ view, racial discord is caused by race consciousness (1997: 539). Any policy, such as affirmative action, that heightens race consciousness, is therefore self-defeating. Such a view could make sense only on the supposition that beliefs, habits, and attitudes don’t exist if we aren’t aware of them. Once we acknowledge that mental states reside at various levels of consciousness, the call for conscious color-blindness effectively amounts to a call to let unconscious racial biases operate unopposed by conscious policies that might change them.

5. THE ORDEAL OF INTEGRATION (II): IDENTITY POLITICS IN THE TWENTY-FIRST CENTURY

If conservatives have been complacent about integration, many on the Left actively promote racial self-segregation. In contrast with conservatives, they do so in recognition of the persistence of unjust racial inequality. The question is whether their prescriptions are up to the task of advancing racial justice. What’s missing from their defenses of black and Latino self-segregation, I’ll argue, is a clear understanding of the negative consequences of white segregation that this entails, as well as a gross undervaluation of the importance of forging *racially integrated* collective identities: forms of collective self-understanding, of who “we” are, that take for granted that “we” includes people of all races. Let’s

consider three models of self-segregation advanced by the Left. Call them the “identity development,” “benign ethnocentrism,” and “epistemological” models.

Beverly Tatum is a leading theorist of the identity development model of self-segregation. She argues that self-segregation is needed for individuals to develop psychologically healthy and mature racial identities. Black self-segregation emerges among children as a way to cope with racism and negative images of blacks. Blacks turn to one another for a sympathetic rather than a dismissive ear in discussing negative encounters with whites, to forge more positive black identities than those prevalent in mainstream culture, and to share their experiences of interpersonal racism and learn how to deal with it (Tatum 1997: 54–74).

Iris Young advances a different model of self-segregation, based on benign ethnocentrism, a kind of morally innocent in-group affinity. On this model, a social subgroup can legitimately prefer affiliating with “their own,” without implying any antipathy toward outgroups. Residential “clustering” by race is morally permissible

when its purpose is mutual aid and culture building among those who have affinity with one another, as long as the process of clustering does not exclude some people from access to benefits and opportunities. Such a clustering desire based on lifestyles or comfort is not wrong even when acted on by privileged or formerly privileged groups . . . if it can be distinguished from the involuntary exclusion of others and the preservation of privilege. (Young 2000: 217)

Integration, Young argues, focuses on the wrong issues. The mere fact that neighborhoods are racially identifiable is no cause for concern. What matters is the equal allocation of benefits to different areas, not the equal allocation of racial groups to different areas.

Aimee MacDonald (2000) defends an epistemological model of self-segregation in the course of defending racial program houses on college campuses. Racial self-segregation provides a locus for the generation of knowledge from racially distinctive perspectives, knowledge that is needed to

counter racism. Because race defines people's social locations, their opportunities, and the ways people perceive and treat them, people experience the social world differently in virtue of the ways they are racially classified. Arriving at an understanding of how this is so requires people to come to grips with their racial identities, which in turn requires that people of the same race share their experiences and work together to interpret them as a basis for antiracist action.

Taken together, the arguments of Tatum, Young, and MacDonald offer a powerful account of the benefits of self-segregation. *I happily acknowledge that these benefits exist*, or, in Young's idealized case of benign ethnocentrism, which abstracts from the fact that ethnocentrism in today's world is inextricable from outgroup antipathy and responses to it, might exist. Yet none of their accounts is grounded in a realistic appraisal of the material and social conditions for advancing racial equality. To achieve racial equality, blacks need to change, whites need to change, and we need to change. All of these changes can happen only through racial integration. Let us recall why.

Young imagines a world in which racial equality can be achieved by moving resources to the people, rather than moving people to the resources. We could imagine this strategy working if disadvantaged racial groups lacked only material resources. But, as we have seen, people's access to advantages is mediated not simply by impersonal allocative rules, but through social, including personal, relationships. To some degree, affirmative action functions for blacks and Latinos as a formal substitute for the informal social connections that enable whites to get ahead. But it is a fantasy to suppose that the substitute is or ever could be perfect, especially at higher rungs of the occupational ladder, where people need to prove themselves through more intangible criteria, such as trust, that develop and become salient through personal relationships. Moreover, as Patterson and Loury stress, blacks need experience in integrated settings to acquire the skills needed to manage and lead racially integrated, majority white institutions. This is a matter of acquiring human capital, not of assimilation. Integration does not assume that the habits learned

and deployed at work or in other integrated settings replace those that prevail in other settings. Racial equality therefore requires that blacks and Latinos change, in that they acquire forms of human and social capital that can be obtained only through social integration.

When blacks and Latinos self-segregate, whites are of necessity racially isolated. Tatum argues that all-white groups can work out positive antiracist white identities for themselves, without having to ask blacks and Latinos to take up the burden of helping them deal with their prejudices (Tatum 1997: 90–113). Yet whites have to be made aware of their own racial privilege for this to happen. Tatum and Young acknowledge that it is hard for whites to become aware of this if they are isolated from blacks and Latinos.

No doubt, among whites eager to have a non-racist identity, the opinions they express in an all-white group could be managed by a skilled psychologist of race relations, such as Tatum herself. The real difficulty lies deeper than people's conscious opinions. To focus on their beliefs about racial privilege or their quest for a non-racist self-understanding is to imagine that acquiring a politically correct consciousness is what whites need to be able to treat blacks and Latinos as equals. Yet we have seen that what most urgently needs to change are people's unconscious habits of interracial interaction and perception. And the fundamental way to change these is to practice respectful interaction in settings that promote interracial cooperation. Whites need this practice more than anyone else, since they have the least experience in integrated settings.

Racial equality cannot be achieved without interracial interaction. To achieve this, we need to generate practical knowledge of how to work together on terms of equality. Only by working and thinking *together* can we work out mutually respectful and cooperative habits of interaction. To be sure, MacDonald is right to point out that blacks and Latinos at times need to talk among themselves to work out strategies for coping with the stresses of integration. But she is wrong to suppose that the possibilities for generating such knowledge would be under threat by closing down racial program housing. Self-segregation is the default position of black, white, and Latino Americans. Black and Latino students will find one

another and work out racially defined identities and epistemological perspectives without needing to be housed together. The most scarce, important, and difficult community of meaning we need to construct is that of a racially integrated “us.” And this community cannot be achieved if black and Latino students institutionalize their self-segregation.

MacDonald’s epistemological argument can also be questioned on its own terms, to the extent that it focuses on the *preservation* of racially exclusive communities of meaning. There is no point in preserving the races, understood as social positions in a racialized social hierarchy. But there may be a point in preserving cultural meanings and practices that are independent of racism and the struggle against it. This is why MacDonald, like Young, shifts from a structural account of race to a cultural account. It is no doubt true that cultural meanings and practices that originated in black and Latino communities have immeasurably enriched American culture. But only a spurious association of culture with blood or ancestry can support the thought that racial self-segregation is needed to preserve or develop diverse cultural meanings and practices, even those that originated among segregated groups. Whites and Asians can, and do, play jazz. No group “owns” any particular cultural practice or has any particular entitlement to exclusive development rights to it. In a free and democratic society, culture is part of the commons and is no racial group’s intellectual property. The demand to “preserve” particular cultural communities of meaning freezes culture in racialized cubicles, prevents its free appropriation by racial others and, most importantly, prevents its free development by an integrated “us.”

The idea that institutionalized self-segregation is needed to preserve epistemic diversity is equally spurious. It makes sense only against a background assumption that integration is the same as assimilation and cultural homogenization, or that it presumes the fixity of mainstream culture. To the contrary, integration is a constant generator of new cultural diversities and epistemic perspectives, just as cross-pollination constantly generates novel combinations of genes in plants. And far from presuming that mainstream culture should remain static, integration aims to *change* it, especially to the

extent that it embodies unconscious racial stereotypes and prejudices.

I conclude that the integrated “us,” not the self-segregated racial group, is the critical agent of racial justice that most urgently awaits deeper and richer construction. This is consistent with affirming that “effective resistance to racial domination requires that the black victims of that domination organize and motivate themselves to collective action through the systematic practice of pro-black discrimination in contact” (Loury 2002: 97). My point is that neither justice nor democracy can be realized if the self-segregated racial group is celebrated as a more worthy site of identity and emotional investment than the integrated “us,” as multiculturalists would have it. Identity politics, in the form of ethnoracial nationalism, was no doubt a necessary moment in the struggle for racial equality (Patterson 1997: 65–6). But it is time to strike a new balance between moments of self-segregation and of integration, decidedly in favor of the racially inclusive “us.”

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Elizabeth Anderson: The Future of Racial Integration

1. Do you think that Anderson has accurately identified the stages of racial integration? If so, give your assessment of where your community stands with regard to her four stages.
2. Anderson offers a distinctive rationale for policies of affirmative action. What is it, and how plausible is it?
3. Anderson presents one politically conservative argument against racial integration. Reconstruct that argument and critically assess Anderson's replies to it.
4. Anderson presents three politically liberal arguments against racial integration. Reconstruct one of those arguments and then critically assess Anderson's reply to it.
5. Do you think that racial integration is valuable for its own sake, valuable only as a means to some further valuable situation, or neither? Defend your answer.

Justice, Deviance, and the Dark Ghetto

Tommie Shelby

Many in America argue that poor urban black people (what Shelby calls the “ghetto poor”) ought to “take responsibility” for their actions and stop blaming the government for their troubles. Others argue that American society has failed to treat the ghetto poor justly and that this explains their relative disadvantage in society. If this latter view is correct, then calls to “take responsibility” and the like are instances of blaming the victim. In this article, Tommie Shelby considers the kinds of criticisms directed at the ghetto poor’s attitudes and behaviors that are (and are not) appropriate, given that their conditions are the product of injustice.

Shelby argues that some criticisms of the ghetto poor are misplaced. For example, young urban black men and boys are often criticized for participating in crime such as shoplifting or using and selling drugs. Shelby grants that some of these crimes deserve criticism, but he argues that many do not. He thinks that these behaviors are often the product of feelings of desperation, guilt, and shame resulting from crushing (and unjust) poverty. Shelby also defends the ghetto poor against complaints about their unemployment, rioting, and overrepresentation among the incarcerated. One of his crucial claims is that sometimes one’s duty of self-respect requires one not to mindlessly obey the law when the relevant law is unjust or being unjustly applied.

Shelby does, however, think that some criticisms of the ghetto poor are appropriate and that the ghetto poor do have some responsibility to help bring about a more just political state—even if that state is oppressive toward them. For example, Shelby argues that it’s very unlikely that a change in the unjust conditions of the ghetto poor will be achieved without their active participation. Thus, he thinks that the ghetto poor bear some responsibility to help bring about such a change. To suggest otherwise, he argues, would be to fail to see the ghetto poor as full moral persons and political agents in their own right.

The truth of the dark ghetto is not merely a truth about Negroes; it reflects the deeper torment and anguish of the total human predicament.

KENNETH B. CLARK, *DARK GHETTO*

Unjust social arrangements are themselves a kind of extortion, even violence, and consent to them does not bind.

JOHN RAWLS, *A THEORY OF JUSTICE*

From Tommie Shelby, “Justice, Deviance, and the Dark Ghetto,” *Philosophy and Public Affairs* 35 (2007), pp. 134–137, 140–143, 151–160. Notes have not been reprinted.

DEVIANC E AS A RESPONSE TO THE GHETTO PLIGHT

... Ghettos are defined by three core characteristics: race, urban location, and poverty. In the United States, ghettos are generally understood to be (1) predominantly black, (2) urban neighborhoods, (3) with high concentrations of poverty. Although ghettos exist in other advanced capitalist societies and my analysis is relevant to them as well, the issues of justice that U.S. ghettos raise are especially acute and in some ways unique. Of course, there are poor neighborhoods in the United States that are not predominantly black, and much of what I will go on to say about black ghettos (or analogous

things) could be said about white slums, Latino barrios, some Indian reservations, and some Asian communities. I focus on black ghettos because they figure most prominently in the public imagination as enclaves of the pathological “underclass” and they are an especially salient example of the problems of racial and economic justice I am concerned with. I focus on high-poverty urban neighborhoods rather than on poor people wherever they happen to live because the high concentration of poverty in inner-city neighborhoods is associated with behavior and attitudes that are not only deviant (i.e., in sharp conflict with commonly accepted norms) but are also widely perceived as a threat to the freedom, property, and safety of others and that therefore lead some to regard many in such neighborhoods as not deserving of further government attempts to improve their lot.

I should emphasize that many who live under ghetto conditions respect the law, accept conventional morality, and make an effort to conform to “mainstream” standards of public and private conduct. Some accept dead-end, menial, and low-wage jobs as they struggle to maintain a decent life for themselves and their families. Most value work and desire to be economically self-sufficient. Some graduate from high school or pass the GED; some of these get post-secondary education or job training; and a few even go on to graduate from college. In short, a substantial segment of the ghetto poor are not alienated from the wider society, its major institutions, or its basic social norms. However, many are alienated, some deeply so.

High-poverty neighborhoods with few good employment options and poor schools lead some residents, especially those unemployed for long periods, to consider securing income through illegitimate means. Ghetto poverty creates desperation and feelings of shame, and some, seeking to escape the weight of their social conditions, or at least to make it more bearable, resort to crime. Of course, crime does not just occur in the ghetto. People from all races, classes, and types of neighborhood engage in criminal activity for money, status, power, or amusement. When persons from the ghetto choose crime, however, they do so under conditions of material deprivation and institutional racism. Thus

their criminal activity might express something more, or something other, than a character flaw or a disregard for the authority of morality.

Some rely on crime to supplement legitimate income derived from work, welfare benefits, or private aid. Others, such as those who have dropped out of the legitimate labor market altogether, do not qualify for welfare benefits, or cannot rely on kin support, use crime as their primary source of income. Although the line is fine and easy to cross, some persons commit crimes without allowing “the streets” to define their social identity or corrupt their souls. Nevertheless, to engage profitably in street crime one must develop the appropriate skills, strategies, and dispositions. This repertoire is simply street capital, assets that one can use to secure income in the underground urban economy. Just as one may use financial capital without being, strictly speaking, a “capitalist,” one can draw on street capital without being a “criminal.” However, crime can become a vocation, and as such it has its own set of disciplines or what I will call “ethics.” There are two broad criminal ethics that I want briefly to describe. Note that these descriptions are to be understood as ideal types, constructed to highlight the core features of a particular action-orientation by abstracting away from characteristics that are extraneous. Real people will rarely embody these ethics consistently or fully, although some may aspire to.

“Gangsters” use violence, threats, and intimidation to forcibly extract money, goods, and services from others. They are fearless and use force or the threat of it to get what they want. They are skilled fighters and adept at the use of weapons. They can strike fear in their victims with little effort. To achieve their aims, they maim and even kill, sometimes without mercy or remorse. The criminal domain they operate in includes robbery, gambling rackets, loan sharking, and extortion. “Hustlers,” by contrast, use deception, manipulation, and treachery to achieve their objectives. They are skillful liars. They are cunning and proficient at subtly exploiting their victims’ personal weaknesses. As amateur psychologists, they have a gift for understanding human nature, a talent they use to garner their victims’ trust, only to betray them.

Their domain includes theft, fraud, prostitution, and swindling. Both gangsters and hustlers flout the law and have little if any respect for the authority of mainstream institutions. These attitudes are appropriate to their trade; it is rational to cultivate them once one has chosen street crime as a way of life. It should go without saying that these two ethics are not mutually exclusive; one need only consider the modus operandi of many pimps. Nowhere is this more obvious, however, than in the selling of illegal drugs in the ghetto. . . .

So far I have not mentioned the racial significance of deviance in ghetto communities. Yet this dimension is crucial to understanding the choices many poor urban blacks make. Notwithstanding the widespread belief that racism is a thing of the past and the growing demand for color-blind public policy, racial prejudice continues to have a negative impact on the life chances of racial minorities in the United States, especially black citizens. The impact of institutional racism is deepest in dark ghettos, because here racism and extreme poverty combine to create a uniquely stigmatized subgroup of the black population. The peculiar consequences of this dynamic, especially when joined with the ghetto subculture just described, play themselves out in many arenas, but here. I focus on just three: employment, housing, and the criminal justice system.

Many working-age ghetto residents have little education, are low skilled, and have gone long periods without legitimate jobs. In the urban labor market there are often many more applicants for low-skilled jobs than there are jobs available, so employers can afford to be selective, engaging in so-called statistical discrimination. These employers are aware that a criminal subculture affects social life in the ghetto, that there are high drop-out rates among urban blacks, and that many poor people do not work regularly. This leads some employers to expect blacks from the ghetto to be generally violent, dishonest, unreliable, and ignorant. Because of longstanding racial stereotypes, the high frequency of these traits among the ghetto poor may seem to lend credence to racist beliefs. For example, the joblessness of some ghetto residents will appear to many employers as laziness and this is of course a stereotype that blacks strongly resent.

One consequence of all this is that many employers avoid hiring blacks from the ghetto when they can find nonblack or suburban workers, and given the surplus of low-skilled workers in the labor pool this is easily accomplished. The racialized stigma attached to the ghetto affects the job prospects of all its black residents, even those who reject the outlaw ethic and seek to conform to mainstream norms. The frustration of dealing with racial discrimination by employers leads more blacks into the criminal subculture than would otherwise end up there.

Many of those who want to find work probably could if they were able to move to suburban neighborhoods or integrated mixed-income urban areas. There tend to be considerably more job opportunities for low-skilled workers in these areas than in or near the ghetto. Schools are of much higher quality there too. Housing is more expensive in these other communities, however, often way out of reach for poor people. Most middle-class people, including many middle-class blacks, do not want to live among the ghetto poor and do not want their children to be forced to attend the same schools with them either; thus they are willing to pay a high premium to reside in better neighborhoods, driving up already high housing costs.

Yet it would be a mistake to think that the black poor find it so hard to exit the ghetto solely because of the uncoordinated decisions of individuals or impersonal market forces (and even if these factors were the complete explanation, it would not follow that justice permits us to tolerate these unintended consequences). Racial discrimination in housing and practices of neighborhood organizations designed to segregate poor blacks in the inner city (including opposition to busing and advocacy of neighborhood schools) also play a large part. Therefore it is enormously difficult for the black poor to escape ghettos, since either they cannot afford to move out or residents of nonghetto areas, whether because of racial prejudice, class bias, or narrow self-interest, inhibit the ability of the urban poor to join these better communities or attend high-quality schools. Many of the black urban poor are effectively confined to ghetto neighborhoods, isolated from the rest of society. They must therefore confront the miserable job prospects and failing

schools that exist in the inner core of U.S. metropolises. Faced with these tremendous obstacles, many choose to drop out of the legitimate labor market, turning to illegitimate means to generate income.

One of the many tragic consequences of this situation is the mass incarceration of poor black people, especially young black men. Despite making up only 13 percent of the male population of the United States, black men constitute almost *half* of the male prison population, and on any given day, nearly a third of all black men in their twenties are in prison, on probation, or on parole. These black men are overwhelmingly from ghetto communities. The high levels of police surveillance, racial profiling, stiff penalties for minor parole violations, felon disenfranchisement laws, and general harassment of young urban blacks intensify their hostility toward the criminal justice system, and invite urban blacks to conclude that they are living under a race-based police state whose intent is to prevent them from enjoying all the benefits of equal citizenship and to contain social unrest. Because of the extreme racial disparity in the numbers of persons under the supervision of the criminal justice system, the general stigma attached to a criminal conviction taints all blacks, especially young black men and boys from the ghetto. Moreover, black urban youth are sometimes seen as having a propensity to criminal behavior. These factors greatly disadvantage those from the ghetto who seek employment, decent housing, and good schools, for they are too often presumed to be (“naturally”) prone to lawlessness.

To be clear, I am not denying the obvious fact that some born into ghetto poverty can, and do, manage to escape poverty and the ghetto, whether through state assistance, the help of other people, sheer personal determination, or good luck. Yet if an unjust basic structure is a significant causal factor in explaining the rise and persistence of ghetto conditions and such conditions diminish the life prospects of citizens who live under them, the fact that some from the ghetto are still able to improve their lot through legitimate means and ultimately to leave the ghetto does not invalidate the claim for redress of those who remain behind. After all, some enslaved blacks during the antebellum era were eventually able to buy their freedom or were

voluntarily released by their owners, and some southern blacks attained middle-class economic status through hard work and perseverance despite Jim Crow segregation and the terror of the Klan. Although the racial status hierarchy in the United States is itself largely impermeable, it has never been so powerful that all blacks are confined to the lowest socioeconomic strata. The obstacles that the system continues to place in the way of poor blacks, though in some ways less burdensome than in the past, are nevertheless objectionable on grounds of justice. . . .

OPPRESSION AND THE DUTY OF JUSTICE

However, even if a society is fundamentally unjust, i.e., it exceeds the limits of tolerable injustice, it does not follow that the ghetto poor have no moral duties to one another or to others. Only someone who holds that the cognitive-instrumental or utility-maximizing conception of reason is the only legitimate conception could think that an unjust social order rationally justifies a war of all against all, in which the only valid value systems are those of the gangster and hustler. The ghetto poor do have duties, natural duties, that are not defined by civic reciprocity and thus are not negated by the existence of an unjust social order.

Among these is the duty not to be cruel. Each also has the duty to help the needy and vulnerable provided this is not too personally risky or costly. There is a duty to not cause unnecessary suffering. There is a duty of mutual respect: to show due respect for the moral personhood of others. There are also many other basic duties. Such duties are not suspended or void because one is oppressed. The existence of these duties makes some of the deviant attitudes and actions of the ghetto poor impermissible, not because they are forbidden by law but because they cannot be fully justified from a moral point of view. This means, at a minimum, that the reckless and gratuitous violence, the selfish indifference to others’ suffering, and the disregard for the humanity of one’s fellow human beings that are all too common in some poor urban neighborhoods should not be tolerated. There should also be special mindfulness of how impressionable youth are

and, in particular, of how observing the behavior of adults shapes a child's moral development.

Yet fulfillment of one's natural duties to others may nevertheless be compatible with certain forms of crime. Taking the lives of others, except in self-defense or in defense of others, is hardly ever justified. However, taking the property of others, especially when these others are reasonably well off, may be legitimate. Mugging someone at gunpoint may not show sufficient respect for the victim's personhood, but shoplifting and other forms of theft might be justified. Given the hazards of participating in gang culture, recruiting children into gangs shows insufficient concern for the weak and vulnerable; yet given the advantages of concerted group action, participating in gangs may be a defensible and effective means to secure needed income. There are also "victimless" crimes such as prostitution, welfare fraud, tax evasion, selling stolen goods, and other off-the-books transactions in the underground economy. There are of course many complex questions here about when coercion, threats, or deception may legitimately be used, and there is the salient question of which, if any, illegal narcotics may be sold to consenting adults without wronging them. I will not pursue these issues further, however. My goal is not to draw the precise line between permissible crimes and impermissible ones but only to offer reasons for thinking that the former set is not empty.

I do, however, want to draw out the practical implications of one natural duty, the duty of justice. According to Rawls, this duty requires each individual (1) to support and comply with just institutions, and (2) where just institutions do not exist, to help to bring them about. No just societies or institutions could exist, at least not for very long, if individuals did not work to create and sustain them. The very idea of social justice would seem to presuppose the duty of justice: no one can resent being treated unjustly and also consistently reject the duty of justice. Rawls argues for the validity of this duty by pointing out that the parties in the original position, seeing their common rational interest in the existence and stability of just institutions, would naturally agree that everyone should support and further such institutions. The duty of justice gives

each person a strong moral reason to protest or resist unjust practices.

The duty of self-respect, which is fulfilled by recognizing and affirming one's equal moral worth as a person, also provides a reason to protest or resist injustice. But it differs from the duty of justice. One expresses self-respect by, for example, standing up for oneself when one has been treated unjustly, rather than meekly acquiescing. The duty of self-respect is a matter of defending one's dignity in the face of injustice; the duty of justice is a matter of taking proactive steps to end injustice or to make the relevant institutions more just. The duty of self-respect is a self-regarding duty; the duty of justice is one owed to others. The duty of self-respect demands action from those who have been wronged; the duty of justice demands action regardless of whether one has been wronged.

There have been important recent philosophical discussions about what relatively advantaged persons ought to do to eliminate or mitigate unjust circumstances. Yet there has been little attention to what obligations to promote just institutions disadvantaged persons have. Some liberals are no doubt reluctant to discuss the moral obligations of the downtrodden out of an understandable distaste for "blaming the victim." Moreover, they rightly maintain that indignation should be directed, first and foremost, toward the complacency of the well off, the "winners" in an unjust system. I want to insist, however, that the duty of justice also applies to the oppressed and in particular to the ghetto poor.

Of course, it would be unreasonable to expect individuals to work to bring about a just society when doing so would be very dangerous or costly. Given the conditions in most ghettos, perhaps it is too much to ask of ghetto denizens that they make significant contributions to the cause of social justice. After all, many have more than they can handle just trying to meet their basic needs and maintain their dignity. Yet it is reasonable to expect the ghetto poor, in addition to fulfilling their other natural duties, to not take courses of action that would clearly exacerbate the injustices of the system or that would increase the burdens of injustice on those in ghetto communities or others similarly situated, at least not when these negative consequences could be

avoided without too much self-sacrifice. Nor should they do things that would clearly make a just society more difficult to achieve, provided in refraining from such actions they can maintain their self-respect and meet their other basic needs.

Expecting the ghetto poor to honor their natural duties, including the duty of justice, does not blame the victims. The ghetto poor should not be held responsible for the appalling social conditions that have been imposed on them because of the workings of an unjust social structure, but they should be held accountable for how they choose to respond to these conditions. Demanding this basic level of moral responsibility treats them as full moral persons and as political agents in their own right. Too often ghettos are viewed as “sick” communities, burdened with myriad pathologies, that the state-as-physician (or some suitable social service organization, such as a charity or church) must “heal.” Not only is this doctor-patient approach to the ghetto too often an expression of offensive paternalistic sentiments (which have well-known black elite noblesse oblige variants), but also it is the wrong paradigm when we are dealing with a social problem whose origin lies in systemic injustice. We all, whether we belong to dominant or subjugated groups, have a duty to help establish just social arrangements. Given that the injustices at issue are features of a system of social cooperation that we all, winners and losers, participate in, we should view the project to correct these injustices as a joint one, or at least it should be so viewed among those who want to live in a just society rather than to profit from an unjust one.

Unfortunately, in light of the ill will, selfishness, and callous indifference of many of their fellow citizens, social justice might not be achievable unless the ghetto poor take on a good deal of the burden in reforming their society. As has so often been true in human history, the oppressed must play a large role—sometimes they have to be the principal agents—in ending the unjust practices they are subjected to. For example, black citizens had to play significant roles in abolishing slavery and Jim Crow, despite having suffered most because of these systems of domination. The fact that this is, in some sense, unfair is irrelevant. The duty of justice is not based on the principle of civic reciprocity.

It is a duty each has qua moral person, not qua citizen. Therefore, one cannot opt out of this duty because one’s fellow citizens fail to fulfill it. Nor should one stop short of doing more than others in the struggle for justice on the ground that were these others to do their part one would not have to do as much (though the criticism of these others is no doubt warranted). Exactly how one should go about fulfilling the duty of justice, that is, which specific courses of action would satisfy it, will depend on which particular social circumstances one faces. In light of these circumstances, one must make an assessment of how best to contribute to improving things. This assessment will necessarily involve determining just how much assistance one can realistically expect from others and how best to enlist this aid. When viewed from this vantage point, ghetto residents should think carefully about how they respond to the injustices of the social order and consider whether the forms of deviance they sometimes engage in are ultimately obstacles to effecting positive social change.

Many people claim that they would be willing to help the poor provided the poor would make an honest effort to help themselves by, say, working, getting an education, and staying out of jail. More advantaged citizens do not want to feel that they are being taken advantage of, and they often suspect that the urban poor lag behind because they lack the necessary work ethic. So one might think that, if not from prudential motives then from the duty of justice, the ghetto poor should avoid deviant behavior and take greater responsibility for helping themselves, as this would assure their fellow citizens that they are not being exploited and thereby encourage them to do something about improving the conditions in the ghetto. However, if the ghetto poor have compelling reasons to think that they are not being treated as equal citizens (say, because a tolerable level of injustice has been exceeded and they are being forced to carry the bulk of the burdensome consequences of this injustice), then they should be the ones worried about being hustled. Given rising inequality and the worsening of the ghetto/prison complex, which show no signs of abating, they have every reason to believe that their interests are not being given equal consideration. Why should they

think that if they were only to behave better things would change? Moreover, to ask them to demonstrate their worthiness for assistance that they are entitled to as a matter of justice would add insult to injury. The suggestion that the ghetto poor “prove themselves” before their compatriots offer help fails to appreciate that acquiescing to injustice is simply incompatible with the maintenance of self-respect.

FROM SPONTANEOUS DEFIANCE TO POLITICAL RESISTANCE

One of the ways that the ghetto poor have sometimes responded to their plight is to engage in spontaneous rebellion. This may take the form of openly transgressing conventional norms, expressing contempt for authority, desecrating revered symbols, pilfering from employers or state institutions, vandalizing public and private property, or disrupting public events. Spontaneous rebellion reaches its apotheosis in the urban riot, where looting, mass destruction of property, and brutal violence are on public display. When legitimate avenues for political action fail to produce results or are closed off, such public unrest can seem to be the only power the ghetto poor can wield collectively that has a chance of garnering concessions from the state.

Many of these acts of defiance, though perhaps *politically* ineffective, may be necessary for the ghetto poor to maintain their self-respect. If nothing else, such actions can be cathartic and can help the oppressed to keep from turning on each other as they seek an outlet for their justified anger. Yet not all expressions of rebellion are aimed at protesting or changing the social order. Some ostensible defiance, on closer scrutiny, reveals itself to be no more than a desire to exploit the system opportunistically, as when demagogues take advantage of the anger of the poor to gain personal power or when gangsters and hustlers take advantage of others’ desperation merely for their own gain—capitalism by other means, as it were. What may have begun as principled resistance can become, because of encroaching cynicism, “life-is-unfair” resignation. Some juvenile deviance is little more than adolescent rebellion unchecked by proper adult supervision. The key practical question, of course, is how, if at all, can this general impulse toward rebellion

in U.S. ghettos be transformed into enduring and effective forms of political resistance. I will not pretend to have the answer to this difficult question. I would, however, like to briefly outline what kinds of moral criticism of the ghetto poor might be appropriate in light of the aim of cultivating constructive forms of resistance, thus giving some concrete content to the abstract duty of justice.

Rawls distinguishes two different ways a society might be unjust.¹ The first way is when the publicly recognized standards for judging the justice of the basic structure are sound but the institutional arrangement of the society fails to satisfy these standards. In this case, the society fails to live up to its own professed ideals, ideals that are *worthy* of public recognition. Alternatively, social arrangements may fit the prevailing conception of justice in the society or the political views of the ruling elite but nevertheless be unjust. In this case, the dominant conception of justice is an *ideology*, a set of widely held beliefs and implicit assumptions that legitimates and thereby helps to sustain an oppressive regime.

If the first situation obtains, the political opposition may be able to appeal to their fellow citizens’ sense of justice, highlighting the gap between ideals and practice. Here, nonviolent civil disobedience, public demonstrations, or other forms of mass protest that attempt to arouse the public’s sense of moral outrage may be productive. Since the era of New World slavery, the dominant tradition in African American activism, from Frederick Douglass to Martin Luther King, Jr., has generally taken this approach. However, if the society is stabilized by a deeply flawed conception of justice, for example one that serves the narrow interests of corporate and political elites, then more drastic or unconventional measures may be warranted. Given a dominant ideology that advances a distorted view of what justice demands and that is widely endorsed because of narrow self-interests or illegitimate group interests, it might not be sufficient to appeal to the majority’s sense of justice. Moral suasion and electoral politics may simply not be enough. Black nationalists, from Martin Delany to Malcolm X, have taken exactly this position with respect to the United States, regarding this society as a deeply racist and plutocratic social

order. Those who oppose such a regime would have to develop a militant social movement that pushes the society in a more progressive direction, not “by any means necessary” but perhaps through means widely, though mistakenly, regarded as unjustified. The black urban poor have often been attracted to such black nationalist doctrines.

Of course this contrast between the two ways a regime can be unjust, although analytically useful, is too stark for practical purposes. Some aspects of an overall social arrangement (for instance, its educational and economic institutions) may be regulated by a corrupt ideology, while other parts (say, its constitution or basic political organization) may be just or diverge from reasonable public standards of justice. Indeed, contrary to the view of some black radicals (who believe that liberal political thought and practice is rotten to the core), this mixed assessment may be the one most applicable to post-civil rights America, as the civil rights movement did, I believe, help to make blacks’ constitutional rights considerably more meaningful. Thus, the political resistance, even if it takes a militant form, must take into account the reasonableness of existing aspects of the social scheme and choose measures of opposition accordingly. To be sure, militant leaders must be willing to take political measures that some might find unacceptable if overcoming serious injustices requires these tactics. And political insurgency aimed at overthrowing an oppressive regime is sometimes justified. However, given the proven difficulty of establishing and maintaining just institutions in the modern world, preserving the reasonably just components of an overall unjust system while pushing insistently for broader reforms may ultimately be a better strategy than abrupt radical reconstruction. Moreover, grassroots organizing and populist collective action would still require some measure of public order to be effective, and so the political institutions currently in place—with their provisions protecting freedom of speech, association, and assembly—could prove useful, their “superstructural” character notwithstanding.

These are difficult and complex questions of political practice that theory can only do so much to illuminate. Yet no matter what form such

opposition should take, the ghetto poor should be included in the resistance effort. In fulfilling the duty of justice, ghetto residents will need to build bonds of political solidarity with each other and with progressive allies. Such solidarity requires not only shared political values and the common goal of ending ghetto conditions but also a sense of compassion for those similarly oppressed. It calls for special concern, a willingness to help the most disadvantaged among you when you can. Solidarity demands loyalty to those you are working together with to change things for the better. Perhaps most important, it requires a sense of mutual trust, without which collective action cannot occur.

If such solidarity is to form and be sustained, however, an outlaw subculture cannot reign in the ghetto. A climate of fear and suspicion erodes any chance of developing mutual trust. It undermines empathy and compassion because those who appear to be in need might in fact be trying to exploit you, or worse. If loyalty to one’s gang trumps all other loyalties or leads one to disregard the legitimate interests of those outside the gang, then no broader form of loyalty in ghetto communities can take shape, let alone stable forms of political organization. This means that the gangster and hustler ethics, *qua* value system, must be repudiated.

I am not, however, suggesting that the ghetto poor are never justified in engaging in street crime. On the contrary, lacking acceptable alternatives, crime may be necessary to meet one’s needs or the needs of others. Nor am I saying that one should never make use of the criminal repertoire of gangsters and hustlers—street capital—to secure necessary income. The political economy of the underground may require these tactics. What I am suggesting is that the techniques of the gangster and hustler should not be used merely to gain power, status, or riches; that one should not allow these practices to constitute one’s enduring social identity; and that one should be careful not to let the use of these tactics corrupt one’s character. Gangsterism and hustling must not be regarded as vocations, but as survival tactics, means of self-defense, or expressions of justified rebellion. Moreover, if street capital is to be converted into political capital in a resistance movement, then ghetto rebellion should not

be merely opportunistic or cathartic but, whenever possible, should publicly register dissent. It is crucial, given the duty of justice and on grounds of self-respect, that the ghetto poor make manifest their principled dissatisfaction with the existing social order, either through politically motivated modes of deviance or in some other recognizable way.

CONCLUSION

The urban poor should not be demonized, stigmatized, or otherwise dehumanized, just as surely as they should not be romanticized. Yet it would be a mistake to think that they should never be morally criticized. Moral criticism can be appropriate even when the targeted behavior and attitudes have been shaped and encouraged by unjust conditions and even when those subjected to criticism are not responsible for the fact that these conditions exist. Such criticism is one way for the members of oppressed groups to hold one another accountable and to create meaningful bonds of solidarity, and can even be offered by sympathetic outsiders seeking to build political alliances. But there are legitimate and constructive forms of moral criticism and illegitimate and self-serving forms. By appreciating how the lack of justice in a basic structure affects what obligations citizens have, we might better distinguish the two types of criticism, and in the process invite the kind of joint action needed to establish and maintain justice.

NOTE

1. Rawls, *A Theory of Justice* (Harvard University Press, 1971), pp. 308–10.

Tommie Shelby: Justice, Deviance, and the Dark Ghetto

1. Many in the United States point to successful black people who have managed to pull themselves out of poverty, despite being born and raised in the black ghetto. They argue that if *that* person can do it, then anyone else can, too. Thus, they conclude, the ghetto poor are responsible for their own poverty. How does Shelby respond to this line of reasoning? Is his reply convincing?
2. Shelby describes a distinction from Rawls between two kinds of unjust societies: societies that have the correct ideals of justice but fail to live up to them, and societies that have the wrong ideals of justice in the first place. Does the United States fall into one of these categories? If not, why not? If so, which one?
3. Shelby argues that it can be morally permissible for ghetto poor people to engage in “victimless” crimes such as prostitution, welfare fraud, tax evasion, and selling stolen goods. Do you agree that these crimes are victimless? Do you agree that it can be morally permissible for ghetto poor people to engage in these behaviors? Why or why not?
4. Shelby thinks that the ghetto poor have duties of justice to work to make their unjust society more just. Do you agree that the oppressed people in a society have a moral duty to work to make their society more just? Why or why not?
5. Present a common criticism of the ghetto poor and then apply Shelby’s analysis to determine the plausibility of that criticism.

Time for a New Black Radicalism

Chris Lebron

Chris Lebron argues that the persistence of racism in the United States calls for the development of a new black radicalism. Such a political movement requires, in his words, “the explicit intention to use strong, nonconventional and unsanctioned means to effect systemic change by either disrupting the status quo or reinstating a preferred

previous status quo.” Lebron is not advocating a return to earlier, better times—he thinks that African Americans have never enjoyed anything remotely like social equality in the United States. In order to stand a better chance of enjoying a social status at least much closer to one that whites have long enjoyed, Lebron argues that a new version of black radicalism is required.

After criticizing three popular reasons for believing that radical social movements are morally problematic, Lebron explains a psychological dynamic that has long characterized the black community, that of shifting between rage and despair and trying to locate a rational basis for hope in the prospects of racial equality. Lebron argues that such a basis can be provided only through a form of unified political activism guided by a central leadership. Further, he questions whether the passive, non-violent resistance that characterized Martin Luther King, Jr.’s campaign of social activism is appropriate for our times. Lebron does not seek to answer this question but to raise the possibility that King’s program, effective as it was for his era, may no longer be an effective tool in the search for real racial justice in the United States.

Here are two statements:

1. *The Negro must love the white man, because the white man needs his love to remove his tensions, insecurities and fears.*
2. *You do too much singing. Today it is time to stop singing, and start swinging.*

Which of the above is emblematic of black radicalism? The answer is not as clear-cut as many of us might think.

The first statement was made by Martin Luther King Jr. in support of his much lauded and widely known strategy of nonviolent resistance.

King’s call comes from his 1958 account of the Montgomery, Ala., bus boycott, “Stride Toward Freedom.” In it, he articulated what he saw as an essential form of communal love that had its roots in New Testament Christianity but one that King felt was best described by the ancient Greek word “agape,” a redeeming love that “springs from the need of the other person.” Certainly, the families of the murdered congregationalists of Emanuel

African Methodist Episcopal Church, in Charleston, S.C., were practicing that sort of love last week when they publicly forgave Dylann Roof, the young white supremacist who committed those murders.

The second statement was made in a characteristically biting tone by Malcolm X some six years after King’s, in a 1964 speech in Detroit, known as “The Ballot or the Bullet,” urging a more active resistance in the face of the government’s repeated failure to protect black people’s rights and lives. It was clearly directed at those who still affirmed King’s program of nonviolent resistance, and raised the possibility that the continuation of that government failure might require blacks to take up arms.

Today, as we face a seemingly endless number of black lives being unjustifiably threatened, damaged and lost, and the resulting emotional cycle among black Americans of rage-despair-hope, it seems urgent that we ask again whether now is the time to make black radicalism central to black politics and activism. And if so, what should it demand of American citizens?

By radicalism I mean the explicit intention to use strong, nonconventional and unsanctioned means to effect systemic change by either disrupting the status quo or reinstating a preferred previous status quo. If the convention in a capitalist society is for the tech industry to charge for all services and you offer yours for free on the principle that “knowledge

wants to be free,” you are a radical; if you’re a state legislator who cuts against the separation of church and state by lobbying to make the Bible the official book of the state, you are a radical.

It would be a disservice to the diverse tradition of black thought and activism to present the black radicalism monolithically, but we can identify a central motivation across its various iterations: to secure for blacks, against the history of white supremacy and the persistent racial oppression it has spawned, a degree of respect and dignity by means that directly confront and reconfigure both the discourse of and policies around racial justice. This is typically done with an eye toward not merely rationally persuading white Americans, but to intentionally unsettle and dislodge them from the comforts of white privilege.

We don’t typically assign the term “radical” to people like the computer programmer or the legislator described above, for a number of reasons. First, radicalism, especially in the political sphere, is thought to necessarily entail violence. Second, radicalism is often used as a substitute for “fundamentalism.” Lastly, radicalism is thought to represent (some form of) insurgency as a way of life or lifestyle. This last reason when combined with the first is what makes the idea of radicalism, especially black radicalism, alarming to many Americans. Yet it turns out that all of these reasons for treating radicalism as a dangerous doctrine are wrong.

It is important to begin by challenging the claim that radicalism and fundamentalism are interchangeable. Fundamentalism is an ideology and all ideologies share one critical flaw. They begin with a basic proposition (for example, the lives of all non-believers in religion X are expendable) and assert that proposition as a true statement about the world and then proceed to interpret all evidence in the light of that purported truth; thus ideology short-circuits effective means of assessing the reality of social, economic and political situations. Radicalism, in contrast, is significantly (but not entirely) *post hoc*—it is inherently pragmatic and arises in response to real threats, actual slights, suffered deprivations and obvious oppression.

When we take radicalism to be the same kind of thing as fundamentalism, it is a short step to the

third charge—that radicalism is a way of life. This is clearly mistaken. Radicalism responds to real conditions of oppression that bring it into being, thus, seeks to eliminate the very conditions that make its existence necessary.

If one accepts these two clarifications, it also becomes clear that it is a mistake to think that radicalism is necessarily bound up with violence. Yes, it can be. America’s founding fathers brought two nations into open warfare in the name of freedom—to disrupt the status quo imposed from without by Britain. This is a form of radicalism represented by Malcolm X. When he exhorted black Americans to stop singing and start swinging, he openly affirmed the legitimacy of violent self-defense against white supremacy and its murderous practitioners. Malcolm certainly sought to disrupt the status quo of white supremacy by unsanctioned means. But what of King teaching that blacks must love whites in order to ease their insecurities and fears? You should accept this as black radicalism as well.

The more obvious radical aspect of King’s teaching has to do with the use of nonviolence as a doctrine of insurgent political action. While today political marches in the name of racial justice are common, in the middle of the 20th century large scale protests cut directly against the prevailing sentiment that blacks had no right to express themselves politically and publicly. King’s challenge to various police forces to exact violence on a passive gathering sought to effectively and strongly disrupt a white supremacist status quo.

But here is another aspect: King’s teachings also sought to disrupt the status quo *within the black community*, where despair risked deactivating the will to political action and rage compelled increasing numbers of black youth to begin considering taking up arms. King always held that passive resistance was the strategy of the truly strong person at a time when the black status quo had reason to view white Americans only as enemies, as undeserving of blacks’ love.

In a manner unsettlingly resonant with the heart of the civil rights era, blacks today continue to find themselves moving between rage and despair. Rage at the abuses that should have ended

when the slaves were freed, despair because the claim that black lives matter was dismissed up to and beyond the signing of the Civil Rights Act. This leaves hope, a disposition taken up when one thinks the expression of rage and despair might have compelled one's oppressors to finally act with a sense of justice. Have the many decades of expressing rage and despair done its work making space for hope?

As things stand, there is no rational space for *mere* hope—recent events in the light of the facts of history discourage naïveté. A truly intelligent hope leaves little to chance and encourages conviction and action to better secure a preferred future—in our case, a racially just America. It seems to me the way to hope today lies in the promise of a resurgent black radical politics.

Systemic racial inequality is a daily fact of American life. There is no shortage of news of vigilantes and police literally getting away with murdering blacks; white supremacist ideologies still thrive, and at times produce awful consequences, as we saw in the Charleston massacre. And that is just the overtly grim news. When we add to that the persistent racial inequalities in income, housing, education, medical care and employment, there is no denying that the withholding from black Americans of resources, opportunity and basic sympathy is the status quo in America. It is an unjust status quo, thus it must be disturbed, disrupted. The hope here, then, would focus on a future wherein blacks' needs, aspirations, and basic humanity are not only beyond question, but recognized as having equal importance and worth as whites'.

However, maybe you are more concerned with this question: *Which* flavor of black radicalism should be embraced—Malcolm's or Martin's? In a society in which blacks must insist and remind their fellow citizens that black lives matter, that really is the question, isn't it? Maybe we should turn to history as our guide.

Blacks have tried for more than 150 years, since the Emancipation Proclamation was signed, to reasonably engage American institutions and whites with a very uneven, and in important respects, failed record of adequate responsiveness. It can be difficult to imagine what else one can say to get

what one is owed after so long. But we should accept at least two propositions. First, that any resurgent black radical politics must also be a unified politics, one that values central leadership coupled with an explicit program of action. The protests and movements in response to the past year's abuse of black citizens have shown that local and spontaneous protests can be effective, but also limited in scope—they have not led to adequate action at the level of national politics. Even when local protests have persisted in places like Ferguson, Mo., they tend to quickly fall from the American public's view, and thus their conscience.

Second, some 50 years after King, maybe blacks should not desire his second coming. Though he is consistently invoked by leaders at every political level, it seems to me that the days of sitting at the lunch counter and enduring inhumane abuses must be left to history. Rather, black Americans have tragically earned the right to ask a question more appropriately radical for our present moment: *Where is the love for us?*

It is time that blacks not be expected nor expect of themselves to set the standard for goodness and upstanding character in a society that regularly treats them cruelly. When I ask, *where is the love*, I am really asking you to tell me in return, to speak by your actions and take responsibility for the kind of radicalism it is now appropriate for blacks to take up: Should we heed Martin's counsel and open our arms in embrace or should we be wary of yet another painful and bloody era of speaking and acting in bad faith, and as Malcolm advised, close our fists?

Chris Lebron: Time for a New Black Radicalism

1. How does Lebron characterize radicalism? Does his characterization tally with your understanding of what radicalism is?
2. Must radicalism be violent? If radicalism is a plausible response to oppression, is violence ever a justified element of a radical response? If so, when? If not, why not?
3. Lebron claims that black radical activism "is typically done with an eye toward not merely rationally persuading white Americans, but to

intentionally unsettle and dislodge them from the comforts of white privilege.” Why does he think such actions are warranted? Do you agree or disagree with his assessment?

4. Lebron enumerates and rejects three popular reasons for thinking radicalism a dangerous doctrine. Present these reasons and assess his critique of them.
5. Lebron claims that “the way to hope today lies in the promise of a resurgent black radical politics.” Explain what he means by this and assess the merits of his claim.
6. Lebron writes that “some 50 years after King, maybe blacks should not desire his second coming.” Explain what Lebron means by this and assess the merits of his claim.

Terrorism

JUST THE FACTS

Terrorism is the deliberate use of violence against innocent victims, with the intent to intimidate a population, for the purpose of advancing some political goal.

In the context of debating the morality of terrorism, to say that a person is **innocent** is to say that she does not bear responsibility for the wrongful harms that terrorists are responding to. Though it is sometimes difficult to determine whether a person bears such responsibility—are citizens of democratic countries that engage in oppressive practices innocent in this sense?—there are many easy cases. For example, some terrorists are not in fact responding to wrongful harms; they simply imagine a deep grievance that has no foundation in reality. Their victims, then, are innocent. Even when terrorists are responding to genuinely immoral treatment, children and those who protest against such treatment are innocent in the relevant sense, since they bear no responsibility for those wrongful harms. By contrast, politicians who support the wrongful treatment, and those who willingly impose it, are not innocent—they bear the requisite responsibility. (Which is *not* to say that they deserve to die at the hands of a terrorist attack. We discuss the morality of terrorism in the next section.)

Both individuals and governments can commit terrorism. Though we tend to focus on individuals, such as the 9/11 bombers, there is also such a thing as state-sponsored terrorism. In the late 1980s, Saddam Hussein's Ba'ath party systematically terrorized the Kurdish population of Iraq, dropping poison gas on villages,

executing community leaders, and subjecting thousands of Kurds to torture, all in an effort to subdue a population that Hussein deeply distrusted. The US government committed acts of terrorism when it dropped two atomic bombs on Hiroshima and Nagasaki, targeting civilians for violent death as a way to intimidate the larger Japanese population (and especially its leaders), with the aim of ending World War II.

According to the Global Terrorism Database, there have been more than 170,000 instances of terrorism across the globe since 1970, resulting in 348,759 deaths.¹ These terrorist activities include bombings, stabbings, shootings, hijackings, kidnappings, use of chemical weapons, acts of torture, and political assassinations. A total of 29,376 deaths related to terrorism were recorded for 2015—a nine-fold increase compared to the year 2000.² Though terrorist activities have been carried out in virtually every country on Earth, they are currently highly concentrated in five countries: Iraq, Afghanistan, Nigeria, Pakistan, and Syria.³ Attacks in these countries have accounted for 72 percent of all deaths from terrorism since 2012.

Though there were 274 known terrorist groups that carried out attacks in 2015, four groups were responsible for 74 percent of deaths: the Islamic State of Iraq and Syria (ISIS); Boko Haram, based largely in Nigeria; the Taliban, based in Afghanistan; and al-Qaeda, in Somalia,

1. <https://www.start.umd.edu/gtd/about/>

2. <http://blog.safe-passage.com/16-latest-global-terrorism-trends-facts-and-figures-from-gti-2016>

3. <http://economicsandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf>

Syria, and Afghanistan. In 2015, ISIS surpassed Boko Haram as the deadliest terrorist group.⁴ ISIS undertook attacks in 252 different cities in 2015 and was responsible for 6,141 deaths. By contrast, Boko Haram was responsible for 5,478 deaths, the Taliban for 4,502 deaths, and al-Qaeda for 1,620 deaths.⁵ ISIS's rise to the top spot was, in part, due to its enormously successful media propaganda campaign. For example, in 2016, ISIS spokesman Abu Mohammed al-Adnani encouraged ISIS sympathizers who could not travel to Iraq and Syria to carry out **lone wolf attacks** in movie theaters or by driving automobiles into crowds of people.⁶ As a result, half of all terrorist plots with an ISIS connection have been conducted by people who have had no direct contact with ISIS.⁷ For example, in June of 2017, eight people were killed and forty-eight were injured when a man, claiming to act on behalf of ISIS, drove into a crowd of pedestrians on the London Bridge.⁸ Two months later, in August of 2017, an ISIS sympathizer drove a van into a crowd of pedestrians in Barcelona, Spain, killing thirteen people and injuring at least 130 others.⁹

Following the September 11th attacks on the World Trade Center in 2001, the United States began to take more extreme measures to fight terrorism. Between 2002 and 2008, the US government detained 119 people at CIA sites on suspicion of connections to terrorist organizations. At least thirty-nine detainees were subjected to "enhanced interrogation techniques." The techniques included sleep deprivation, prolonged standing,

4. <http://blog.safe-passage.com/16-latest-global-terrorism-trends-facts-and-figures-from-gti-2016>

5. <http://economicsandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf>

6. <https://www.theguardian.com/world/2016/may/22/isis-leader-civilian-lone-wolf-attacks-us-europe>

7. <http://economicsandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf>

8. <https://www.independent.co.uk/news/uk/home-news/london-terror-attack-isis-claims-responsibility-borough-market-bridge-a7772776.html>

9. <http://www.cnn.com/2017/08/17/europe/barcelona-las-ramblas-van-hits-crowd/index.html>

and exposure to cold. Twenty-six detainees were found to be held wrongfully. At least five were subjected to rectal rehydration—the insertion of a tube into the rectum to forcibly feed or hydrate a person.¹⁰ The process is extremely uncomfortable and comes with many health risks, including damage to the rectum and food rotting in the digestive system. At least three detainees were subjected to waterboarding—an interrogation technique that simulates the sensation of drowning.¹¹ A detainee is strapped down, with a towel placed tightly over his face. Water is poured over the towel, making it difficult for the detainee to breathe, and often inducing panic.

It's difficult to know how many countries regularly practice torture. Nearly every country condemns it and has an incentive to appear as if it doesn't participate in the practice. However, former UN Special Rapporteur on torture Manfred Nowak estimates that most countries do engage in torture. He writes, "[T]orture and ill treatment are widespread practices in the majority of the countries on our planet. Almost no society is immune against torture, but in many societies torture is practiced systematically, both in fighting ordinary crime and in combatting terrorism, extremism or similar politically motivated offences."¹²

The monetary costs of fighting terrorism have been enormous. The Congressional Budget Office has said that it is "impossible to determine precisely how much" the United States has spent on its efforts in "Afghanistan and Iraq and related activities."¹³ However, a recent study designed to measure American war expenses in the aftermath of September 11, 2001, estimates that the United States has spent \$4.79 trillion

10. <http://www.cnn.com/2015/01/29/us/cia-torture-report-fast-facts/index.html>

11. <http://edition.cnn.com/2015/01/29/us/cia-torture-report-fast-facts/index.html>

12. http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf

13. <https://www.usnews.com/news/articles/2016-09-09/war-on-terror-could-be-costliest-yet>

in Iraq, Afghanistan, Syria, Libya, and the surrounding regions.¹⁴ These figures are only for US military expenses. They leave out the costs of intensified security screenings of passengers and baggage at airports, increased costs for CIA investigation, increased security at political and sporting events, and the expenses of every other country involved in the fight against terrorism.

While the monetary cost to the United States of combatting terrorism has been staggering, the cost in lives lost has been, relative to other countries, rather small. For instance, since the September 11th attacks in 2001, foreign-born terrorists in the United States have killed roughly one American per year. Six Americans per year have died at the hands of Islamic terrorists (either foreign or domestic). Statistically speaking, the typical American is 260 times more likely to die by being struck by lightning and 467 times more likely to die at his or her own hands (by suicide) than to be killed by a foreign-born terrorist.¹⁵ As for Western Europe, since 1970, the Global Terrorism Index has recorded 6,400 deaths in that region out of a worldwide total of 348,759—less than 2 percent of all deaths due to terrorism.¹⁶ Whether the relative safety of the United States and Western Europe from terrorist violence is due to the extensive measures taken to prevent terrorism in these areas or due to their distance from the Middle East—the current epicenter of terrorist activity—is difficult to assess.

ARGUMENT ANALYSIS

Because deliberate violence and intimidation are essential to terrorism, and because violence and intimidation are ordinarily immoral, so too is terrorism. Its default status is clear: without extremely strong arguments in its favor, terrorism cannot be morally justified. Indeed, the

14. <https://www.usnews.com/news/articles/2016-09-09/war-on-terror-could-be-costliest-yet>

15. <http://www.businessinsider.com/death-risk-statistics-terrorism-disease-accidents-2017-1>

16. <http://www.telegraph.co.uk/news/0/many-people-killed-terrorist-attacks-uk/>

moral debates that surround terrorism take it for granted that it is usually wrong; the question, really, is whether it is *ever* morally right.

Many people think the answer is no; they believe that terrorism is never morally permitted under any circumstances. Here is a standard way to defend that idea:

The Absolutist Argument

1. It is never morally permissible to intend to violently harm innocent people.
2. Terrorism involves the intention to violently harm innocent people.

Therefore,

3. It is never morally permissible to engage in terrorism.

Premise 2 is true by definition. And many people take premise 1 for granted. But because it states an **absolute moral rule**—one that must always be obeyed, no matter what—it needs a very strong justification.

One such justification comes from the Kantian moral tradition, according to which it is always wrong to treat people as a **mere means** to the achievement of one's own goals. (For more on Kant's theory, see Chapter 6.) This amounts to treating people in ways that fail to respect their rationality and autonomy, as if they had no intrinsic importance, as if they were mere things to be manipulated for one's own purposes. Innocent people are valuable in their own right; we disrespect that value if we try to violently harm them, rather than reason or negotiate with them.

This Kantian account makes good sense of our feeling that terrorists are *using* their victims as pawns to achieve some political goal. Such treatment entirely ignores the specificity, the intelligence, and the worth of the victims—they are disposable, their bodies maimed or destroyed without their consent, all in the service of the terrorist's political goals.

You treat other people as mere means when you lie to them to get what you want; when you coerce them into doing your bidding; when you

threaten them in order to subject them to your will. Terrorism falls into the same category. But even though there is surely something morally suspect about lying to someone, it may, on occasion, be morally acceptable to do so. Likewise, it may—if only rarely—be morally OK to coerce or threaten someone. There are two lessons to be taken from this. First, Kant was right to think that treating others as mere means *is* morally problematic. Since terrorism is a form of treating innocent victims as mere means, it follows that terrorism, too, is morally problematic. But, second, there are cases in which it may, in the end, be morally acceptable to treat others as mere means—to lie, coerce, and threaten them. So, for all this argument shows, it may also be morally acceptable to engage in terrorism.

A second absolutist argument against allowing terrorism comes from consequentialists, who emphasize the importance of results in determining the morality of actions. Consequentialists require actions to maximize good results or to minimize bad ones. And one might think that terrorism never succeeds in achieving either sort of outcome. Hence

The Ineffectiveness Argument

1. An action is morally right only if it yields better results than any available option.
2. Terrorism never yields such results—there is always an alternative to terrorism that will bring about a better outcome.

Therefore,

3. Terrorism is never morally right.

If you've read the earlier material on consequentialism (Chapter 5), you know that premise 1 is controversial. There is much to be said for it, though there are also a number of potential problems. We won't pause here to re-engage in those debates. Instead, let us assume, just for purposes of argument, that premise 1 is true. Why think that premise 2 is true?

One way to try to support that premise is to generalize from lots of specific instances of

terrorism. The thought is that if we carefully study the details of terrorist acts, we will see that there is always some alternative to terrorism that could have brought about better results. I am not an expert in terrorism, so I am in no position to venture an opinion about whether this thought is correct. It's certainly true that the terrorist actions that have drawn the most attention—for example, the killing of Israeli athletes at the 1972 Munich Olympics, the 9/11 attacks in New York and Washington, the London subway attacks in 2005, the Mumbai hotel killings in 2008—have grossly failed the consequentialist test of moral rightness. These events certainly did not maximize happiness. Nor did they minimize misery—far from it. But if consequentialists are to pronounce an absolute ban on terrorism, they must show much more than this. They must show that *no* instance of terrorism can yield maximally good results.

As most consequentialists have argued, however, it is exceptionally difficult to defend the existence of absolute moral rules—including an absolute ban on terrorism. It is never morally acceptable to break an absolute moral rule (that's what makes it absolute). Consequentialists, however, have usually pointed to two possibilities that should raise doubts about whether a moral rule is absolute. The first of these is that obedience to a moral rule might lead to disaster. The second is that breaking the rule might lead to results that are *way* better than obeying it.

To illustrate these worries, consider two moral rules that many have thought are absolute: the ban on deliberately killing innocents, and the prohibition on torture. Suppose that a very credible threat has been issued: unless John Doe is killed, a nuclear device planted in a large city will be detonated. Suppose John Doe is as innocent as you or I. In this case, it's one innocent life versus hundreds of thousands. Now suppose that your only chance to locate the bomb without killing John Doe is to torture the person who planted it. In both cases, though we recoil from killing innocents and torturing

people, many will think that we are morally permitted to do such things, just because they may be needed to prevent a catastrophe. The critic of absolutism relies on this thought in offering

The Argument from Disaster Prevention

1. If there are any absolute moral rules, then we are never permitted to break them.
2. Every moral rule may be permissibly broken, since doing so may be necessary to prevent a catastrophe.

Therefore,

3. There are no absolute moral rules.

This is a very powerful argument. Its first premise is certainly true, since absolute moral rules are, by definition, those that we are never allowed to break. The second premise is also very plausible. It's difficult to see why we should obey a rule if doing so will lead to catastrophe.

But can this reasoning be applied in the case of terrorism? To investigate this question, we need to reflect on a scenario that has the best chance of justifying terrorism. Because terrorism is not intrinsically valuable—there is nothing good, in itself, in the act of violently terrorizing innocent people—terrorism's moral justification (if there is one) must depend on showing that it is needed in achieving an extremely valuable goal.

Here is a plausible way to fill out this thought: terrorism can be morally justified only if it (1) aims at a morally good goal, (2) does not impose more harm than is needed to achieve this goal, (3) is required to end a practice that is itself morally horrible, and (4) is used as a last resort.

As a test case, consider a deeply oppressed population that has tried every alternative to terrorism, in an effort to gain basic freedoms and a minimal amount of political respect. Each effort is met with ferocious violence. The situation is disastrous for the oppressed, who are faced with a choice of either remaining subjugated or resorting to violence themselves. Their leaders may shrink from terrorism but come to

believe that it is the only feasible path to freedom. Suppose they are right—a few terrorist acts could succeed in getting the rulers to the negotiation table and helping to bring about a more egalitarian society. In that case, why prohibit the only means of ending the catastrophe that has engulfed the subject population?

One answer denies the assumption behind this question: that terrorism can really be an effective means of achieving morally good goals. After all, engaging in terrorism very often leads not to compromise but to retaliation, increasing mistrust, and the entrenchment of existing positions. Further, some have argued that condition (3) cannot be met. The thought is that whenever terrorism looks like a viable strategy to end a practice that is morally horrible, there is always a better option: rather than targeting innocents, one could target others, such as the politicians who are supporting the oppression or the police and military personnel who are enforcing it. Since these individuals are not innocent—recall the definition of innocence provided in the previous section—violently attacking them does not amount to terrorism.

It's not clear why we should think that attacking military and political figures is *always* going to be more effective than terrorism as a means of achieving morally good goals. Sometimes it will be, but, for all we know, sometimes it won't. So, for all we know, some cases of terrorism might fulfill not only condition (3) but also (1), (2), and (4).

Careful readers will have noticed, however, that conditions (1)–(4) are stated as necessary conditions, rather than sufficient conditions, of the moral legitimacy of terrorism. Thus even if all four conditions are met, it does not follow that terrorism is ever morally permissible. One might argue that even if terrorism aims at a morally good goal, does not impose more harm than is needed to achieve this goal, is required to end a practice that is itself morally horrible, and is used as a last resort, it is *still* immoral. Another consequentialist argument that affirms

this conclusion is based on the idea that targeting innocent people for violence and intimidation is bound to lead to disaster in the long run. The thought is that resorting to terrorism is a game changer that will likely give hardliners on the other side the excuse they've wanted to violently retaliate and attack innocents who are identified with the terrorist cause. Once the terroristic cycle of violence begins, there is no ending it without a huge amount of innocent blood being shed on all sides. These predictions serve as the basis of

The Slippery Slope Argument

1. If an action sets a dangerous precedent that is likely to lead to terrible long-term consequences, then it is immoral.
2. Terrorism sets a dangerous precedent that is likely to lead to terrible long-term consequences.

Therefore,

3. Terrorism is immoral.

Those of you who have read Chapter 15 will recognize this form of argument—there, it was used to oppose the legalization of active euthanasia. The basic idea is that once you take the initial step—in this case, resorting to terrorism—there is no going back. You are headed inevitably to disaster.

Premise 1 expresses a classic consequentialist thought. As such, it inherits the attractions of consequentialism that we considered in Chapter 5. But it is also subject to critique, most notably from those who think that morality requires us to act justly, even if doing so is likely to lead to terrible results. (For example: impeaching a popular president for his corruption may, in a politically unstable setting, lead to violent riots by his supporters, or even to civil war.)

Premise 2 is usually true. Most instances of terrorism do set a dangerous precedent that leads to terrible long-term consequences. But there might be exceptions to the rule. One would have to undertake a very detailed study of terrorism

in order to know whether such exceptions exist. If they do, then premise 2, while generally true (i.e., true of most cases), is not always true. For those exceptions, the Slippery Slope Argument would be unsound.

Those who oppose an absolute moral ban on terrorism sometimes argue that such a rule would be irrational, because obeying it would sometimes frustrate its underlying purpose. These critics hold that the purpose of a ban on terrorism is to protect innocent lives. But in rare cases, they say, obeying a ban on terrorism might cost far more lives than violating that ban. Though terrorism will result in the loss of innocent life, it might be needed to change a political situation in which many more innocent lives are being taken by those who are enforcing oppressive, discriminatory policies. If this is ever so, then an absolute ban on terrorism is irrational, because complying with the ban will undermine its purpose. That shows that the ban should not be absolute. The charge can be put in the form of

The Argument from Irrationality

1. If perfect obedience to a rule can frustrate the underlying purpose of the rule, then the rule is irrational.
2. Perfect obedience to an absolute ban on terrorism can sometimes frustrate its underlying purpose.

Therefore,

3. An absolute ban on terrorism is irrational.

This may look a bit like the Argument from Disaster Prevention, but there is an important difference. The charge here isn't that following absolute rules may produce a catastrophe. Rather, the complaint is that there is something fundamentally *inconsistent* about the absolutist position. It is tempting to defend absolute rules by claiming that they protect all-important values, such as the value of innocent life. But if these values can be better served by violating those rules, then the rules *should* be broken. And that means that they aren't really absolute, after all.

Absolutists have replied to this challenge by rejecting the argument's second premise. It's natural to think that the point of an absolute ban on terrorism is to protect innocent life. But absolutists *deny* this. After all, if our goal is to minimize the loss of innocent human life, then we *should* sometimes deliberately kill an innocent person, since that will best achieve our goal. But certain absolutists think that we should never, ever deliberately kill another innocent human being—even if doing so will thereby spare many more innocent people from being killed.

If the point of a ban on terrorism is not to save innocent life, then what is it? The answer is simplicity itself. The point of such a ban is to forbid you from targeting innocent people for harm. The only way to honor that demand is by not targeting innocents. Of course, it may be that by obeying this requirement, you thereby open the door to a situation in which many more innocent people are killed. But the absolute requirement is not that you prevent the killing of innocents. It is that you kill none of them yourself. In short: if the purpose of an absolute ban on terrorism is to prevent each person from committing terrorism, then perfect compliance with this rule is *not* irrational. If everyone obeyed this rule, its purpose would be fulfilled: no one would engage in terrorism.

The last argument we will consider here seeks to defend the occasional permissibility of terrorism, by drawing some parallels between terrorism and war. War, like terrorism, is bad. The world would be a better place without either. But we can accept this verdict while also allowing that war is sometimes morally justified. The precise conditions under which a nation is morally allowed to go to war are controversial; indeed, some people—**pacifists**—reject the idea that wars are *ever* justified. This is not the place to try to sort out these difficult issues. Let's assume, just for the moment, that pacifists are mistaken, and that it is sometimes morally acceptable to engage in military battles. Some critics of an absolute ban on terrorism have argued that the

conditions that morally justify conducting a war are the very same as those that justify terrorism. According to them, there is a close parallel between war and terrorism that is revealed by

The War-Terrorism Argument

1. If war can sometimes be morally justified, then so too can terrorism.
 2. War can sometimes be morally justified.
- Therefore,
3. Terrorism can sometimes be morally justified.

Those who defend this argument do not claim that war is the very same thing as terrorism. Rather, this is an **argument from analogy**. All such arguments have the following form. They compare two things—call them A and B, just for simplicity. Such arguments identify several features of A, claim that B shares those features, and then conclude that B shares a further feature possessed by A. In this case, the two things being compared are war and terrorism. War has several features—it's violent, it inevitably kills innocent people, and it inspires terror. Terrorism shares each of these features. On the assumption that pacifists are mistaken—the assumption built into premise 2—war has a further feature, namely, that it can sometimes be morally justified. The thought is that if war can be morally justified despite all of these very bad features, then terrorism, which shares those features, can sometimes be morally legitimate as well.

Because we can't devote the needed time to assessing premise 2, let us suspend judgment about it. It might, as most people believe, be true. Or perhaps premise 2 is false, and the pacifists are correct: war is never morally justified, and there is a sound argument that explains why refraining from violence is always more morally important than defending yourself and your loved ones against attack. Regardless of how the debate over pacifism is settled, many will seek to resist premise 1, and the parallel between war and terrorism that it affirms.

In order to question premise 1, you need to identify some important difference that distinguishes the morality of war from the morality of terrorism. The most likely candidate is this: terrorists *intend* to harm innocent people, whereas military personnel, at least when they are acting in a morally acceptable way, do not. Those who oppose premise 1 say that there is a crucial difference between intending to harm innocents and merely foreseeing that they will be harmed. Everyone knows that innocents will die in war, even when troops are doing their best to avoid civilian casualties. But if troops are not targeting civilians, if the war is undertaken for a just cause, and if the troops are using the least amount of force needed to secure their goals, then the loss of innocent life may be morally acceptable “collateral damage” of military action.

This line of reasoning expresses a commitment to the **doctrine of double effect** (DDE). The doctrine refers to two relevant effects that actions can have: those that we intend to bring about, and those that we foresee but do not aim for. This principle says that if your goal is worthwhile, you are sometimes permitted to act in ways that foreseeably cause harm to innocents, though you must never intend to cause such harm.

Consequentialists can't stand the DDE, because it conflicts with the consequentialist claim that the morality of an action depends entirely on its results. The DDE makes the morality of an action depend instead on what is going on in the mind of the person who performs it—is he trying to hurt people, or is he trying to do good, all the while knowing that some innocent folks are going to get hurt? Consequentialists believe that this is the wrong question to be asking—we should, instead, be concerned solely with whether this action, among all available options, is going to bring about the best results.

Whether premise 1 of the War-Terrorism Argument is plausible depends on whether there really is, as fans of the DDE insist, and as

consequentialists deny, a morally relevant difference between intending harm and merely foreseeing it. What do you think?

CONCLUSION

No reasonable person can think that terrorism is, in itself, a good thing. The question, though, is whether there are any circumstances in which it promises to do enough good as to outweigh the harm that it inflicts on innocent people.

Both Kantians and some consequentialists insist that there are no such circumstances. They defend an absolute moral rule against terrorism, either because it treats people as mere means, or because it violates the DDE, or because it is bound to lead to more harm than good.

Others believe that terrorism may sometimes be morally legitimate, though only if a number of conditions are met. These thinkers claim that terrorism might, in some cases, be an effective way to help to end oppression. As they see it, even though terrorism (like war) definitely imposes substantial harms, the ends, if good enough, can justify the unsavory means.

ESSENTIAL CONCEPTS

Absolute moral rule: a moral rule that may never permissibly be broken.

Argument from analogy: a type of argument that draws a parallel between two things that share several features, concluding that they are likely to share some further feature as well.

Doctrine of double effect: the view that says that if your goal is worthwhile, you are sometimes permitted to act in ways that foreseeably cause certain types of harm, though you must never intend to cause such harms.

Innocence: in general, the absence of guilt. In the context of terrorism, innocence denotes the absence of responsibility for the wrongful harms that terrorists are responding to.

Lone wolf attacks: terrorist attacks undertaken by single individuals, rather than through the coordinated efforts of members of a terrorist group.

STAT SHOT

- The vast majority of terrorism victims since 2001 have been from Middle Eastern countries, not the United States or Western Europe (Figure 19.1).

Number of persons killed by terrorist attacks in selected countries. 2001–2014

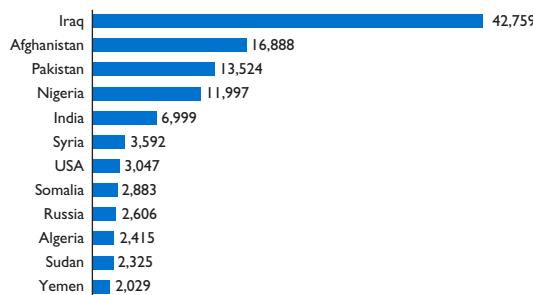


Figure 19.1.

Source: <http://www.telegraph.co.uk/news/2016/03/25/west-europe-is-safer-now-than-in-the-1970s-and-safer-than-almost/>

- The United States is split over whether torture is ever acceptable for the purposes of fighting terror. Forty-nine percent say that it is never acceptable, while 48 percent say that it is sometimes acceptable (Figure 19.2).

How concerned are you about extremism in the name of Islam in our country these days?

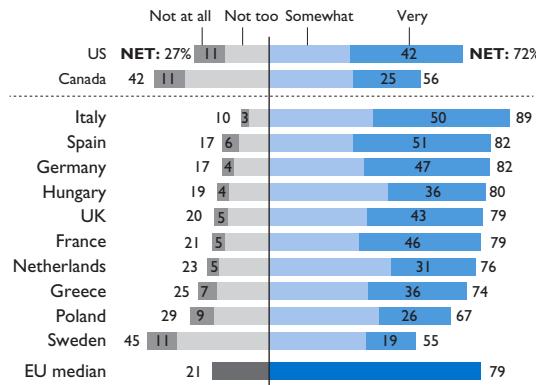
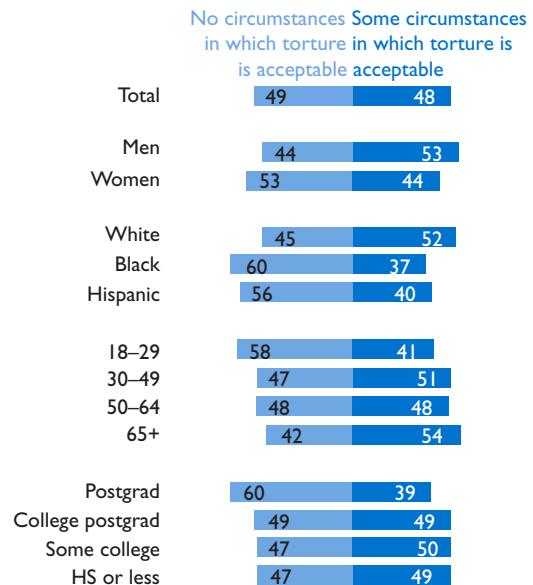


Figure 19.3.

Source: Spring 2017 Global Attitudes Survey. <http://www.pewresearch.org/fact-tank/2017/05/24/majorities-in-europe-north-america-worried-about-islamic-extremism/>

Thinking about US anti-terrorism efforts, which comes closer to your view? There are... (%)



Notes: Don't know/No answer responses not shown, Whites and blacks include only those who are not Hispanic, Hispanics are of any race.

Figure 19.2.

Source: <http://www.pewresearch.org/fact-tank/2017/01/26/americans-divided-in-views-of-use-of-torture-in-u-s-anti-terror-efforts/>

- EU countries are concerned about Islamic extremism in their country (Figure 19.3).

Mere means: to treat another as a mere means to the achievement of one's own goals is to treat her in ways that fail to respect her rationality and autonomy, as if she had no intrinsic importance.

Pacifism: the view that peace is a paramount value and that violence (including war) is immoral.

Terrorism: the deliberate use of violence on innocent victims, with the intent to intimidate a population, for the purpose of advancing some political goal.

Cases for Critical Thinking

Paying Ransom

In August of 2008, Amanda Lindhout was working as a reporter for a Canadian news service. She was sent to Somalia to cover a humanitarian crisis in the area. Almost immediately after she arrived, her SUV was stopped by about a dozen men carrying AK-47s who ordered her to get into their van. She was driven away and thrown into a dark room for twenty-four hours. Eventually, a man entered Amanda's room and told her that she was being held for ransom. The men were asking Amanda's family for \$1.5 million.

Lindhout's family didn't have the money. The terrorists likely knew that they wouldn't. They likely expected the Canadian government to give the money to the Lindhout family. But Canada (like the United States) has a "no concessions" policy on paying ransoms, especially to terror groups. In fact, even if Lindhout's family had the money to pay the ransom on their own, it would have been illegal (according to Canadian law) for them to pay it. Canada forbids its citizens from paying ransoms. The goal of such a policy is to prevent families from incentivizing terror groups to kidnap even more Canadians abroad.

Eventually, Lindhout's family learned that the Canadian government rarely enforces the law prohibiting ransom payments to terrorists.

Lindhout's mother immediately began a fund-raising campaign. She booked meetings with high-powered business people in Calgary and managed to raise the \$1.5 million. She paid the ransom and, fifteen months after Lindhout was kidnapped, she was free. The Canadian government never prosecuted Lindhout's mother.¹

1. <http://www.nytimes.com/2013/09/01/magazine/lindhout-kidnapping-somalia.html>
2. <https://www.theguardian.com/world/2016/jun/17/governments-pay-ransoms-hostages-kidnappers-terrorists-complicated-canada-us>
3. <https://www.theguardian.com/world/2015/jan/15/two-italian-aid-workers-freed-syria>

Questions

1. Virtually every nation claims not to pay (and not to allow its citizens to pay) ransom to terrorists. However, some countries very likely do. For instance, money has recently been transferred to terrorist organizations to free German, French, Spanish, and Italian citizens.^{2,3} Should governments pay ransoms to free their captured citizens? Why or why not?
2. Should governments permit their citizens to pay ransom if they can afford it—even if the government refuses to pay it themselves? Why or why not?
3. Is it morally permissible for private citizens to pay ransoms to terrorists to free their loved ones when their government refuses to do so? Why or why not?
4. Rather than pay ransoms directly to terror groups, some countries offer to contribute funds to some humanitarian cause in the terrorists' area. They'll offer to build a piece of infrastructure (e.g., a school, road, bridge) or send food or supplies to the area. Is it morally permissible for governments to free its citizens in this way? Why or why not?

Drone Strikes

New technology has made it possible for Western militaries to conduct surveillance and air

strikes remotely from relatively inexpensive unmanned aircraft—often called “drones.” For several years now, the United States has conducted drone strikes in Middle Eastern countries such as Yemen, Somalia, and Pakistan. Terrorist targets in these countries can be monitored for days, weeks, or even months before a strike is made. The laser-guided missiles launched from drones are devastatingly accurate—much more accurate than missiles launched from traditional manned aircraft. This makes it possible to minimize collateral damage in an unprecedented way. No American lives are put at risk in these strikes, since drones are guided from the safety of a military compound, hundreds or even thousands of miles away from the terrorist’s location.¹

Some worry that the ease and apparent effectiveness of drone strikes make the US government much more prone to conduct these attacks, thereby increasing the number of people killed and the risk of harming innocent civilians. Citizens living in the area where drone strikes are conducted often live in constant fear, never knowing if their house will be the next one to explode without warning. This leads to resentment of the United States among these populations and may encourage some to join the terrorists’ ranks. Finally, these strikes have severe consequences for drone pilots. Many experience “burnout” or depression.² Many report being distressed by the experience of monitoring a target in the company of the target’s family, only to subsequently pull the trigger, launching the missile that kills him.

1. <https://www.nytimes.com/2017/03/16/opinion/preventing-a-free-for-all-with-drone-strikes.html>

2. <http://www.nytimes.com/2008/12/14/magazine/14Ideas-Section2-B-t-001.html>

3. <https://www.nytimes.com/2015/04/24/world/asia/drone-strikes-reveal-uncomfortable-truth-us-is-often-unsure-about-who-will-die.html>

Questions

1. What do you regard as the greatest advantage and disadvantage of drone strikes?

2. What consequences, if any, are there to soldiers fighting in a war when they experience virtually no risk of death in the fight? Would it be morally better for soldiers on both sides to experience risk of death? Why or why not?
3. Drone pilots can have a fairly high degree of confidence about the identity of their intended target before they conduct a strike. It’s virtually impossible, however, for them to be certain that their intended target is the terrorist they’ve been ordered to kill, rather than someone who looks very much like the terrorist they’ve been ordered to kill.³ Drone camera technology just isn’t good enough to pick up the subtle facial features of people on the ground from nearly a mile up in the air. How should we weigh the possibility of killing the wrong person against the possibility of saving many lives from a terrorist attack (by killing a would-be terrorist)?
4. Suppose we’re certain that a terrorist plans to detonate an explosive in a mall within several days. We estimate that twenty people will die in the attack, should it occur. And suppose that a drone strike would be sure to kill the terrorist, but, since he lives in a populated location, it’s likely to kill three or four other innocent civilians, too. Would it be morally permissible to conduct this strike?

Humane Torture?

Governments and militaries have long used torture as an interrogation technique designed to obtain information that can be used to prevent terrorist attacks. Some techniques, besides causing unimaginable pain, cause lasting damage to the detainee. There are, however, ways of torturing a person that are (claimed to be) more humane and have no clear, long-lasting effects. For instance, Harvard law professor Alan Dershowitz has proposed putting a sterilized needle under a detainee’s fingernail and slowly pushing

the needle in.¹ This would result in excruciating pain, if carried through long enough, without also causing any significant long-term damage. Indeed, he has suggested, there could be medical doctors present to oversee the process, and all proceedings could be video-recorded with proper oversight from an independent group to ensure that no terrible abuse takes place. The goal of such a practice would be merely to extract information—not to maim, humiliate, or “make an example” of someone.

1. <http://edition.cnn.com/2003/LAW/03/03/cnna.Dershowitz/>

Questions

1. What are the advantages and disadvantages of having such a system of (relatively) well-ordered torture with oversight?

2. Would such a system be effective at extracting reliable information from terrorists? Why or why not?
3. Would it be morally permissible for a state to carry out such torture if it announced to the world that it had a policy of doing this to terrorists suspected of having important information?
4. If you oppose this form of torture, what is the most severe measure you think it would be permissible to take to obtain information from a terrorist? If you endorse this form of torture, what is the most severe form of torture you think would be permissible to use in the effort to extract information from a terrorist?

READINGS

Terrorism: A Critique of Excuses

Michael Walzer

Terrorists target innocent people to further their own political agenda. Michael Walzer thinks that terrorism can never be justified: it can never be shown to be, in the end, the morally right thing to do. But can terrorism ever be excused? Can terrorists, while doing something very wrong, nonetheless be freed of any moral blame for their actions?

Walzer defends a negative answer to this question by considering the four most prominent excuses for terrorism. These excuses include the claim (1) that terrorism is a last resort, chosen when all else fails; (2) that nothing but terrorism is possible for weak insurgency movements; (3) that terrorism works, and whatever works for a good cause is itself morally acceptable; and (4) that all politics involves terrorism, and all political groups practice it. Walzer argues that each of these excuses fails.

How should we combat terrorism? While Walzer does not offer anything like a simple solution to this question, he identifies some constraints that must be met. We must avoid repeating the wrongs of terrorists when we fight against them. We must not target people indiscriminately. If we must engage in repression and retaliation, it must be directed at the terrorists themselves, and never at the people in whose name the terrorists are acting.

Terrorism is often a response to oppression. While Walzer rejects the idea that this ever justifies or excuses terrorism, he insists that the oppression should be reduced or (ideally) eliminated. Not all terrorism stems from oppression. And when terror is a response to oppression, it can be very tempting to do nothing about the oppression, or even to increase one's iron grip. But Walzer rejects such responses. Justice requires that we relieve oppression, even when one's enemies are using it to justify terroristic attacks.

No one these days advocates terrorism, not even those who regularly practice it. The practice is indefensible now that it has been recognized, like rape and murder, as an attack upon the innocent. In a sense, indeed, terrorism is worse than rape and murder commonly are, for in the latter cases the victim has been chosen for a purpose; he or she is the direct object of attack, and the attack has some reason, however twisted or ugly it may be. The victims of a terrorist attack are third parties, innocent bystanders; there is no special reason for attacking them; anyone else within a large class of (unrelated) people will do as well. The attack is directed indiscriminately against the entire class. Terrorists are like killers on a rampage, except that their rampage is not just expressive of rage or madness; the rage is purposeful and programmatic. It aims at a general vulnerability: Kill these people in order to terrify those. A relatively small number of dead victims makes for a very large number of living and frightened hostages.

This, then, is the peculiar evil of terrorism—not only the killing of innocent people but also the intrusion of fear into everyday life, the violation of private purposes, the insecurity of public spaces, the endless coerciveness of precaution. A crime wave might, I suppose, produce similar effects, but no one plans a crime wave; it is the work of a thousand individual decision-makers, each one independent of the others, brought together only by the invisible hand. Terrorism is the work of visible hands; it is an organizational project, a strategic choice, a conspiracy to murder and intimidate . . . you and me. No wonder the conspirators have difficulty defending, in public, the strategy they have chosen.

From Michael Walzer, "Terrorism: A Critique of Excuses," in S. Luper-Foy, ed., *Problems of International Justice* (Boulder, CO: Westview Press, 1988), pp. 237–247.

The moral difficulty is the same, obviously, when the conspiracy is directed not against you and me but against *them*—Protestants, say, not Catholics; Israelis, not Italians or Germans; blacks, not whites. These "limits" rarely hold for long; the logic of terrorism steadily expands the range of vulnerability. The more hostages they hold, the stronger the terrorists are. No one is safe once whole populations have been put at risk. Even if the risk were contained, however, the evil would be no different. So far as individual Protestants or Israelis or blacks are concerned, terrorism is random, degrading, and frightening. That is its hallmark, and that, again, is why it cannot be defended.

But when moral justification is ruled out, the way is opened for ideological excuse and apology. We live today in a political culture of excuses. This is far better than a political culture in which terrorism is openly defended and justified, for the excuse at least acknowledges the evil. But the improvement is precarious, hard won, and difficult to sustain. It is not the case, even in this better world, that terrorist organizations are without supporters. The support is indirect but by no means ineffective. It takes the form of apologetic descriptions and explanations, a litany of excuses that steadily undercuts our knowledge of the evil. Today that knowledge is insufficient unless it is supplemented and reinforced by a systematic critique of excuses. That is my purpose here. I take the principle for granted: that every act of terrorism is a wrongful act. The wrongfulness of the excuses, however, cannot be taken for granted; it has to be argued. The excuses themselves are familiar enough, the stuff of contemporary political debate. I shall state them in stereotypical form. There is no need to attribute them to this or that writer, publicist, or commentator; my readers can make their own attributions.

The most common excuse for terrorism is that it is a last resort, chosen only when all else fails. The image is of people who have literally run out of options. One by one, they have tried every legitimate form of political and military action, exhausted every possibility, failed everywhere, until no alternative remains but the evil of terrorism. They must be terrorists or do nothing at all. The easy response is to insist that, given this description of their case, they should do nothing at all; they have indeed exhausted their possibilities. But this response simply reaffirms the principle, ignores the excuse; this response does not attend to the terrorists' desperation. Whatever the cause to which they are committed, we have to recognize that, given the commitment, the one thing they cannot do is "nothing at all."

But the case is badly described. It is not so easy to reach the "last resort." To get there, one must indeed try everything (which is a lot of things) and not just once, as if a political party might organize a single demonstration, fail to win immediate victory, and claim that it was now justified in moving on to murder. Politics is an art of repetition. Activists and citizens learn from experience, that is, by doing the same thing over and over again. It is by no means clear when they run out of options, but even under conditions of oppression and war, citizens have a good run short of that. The same argument applies to state officials who claim that they have tried "everything" and are now compelled to kill hostages or bomb peasant villages. Imagine such people called before a judicial tribunal and required to answer the question, What exactly did you try? Does anyone believe that they could come up with a plausible list? "Last resort" has only a notional finality; the resort to terror is ideologically last, not last in an actual series of actions, just last for the sake of the excuse. In fact, most state officials and movement militants who recommend a policy of terrorism recommend it as a first resort; they are for it from the beginning, although they may not get their way at the beginning. If they are honest, then, they must make other excuses and give up the pretense of the last resort.

[Would terrorism be justified in a "supreme emergency" as that condition is described in "Emergency Ethics" (chapter 3)? It might be, but only if the oppression to which the terrorists claimed to be responding was genocidal in character. Against the

imminent threat of political and physical extinction, extreme measures can be defended, assuming that they have some chance of success. But this kind of a threat has not been present in any of the recent cases of terrorist activity. Terrorism has not been a means of avoiding disaster but of reaching for political success.]

The second excuse is designed for national liberation movements struggling against established and powerful states. Now the claim is that nothing else is possible, that no other strategy is available except terrorism. This is different from the first excuse because it does not require would-be terrorists to run through all the available options. Or, the second excuse requires terrorists to run through all the options in their heads, not in the world; notional finality is enough. Movement strategists consider their options and conclude that they have no alternative to terrorism. They think that they do not have the political strength to try anything else, and thus they do not try anything else. Weakness is their excuse.

But two very different kinds of weakness are commonly confused here: the weakness of the movement vis-à-vis the opposing state and the movement's weakness vis-à-vis its own people. This second kind of weakness, the inability of the movement to mobilize the nation, makes terrorism the "only" option because it effectively rules out all the others: non-violent resistance, general strikes, mass demonstrations, unconventional warfare, and so on.

These options are only rarely ruled out by the sheer power of the state, by the pervasiveness and intensity of oppression. Totalitarian states may be immune to nonviolent or guerrilla resistance, but all the evidence suggests that they are also immune to terrorism. Or, more exactly, in totalitarian states state terror dominates every other sort. Where terrorism is a possible strategy for the oppositional movement (in liberal and democratic states, most obviously), other strategies are also possible if the movement has some significant degree of popular support. In the absence of popular support, terrorism may indeed be the one available strategy, but it is hard to see how its evils can then be excused. For it is not weakness alone that makes the excuse, but the claim of the terrorists to represent the weak; and the particular form of weakness that

makes terrorism the only option calls that claim into question.

One might avoid this difficulty with a stronger insistence on the actual effectiveness of terrorism. The third excuse is simply that terrorism works (and nothing else does); it achieves the ends of the oppressed even without their participation. “When the act accuses, the result excuses.” This is a consequentialist argument, and given a strict understanding of consequentialism, this argument amounts to a justification rather than an excuse. In practice, however, the argument is rarely pushed so far. More often, the argument begins with an acknowledgment of the terrorists’ wrongdoing. Their hands are dirty, but we must make a kind of peace with them because they have acted effectively for the sake of people who could not act for themselves. But, in fact, have the terrorists’ actions been effective? I doubt that terrorism has ever achieved national liberation—no nation that I know of owes its freedom to a campaign of random murder—although terrorism undoubtedly increases the power of the terrorists within the national liberation movement. Perhaps terrorism is also conducive to the survival and notoriety (the two go together) of the movement, which is now dominated by terrorists. But even if we were to grant some means-end relationship between terror and national liberation, the third excuse does not work unless it can meet the further requirements of a consequentialist argument. It must be possible to say that the desired end could not have been achieved through any other, less wrongful, means. The third excuse depends, then, on the success of the first or second, and neither of these look likely to be successful.

The fourth excuse avoids this crippling dependency. This excuse does not require the apologist to defend either of the improbable claims that terrorism is the last resort or that it is the only possible resort. The fourth excuse is simply that terrorism is the universal resort. All politics is (really) terrorism. The appearance of innocence and decency is always a piece of deception, more or less convincing in accordance with the relative power of the deceivers. The terrorist who does not bother with appearances is only doing openly what everyone else does secretly.

This argument has the same form as the maxim “All’s fair in love and war.” Love is always fraudulent, war is always brutal, and political action is

always terrorist in character. Political action works (as Thomas Hobbes long ago argued) only by generating fear in innocent men and women. Terrorism is the politics of state officials and movement militants alike. This argument does not justify either the officials or the militants, but it does excuse them all. We hardly can be harsh with people who act the way everyone else acts. Only saints are likely to act differently, and sainthood in politics is supererogatory, a matter of grace, not obligation.

But this fourth excuse relies too heavily on our cynicism about political life, and cynicism only sometimes answers well to experience. In fact, legitimate states do not need to terrorize their citizens, and strongly based movements do not need to terrorize their opponents. Officials and militants who live, as it were, on the margins of legitimacy and strength sometimes choose terrorism and sometimes do not. Living in terror is not a universal experience. The world the terrorists create has its entrances and exits.

If we want to understand the choice of terror, the choice that forces the rest of us through the door, we have to imagine what in fact always occurs, although we often have no satisfactory record of the occurrence: A group of men and women, officials or militants, sits around a table and argues about whether or not to adopt a terrorist strategy. Later on, the litany of excuses obscures the argument. But at the time, around the table, it would have been no use for defenders of terrorism to say, “Everybody does it,” because there they would be face to face with people proposing to do something else. Nor is it historically the case that the members of this last group, the opponents of terrorism, always lose the argument. They can win, however, and still not be able to prevent a terrorist campaign; the would-be terrorists (it does not take very many) can always split the movement and go their own way. Or, they can split the bureaucracy or the police or officer corps and act in the shadow of state power. Indeed, terrorism often has its origin in such splits. The first victims are the terrorists’ former comrades or colleagues. What reason can we possibly have, then, for equating the two? If we value the politics of the men and women who oppose terrorism, we must reject the excuses of their murderers. Cynicism at such a time is unfair to the victims.

The fourth excuse can also take, often does take, a more restricted form. Oppression, rather than political rule more generally, is always terroristic in character, and thus, we must always excuse the opponents of oppression. When they choose terrorism, they are only reacting to someone else's previous choice, repaying in kind the treatment they have long received. Of course, their terrorism repeats the evil—innocent people are killed, who were never themselves oppressors—but repetition is not the same as initiation. The oppressors set the terms of the struggle. But if the struggle is fought on the oppressors' terms, then the oppressors are likely to win. Or, at least, oppression is likely to win, even if it takes on a new face. The whole point of a liberation movement or a popular mobilization is to change the terms. We have no reason to excuse the terrorism reactively adopted by opponents of oppression unless we are confident of the sincerity of their opposition, the seriousness of their commitment to a nonoppressive politics. But the choice of terrorism undermines that confidence.

We are often asked to distinguish the terrorism of the oppressed from the terrorism of the oppressors. What is it, however, that makes the difference? The message of the terrorist is the same in both cases: a denial of the peoplehood and humanity of the groups among whom he or she finds victims. Terrorism anticipates, when it does not actually enforce, political domination. Does it matter if one dominated group is replaced by another? Imagine a slave revolt whose protagonists dream only of enslaving in their turn the children of their masters. The dream is understandable, but the fervent desire of the children that the revolt be repressed is equally understandable. In neither case does understanding make for excuse—not, at least, after a politics of universal freedom has become possible. Nor does an understanding of oppression excuse the terrorism of the oppressed, once we have grasped the meaning of “liberation.”

These are the four general excuses for terror, and each of them fails. They depend upon statements about the world that are false, historical arguments for which there is no evidence, moral claims that turn out to be hollow or dishonest. This is not to say that there might not be more particular excuses that have greater plausibility, extenuating circumstances in

particular cases that we would feel compelled to recognize. As with murder, we can tell a story (like the story that Richard Wright tells in *Native Son*, for example) that might lead us, not to justify terrorism, but to excuse this or that individual terrorist. We can provide a personal history, a psychological study, of compassion destroyed by fear, moral reason by hatred and rage, social inhibition by unending violence—the product, an individual driven to kill or readily set on a killing course by his or her political leaders. But the force of this story will not depend on any of the four general excuses, all of which grant what the storyteller will have to deny: that terrorism is the deliberate choice of rational men and women. Whether they conceive it to be one option among others or the only one available, they nevertheless argue and choose. Whether they are acting or reacting, they have made a decision. The human instruments they subsequently find to plant the bomb or shoot the gun may act under some psychological compulsion, but the men and women who choose terror as a policy act “freely.” They could not act in any other way, or accept any other description of their action, and still pretend to be the leaders of the movement or the state. We ought never to excuse such leaders.

What follows from the critique of excuses? There is still a great deal of room for argument about the best way of responding to terrorism. Certainly, terrorists should be resisted, and it is not likely that a purely defensive resistance will ever be sufficient. In this sort of struggle, the offense is always ahead. The technology of terror is simple; the weapons are readily produced and easy to deliver. It is virtually impossible to protect people against random and indiscriminate attack. Thus, resistance will have to be supplemented by some combination of repression and retaliation. This is a dangerous business because repression and retaliation so often take terroristic forms and there are a host of apologists ready with excuses that sound remarkably like those of the terrorists themselves. It should be clear by now, however, that counterterrorism cannot be excused merely because it is reactive. Every new actor, terrorist or counterterrorist, claims to be reacting to someone else, standing in a circle and just passing the evil along. But the circle is ideological in

character; in fact, every actor is a moral agent and makes an independent decision.

Therefore, repression and retaliation must not repeat the wrongs of terrorism, which is to say that repression and retaliation must be aimed systematically at the terrorists themselves, never at the people for whom the terrorists claim to be acting. That claim is in any case doubtful, even when it is honestly made. The people do not authorize the terrorists to act in their name. Only a tiny number actually participate in terrorist activities; they are far more likely to suffer than to benefit from the terrorist program. Even if they supported the program and hoped to benefit from it, however, they would still be immune from attack—exactly as civilians in time of war who support the war effort but are not themselves part of it are subject to the same immunity. Civilians may be put at risk by attacks on military targets, as by attacks on terrorist targets, but the risk must be kept to a minimum, even at some cost to the attackers. The refusal to make ordinary people into targets, whatever their nationality or even their politics, is the only way to say no to terrorism. Every act of repression and retaliation has to be measured by this standard.

But what if the “only way” to defeat the terrorists is to intimidate their actual or potential supporters? It is important to deny the premise of this question: that terrorism is a politics dependent on mass support. In fact, it is always the politics of an elite, whose members are dedicated and fanatical and more than ready to endure, or to watch others endure, the devastations of a counter-terrorist campaign. Indeed, terrorists will welcome counterterrorism; it makes the terrorists’ excuses more plausible and is sure to bring them, however many people are killed or wounded, however many are terrorized, the small number of recruits needed to sustain the terrorist activities.

Repression and retaliation are legitimate responses to terrorism only when they are constrained by the same moral principles that rule out terrorism itself. But there is an alternative response that seeks to avoid the violence that these two entail. The alternative is to address directly, ourselves, the oppression the terrorists claim to oppose. Oppression, they say, is the cause of terrorism. But that is merely one more excuse. The real cause of terrorism is the decision

to launch a terrorist campaign, a decision made by that group of people sitting around a table whose deliberations I have already described. However, terrorists do exploit oppression, injustice, and human misery generally and look to these at least for their excuses. There can hardly be any doubt that oppression strengthens their hand. Is that a reason for us to come to the defense of the oppressed? It seems to me that we have our own reasons to do that, and do not need this one, or should not, to prod us into action. We might imitate those movement militants who argue against the adoption of a terrorist strategy—although not, as the terrorists say, because these militants are prepared to tolerate oppression. They already are opposed to oppression and now add to that opposition, perhaps for the same reasons, a refusal of terror. So should we have been opposed before, and we should now make the same addition.

But there is an argument, put with some insistence these days, that we should refuse to acknowledge any link at all between terrorism and oppression—as if any defense of oppressed men and women, once a terrorist campaign has been launched, would concede the effectiveness of the campaign. Or, at least, the defense would give terrorism the appearance of effectiveness and so increase the likelihood of terrorist campaigns in the future. Here we have the reverse side of the litany of excuses; we have turned over the record. First oppression is made into an excuse for terrorism, and then terrorism is made into an excuse for oppression. The first is the excuse of the far left; the second is the excuse of the neoconservative right. I doubt that genuine conservatives would think it a good reason for defending the status quo that it is under terrorist attack; they would have independent reasons and would be prepared to defend the status quo against any attack. Similarly, those of us who think that the status quo urgently requires change have our own reasons for thinking so and need not be intimidated by terrorists or, for that matter, anti-terrorists.

If one criticizes the first excuse, one should not neglect the second. But I need to state the second more precisely. It is not so much an excuse for oppression as an excuse for doing nothing (now) about oppression. The claim is that the campaign against terrorism has priority over every other political activity. If the people who take the lead in this campaign are the

old oppressors, then we must make a kind of peace with them—temporarily, of course, until the terrorists have been beaten. This is a strategy that denies the possibility of a two-front war. So long as the men and women who pretend to lead the fight against oppression are terrorists, we can concede nothing to their demands. Nor can we oppose their opponents.

But why not? It is not likely in any case that terrorists would claim victory in the face of a serious effort to deal with the oppression of the people they claim to be defending. The effort would merely expose the hollowness of their claim, and the nearer it came to success, the more they would escalate their terrorism. They would still have to be defeated, for what they are after is not a solution to the problem but rather the power to impose their own solution. No decent end to the conflict in Ireland, say, or in Lebanon, or in the Middle East generally, is going to look like a victory for terrorism—if only because the different groups of terrorists are each committed, by the strategy they have adopted, to an indecent end. By working for our own ends, we expose the indecency.

NOTE

* In an earlier chapter, omitted here, Walzer defines a supreme emergency as a situation in which a group is faced with a serious risk of annihilation from a dedicated enemy.—Ed.

Michael Walzer: Terrorism: A Critique of Excuses

1. Although many people talk of “terrorism” today, the term is seldom explicitly defined. What exactly is terrorism? Are all terrorist acts committed by individuals and private organizations, or can states also engage in terrorism?
2. What is the difference between “advocating” and “excusing” terrorism? Do you agree with Walzer that no one advocates terrorism today?
3. How does Walzer respond to the excuse that terrorism is a last resort, to be chosen only when all else fails or when no other strategies are possible? Do you find his criticisms of this excuse convincing?
4. Some people claim that while terrorism is distasteful, it is sometimes justified because it can attain desirable results. How does Walzer respond to this argument? Do you agree with his response?
5. Should we ever comply with the demands of terrorists? If so, under what conditions? If not, why not?
6. What constraints does Walzer place on responding to terrorism? Should we accept such constraints? Why or why not?

Terrorism and War

Virginia Held

Here's a common thought: war can be morally justified in some cases, though terrorism cannot. Virginia Held argues that this is mistaken. She argues that acts of terrorism are like very small-scale wars. *If* wars are sometimes morally justified, then so are some acts of terrorism.

Held begins her case by considering the definition of “terrorism,” since many define it in such a way that terrorism couldn't possibly be morally justified. One standard definition has it that only “subnational groups or clandestine agents” can commit

acts of terror. If this were correct, then it would be impossible for political states to engage in terrorism. But Held argues that there are clear cases of state-sanctioned terrorism, as when the Argentinian military caused thousands of its political opponents to “disappear.”

Some argue that terrorism necessarily involves targeting innocent civilians. Held argues that this doesn’t quite get things right. On 9/11, hijackers crashed a plane into the Pentagon—a military complex with almost exclusively military personnel. This was a textbook case of terrorism, but it didn’t target civilians.

On Held’s view, terrorism is “political violence that usually spreads fear beyond those attacked.” In this way, terrorism resembles small-scale war. And it is plausible that some acts of war by political states are justified. If so, then some acts of small-scale war by nonpolitical states are likely justified, too. Held argues that if a government’s policies are morally unjustifiable, and if political violence to resist them is justifiable, then it should be justifiable for political violence (terrorism) to be directed at those responsible for upholding the relevant policies. For example, if a group of people have been under the oppressive thumb of foreign colonizers, and those colonizers have long been unresponsive to the complaints of the people they’re colonizing, then, in Held’s view, political violence might be justified. Held acknowledges that these are big “ifs.” She thinks that acts of terror, like acts of war, are always difficult to justify. Nevertheless, she thinks that we ought to acknowledge that, in a very narrow range of cases, terrorism likely can be justified.

DEFINING “TERRORISM”

... Understanding how “terrorism” should be defined is notoriously difficult. It is one of the *most* contested concepts and obviously difficult to be clear about.

Governments characteristically define “terrorism” as something only their opponents can commit, as something only those who seek to change policies, or to attack a given political system or status quo can engage in. The definition used by the U.S. State Department, for instance, includes the claim that it is carried out by “subnational groups or clandestine agents.”¹ And international law seems to concur. This is obviously unsatisfactory. When the military rulers of Argentina caused thousands of their suspected opponents to “disappear” in order to spread fear among other potential dissidents, this was state terrorism. And as the

Israeli and U.S. political scientists Neve Gordon and George Lopez say, “Israel’s practice of state-sanctioned torture also qualifies as political terrorism. It is well known that torture is not only used to extract information or to control the victim; it is also used to control the population as a whole.”² They conclude, and I agree, “that states can terrorize and can use soldiers, airplanes, and tanks to do so... terror should not be reduced to the difference between nonstate and state action.”³

There can also be state sponsored terrorism as when the government of one state funds and supports terrorism carried out by members of groups or states not under its control. The U.S. routinely lists a number of countries such as Iran and Syria which, it claims, support terrorist groups elsewhere. And U.S. support in the 1980’s for the Contras in Nicaragua who spread fear of what would happen to people if they joined or supported the Sandinista rebels would fall also into this category. This is a kind of terrorism most states recognize when engaged in by their adversaries, if not when they themselves aid such terrorists.

From Virginia Held, “Terrorism and War,” in *How Terrorism Is Wrong: Morality and Political Violence* (2008), pp. 18–25. © Oxford. By permission of Oxford University Press, USA. Notes have been abridged.

Terrorism is certainly violence, and it is political violence. One can doubt that Al Qaeda has a *political* objective in the sense in which most of us understand politics, but since it aims at the religious domination of the political, its violence is itself political, though perhaps not open to the usual responses to political aims through dialogue and compromise. War is also political violence, on a larger scale, though if the most alarming plans of current terrorist groups would be successful, they would often amount to war as currently understood. And political violence can also be more limited than most terrorism, as in the assassination of a particular political leader. Terrorism usually seeks to terrorize, to spread fear among a wider group than those directly harmed or killed.

An important definitional question to which I would like to devote some attention is whether the targeting of civilians must be part of the definition of “terrorism,” and whether such targeting turns other political violence into terrorism. Many of those writing on terrorism build the targeting of civilians into their definitions. It should be pointed out that this is the meaning of “terrorism” that may be emerging in international law. Since the development of international law is something to which progressives must attach great importance, we should certainly hesitate to challenge its positions. But international law is itself evolving, and has serious limitations. As currently formulated, it is highly biased in favor of existing states and against non-state groups. This may be a bias we should accept in a dangerous world, but considering the moral issues involved is surely appropriate.

I think there are serious problems with a definition of “terrorism” that sees “the deliberate killing of innocent people” as Michael Walzer puts it, to be its defining characteristic, or what distinguishes it from other kinds of political violence and war, and makes it automatically morally unjustifiable in the same way that murder is.

First, consider some of the descriptive implications. If targeting civilians must be part of terrorism, then blowing up the U.S. Marine barracks in Lebanon in 1983 and killing hundreds of marines, and blowing a hole in the U.S. destroyer USS Cole and killing 17 sailors in Yemen in October of 2000,

would not be instances of terrorism, and yet they are routinely described as examples of terrorism. Although we might say that such descriptions are simply wrong, I am inclined to think they are not.

Even more awkward for the proposed definition that killing civilians is the defining characteristic of terrorism is that we would have to make a very sharp distinction between the September 11th attack on the World Trade Center, which was certainly terrorism, and the attack that same day and with entirely similar means, on the U.S. Pentagon building, which on this definition would not be (although some civilians work at the Pentagon, it is certainly primarily a military target). And this seems very peculiar.

If one tries with this definition to include rather than exclude these cases as instances of terrorism, and thinks that instead of those who are technically “civilians” one simply means those who are not now shooting at one, like the Marines when they were asleep or the colonels in the Pentagon at their desks, and suggests that only those actually presently engaged in combat are legitimate targets, one will make it illegitimate for the opponents of terrorism to target terrorists when they are not actually engaged in bombings and the like. And distinguishing when members of the armed forces are actual present threats that may be targeted, as distinct from only potential threats because now resting, has not been part of the distinctions worked out asserting that noncombatants should not be targeted. As Robert Fullinwider writes, “combatants are first of all those in a warring country’s military service. They are . . . fair targets of lethal response . . . even when they are in areas to the rear of active fighting and even when they are sleeping.”⁴ What counts is whether they are members of the armed forces or fighting group, or not.

An even more serious problem with a proposal to tie the definition of “terrorism” to the targeting of civilians (but to include the attack on the Pentagon among instances of terrorism because members of the armed forces working at the Pentagon should be thought of as if they were civilians) is that it puts the burden of being a “legitimate target” on the lowest levels of the military hierarchy, the ordinary soldiers and sailors and pilots and support

personnel, and exempts the persons who give them their orders, send them into combat, and make them instruments of violence.

Furthermore, if attacking civilians *is* the defining characteristic of terrorism, a great many actions that are standardly *not* called terrorism would have to be considered to be: the bombings of Hiroshima, Nagasaki, Dresden, London, and all those other bombings of places where people live and where civilians become targets, and where the aim to spread fear and demoralization among wider groups was surely present. U.S. bombings in the war in Vietnam would be prime examples. Perhaps we should just get used to calling all these “acts of terrorism.” But perhaps we should find a definition of “terrorism” that does not ask us to.

What a lot of discussions of terrorism try of course to do is to come up with a definition such that what *they* do is terrorism and is *unjustified*, whereas what *we* and our friends do is not terrorism but a justified response to it, or is justified self-defense. Building the targeting of civilians into the definition of “terrorism” is often used to accomplish this, since “intentionally killing innocent people” seems by definition wrong and unjustified. However, the net then catches not only the usual miscreants of terrorism, but also much bombing carried out by, for instance, the U.S. and its allies, bombing that proponents are very reluctant to consider unjustified. And they end up with the kind of double standard that moral discussion ought to avoid. Walzer, for instance, has argued that terrorism is never justified, even in a just cause, because it deliberately kills innocents, but that at least some allied bombing of German cities in World War II was justified even though many innocent civilians were deliberately killed.⁵

Of course, there has been a great deal of discussion of what “deliberately” amounts to. The claim is often made that terrorism intentionally targets civilians, while the violence of governments seeking to suppress it only accidentally causes comparable loss of life among civilians, and that this makes all the moral difference. I find this a dubious claim. Only governments with highly sophisticated weaponry can afford to be highly selective in their targets—the Allies in World War II, for

instance, could not afford to be—and we know that even “smart bombs” often make mistakes. So the relevant comparison with respect to civilians seems to me to be: in the pursuit of their political goals, which side is causing the greater loss of civilian life. And if the deaths caused by both sides of a political conflict in which terrorism is used by at least one side are roughly equivalent, the argument may appropriately focus especially on the justice, or lack of it, of the political goals involved.

It is not a popular point to make in the wake of September 11th, but we might keep in mind that the actual loss of life caused by terrorism in comparison with conventional warfare remains relatively modest. It is the fear that is large rather than the actual numbers killed. Of course this may change if nuclear weapons come to be used by terrorists; but the *comparative* figures may easily not change if the Pentagon has its way and nuclear weapons become a much more standard and routine part of the arsenal of “defense.”

Another difficulty with building the killing of civilians, or noncombatants, or “the innocent,” into the definition of “terrorism” is that, as previously mentioned, it is not at all clear who the “innocent” are as distinct from the “legitimate” targets. Let us explore this issue somewhat further.

We can agree, perhaps, that small children are innocent, but beyond this, there is little moral clarity. First of all, many members of the armed forces are conscripts who have no choice but to be combatants. Many conscripts in the Israeli army, for instance, may disapprove of their government’s policies. Many others of those who participate in armed conflict, in the U.S. armed forces for instance, have been pressed into service by economic necessity and social oppression. Many other combatants around the world are themselves children, pulled into combat at age 12, 13, or 14, for instance. Studies by international inquiries put the numbers of children in combat in the hundreds of thousands.

More complicatedly, many civilians, the so-called “innocents,” may have demanded of their governments the very policies that opponents are resisting, sometimes using terrorism to do so. A political analyst for an Israeli newspaper, for instance, said that even more than Ariel Sharon’s

inclinations, it was the Israeli public's demands that caused the recent violent reoccupation of Palestinian territories and massive destruction there,⁶ though Sharon may not have needed much help in deciding on these actions. In January of 2003, the Israeli public had the chance to accept or reject the policies of the Sharon government: voters returned Sharon and his Likud party to power with double the number of seats in parliament they had before. Unfortunately, terrorism that kills civilians to oppose a government's policies does not distinguish between those who support and those who oppose that government. But neither does counter-terrorism that kills civilians distinguish between those who support and those who do not support terrorist groups.

Especially in the case of a democracy, where citizens elect their leaders and are ultimately responsible for their government's policies, it is not clear that citizens should be exempt from the violence those policies may lead to while the members of their armed services are legitimate targets. If a government's policies are *unjustifiable*, and if political violence to resist them is *justifiable* (these are very large "ifs," but not at all unimaginable) then it is not clear why the political violence should not be directed at those responsible for these policies. As one lawyer and political scientist asks, "In the history of modern democracy, a history that includes racial and colonial terrorism, was the use of terrorism by others *never justified*?"⁷

... I do not mean to suggest that no distinction at all can be made between combatants and civilians, or that the restraints on the conduct of war demanding that civilians be spared to the extent possible be abandoned. Rather, I am suggesting that the distinction cannot do nearly as much moral work as its advocates assign it. I reject the view that terrorism is inevitably and necessarily morally worse than war, which many assert because they declare that, by definition, terrorism targets civilians.

In sum, then, I decline to make targeting civilians a defining feature of terrorism. Terrorism is political violence that usually spreads fear beyond those attacked, as others recognize themselves as potential targets. This is also true of much war. The "Shock and Awe" phase of the U.S.'s war against

Iraq in March of 2003 was a clear example. Terrorism's political objectives distinguish it from ordinary crime. Perhaps more than anything else, terrorism resembles small-scale war. It can consist of single events such as (in the U.S.) the Oklahoma City bombing, whereas war is composed of a series of violent events. And there are many kinds of terrorism, as there are many kinds of war.

TERRORISM AND JUSTIFICATION

Governments try hard to portray groups that use terrorism as those who cause violence that would otherwise not exist, and to portray their own efforts to suppress that violence, however violently they do so, as a justified response to provocation. But if the governments would agree to what the groups seek—*independence for Chechnya* for instance—the violence of the terrorists would not take place. So the violence used to suppress terrorism is the price paid to maintain the status quo, as the violence used by the dissatisfied group is the price paid to pursue its goal. From a moral point of view, it is entirely appropriate to compare these levels of violence. The status quo is not in itself morally superior; it may include grievous violations of rights or denials of legitimate aims. Whether the goals of a dissatisfied group are morally defensible or not needs to be examined, as does whether a government's refusal to accede to these goals is morally defensible. Using violence to bring about change is not inherently worse from a moral point of view than using violence to prevent such change. No doubt stability has value, but its costs need to be assessed.

A more promising argument against terrorism is that it does not achieve what its advocates seek, that other means are not only more justifiable but more successful. But then the burden of making them more successful is on governments and those with power. When nonviolent protest is met with violence and fails consistently to change the policies protested against even when such policies are *unjustifiable*, it will be hard to argue that nonviolence works where terrorism does not. The terrorist Leila Khaled said about Palestinian hijackings in the 1970's that they "were used as a kind of struggle to put the question—who are the Palestinians—before

the world. Before we were dealt with as refugees. We yelled and screamed, but the whole world answered with more tents and did nothing.”⁸ Terrorists often believe, whether mistakenly or not, that violence is the only course of action open to them that can advance their political objectives. It is the responsibility of those who are able to do so to make this assessment untrue.

As many have noted, one of the most effective ways to reduce the appeal of terrorism to the disaffected is to enable them to participate in the political processes that affect them. Democracy is more effective than counter-terrorism. As Benjamin Barber writes,

Violence is not the instrument of choice even under tyrannical governments because confrontations based on force usually favor the powerful . . . But it can become the choice of those so disempowered by a political order (or a political disorder) that they have no other options . . . To create a just and inclusive world in which all citizens are stakeholders is the first objective of a rational strategy against terrorism . . .⁹

Lloyd Dumas examines the ineffectiveness of violent counter-terrorism, noting that “for decades, Israel has doggedly followed a policy of responding to any act of terrorism with violent military retaliation.”¹⁰ The result has been that “there exists today more terrorism directed against Israel than ever before . . . Israelis live in fear and Palestinians live in misery.”¹¹ He concludes that “in the long run, encouraging economic and political development is the single most effective counter-terrorist approach.”¹²

Claiming that all terrorism is the same and necessarily evil and that the so-called “war on terrorism” must *end* terrorism, or must stamp it out once and for all, or claiming that all responses to terrorism should be the same, is worse than unrealistic and misleading. It invites those who set up the eradication of terrorism as a goal to be humiliated when it is not achieved, and to be thus provoked into even more unjustified violence.

Of course there is no good terrorism. All terrorism is awful, just as all war is awful, and it is outrageous that human beings have not yet managed to

avoid, head off, control, and put an end to war (and to terrorism).

But this said, we can recognize that some war is worse than other war, that moral judgments are possible of its purposes and of the way it is carried out. We are accustomed to making such judgments with respect to war; we should become accustomed to making them with respect to terrorism.

One may have grave doubts whether the criteria for a just war offered by just war theory can *ever* be satisfied, especially in the case of wars fought with contemporary weaponry. But one can still agree that some wars carried out by some states or groups and fought in some ways for some purposes are *more unjustifiable* than others. And *if* war can be justified, so can some terrorism be. . . .

The United Nations, and most states, are intent on holding that to be legitimate, violence must be carried out by states, not non-state groups. But the UN also recognizes a fundamental right to self-determination which includes rights to resist “colonial, foreign and alien domination.” As Fullinwider notes, “since the United States is a country founded on violent rebellion against lawful authority, we can hardly endorse a blanket disavowal of the right by others violently to rebel against their own oppressors.”¹³ What is so disturbing about terrorists, he concludes, is that they appeal to morality directly without appealing to law; they rely on “private judgment.” But private judgment is not only a menace when exercised by non-state groups. When states put private judgment ahead of international law, as the U.S. has been doing increasingly under the George W. Bush presidency, the chances of escaping Hobbesian chaos are undermined.

It is very important to be able to make some relevant distinctions about terrorism. If its purpose is to impose a religious tyranny on unwilling citizens, it is worse than if it seeks a legitimate purpose. If its success would bring about the end of democratic discourse and the violation of its subjects’ human rights, it is more unjustifiable than if its success would create acceptable political outcomes. Judgments of the purposes aimed at are of great, though of course not conclusive importance, as they are in judging war. Judgments of the kinds of violence used to try to achieve or to prevent political purposes are

also of great importance. Terrorism that kills large numbers of children and relatively non-responsible persons is obviously worse than terrorism that largely targets property, or that kills only small numbers of persons responsible for an unjustifiable policy. Terrorism that kills many civilians is worse than that which does not, as is war that does so.

No form of violence can be justified unless other means of achieving a legitimate political objective have failed. But this is *also* a moral requirement on the governments that oppose change and that seek to suppress terrorism. And those with greater power have a greater obligation to avoid violence and to pursue other means of obtaining political objectives.

It is not only potential terrorists who should find non-violent means to press their demands; those resisting these demands should find non-violent means to oppose terrorism—to give a voice to opponents, and not just an empty voice, but to respond to legitimate demands to, for instance, end an occupation, cease a colonization, and stop imperialistic impositions. Governments that use violence—military and police forces—to suppress their opponents are often as guilty of using unjustified violence as are those struggling for a hearing for their legitimate grievances. And sometimes they are more at fault because alternative courses of action were more open to them. . . .

NOTES

1. US Department of State, *Patterns of Global Terrorism 1997*, Department of State Publications, 10321 (Washington, DC: United States Department of State, 1998), p. vi.
2. Neve Gordon and George A. Lopez, "Terrorism in the Arab-Israeli Conflict," in Andrew Valls (ed.), *Ethics in International Affairs* (Lanham: Rowman & Littlefield Publishers, 2000), p. 110.
3. Ibid.
4. Robert Fullinwider, "Terrorism, Innocence, and War" in Verna V. Gehring (ed.), *War after September 11* (Lanham: Rowman & Littlefield Publishers, 2003), p. 22.
5. Michael Walzer, *Just and Unjust Wars*, 3rd edition (New York: Basic Books, 2003), Chapter 16.

6. Serge Schmemann, "Not Quite an Arab-Israeli War, but a Long Descent into Hatred," *The New York Times* (22 April 2002), pp. A1, A11.
7. Angelia Means, "The Idea of the Enemy," typescript, p. 4. Quoted with permission.
8. Kamel B. Nasr, *Arab and Israeli Terrorism* (Jefferson: McFarland & Co., 1997), p. 57.
9. Benjamin R. Barber, "The War of All against All," in Verna V. Gehring (ed.), *War after September 11* (Lanham: Rowman & Littlefield Publishers, 2003), pp. 77, 88.
10. Lloyd J. Dumas, "Is Development an Effective Way to Fight Terrorism," in Verna V. Gehring (ed.), *War after September 11* (Lanham: Rowman & Littlefield Publishers, 2003), p. 73.
11. Ibid.
12. Ibid.
13. Fullinwider, "Terrorism, Innocence, and War," p. 24.

Virginia Held: Terrorism and War

1. Held carefully considers, and rejects, several definitions of "terrorism." Why does she think that the definition of "terrorism" matters so much?
2. Held argues that terrorism and war share many similarities. In what ways are they similar? In what ways are they different?
3. Held says that in democracies "where citizens elect their leaders and are ultimately responsible for their government's policies, it is not clear that citizens should be exempt from the violence those policies may lead to while the members of their armed services are legitimate targets." Do you agree that citizens of democracies are responsible for their government's policies? If so, can citizens, on that basis, be the proper targets of political violence? Why or why not?
4. On Held's view, terrorism is "political violence that usually spreads fear beyond those attacked." Can you think of any instances of terrorism that do not meet this definition? Can you think of any acts that meet this definition but aren't acts of terrorism?
5. What do you think: can acts of terrorism ever be justified? If so, what would such an act look like? If not, why not?

Is Terrorism Distinctively Wrong?

Lionel K. McPherson

According to what Lionel McPherson calls “the dominant view,” terrorism is always wrong, but waging war isn’t. McPherson argues that this view is mistaken. The dominant view gets its intuitive force from the thought that killing innocent civilians is very bad. But far more innocent civilians have been killed during conventional wars than from acts of terrorism. Proponents of the dominant view point out that noncombatant deaths in war are often justified by the great political goals they make possible. But the same, McPherson argues, can be said of acts of terrorism. For instance, certain acts of violence carried out by the ANC, an organization opposing apartheid in South Africa, were (as he sees it) likely justified. Thus in the context of comparing the morality of terrorism and war, terrorism is not distinctively wrong. On McPherson’s view, most acts of terrorism, like most acts of war, are unjustified, while some are justified.

McPherson argues that there is, however, another feature of terrorism that makes it morally objectionable in a way that war often is not. Many terrorist activities are carried out by groups on behalf of a population that does not recognize that group as representing their interests. For example, al-Qaeda claims to represent the followers of Islam, but al-Qaeda is not widely embraced by the Islamic community. And this is a typical (though not essential) feature of terrorist organizations. According to McPherson, then, what’s often distinctively wrong about terrorism is that it is carried out by groups that resort to political violence without representative authority—that is, without any process of public review and endorsement.

Many people, including philosophers, believe that terrorism is necessarily and egregiously wrong. I will call this “the dominant view.” The dominant view maintains that terrorism is akin to murder. This forecloses the possibility that terrorism, under any circumstances, could be morally permissible—murder, by definition, is wrongful killing. The unqualified wrongness of terrorism is thus part of this understanding of terrorism. . . .

I will argue that the dominant view’s condemnatory attitude toward terrorism as compared to conventional war cannot be fully sustained. . . .

DEFINITIONAL ISSUES

The dominant view finds characteristic expression in the following definition: “Terrorism is a type of political violence that intentionally targets civilians

(noncombatants) in a ruthlessly destructive, often unpredictable manner. . . . Essentially, terrorism employs horrific violence against unsuspecting civilians, as well as combatants, in order to inspire fear and create panic, which in turn will advance the terrorists’ political or religious agenda.”¹ Much of this language is not helpful in morally distinguishing terrorism, since conventional war tends to be at least as “ruthlessly destructive,” “unpredictable,” and “horrific” for noncombatants and combatants.

I will define ‘terrorism’ as the deliberate use of force against ordinary noncombatants, which can be expected to cause wider fear among them, for political ends. My definition focuses on the aspect of terrorism—namely, targeting of ordinary non-combatants—that commonly is thought to characterize its distinctive wrongness as compared to conventional war. Left out of the definition, for instance, is the claim that non-combatants are “innocent.” The relevant understanding of innocence in war is a contested matter, and my

From Lionel K. McPherson, “Is Terrorism Distinctively Wrong?” *Ethics* 117 (2007), pp. 524–546. Notes have been abridged.

argument will not depend on how this is settled. I will assume provisionally that ordinary noncombatants in general are innocent. . . .

CHALLENGING THE DOMINANT VIEW

Moral evaluation of terrorism might begin with the question of what makes terrorism wrong. A better opening question, I believe, is whether use of force that leads to casualties among ordinary noncombatants is morally objectionable. The latter question prompts comparison of terrorism and conventional war. Judging by practice and common versions of just war theory, the answer is plainly no. The journalist Chris Hedges reports these facts: "Between 1900 and 1990, 43 million soldiers died in wars. During the same period, 62 million civilians were killed. . . . In the wars of the 1990s, civilian deaths constituted between 75 and 90 percent of all war deaths."²² Such numbers may seem counterintuitive. More noncombatants than combatants have died in war, by a sizable margin, and the margin has only grown in an era of the most advanced weapons technology. We must conclude that war generally is highly dangerous for noncombatants. I will characterize this as the brute reality of war for noncombatants. This reality cannot be attributed simply to the conduct of war departing from the laws of war.

There is an ambiguity in the data I have cited: they do not clearly support the claim that most noncombatants who died in these wars were killed by military actions, for example, through the use of bombs, artillery, and land mines. Many noncombatant deaths in war have been the result of displacement and the lack of shelter, inability to get food, and the spread of disease. At the same time, modern warfare is marked by a nontrivial number of noncombatant deaths that are the direct result of military actions. The ratio of war to "war-related" noncombatant casualties and the distribution of moral responsibility for these casualties will not be at issue here. I proceed on the assumption that evaluating the ethics of war involves recognizing that war, directly or indirectly, leads to a great many noncombatant casualties. Modern warfare and widespread harm to noncombatants are virtually inextricable. . . .

Immediately doubtful is the popular notion that terrorism is distinctively wrong because of the fear

it usually spreads among ordinary noncombatants. Recall that my nonmoral definition of terrorism includes a fear-effects clause which descriptively distinguishes terrorism from other forms of political violence. However, this does not morally distinguish terrorism and conventional war. The brute reality of war for noncombatants indicates that in general they have more to fear from conventional war than (nonstate) terrorism, particularly since (nonstate) terrorists rarely have had the capacity to employ violence on a mass scale.³ . . .

The laws of war recognize a principle that prohibits disproportionate or excessive use of force, with an emphasis on noncombatants. For example, Article 51 (5) (b) of the 1977 Geneva Protocol I rules out use of force "which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."²⁴ Standard just war theory considers this the proportionality principle. Proponents of the dominant view might take the proportionality principle to illuminate an essential moral difference between conventional war and terrorism. They might claim that, unlike proper combatants, terrorists do not care about disproportionate harm to noncombatants. But the full impact of this charge is not easily sustained for two reasons.

The first reason is that terrorists could have some concern about disproportionate harm to noncombatants. This point is most salient when proportionality is understood in instrumental terms of whether violence is gratuitous, namely, in exceeding what is minimally necessary to achieve particular military or political goals, despite the availability of an alternative course of action that would be less harmful and no less efficacious. Terrorists may possess a normative if flawed sensibility that disapproves of instrumentally gratuitous violence, for the harm done would serve no strategic purpose. So the plausible charge is that terrorists reject the proportionality principle as conventionally construed (since it implicitly rules out deliberate use of force against noncombatants), not that they lack all concern for disproportionate harm to noncombatants.

The second reason is that the proportionality principle requires rather modest due care for noncombatants. Force may be used against them, provided that the incidental, or collateral, harm to them is not excessive when measured against the expected military gains. According to one legal scholar, “the interpretation by the United States and its allies of their legal obligations concerning the prevention of collateral casualties and the concept of proportionality comprehends prohibiting only two types of attacks: first, those that intentionally target civilians; and second, those that involve negligent behavior in ascertaining the nature of a target or the conduct of the attack itself.”⁵ Such an interpretation seems accurately to reflect the principle’s leniency. Indeed, the U.S. general and military theorist James M. Dubik argues that commanders have a special moral duty “not to waste lives of their soldiers” in balancing the responsibility to ensure that due care is afforded to noncombatants.⁶ A commander may give priority to limiting risk of harm to his own combatants, for their sake, at the expense of noncombatants on the other side.

We find, then, that the proportionality principle does not express a commitment to minimizing non-combatant casualties. The principle more modestly would reduce noncombatant casualties in requiring that they be worth military interests. Perhaps my reading appears too narrow. A prominent reason for thinking that terrorism is distinctively wrong is that terrorists, unlike combatants who comply with the laws of war, do not acknowledge the moral significance of bearing burdens in order to reduce noncombatant casualties for the sake of noncombatants themselves. To reply that terrorists might well be motivated to reduce noncombatant casualties on strategic grounds, for example, to avoid eroding sympathy for their political goals, would miss the point. Basic respect for the lives of noncombatants seems evidenced instead by a willingness to bear burdens in order to reduce harm to them. Terrorists, the objection goes, do not have this respect for noncombatant lives, which is a major source of the sense that terrorism is distinctively wrong as compared to conventional war.

There are difficulties with this objection. It suggests that the laws of war are imbued with a certain

moral character, namely, fundamental moral concern for noncombatants. These laws, though, are part of the war convention, adopted by states and codified in international law for reasons that seem largely to reflect their shared interests, at least in the long run. We do not have to be political realists to see this. Given that noncombatants are vulnerable enough on all sides and no state generally has much to gain by harming them, states usually are prudent to accept mutually a principle that seeks to reduce noncombatant casualties. States usually are also prudent to comply with the laws of war, since this compliance is a benchmark of moral and political respectability on the world stage. Simply put, states, like terrorists, would seem contingently motivated to accept the proportionality principle on broadly strategic grounds.

Now the objection might go that, even if a realist analysis of the proportionality principle’s place in the war convention is correct, this is no barrier to states’ recognizing that the principle has independent, nonprudential moral standing. But the same can be true for terrorists. Familiar characterizations of them as “evil” or unconstrained by moral boundaries are an unreliable indication of moral indifference to harming noncombatants. As Virginia Held observes, “Terrorists often believe, whether mistakenly or not, that violence is the only course of action open to them that can advance their political objectives.”⁷ When terrorism is seen by its agents as a means of last resort, this provides some evidence that they acknowledge the moral significance of bearing burdens out of respect for the lives of noncombatants. Such agents will not have employed terrorism earlier, despite their grievances.

A model case is the African National Congress (ANC) in its struggle against apartheid in South Africa. Nelson Mandela, during the 1964 trial that produced his sentence of life imprisonment, summed up the ANC’s position as follows:

- a. It was a mass political organization with a political function to fulfill. Its members had joined on the express policy of nonviolence.
- b. Because of all this, it could not and would not undertake violence. This must be stressed.
- c. On the other hand, in view of this situation I have described, the ANC was prepared to depart

from its fifty-year-old policy of nonviolence. . . . There is sabotage, there is guerrilla warfare, there is terrorism, and there is open revolution. We chose to adopt the first method and to exhaust it before taking any other decision.⁸

Mandela was implying that violence, including terrorism, became an option “only when all else had failed, when all channels of peaceful protest had been barred to us,” which led the ANC to conclude that “to continue preaching peace and nonviolence at a time when the government met our peaceful demands with force would be unrealistic and wrong.”⁹ By the 1980s, at the height of government repression, the ANC did resort to acts of terrorism before reaffirming its earlier position on controlled violence that does not target civilians. The case of the ANC demonstrates that those who employ terrorism can have and sometimes have had fundamental moral concern for noncombatants. Such moral concern, however, is overriding neither for terrorists nor for proper combatants. . . .

JUSTICE BEYOND THE DOCTRINE OF DOUBLE EFFECT

Roughly, the **Doctrine of Double Effect** holds that one may never intend to cause an evil, even to achieve a greater good. One may pursue a good end through neutral means, even if foreseeing that this will have evil effects, provided that the evil is proportionate to the good and there is no better way of achieving the good. On standard just war theory, the DDE rules out terrorism, since intending to harm ordinary noncombatants would be to aim at causing an evil. Acts of conventional war that unintentionally harm noncombatants are not necessarily ruled out, since such acts have only military targets. . . .

Some philosophers directly challenge the DDE as a test of the permissibility of acts by challenging the relevance of intention. Judith Thomson presents the following case: A bomber pilot seeks advice from his superior officers about the permissibility of an attack that would destroy a munitions factory and an adjacent hospital in which noncombatants would be killed.¹⁰ The superiors assure the pilot that the military gains would be necessary and proportionate in relation to the noncombatant casualties. Still,

the superiors want to know whether the pilot intends to destroy the factory or intends to destroy the hospital. Thomson finds absurd the notion that their advice would turn on which intention the pilot has. The properties of the bombing are known in advance and seem on their own to render the act impermissible or not under the circumstances. The pilot’s moral character or his disposition to act on objectionable motives in other situations is not at issue. . . .

The DDE is susceptible to yielding dubious results. Frances Kamm describes a threshold deontological point of view. Suppose that it would be permissible to kill a million noncombatants as an unintended effect of tactical bombing in a war of just cause; a permissible alternative might be to kill a few hundred different noncombatants as an intended effect of terror bombing.¹¹ The DDE would not be an overriding deontological constraint, since the cost of acting within the constraint exceeds any reasonable threshold. How could it be impermissible to kill through terrorism so many fewer persons of the same type, who otherwise would be killed through conventional war? We are not presupposing that the agent’s intention makes an essential moral difference. A ready response comes from an objection to consequentialism: noncombatants have a right not to be harmed that cannot simply be traded off against the collectivized interests of a greater plumber of noncombatants or against some other greater good.

Whether or not this is seen as a viable objection to consequentialism, it is much less compelling in support of the DDE. The threshold deontological argument can be reformulated. Suppose that the few hundred noncombatants who would be killed intentionally are among the million noncombatants who otherwise would be killed collaterally. The presumptive right not to be harmed that the prospective terror bombing victims have would be violated anyway, since they are a subset of the prospective tactical bombing victims who also have this right. There is no consequentialist sacrifice of the lives of noncombatants who would not be harmed, only minimization of the loss of life among noncombatants who would be killed through the alternative. Still, the DDE would prohibit the course of action through which fewer noncombatants would be killed, since the doctrine rules out intentionally

killing them. . . . The prospective terror bombing victims may well elect to be killed intentionally if confronted with the narrow choice, in order to minimize loss of life among the larger set of non-combatants that includes them. To deny them this measure of influence over their fate suggests a doctrinaire refusal to share their sensible perspective. The DDE's overwhelming emphasis on the intentions of the harm-doing agents would amount to indifference to the victims' choice and their concern for the good of their people.

Standard just war theory's application of the Doctrine of Double Effect is all too compatible with the brute reality of war for noncombatants. The conventional interpretation of the DDE permits use of force against noncombatants once its prohibition on intending to harm them and its requirements of necessity and proportionality have been satisfied. If we believe that fewer noncombatant casualties is a goal morally worth striving for, we are led to the discomfiting conclusion that terrorism in some situations might better achieve this goal than use of force that satisfies the limited noncombatant immunity principle. . . .

THE ARGUMENT FROM REPRESENTATIVE AUTHORITY

Terrorism often is not backed by representative authority, by which I mean adequate license for acting on behalf of a people through their approval. The argument from representative authority that I will elaborate is related to a familiar argument from legitimate authority. While the latter is too restrictive, the former provides a qualified basis for the view that terrorism is a distinctively objectionable form of political violence.

The large and difficult topic of legitimate authority will have to be confined to a brief discussion for present purposes. One prominent approach draws from Hobbesian social contract theory: a state's authority depends on its ability to impose law and order on the persons within its domain.¹² They must fare better than they could expect to if left to their own devices. That is, the state would have legitimate authority by virtue of being able to mediate the aggressive pursuit of self-interest by individual members,

who rationally would agree to be governed through coercive power for the sake of their mutual interest. Another prominent approach, which also utilizes a social contract model, regards members of a state as political constituents and moral agents, not mainly as subjects. This is exemplified when the members of a state are organized around a substantially just and democratic government. Rawls gives the following characterization: "The government is effectively under their political and electoral control, and . . . it answers to and protects their fundamental interests as specified in a written or unwritten constitution and in its interpretation. The regime is not an autonomous agency pursuing its own bureaucratic ambitions. Moreover, it is not directed by the interests of large concentrations of private economic and corporate power veiled from public knowledge and almost entirely free from accountability."¹³ The state's legitimate authority would derive from the people, whose government operates through and for them. At the same time, advancing their interests must be compatible with justice.

It might be thought, as the political status definition implies, that terrorism is distinctively wrong because terrorist groups by their nature lack legitimate authority. But this would presuppose that legitimate authority could be a decisive condition for permissible resort to political violence. A plausible argument for such a position is not obvious, especially on a view that grounds the state's authority merely on its ability to provide civil order. Indeed, authoritarian states are capable of achieving civil order. They do not thereby have moral standing, despite the claim they may have to political sovereignty under international law and custom. A decent state must do more than protect its members against internal anarchy and external threats: it also must protect their other fundamental interests and do so through acceptable means. That nonstate terrorism would offend against a morally weak, Hobbesian account of legitimate authority hardly seems a compelling reason for judging that nonstate terrorism is wrong. . . .

A limited appeal to adequate license does help to draw a moral boundary between terrorism and conventional war. In the ideal scenario, a democratic state functions with a considerable degree of

control by its people and transparency regarding political processes. This provides no guarantee that political decisions will be substantively just. Nor am I suggesting that the ideal scenario of decision making in democratic states is closely approximated in real-world scenarios. There are no official referenda about decisions to go to war, let alone about how a war is fought, and political leaders can shape public opinion through selective dissemination of information and appeals to national interest that have a chilling effect on public debate. Yet political representatives in a democracy are under pressure from their constituents to justify going to war and to maintain support for a war that is already under way. Reasonable institutional procedures can provide checks and balances on the exercise of political power, presumably with a tendency to yield political decisions that are not egregiously unjust. . . .

The deeply distinctive problem for nonstate terrorists now emerges. That they lack legitimate authority is only a rough indication of the problem. Political violence by nonstate actors is objectionable when they employ it on their own initiative, so that their political goals, their violent methods, and, ultimately, their claim to rightful use of force do not go through any process of relevant public review and endorsement. Nonstate terrorism's distinctive wrongness does not lie in the terrorism but rather in the resort to political violence without adequate license from a people on whose behalf the violence is purportedly undertaken.

We must recognize a distinction here between legitimate authority and representative authority. For nonstate actors, representative authority is the crucial kind of authority. While states are usually treated as the entities that have legitimacy in international relations, lack of statehood does not strictly indicate the deeper problem with political violence by nonstate actors. A nonstate group may have representative authority: the group not only would take itself to act on behalf of a people but also would be acting on the people's behalf given credible measures of approval by that people. Such measures, for example, mass demonstrations, general strikes, and polling, might lie outside formal political procedures. This raises concerns about the reliability of the measures and their interpretation by

actors unfettered by the responsibilities of formal political leadership. These concerns me less of an issue when the right to resort to political violence belongs only to the state, that is, when the state has morally robust legitimate authority. Viable states function with established lines of authority for political decision making, which undergirds domestic stability and practicable international relations. In addition, states are more susceptible than nonstate actors to inducements and deterrents (e.g., economic cooperation, political sanctions, the threat of military action) aimed at promoting justice at home and abroad. Considerations of this sort motivate the prevailing view that statehood is prerequisite to permissible resort to political violence.

But the argument from the importance of statehood seems mainly pragmatic. The tendency that a state monopoly of political violence has to yield morally salient advantages does not indicate that political violence by nonstate actors is always morally objectionable. That a nonstate group does not have control of a state, does not exercise the full functions of a government, and has not conducted elections or put into place a just consultation hierarchy is not a sufficient basis for denying that the group has representative authority as a condition for permissible resort to political violence. The representative authority that nonstate groups may have, if in fact they often lack it, can be morally analogous to the legitimate authority of states. For instance, the FLN (National Liberation Front) came to have representative authority in relation to the Algerian people during Algeria's fight for independence from France, whereas Al-Qaeda does not have representative authority in pursuing militant Islamist goals in the name of the Muslim people. Appropriate wariness about nonstate groups claiming to have representative authority does not warrant rejecting all such claims tout court. . . .

The requirement of representative authority as a condition for employing political violence on behalf of a people expresses the value of autonomy. Typically, nonstate actors engaged in terrorism do not meet this requirement, though there have been notable exceptions that include the ANC, the FLN, and the PLO (Palestinian Liberation Organization) at some periods in their histories. Tyrannical regimes,

despite having control of a state, never meet this requirement, though dictatorial regimes that have the majority support of their people might. A state that lacks legitimate authority is also likely to lack representative authority to act on behalf of the major sub-state groups or peoples within its territory, such as Kurds, Shiites, and Sunnis in Iraq. More precisely, then, my claim that there is a distinctive sense in which terrorism can be wrong holds with regard to a defeasible perspective from which nonstate actors lack representative authority and states have it.

The ultimate source of the value of autonomy as expressed by the requirement of representative authority is internal to a people on whose behalf political violence would be undertaken. It is true that, in order to meet this requirement, the goals and methods of political violence must go through a process of relevant public review and endorsement—a process that seems more likely than some nonrepresentative route to yield courses of action that are, at least, less unjust. To this extent, outsiders to a people have moral reason to care about representative authority. But the requirement of representative authority is not driven by the interests of outsiders, even as prospective victims. The internal moral importance of representative authority might make no difference to them. If the cause for political violence is just, victims on the other side would not be wronged with respect to the fact that the violence does not meet the representative authority requirement. When the cause is unjust, the representative authority requirement is morally moot from any perspective.

CONCLUSION

... I have argued that terrorism is not distinctively wrong as compared to conventional war in the following respects. Both types of political violence may be waged for just or unjust causes. Both types employ use of force against noncombatants, with conventional war usually causing them many more casualties. War and terrorism hence can be expected to produce fear widely among noncombatants where force is used. Further, states do not necessarily have and nonstate groups do not necessarily lack an adequate kind of authority that is a condition for permissible resort to political violence.

If we believe that terrorism is an evil because of the harm it does to ordinary noncombatants, we should be prepared to accept that the brute reality of war for noncombatants is an evil that is at least on par. The notion that an essential moral difference lies in whether the agents using force intend to harm noncombatants is, in the context of political violence, misplaced. If we believe that war can be justifiable on grounds of just cause and the unavailability of less harmful means, despite the harm it does to noncombatants, we must take seriously whether these same grounds could ever justify terrorism. The failures of the dominant view of terrorism should lead us to adopt either a more critical attitude toward conventional war or a less condemnatory attitude toward terrorism.

NOTES

1. Louis P. Pojman, “The Moral Response to Terrorism and Cosmopolitanism,” in *Terrorism and International Justice*, ed. James P. Sterba (New York: Oxford University Press, 2003), 135–57, 140.
2. Chris Hedges, *What Every Person Should Know about War* (New York: Free Press, 2003), 7.
3. I add the qualification “nonstate” since states have employed tactics (e.g., fire-bombing of cities) and weapons (e.g., chemical, biological, and nuclear) that could count as terrorist.
4. Roberts and Guelff, *Documents on the Laws of War*, 449.
5. Judith Gail Gardam, “Proportionality and Force in International Law,” *American Journal of International Law* 87 (1993): 391–413, 410.
6. James M. Dubik, *Philosophy & Public Affairs* 11 (1982): 354–71, 368.
7. Virginia Held, “Terrorism and War,” *Journal of Ethics* 8 (2004): 59–75, 69.
8. Nelson Mandela, “I Am Prepared to Die,” in *Mandela, Tambo, and the African National Congress: The Struggle against Apartheid, 1948–1990: A Documentary Survey*, ed. Sheridan Johns and R. Hunt Davis Jr. (New York: Oxford University Press, 1991), 115–83, 121.
9. *Ibid.*, 120.
10. Judith Jarvis Thomson, “Self-Defense,” *Philosophy & Public Affairs* 20 (1991): 283–310, 293.
11. Kamm, “Failures of Just War Theory,” 664.

12. See Thomas Hobbes, *Leviathan* (1651), ed. C. B. Macpherson (Harmondsworth: Penguin, 1968), chaps. 13–14.
13. John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 24.

Lionel McPherson: Is Terrorism Distinctively Wrong?

1. According to McPherson, terrorism is “the deliberate use of force against ordinary noncombatants, which can be expected to cause wider fear among them, for political ends.” Can you think of any acts of terrorism that do not meet this definition?

2. McPherson argues that terrorism and war have much in common. In what ways are they similar? In what ways are they different?
3. What is representative authority? Why does McPherson think that it is wrong for groups to engage in political violence without it?
4. Can you think of some existing terrorist organizations that do not enjoy representative authority? Can you think of any that do?
5. Why does McPherson think that it is easier for states to justify political violence than for non-state groups to do so? Do you agree? Why or why not?

Can Terrorism Be Morally Justified?

Stephen Nathanson

In this article, Stephen Nathanson attempts to vindicate the claim that terrorism is always morally wrong. This is no easy task, because terrorism and war seem to share many features. For example, both acts of terrorism and acts of war involve violence for political ends, and both (almost always) result in significant casualties for innocent civilians. But since Nathanson thinks that war is sometimes justified, there is some pressure to conclude that acts of terrorism can sometimes be justified, too.

Nathanson considers, but rejects, several ways that philosophers have tried to support the claim that terrorism is always wrong while some acts of war are not. He considers, for example, the idea that acts of terrorism are always wrong because they involve intentionally killing innocent civilians, while acts of war involve only the unintentional killing of civilians. Nathanson argues that this attempt to distinguish impermissible terrorism from permissible war fails. He asks us to imagine that the terrorists who flew planes into the Twin Towers didn’t intend to kill anyone, only to destroy the buildings. He thinks that would not make their actions any less morally bad. Thus, he argues, the mere fact that acts of terrorism involve intentionally killing civilians, while acts of war do not, does not explain why terrorism is always wrong while war is not.

Nathanson thus proceeds to offer his own account of the relevant difference between the moral permissibility of some acts of war and terrorism. He argues that acts of war can be justified if they conform to what he calls the “bend over backward” rule. This rule says, roughly, that an act of war is morally permissible only if the acting

agent(s) take extraordinary measures to limit the death of innocent civilians. They must, as it were, "bend over backward" to prevent civilian casualties. Nathanson argues that acts of terrorism never conform to this rule and are thus always morally wrong, whereas acts of war often meet this condition.

Can terrorism be morally justified?

Even asking this question can seem like an insult—both to victims of terrorist actions and to moral common sense. One wants to say: if the murder of innocent people by terrorists is not clearly wrong, what is?

But the question is more complicated than it looks. We can see this by broadening our focus and considering some of the other beliefs held by people who condemn terrorism. Very few of us accept the pacifist view that all violence is wrong. Most of us believe that some acts of killing and injuring people are morally justified. Indeed, most of us think that war is sometimes justified, even though it involves organized, large-scale killing, injuring, and destruction and even though innocent civilians are usually among the victims of war. So, most of us believe that even the killing of innocent people is sometimes morally justified. It is this fact that makes the condemnation of terrorism morally problematic. We pick out terrorism for special condemnation because its victims are civilian, noncombatants rather than military or governmental officials, but we also believe that such killings are sometimes morally permissible. Seen in this broader context, judgments about terrorism often seem hypocritical.

Seen in a broader context, moral judgments of terrorism often seem hypocritical. They often presuppose self-serving definitions of "terrorism" that allow people to avoid labeling actions that they approve as instances of terrorism, even though these actions are indistinguishable from other acts that are branded with this negative label. On other occasions, moral judgments of terrorism rest on biased,

uneven applications of moral principles to the actions of friends and foes. Principles that are cited to condemn the actions of foes are ignored when similar actions are committed by friends.

We need to ask then: Can people who believe that war is sometimes morally permissible consistently condemn terrorist violence? Or are such condemnations necessarily hypocritical and self-serving?

If we are to avoid hypocrisy, then we need both (a) a definition of terrorism that is neutral with respect to who commits the actions, and (b) moral judgments of terrorism that derive from the consistent, even-handed applications of moral criteria.

This paper aims to achieve both of these things. First, I begin with a definition of terrorism and then discuss why terrorism is always wrong. In addition, I want to show that the condemnation of terrorism does not come without other costs. A consistent approach to terrorism requires us to revise some common judgments about historical events and forces us to reconsider actions in which civilians are killed as "collateral damage" (i.e., side effects) of military attacks.

My aim, then, is to criticize both terrorist actions and a cluster of widespread moral views about violence and war. This cluster includes the following beliefs:

1. Terrorism is always immoral.
2. The allied bombing of cities in World War II was morally justified because of the importance of defeating Nazi Germany and Japan.
3. It is morally permissible to kill civilians in war if these killings are not intended.

The trouble with this cluster is that the first belief expresses an absolute prohibition of acts that kill innocent people while the last two are rather permissive. If we are to avoid inconsistency and hypocrisy, we must revise our views either (a) by accepting that terrorism is sometimes morally permissible,

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or (b) by judging that city bombings and many collateral damage killings are morally wrong. I will defend the second of these options.

DEFINING TERRORISM

I offer the following definition of terrorism to launch my discussion of the moral issues.¹ Terrorist acts have the following features:

1. They are acts of serious, deliberate violence or destruction.
2. They are generally committed by groups as part of a campaign to promote a political or social agenda.
3. They generally target limited numbers of people but aim to influence a larger group and/or the leaders who make decisions for the group.
4. They either kill or injure innocent people or pose a serious threat of such harms to them.

This definition helps in a number of ways. First, it helps us to distinguish acts of terrorism from other acts of violence. Nonviolent acts are not terrorist acts; nor are violent actions that are unrelated to a political or social agenda. Ironically, some terrible kinds of actions are not terrorist because they are too destructive. As condition 3 tells us, terrorism generally targets limited numbers of people in order to influence a larger group. Acts of genocide that aim to destroy a whole group are not acts of terrorism, but the reason why makes them only worse, not better.

Second, the definition helps us to identify the moral crux of the problem with terrorism. Condition 1 is not the problem because most of us believe that some acts of violence are morally justified. Condition 2 can't be the problem because anyone who believes in just causes of war must accept that some causes are so important that violence may be a legitimate way to promote them. Condition 3 is frequently met by permissible actions, as when we punish some criminals to deter other people from committing crimes. Condition 4 seems closer to what is essentially wrong with terrorism. If terrorism is always immoral, it is because it kills and injures innocent people.

As I have already noted, however, morally conscientious people sometimes want to justify acts that

kill innocent people. If a blanket condemnation of terrorism is to be sustained, then we must either condemn all killings of innocent people, or we must find morally relevant differences between the killing of innocents by terrorists and the killing of innocents by others whose actions we find morally acceptable.

TERRORISM AND CITY BOMBING: THE SAME OR DIFFERENT?

Many people who condemn terrorism believe that city bombing in the war against Nazism was justified, even though the World War II bombing campaigns intentionally targeted cities and their inhabitants. This view is defended by some philosophical theorists, including Michael Walzer, in his book *Just and Unjust Wars* and G. Wallace in "Terrorism and the Argument from Analogy."² By considering these theorists, we can see if there are relevant differences that allow us to say that terrorism is always wrong but that the World War II bombings were morally justified.

One of the central aims of Michael Walzer's *Just and Unjust Wars* is to defend what he calls the "war convention," the principles that prohibit attacks on civilians in wartime. Walzer strongly affirms the principle of noncombatant immunity, calling it a "fundamental principle [that] underlies and shapes the judgments we make of wartime conduct." He writes:

A legitimate act of war is one that does not violate the rights of the people against whom it is directed. . . . [N]o one can be threatened with war or warred against, unless through some act of his own he has surrendered or lost his rights.³

Unlike members of the military, civilians have not surrendered their rights in any way, and therefore, Walzer says, they may not be attacked.

Given Walzer's strong support for noncombatant immunity and his definition of terrorism as the "method of random murder of innocent people," it is no surprise that he condemns terrorism.⁴ At one point, after describing a terrorist attack on an Algerian milk bar frequented by teenagers, he writes:

Certainly, there are historical moments when armed struggle is necessary for the sake of human

freedom. But if dignity and self-respect are to be the outcomes of that struggle, it cannot consist of terrorist attacks against children.⁵

Here and elsewhere, Walzer denounces terrorism because it targets innocent people.

Nonetheless, he claims that the aerial attacks on civilians by the British early in World War II were justified. In order to show why, he develops the concept of a “supreme emergency.” Nazi Germany, he tells us, was no ordinary enemy; it was an “ultimate threat to everything decent in our lives.”⁶ Moreover, in 1940, the Nazi threat to Britain was imminent. German armies dominated Europe and sought to control the seas. Britain feared an imminent invasion by a country that threatened the basic values of civilization.

According to Walzer, the combination of the enormity and the imminence of the threat posed by Nazi Germany produced a supreme emergency, a situation in which the rules prohibiting attacks on civilians no longer held. If killing innocents was the only way to ward off this dreadful threat, then it was permissible. Since air attacks on German cities were the only means Britain had for inflicting harm on Germany, it was morally permissible for them to launch these attacks.

Walzer does not approve all of the city bombing that occurred in World War II. The emergency lasted, he thinks, only through 1942. After that, the threat diminished, and the constraints of the war convention should once again have been honored. In fact, the bombing of cities continued throughout the war, climaxing in massive attacks that killed hundreds of thousands of civilians: the bombing of Dresden, the fire bombings of Japanese cities by the United States, and the atomic bombings of Hiroshima and Nagasaki. According to Walzer, none of these later attacks were justified because the supreme emergency had passed.⁷

While Walzer’s discussion begins with the special threat posed by Nazism, he believes that supreme emergencies can exist in more ordinary situations. In the end, he supports the view that if a single nation is faced by “a threat of enslavement or extermination[,]” then its “soldiers and statesmen [may] override the rights of innocent people for the

sake of their own political community. . . .”⁸ While he expresses this view with “hesitation and worry,” he nevertheless broadens the reach of the concept of “supreme emergency” to include circumstances that arise in many wars.

The problem for Walzer is that his acceptance of the broad “supreme emergency” exception threatens to completely undermine the principle of noncombatant immunity that lies at the heart of his own view of the ethics of warfare. How can the principle of noncombatant immunity be fundamental if it can be overridden in some cases? Moreover, his condemnation of terrorism is weakened because it seems to be possible that people might resort to terrorism in cases that qualify as supreme emergencies, as when their own people are threatened by extermination or enslavement. Walzer’s defense of the bombing of cities, then, seems to be inconsistent with his sweeping denunciation of terrorism.

WALLACE’S ARGUMENT FROM ANALOGY

While Walzer does not directly address the tension between the two parts of his view, G. Wallace explicitly tries to defend the view that terrorism is wrong and that the bombing of cities was justified. According to Wallace, the bombing campaign was justified because it satisfied all four of the following criteria:⁹

1. It was a measure of last resort.
2. It was an act of collective self-defense.
3. It was a reply in kind against a genocidal, racist aggressor.
4. It had some chance of success.

He then asks whether acts of terrorism might be justified by appeal to these very same criteria.

Wallace’s answer is that terrorism cannot meet these criteria. Or, more specifically, he says that while any one of the criteria might be met by a terrorist act, all four of them cannot be satisfied. Why not? The problem is not with criteria 2 and 3; a community might well be oppressed by a brutal regime and might well be acting in its own defense. In these respects, its situation would be like that of Britain in 1940.

But, Wallace claims, conditions 1 and 4 cannot both be satisfied in this case. If the community has a good chance of success through the use of terrorism (thus satisfying condition 4), then other means of opposition might work as well, and terrorism will fail to be a last resort. Hence it will not meet condition 1. At the same time, if terrorist tactics are a last resort because all other means of opposition will fail, then the terrorist tactics are also likely to fail, in which case condition 4 is not met.

What Wallace has tried to show is that there are morally relevant differences between terrorism and the city bombings by Britain. Even if some of the criteria for justified attacks on civilians can be met by would-be terrorists, all of them cannot be. He concludes that “[E]ven if we allow that conditions (1) and (4) can be met separately, their joint satisfaction is impossible.”¹⁰

Unfortunately, this comforting conclusion—that the British city bombing was justified but that terrorism cannot be—is extremely implausible. Both terrorism and city bombing involve the intentional killing of innocent human beings in order to promote an important political goal. Wallace acknowledges this but claims that the set of circumstances that justified city bombing could not possibly occur again so as to justify terrorism.

There is no basis for this claim, however. Wallace accepts that the right circumstances occurred in the past, and so he should acknowledge that it is at least possible for them to occur in the future. His conclusion ought to be that if city bombing was justifiable, then terrorism is in principle justifiable as well. For these reasons, I believe that Wallace, like Walzer, is logically committed to acknowledging the possibility of morally justified terrorism.

This is not a problem simply for these two authors. Since the historical memory of city bombing in the United States and Britain sees these as justifiable means of war, the dilemma facing these authors faces our own society. We condemn terrorists for intentionally killing innocent people while we think it was right to use tactics in our own wars that did the same. Either we must accept the view that terrorism can sometimes be justified, or we must come to see our own bombings of cities as violations of the prohibitions on killing civilians in wartime.¹¹

TERRORISM, COLLATERAL DAMAGE, AND THE PRINCIPLE OF DOUBLE EFFECT

Many of us believe that wars are sometimes justified, but we also know that even if civilians are not intentionally killed, the deaths of civilians is a common feature of warfare. Indeed, during the twentieth century, civilian deaths became a larger and larger proportion of the total deaths caused by war. A person who believes that wars may be justified but that terrorism cannot be must explain how this can be.

One common approach focuses on the difference between intentionally killing civilians, as terrorists do, and unintentionally killing civilians, as sometimes happens in what we regard as legitimate acts of war. According to this approach, terrorism is wrong because it is intentional while so-called “collateral damage” killings and injuries are morally permissible because they are not intended.

This type of view is developed by Igor Primoratz in “The Morality of Terrorism.”¹² Primoratz attempts to show why terrorism is morally wrong and how it differs from other acts of wartime killing that are morally permissible.

First, he makes it clear that, by definition, terrorism always involves the intentional killing of innocent people. He then offers a number of arguments to show why such killings are wrong. The first two have to do with the idea that persons are moral agents who are due a high level of respect and concern. He writes:

[E]very human being is an individual, a person separate from other persons, with a unique, irreproducible thread of life and a value that is not commensurable with anything else.¹³

Given the incommensurable value of individual persons, it is wrong to try to calculate the worth of some hoped-for goal by comparison with the lives and deaths of individual people. This kind of calculation violates the ideal of giving individual lives our utmost respect and concern. Terrorists ignore this central moral ideal. They treat innocent people as political pawns, ignoring their individual worth and seeing their deaths simply as means toward achieving their goals.

In addition, Primoratz argues, terrorists ignore the moral relevance of guilt and innocence in their treatment of individuals. They attack people who have no responsibility for the alleged evils that the terrorists oppose and thus violate the principle that people should be treated in accord with what they deserve.

Terrorists, Primoratz tells us, also forsake the ideal of moral dialogue amongst equals. They not only decide who will live and who will die, but they feel no burden to justify their actions in ways that the victims might understand and accept. People who take moral ideals seriously engage in open discussion in order to justify their actions. They engage others in moral debate. Ideally, according to Primoratz, a moral person who harms others should try to act on reasons that are so compelling that they could be acknowledged by the victims. Terrorist acts cannot be justified to their victims, and terrorists are not even interested in trying to do so.¹⁴

Though these ideas are sketched out rather than fully developed, Primoratz successfully expresses some important moral values. Drawing on these values, he concludes that terrorism is incompatible with “some of the most basic moral beliefs many of us hold.”¹⁵

Primoratz vs. Trotsky

Having tried to show why terrorism is wrong, Primoratz considers an objection put forward by Leon Trotsky, who defended terrorism as a revolutionary tactic. Trotsky claims that people who approve traditional war but condemn revolutionary violence are in a weak position because the differences between these are morally arbitrary. If wars that kill innocent people can be justified, Trotsky claims, then so can revolutions that kill innocent people.

Primoratz replies by arguing that there is an important moral difference between terrorism and some acts of war that kill innocent people. While he acknowledges that the “suffering of civilians . . . is surely inevitable not only in modern, but in almost all wars,” Primoratz stresses that the moral evaluation of acts of killing requires that we “attend not only to the suffering inflicted, but also to the way it is inflicted.”¹⁶ By this, he means that we need,

among other things, to see what the person who did the act intended.

To illustrate his point, he contrasts two cases of artillery attacks on a village. In the first case, the artillery attack is launched with the explicit goal of killing the civilian inhabitants of the village. The civilians are the target of the attack. This attack is the equivalent of terrorism since both intentionally target innocent people, and just like terrorism, it is immoral.

In a second case, the artillery attack is aimed at “soldiers stationed in the village.” While the soldiers know that innocent people will be killed, that is not their aim.

Had it been possible to attack the enemy unit without endangering the civilians in anyway, they would certainly have done so. This was not possible, so they attacked although they knew that the attack would cause civilian casualties too; but they did their best to reduce those inevitable, but undesired consequences as much as possible.¹⁷

In this second case, the civilian deaths and injuries are collateral damage produced by an attack on a legitimate military target. That is the key difference between terrorism and legitimate acts of war. Terrorism is intentionally directed at civilians, while legitimate acts of war do not aim to kill or injure civilians, even when this is their effect.

Primoratz concludes that Trotsky and other defenders of terrorism are wrong when they equate war and terrorism. No doubt, the intentional killing of civilians does occur in war, and when it does, Primoratz would condemn it for the same reason he condemns terrorism. But if soldiers avoid the intentional killing of civilians, then their actions can be morally justified, even when civilians die as a result of what they do. As long as soldiers and revolutionaries avoid the intentional killing of innocent people, they will not be guilty of terrorist acts.

Problems with Primoratz’s View

Primoratz’s view has several attractive features. Nonetheless, it has serious weaknesses.

In stressing the role of intentions, Primoratz appeals to the same ideas expressed by what is called the “principle of double effect.” According to this

principle, we should evaluate actions by their intended goals rather than their actual consequences. An act that produces collateral damage deaths is an unintentional killing and hence is not wrong in the way that the same act would be if the civilians' deaths were intended.

While the principle of double effect is plausible in some cases, it is actually severely defective. To see this, suppose that the September 11 attackers had only intended to destroy the Pentagon and the World Trade Center and had no desire to kill anyone. Suppose that they knew, however, that thousands would die in the attack on the buildings. And suppose, following the attack, they said "We are not murderers. We did not mean to kill these people."

What would be our reaction? I very much doubt that we would think them less culpable. They could not successfully justify or excuse their actions by saying that although they foresaw the deaths of many people, these deaths were not part of their aim. We would certainly reject this defense. But if we would reject the appeal to double effect in this case, then we should do so in others.

In Primoratz's example, the artillery gunners attack the village with full knowledge of the high probability of civilian deaths. The artillery gunners know they will kill innocent people, perhaps even in large numbers, and they go ahead with the attack anyway. If it would not be enough for my imagined September 11 attackers to say that they did not intend to kill people, then it is not enough for Primoratz's imagined soldiers to say that they did not mean to kill the villagers when they knew full well that this would result from their actions.

If we accept Primoratz's defense of collateral damage killings, his argument against terrorism is in danger of collapsing because terrorists can use Primoratz's language to show that their actions, too, may be justifiable. If Primoratz succeeds in justifying the collateral damage killings and if the distinction between these killings and terrorism cannot rest solely on whether the killings are intentional, then the criteria that he uses may justify at least some terrorist acts. Like the soldiers in his example, the terrorists may believe that the need for a particular attack is "so strong and urgent that it prevailed

over the prohibition of killing or maiming a comparatively small number of civilians." Consistency would require Primoratz to agree that the terrorist act was justified in this case.

Recall, too, Primoratz's claim that actions need to be capable of being justified to the victims themselves. Would the victims of the artillery attack accept the claim that the military urgency justified the "killing or maiming a comparatively small number of civilians?"¹⁸ Why should they accept the sacrifice of their own lives on the basis of this reasoning?

In the end, then, Primoratz does not succeed in showing why terrorism is immoral while collateral damage killing can be morally justified. Like Wallace and Walzer, he has trouble squaring the principles that he uses to condemn terrorism with his own approval of attacks that produce foreseeable collateral damage deaths.

The problem revealed here is not merely a problem for a particular author. The view that collateral damage killings are permissible because they are unintended is a very widespread view. It is the view that United States officials appealed to when our bombings in Afghanistan produced thousands of civilian casualties. Our government asserted that we did not intend these deaths to occur, that we were aiming at legitimate targets, and that the civilian deaths were merely collateral damage. Similar excuses are offered when civilians are killed by cluster bombs and land mines, weapons whose delayed detonations injure and kill people indiscriminately, often long after a particular attack is over.

There are many cases in which people are morally responsible for harms that they do not intend to bring about, but if these harms can be foreseen, their claims that they "did not mean to do it" are not taken seriously. We use labels like "reckless disregard" for human life or "gross negligence" to signify that wrongs have been done, even though they were not deliberate. When such actions lead to serious injury and death, we condemn such actions from a moral point of view, just as we condemn terrorism. The principle of double effect does not show that these condemnations are mistaken. If we want to

differentiate collateral damage killings from terrorism so as to be consistent in our moral judgments, we will need something better than the principle of double effect and the distinction between intended and unintended effects.

A SKETCH OF A DEFENSE

I want to conclude by sketching a better rationale for the view that terrorist attacks on civilians are always wrong but that some attacks that cause civilian deaths and injuries as unintended consequences are morally justified.

I have argued that a central problem with standard defenses of collateral damage killings is that they lean too heavily on the distinction between what is intended and what is foreseen. This distinction, when used with the doctrine of double effect, is too slippery and too permissive. As I noted above, it might provide an excuse for the September 11 attacks if (contrary to fact) the attackers were only targeting the World Trade Center *building* and the Pentagon *building* and did not actually aim to kill innocent civilians.

Michael Walzer makes a similar criticism of the double effect principle. “Simply not to intend the death of civilians is too easy,” he writes. “What we look for in such cases is some sign of a positive commitment to save civilian lives.”¹⁹ Walzer calls his revised version the principle of “double intention.” It requires military planners and soldiers to take positive steps to avoid or minimize these evils, even if these precautions increase the danger to military forces.

Walzer’s rule is a step in the right direction, but we need to emphasize that the positive steps must be significant. They cannot be *pro forma* or minimal efforts. In order to show a proper respect for the victims of these attacks, serious efforts must be made to avoid death and injury to them. I suggest the following set of requirements for just, discriminate fighting, offering them as a sketch rather than a full account. The specifics might have to be amended, but the key point is that serious efforts must be made to avoid harm to civilians. Not intending harm is not enough. In addition, military planners must really exert themselves. They must,

as we say, *bend over backwards* to avoid harm to civilians. For example, they must:

1. Target attacks as narrowly as possible on military resources;
2. Avoid targets where civilian deaths are extremely likely;
3. Avoid the use of inherently indiscriminate weapons (such as land mines and cluster bombs) and inherently indiscriminate strategies (such as high-altitude bombing of areas containing both civilian enclaves and military targets); and
4. Accept that when there are choices between damage to civilian lives and damage to military personnel, priority should be given to saving civilian lives.

If a group has a just cause for being at war and adheres to principles like these, then it could be said to be acknowledging the humanity and value of those who are harmed by its actions. While its attacks might expose innocent people to danger, its adherence to these principles would show that it was not indifferent to their wellbeing. In this way, it would show that its actions lack the features that make terrorism morally objectionable.

Why is this? Because the group is combining its legitimate effort to defend itself or others with serious efforts to avoid civilian casualties. The spirit of their effort is captured in the phrase I have already used; “bending over backwards.” The “bend over backwards” ideal is superior to the principle of double effect in many ways. First, it goes beyond the weak rule of merely requiring that one not intend to kill civilians. Second, while the double effect rule’s distinction between intended and unintended results permits all sorts of fudges and verbal tricks, the “bend over backwards” rule can be applied in a more objective and realistic way. It would be less likely to approve sham compliance than is the doctrine of double effect.

The “bend over backwards” rule might even satisfy Primoratz’s requirement that acts of violence be justifiable to their victims. Of course, no actual victim is likely to look favorably on attacks by others that will result in the victim’s death or

serious injury. But suppose we could present the following situation to people who might be victims of an attack (a condition that most of us inhabit) and have them consider it from something like Rawls's veil of ignorance. We would ask them to consider the following situation:

- Group A is facing an attack by group B; if successful, the attack will lead to death or the severest oppression of group A.
- The only way that group A can defend itself is by using means that will cause death and injury to innocent members of group B.
- You are a member of one of the groups, but you do not know which one.

Would you approve of means of self-defense that will kill and injure innocent members of B in order to defend group A?

In this situation, people would not know whether they would be victims or beneficiaries of whatever policy is adopted. In this circumstance, I believe that they would reject a rule permitting either intentional or indiscriminate attacks on civilians. Thus, they would reject terrorism as a legitimate tactic, just as they would reject indiscriminate attacks that kill and injure civilians.

At the same time, I believe that they would approve a rule that combined a right of countries to defend themselves against aggression with the restrictions on means of fighting contained in the "bend over backwards" rule. This would have the following benefits. If one were a member of a group that had been attacked, one's group would have a right of self-defense. At the same time, if one were an innocent citizen in the aggressor country, the defenders would be required to take serious steps to avoid injury or death to you and other civilians.

If people generally could accept such a rule, then actions that adhere to that rule would be justifiable to potential victims as well as potential attackers. This would include actions that cause civilian casualties but that adhere to the "bend over backwards" principle.

I believe that this sort of approach achieves what nonpacifist critics of terrorism want to achieve. It provides a principled basis for condemning terrorism, no matter who it is carried out by, and a

principled justification of warfare that is genuinely defensive. Moreover, the perspective is unified in a desirable way. Terrorist actions cannot be morally justified because the *intentional* targeting of civilians is the most obvious kind of violation of the "bend over backwards" rule.

At the same time that these principles allow for the condemnation of terrorism, they are immune to charges of hypocrisy because they provide a basis for criticizing not only terrorist acts but also the acts of any group that violates the "bend over backwards" rule, either by attacking civilians directly or by failing to take steps to avoid civilian deaths.

CONCLUSION

Can terrorism be morally justified? Of course not. But if condemnations of terrorism are to have moral credibility, they must rest on principles that constrain our own actions and determine our judgments of what we ourselves do and have done. To have moral credibility, opponents of terrorism must stand by the principles underlying their condemnations, apply their principles in an evenhanded way, and bend over backwards to avoid unintended harms to civilians. Only in this way can we begin inching back to a world in which those at war honor the moral rules that prohibit the taking of innocent human lives. As long as condemnations of terrorism are tainted by hypocrisy, moral judgments will only serve to inflame people's hostilities rather than reminding them to limit and avoid serious harms to one another.

NOTES

1. For development and defense of this definition, see my "Prerequisites for Morally Credible Condemnations of Terrorism," in William Crotty, ed., *The Politics of Terrorism: Consequences for an Open Society* (Boston: Northeastern University Press, 2003).
2. Michael Walzer. *Just and Unjust Wars* (New York: Basic Books, 1977); Gerry Wallace, "Terrorism and the Argument from Analogy," *Journal of Moral and Social Studies*, vol. 6(1991), 149–160.
3. Walzer, 135.
4. Walzer, 197.
5. Walzer, 205.
6. Walzer, 253.

7. Kenneth Brown, “Supreme Emergency’: A Critique of Michael Walzer’s Moral Justification for Allied Obliteration Bombing in World War II,” *Manchester College Bulletin of the Peace Studies Institute*, 1983 (13, nos. 1–2), 6–15.
8. Walzer, 254.
9. Wallace, 155.
10. Wallace, 155–156.
11. See Rawls on city bombing and the atomic bombings in *The Law of Peoples* and *Collected Papers*.
12. Igor Primoratz, “The Morality of Terrorism?” *Journal of Applied Philosophy*, vol. 14 (1997), 222. Primoratz defends his definition of terrorism in “What Is Terrorism?” *Journal of Applied Philosophy*, vol. 7 (1990), 129–138. These subjects are also helpfully discussed in Haig Khatchadourian, “Terrorism and Morality,” *Journal of Applied Philosophy*, vol. 5 (1988), 131–145.
13. Primoratz, 224.
14. For a similar idea, see Thomas Nagel, *Equality and Partiality* (New York: Oxford, 1991), 23. “[W]e are looking for principles to deal with conflict that can at some level be endorsed by everyone. . . .”
15. Primoratz, “The Morality of Terrorism,” 225.
16. Primoratz, 227.
17. Primoratz, 227.
18. Primoratz, 228.
19. Walzer, 155–156.

Stephen Nathanson: Can Terrorism Be Morally Justified?

1. Nathanson argues that some instances of killing innocent people for political ends are so destructive that they don’t even count as instances of terrorism. Why does he think this? Do you find his argument convincing?
2. Nathanson thinks that it is always wrong to kill innocent people intentionally. Do you agree? If so, why? If not, can you think of an example of when it is permissible to kill an innocent person intentionally?
3. If Nathanson’s definition of terrorism is correct, then the US bombings of Hiroshima and Nagasaki in World War II count as instances of terrorism. Thus, on Nathanson’s view, they were morally wrong. Do you agree that these bombings were acts of terrorism? Do you agree that they were morally wrong? Why or why not?
4. What is the principle of double effect? Why does Nathanson reject it? Are you convinced by his argument?
5. Do you think that there are some acts of war or terrorism that fail to meet the “bend over backward rule” but are nevertheless morally permissible? If so, give an example. If not, why not?

The Death Penalty

JUST THE FACTS

Capital punishment, commonly known as the death penalty, is the government-authorized practice of executing people (i.e., putting them to death) as punishment for a crime.

Capital punishment is illegal, or legal but almost never practiced, in the majority of countries in the world. It remains legal, however, and is regularly practiced in the world's most populous countries (e.g., China, India, Indonesia, the United States). Thus, roughly 60 percent of the world's population lives in a country where capital punishment is both legal and practiced. According to Amnesty International (an organization that opposes the death penalty), in 2016, there were twenty-three countries (about an eighth of all countries) who were known to have executed a total of 1,032 convicted criminals. Most of those executions were carried out by Iran, Saudi Arabia, Iraq, and Pakistan (in that order). China is believed to have carried out more executions than any other country, but there are no good data on China's practices, since China refuses to divulge figures on their use of the death penalty. Thus, the 1,032 figure cited earlier does not count the executions authorized by the Chinese government. Among so-called first-world countries, executions are uncommon, but the United States is a notable exception. Capital punishment is outlawed in every country in the European Union.

In the United States, capital punishment is legal in thirty-one states and illegal in nineteen states (as well as the District of Columbia). Since 1976, the US government and individual states have executed 1,455 inmates—twenty of them

in 2016. The number of inmates executed in the United States has dropped every year since 2009, when there were fifty-two executions, and executions have trended downward since 1999, when there were ninety-eight of them.

Prior to 1972, capital punishment was legally permitted by the US government. In the 1972 Supreme Court case *Furman v. Georgia*, however, the Court ruled (in a 5-to-4 decision) that the death penalty violated the Eighth Amendment of the US Constitution and was therefore **unconstitutional**. The Eighth Amendment says that “Excessive bail shall not be required, nor excessive fines imposed, *nor cruel and unusual punishments inflicted*.” The court’s majority view was that sentences of capital punishment were either **arbitrarily** or **discriminatorily** applied (or both)—at least, as things were practiced then in 1972. Thus, in the Court’s view, the death penalty violated the “cruel and unusual punishment” clause. Capital punishment was therefore outlawed in the United States beginning in 1972. This prohibition, however, didn’t last long. States reacted to *Furman* by providing juries with objective criteria for when (and when not) to sentence a convicted felon to death, in the hopes that this would address the Court’s concerns that the death penalty was being arbitrarily applied. Once these policies were in place, the Supreme Court ruled, in the 1976 case *Woodson v. North Carolina*, that the death penalty was constitutional so long as the safeguards preventing the death penalty from being arbitrarily applied continued to be in place. The death penalty has been legal and practiced in the United States ever since.

There are two kinds of crimes for which a person is liable to be sentenced to death in the United States: murder (usually **aggravated murder**) and crimes against the state (e.g., treason, espionage, high-volume drug trafficking). No one has been executed for crimes against the state since 1976, so most of our discussion will concern the death penalty for supposed murderers. Murder consists in the **premeditated** killing of one person by another in an attempt to harm the victim (thus distinguishing murder from euthanasia—see Chapter 15). Aggravated murder consists in murder plus so-called **aggravating conditions**. Aggravating conditions are features of a crime that significantly increase the severity or the harmful consequences of that crime. What constitutes an aggravating condition differs from state to state, but a few conditions are common to most states. For instance, a murder preceded by rape or torture is an instance of aggravated murder, since these features make the crime significantly more heinous.

Methods of capital punishment currently in use across the world include beheading, electrocution, firing squad, hanging, lethal gas, and **lethal injection**. Lethal injection is by far the most common method used in the United States, though electrocution (by electric chair), hanging, firing squad, and lethal gas remain on the books in some states as a legal means of execution.

Lethal injection involves injecting three different drugs into a prisoner's veins in a very specific order. The first drug is sodium thiopental (or, in some states, midazolam), a fast-acting form of anesthesia that causes a person to lose consciousness within thirty to forty-five seconds. If all goes according to plan, prisoners will not feel anything that happens to them after they receive this injection. They'll be in a medically induced coma. The next drug, pancuronium bromide, is a powerful muscle relaxant. It paralyzes all of a person's muscles, including the diaphragm, which is necessary for breathing. The last drug, potassium chloride, disrupts electrical signals in the heart, causing it to fail and stop

beating. Once the heart stops, the prisoner is dead and the execution is complete. The entire process usually lasts less than five minutes.

Executions in the United States are not evenly distributed along sex and racial lines. The overwhelming majority of **death row** inmates are male—less than 2 percent are female. And of the 1,455 inmates executed in the United States since 1976, only sixteen have been female—about 1 percent. With respect to race, 42 percent of all death row inmates in the United States are African American, 42 percent white, and 13 percent Hispanic. For reference, white people constitute roughly 64 percent of the US population, while African Americans constitute roughly 12 percent, and Hispanic people 16 percent. Thus, African Americans are significantly overrepresented among the death row population and white people are significantly underrepresented. Not surprisingly, African Americans are also overrepresented among those who have been executed. Since 1976, 34.5 percent of all inmates executed were African American, while 55.7 percent were white. During that time, 307 inmates have been executed for committing an interracial murder, where a white person murders a black person or a black person murders a white person. In 287 of those executions (93 percent), a black person was executed for murdering a white person. In twenty of those executions (7 percent), a white person was executed for murdering a black person.

In general, US citizens favor the death penalty for convicted murderers. According to a recent Pew Research Center poll,¹ 49 percent of US citizens said that they favor the death penalty while 42 percent said they oppose it, with opinions differing along sex and racial lines. On the whole, both men and women in the United States favor the death penalty, but men favor it much more. The poll found that 45 percent of

1. <http://www.pewresearch.org/fact-tank/2016/09/29/support-for-death-penalty-lowest-in-more-than-four-decades/>

women favor the death penalty, while 43 percent oppose it. Fifty-five percent of men said they favor the death penalty; only 38 percent oppose it. There is a significant divergence of opinion among white people and minorities, too: whites generally favor the death penalty while minorities overwhelmingly oppose it. The poll found that 57 percent of white respondents favor the death penalty; only 35 percent oppose it. Among black people, 29 percent favored it, while 63 percent opposed. Hispanics, too, generally opposed the death penalty—36 percent favored, 50 percent opposed.

ARGUMENT ANALYSIS

There is something morally suspect about punishment—after all, when we punish, we deliberately try to make someone suffer, at a point where he is defenseless and within our control. In any other context, such behavior would certainly be immoral. So if punishment is ever morally acceptable, we need some excellent reason to remove our suspicions. There are three primary justifications of punishment, only two of which have any application when it comes to the death penalty.

The first justification is rehabilitation—the state punishes criminals in order to make them better people. The idea is that forcing wrongdoers to suffer will give them the needed incentive to reflect on their wrongdoing and then turn themselves around, so that they can eventually be successfully integrated into society. This justification obviously fails as a basis for supporting the death penalty—we aren't going to improve people's moral character by executing them.

By contrast, the other two justifications of punishment have often been used to defend capital punishment. The first of these is the **deterrance theory**, which has its roots in consequentialist moral theories. The basic idea here is that punishment is justified because of its good results; in particular, punishment is morally acceptable if, only if, and because it is likely to efficiently prevent crime. When it comes to the

death penalty, the view says that killing criminals is itself a bad thing, but this can sometimes be outweighed by the good we can secure by preventing the deaths of innocent people in the future. That prevention occurs through what is known as **special deterrence** (deterring the criminal himself) and **general deterrence** (deterring law-abiding people who might otherwise be tempted to commit serious crimes).

The remaining justification of punishment is known as **retributivism**, which has its roots in nonconsequentialist moral theories. On this view, punishment is morally justified if, only if, and because it gives criminals their **just deserts** (i.e., what they justly deserve). Retributivism tells us that when we want to determine whether a punishment is morally justified, we don't look into the future to see whether punishing a criminal will yield good results. Instead, we look to the past, assess how guilty a criminal is, and then set a punishment that is proportional to the crime. When it comes to the death penalty, the retributivist justification is that murderers deserve to die; we must give people what they deserve; and so we must execute murderers.

Of course, there are also opponents of the death penalty. Such critics, known as **abolitionists**, believe that capital punishment cannot be morally justified and so seek to abolish it where it exists. In addition to criticizing the arguments of deterrence theorists and retributivists who support the death penalty, abolitionists also offer some positive arguments of their own. Let's consider these, before assessing the merits of the arguments used to support capital punishment.

One popular critique of the death penalty asserts that there is a kind of incoherence at its heart. The state can't consistently prohibit murder while also approving of it, in the form of capital punishment. A common way to express this idea is by means of

The Incoherence Argument

1. Murder is immoral.
2. Capital punishment is murder.

Therefore,

3. Capital punishment is immoral.

This argument won't work. Though the first premise is true by definition, the second premise begs the question. In other words, it is assuming the truth of the conclusion it is meant to support. What premise 2 really says is: Capital punishment is immoral killing. Suppose you are wondering what to think about the morality of the death penalty. This argument isn't going to help—you need as much support for premise 2 as for the conclusion. If anyone presented this argument to you, you'd rightly say that you haven't yet been given any reason to believe the conclusion. Asserting premise 2 is just another way of stating that conclusion, rather than an independent reason to believe it.

Abolitionists might try another tack:

The Absolutist Argument

1. Killing people is absolutely wrong, that is, wrong always and everywhere.
2. Capital punishment kills people.

Therefore,

3. Capital punishment is absolutely wrong.

Premise 2 of this argument is true, no doubt about it. But premise 1 is very hard to defend. There seem to be justified exceptions, as when we kill in self-defense as a last resort. Or when we engage in a just war and kill an enemy combatant who is intent on genocide. If there are exceptions to premise 1, perhaps capital punishment is one of them.

True, there are some pacifists who oppose all killing, no matter the circumstances. But this form of pacifism is very difficult to defend. Until we have a satisfying defense of such rigorous pacifism, the jury is out on the merits of premise 1, and so of this argument.

But perhaps a more familiar argument will do the trick. It is well known that if you are a person of color in the United States, you stand a much greater chance of being charged with a

capital offense in the first place, then convicted, and eventually sentenced to death, than if you are a white person who has been suspected of committing murder. There is no denying that there is systemic discrimination that occurs in the administration of the death penalty, and that such discrimination is morally unjustified. This serves as the basis of

The Argument from Discrimination

1. If a punishment is applied in a systemically discriminatory way, then it is morally unjustified and ought to be abolished.
2. The death penalty is applied in a systemically discriminatory way.

Therefore,

3. The death penalty is morally unjustified and ought to be abolished.

Defenders of the death penalty have replied in three ways to this argument. First, some have conceded that the argument is sound, and that it represents an indictment of the way that the death penalty is actually administered. But, they say, this is a flaw that can be remedied—the death penalty is, *in principle*, morally justified, even if, as it is currently practiced, it is not. Whether this reply is satisfactory depends on whether you think that we can someday erase systemic discrimination from our society. I leave it to you to defend your optimism or pessimism on this matter.

A second reply denies premise 2, and argues that in fact there is no such systemic discrimination that occurs in today's legal system. Though settling this issue requires an in-depth consideration of the evidence, the evidence does seem very clearly to support this premise.

Since the argument is valid and premise 2 is (I am assuming) true, that leaves only premise 1 as the target for those who wish to reject the conclusion. But how can we deny that *systemic* discrimination—bias that is not the rare exception, but rather the normal circumstance—undermines the legitimacy of the death penalty?

Perhaps it does. But death penalty defenders point out that such discrimination is not likely to be restricted only to capital cases. If it really is systemic, then discrimination affects all levels of the legal system. And if systemic discrimination really is sufficient to undermine the moral justification of punishment, then it is sufficient to undermine the morality of *the entire legal system*. Further, since this argument is designed to show that the death penalty should be abolished because it is morally unjustified, then its soundness would imply that we should abolish our entire criminal justice system, because it, too, is infected with systemic discrimination and so morally unjustified.

Some abolitionists will endorse this radical conclusion. But many others will resist. Every human institution is imperfect, they will say, and our legal system, while far from ideal in its workings, has enough merit to warrant our allegiance. If that is so, then perhaps the fact that the death penalty is administered in a discriminatory way is not enough to show that we ought to abolish it. Resolving this debate requires extensive knowledge of the facts about how our legal system actually works, including the extent of discrimination faced by people of color. But it also requires thinking deeply about how much injustice an institution can tolerate before it becomes morally unjustified on the whole.

I invite you to reflect further on these issues, but in the meantime, we should move to another abolitionist argument. This one points to the fact that the legal system is bound to be error-prone. It's folks like you and I who sit on juries, and we make mistakes. Even if we could correct for our biases, we are still fallible. Evidence is rarely complete. Some defense lawyers are much better than others. Some judges are more impartial and better versed in the law than others. As a result, even if we were all pure at heart, some innocent people would be wrongly convicted. This is bad enough. But when their conviction leads to their death, that, says abolitionists, is too much. This line of thinking can be expressed in

The Killing Innocents Argument

1. If we know that a social practice will result in killing innocents, then it is immoral and ought to be abolished.
2. We know that the death penalty will result in killing innocents.

Therefore,

3. The death penalty is immoral and ought to be abolished.

Some defenders of the death penalty reject premise 2. They claim that given the appeals available to those sentenced to death, we are bound to weed out erroneous convictions, with the result that the innocent are never sent to their deaths. But this is an extraordinarily optimistic assumption, and is cast into doubt by the best study we have.² True, studies on this matter are not themselves perfect, because it is sometimes so difficult to establish the truth about whether the defendant in a capital case is really guilty. But precisely because of this difficulty, it is impossible to be justly confident that innocents are never sent to their death.

Defenders of the death penalty might instead say that in at least some cases, we can be absolutely sure that the defendant is guilty—we have him on video, say, or we have his confession, or we have several eyewitnesses who testify to his guilt. There are two problems with such a reply. First, each of these sources of evidence is sometimes misleading. Many people have signed confessions to crimes they didn't commit. Eyewitness testimony has often proven to be unreliable. And videos have sometimes been tampered with. Still, imagine that in a given case you *can* be absolutely sure that the defendant committed the crime he's accused of. Now a second problem

2. <http://www.newsweek.com/one-25-executed-us-innocent-study-claims-248889>; <http://phenomena.nationalgeographic.com/2014/04/28/how-many-people-are-wrongly-convicted-researchers-do-the-math/>

arises—how are you going to craft a law that ensures that only *these* defendants are convicted and sentenced to death? We rightly ask jurors and judges to follow the law, rather than use their own instincts, to determine whether a defendant is guilty. Suppose we wrote a law that restricted the death penalty just to cases in which all jurors were sure of the defendant's guilt. Given human fallibility, it seems that even that law would in some cases be misapplied, thereby sending some innocent people to their death.

A stronger reply to the Killing Innocents Argument criticizes premise 1. As it stands, that premise is implausible, since we rightly allow many other social practices that are known to impose substantial risks of killing innocents. Think of driving cars, building bridges, manufacturing prescription drugs. We know that each of these practices is going to result in the loss of innocent life, and yet we allow them anyway.

The abolitionist might reply that there is something especially awful when the state is taking innocent life. While there does seem something correct about that, this reply won't fix the problem here. Suppose that the state took over the health care system, and all doctors and pharmacists became state employees. (If you're opposed to such an idea, that's fine. I'm not arguing for the advisability of such a plan, but just asking you to imagine what might happen if it were implemented.) In that case, we'd know in advance that some state employees, acting in the name of the state, are going to inadvertently kill some innocent people. Yet that fact would not by itself show that we oughtn't to have state-run medical care.

Though there are difficulties with each of these abolitionist arguments, it may be that defenses of the death penalty do no better. Let's turn our attention now to some of those defenses. We'll consider the arguments from deterrence theorists first, and then shift the focus to retributivist arguments.

The basic deterrence argument for the death penalty is perfectly simple:

The Basic Deterrence Argument

1. If a punishment efficiently deters crime, then that punishment is morally justified.
2. The death penalty efficiently deters murder.

Therefore,

3. The death penalty is morally justified.

It's very important to note that qualification about a punishment *efficiently* deterring crime. Loads of punishments will have a deterrent effect that prevents a given crime. For instance, if I was the town mayor and wanted to stop people from littering, I could ask the town council to impose the death penalty on litterers. That would *definitely* be a good deterrent! Don't think we'd see too much litter around town after that. But it's absurd to think that death for litterers is a justified punishment. That's because the death penalty is not an efficient punishment—it imposes more harm than is needed to generate the good result of crime prevention. An efficient punishment is one that will hurt the criminal *no more than is necessary* in order to get the beneficial effect of crime prevention. Efficiency here means getting the greatest crime reduction for the least cost—where such cost is measured not just in dollars but also in the suffering of the criminals themselves.

So the Basic Deterrence Argument says, in effect, that in order to prevent murders, you have to threaten to execute murderers. No lesser punishment will do. That's what is conveyed by premise 2, which says that the death penalty is an efficient way to prevent murder.

There are two problems with the Basic Deterrence Argument. The first is that premise 1 may license some very bad behavior. Suppose we do a lot of scientific studies and it turns out that no amount of jail time will efficiently deter certain criminals. Nor will the prospect of a lethal injection. The only thing that will do the trick

is to threaten to kill them in some horrible way, like slowly cutting them in half without anesthesia or throwing them off a very tall building. Premise 1 says that under these circumstances, such punishments are morally justified. It is hard to accept that.

But suppose you do. Still, premise 2 of this argument is also problematic, because there is no good evidence that it is true. Despite countless studies of the issue, the consensus among social scientists is that we lack strong reasons for thinking that the death penalty actually is an efficient deterrent of murder. That doesn't prove that premise 2 is false. But it does show that until better evidence comes along, we are not yet justified in thinking it true, and so not yet justified in thinking that the Basic Deterrence Argument is sound.

There are two further points to make about premise 2. First, one might insist that although the way the death penalty is currently administered fails to be an efficient deterrent, that just shows that we aren't doing it right. After all, we execute only about one in a thousand of those who are convicted of murder. If we performed a lot more executions, people would start to get the message, and the murder rate would drop accordingly. The problem with this reply, though, is that executing a lot more convicts increases the chance that we will end up killing more wrongly convicted, innocent people.

Faced with the absence of hard evidence in support of premise 2, deterrence theorists have come up with an armchair reason to support it. The thought is simple: the greater one fears a punishment, the greater the deterrence it provides. People fear execution more than any other punishment. So the death penalty provides greater deterrence than any other punishment.

Yet this very plausible line of thinking is actually somewhat problematic. I fear being beheaded more than I do a lethal injection. So, according to the previous paragraph, beheading deters me more. But it doesn't. The prospect of a lethal injection is fearful enough to deter me from doing anything truly horrible. In other

words, beheading is an inefficient punishment—it is harsher than punishment needs to be in order to deter me from murdering anyone.

Now the problem: execution, even if more fearful than life in prison, may be harsher than what is needed to deter would-be murderers. Some criminals, of course, might not be deterred at all, either because they are so intent on killing their victim or because they aren't thinking things through, and are acting, say, on impulse, or under the influence of drugs, or because they are so mentally ill that they are unable to calculate the risks. But for those criminals who can be deterred, a lesser punishment than execution—perhaps life imprisonment—may do. Defenders of the Basic Deterrence Argument have to show that murderers would abandon their plans if faced with the prospect of execution, but would carry out their plans if faced with life in prison. That has yet to be shown.

Turn now to retributivist efforts to justify capital punishment. Retributivists can entirely avoid having to answer questions about how likely it is that the death penalty will reduce crime. Their focus is instead on giving criminals their just deserts. This can be expressed in

The Argument from Just Deserts

1. If murderers deserve to die, then the state should execute them.
2. Murderers deserve to die.

Therefore,

3. The state should execute murderers.

The defense of premise 1 is straightforward. The state should be in the business of acting justly, and acting justly means giving people what they deserve. The defense of premise 2 is also straightforward: murderers have killed their victims. If you harm someone, then justice demands that you be harmed in the same way. So murderers deserve to die.

This argument is very popular. It is also deeply problematic.

Consider premise 1. You might think that it is obviously true, because it is based on two extremely plausible principles:

(D1) If a person deserves X, then justice demands that she get X.

(D2) The state should treat its citizens justly.

But there are three problems with premise 1, which, surprisingly, derive from doubts we might have about D2. I'm not sure that any of these problems is sufficient to undermine the premise, but taken together, they do put real pressure on its appeal.

First, most of us think that giving people the punishment they deserve sometimes has to take a back seat to other moral concerns. Our practice of allowing for parole, plea bargains, executive clemency, pardons, and suspended sentences attests to that. Each of these can be seen as an exercise in mercy—in treating people more kindly than they deserve. And mercy is a virtue. So perhaps it's not the case that just because murderers deserve to die—if they do—that we should be in the business of executing them.

Second, suppose that maintaining a system of capital punishment required so much money that we had to drastically sacrifice funds for schooling, for health programs, and for national defense. Studies show that a system of capital punishment is *much* more expensive than a system that has abolished it.³ Each state with the death penalty spends hundreds of thousands of dollars more per death row inmate than for a convict who is sentenced to life in prison. Perhaps we should punish criminals a bit less than they deserve, so as to save resources to meet these other social needs.

Third, suppose that by instituting the death penalty, a state thereby *increased* the crime rate. I should stress that there is no conclusive evidence that this has occurred. There is a strong correlation between states that have the death penalty and states that have murder rates that

are higher than average. But correlation is not the same thing as causation—studies have not shown that these higher murder rates are *caused by* the death penalty. Still, suppose that allowing capital punishment had a brutalizing effect, making people less respectful of human life than they'd otherwise be, and so making people less inhibited about taking the lives of others. (Again, I am not saying that this is in fact the case, just inviting you to think about what would follow if it were.) If capital punishment actually increases, rather than decreases, the murder rate, then that would be an excellent reason to suspend the death penalty—even if it is true that this is what murderers deserve.

Giving people their just deserts is very important. But these considerations should make us wonder whether it is *all*-important. Premise 1 stands for the idea that justice must always be done, no matter its costs. But perhaps there are limits to when it is appropriate to give people what they deserve. Resolving this issue is very hard, and I am not claiming that these three points, taken together, are decisive refutations of premise 1. Indeed, let's suppose for now that premise 1 can survive these concerns. Still, premise 2 (the claim that murderers deserve to die) is actually very hard to defend.

Here's a radical critique of premise 2: no one deserves to suffer. There is a classic argument for this view. People deserve to suffer only if they freely choose to do wrong. But we have no free choice. So no one deserves to suffer.

We have no free choice? Really? I bet you don't believe that. I don't, either. But there's a powerful argument for this view. Our choices are determined by our beliefs and desires, which in turn are determined by how we were raised, by the society and the era in which we live, by the messages we take in through the media, our social networks, our parents, our clergy (if we are religious). We cannot control these influences. But that means that our choices are ultimately the product of factors beyond our control. If we don't control the ultimate causes of our choices,

3. <http://www.deathpenaltyinfo.org/costs-death-penalty>

then we don't control our choices. And if we do not control our choices, then we lack free choice.

I said this was a radical idea, right? The basic line of thought is that we are justly punished only if we have freely chosen to do wrong. But no one has freely chosen to do wrong, because no one has freely chosen to do *anything*. So no one can be justly punished. Note that this way of pushing back against the retributivist would show not only that the death penalty is immoral, but that *all* punishment is immoral. Most people are going to want to find a way to refute this argument. Have fun!

Let's assume we can answer this radical challenge, and so assume that some people are responsible for their poor choices and the terrible actions prompted by them. Still, why think that murderers who freely choose to kill are deserving of death? The classic retributivist response invokes the famous **lex talionis**. This principle (Latin for "law of retaliation") is the eye-for-an-eye, tooth-for-a-tooth, life-for-a-life guideline that says, more specifically, that a punishment is deserved if and only if it treats the criminal just as he treated his victim(s).

Punishment that is administered as lex talionis advises can be deeply satisfying. It can get criminals to see things from their victims' perspective, and so open their eyes to the true nature of the damage they have done. Further, punishment in line with lex talionis seems perfectly just, since the criminal can't rightly complain of being mistreated, given that he was willing to treat someone else in exactly the same way. Lastly, in the difficult matter of determining how to punish criminals, lex talionis often gives us concrete, practical advice. What to do with a murderer, for instance? Treat him as he has treated his victim.

These attractions account for lex talionis's broad appeal. Despite the widespread enthusiasm, however, lex talionis is fatally flawed. Three reasons explain its failure.

First, lex talionis cannot explain why criminals who intentionally hurt their victims should

be punished more than those who accidentally cause the same harm. Lex talionis tells us to set the punishment by reference to the suffering of the victim. But victims can suffer the same harm, whether the perpetrator has carefully planned to cause it or has caused it by accident. If I am recklessly practicing archery in my backyard and unintentionally skewer my neighbor, I deserve less punishment than a cold-blooded murderer. Or so we think. Lex talionis does not allow for that, since the victims in both cases have suffered the same harm.

We could say that what criminals deserve is determined not only by the harm they have done, but also by how blameworthy they are in bringing it about. So a hired killer should be punished more than a reckless archer, because the murderer displays a kind of moral corruption that the archer lacks. This does give us the right answer—the callous killer *should* be punished more. But it comes at the cost of abandoning lex talionis.

That's because we are no longer required to treat the criminal as he treated his victim. If an assassin deserves to be executed, then those who kill, but are less guilty than an assassin, should receive a lighter sentence than death. That undermines the letter and spirit of lex talionis, since these less guilty killers will not be harmed just as they have harmed their victims. And it also removes one of the great virtues of lex talionis—that of offering precise guidance on how much criminals should be punished.

A second problem with lex talionis is that it cannot tell us what many criminals deserve. This is most obvious in crimes that lack victims. Suppose an assassin attempts (but fails) to kill his victim, and the victim never discovers this. No harm, no foul? Suppose that someone leaves a bar well and truly drunk, and then manages to drive home without hurting anyone. Still, she deserves to be punished, but since there is no victim, lex talionis offers no basis for punishment.

Other crimes may have victims, and yet lex talionis offers no advice about their punishment.

What to do with a hijacker or a counterfeiter? A kidnapper? Someone who transports stolen mattresses across state lines? The idea of treating these people just as they've treated their victims makes little sense.

Lastly, the guidance that *lex talionis* provides, when it does prescribe a punishment, is sometimes deeply immoral. It's a sad truth: any horror you can imagine people doing to one another has probably already been done. People have raped and tortured others, have burned whole families as they slept in their homes, have severed their limbs, tossed acid in their faces, and thrown handcuffed victims out of helicopters. Does morality really require that we do these things to the criminals who committed such deeds? We don't want official torturers, rapists, and arsonists on the state payroll. Legal punishment is the state's business, and we insist that the state meet certain minimum moral standards. A state that rapes its rapists is failing, miserably.

These three problems show that *lex talionis* cannot be the whole story about justice, because *lex talionis* sometimes fails to give advice when it is needed, and sometimes gives bad advice. This doesn't show that premise 2 is false. It may still be true that murderers deserve to die. But the classic defense of this claim is mistaken. If you believe in premise 2, your task is now to come up with a better defense than the one offered by *lex talionis*.

CONCLUSION

Abolitionists about capital punishment have offered several critiques that seek to undermine its moral legitimacy. The strongest of these are worries about systemic discrimination and the danger of killing innocents who have been wrongly convicted. Although these are very serious concerns, it isn't clear as yet that they can be fashioned into airtight arguments that threaten the morality of capital punishment. That said, the central arguments offered by deterrence theorists and retributivists are also vulnerable to criticisms. There is little evidence

that the death penalty is an efficient deterrent, and the standard way to show that murderers deserve to die is deeply flawed. Given these argumentative difficulties, how should we as a society respond? One principle says: maintain the status quo, until there is a compelling argument to shift from it. A different principle directs us to refrain from deliberately killing any of our citizens until we have a compelling argument that licenses such killing. Which of these do you find more plausible, and why?

ESSENTIAL CONCEPTS

Abolitionists: those who believe that the death penalty is not morally justified (and so seek to abolish it where it exists).

Aggravated murder: a murder that is made even more severe by especially violent or harmful circumstances in connection with the murder.

Aggravating conditions: features of a crime that increase its severity or harmful consequences.

Arbitrary: capricious, unprincipled, without a discernible rationale.

Capital offenses: those crimes that carry the death penalty as a possible punishment.

Capital punishment: the death penalty.

Death row: the part of a prison with cells for people sentenced to death.

Deterrence theory: the view that punishment is justified if, only if, and because it is an efficient way of preventing crime.

Discriminatorily: marked by unjustified bias for or against a particular group.

General deterrence: using the threat of punishment to prevent crimes that might be committed by those other than the criminal himself.

Just deserts: what a person deserves.

Lethal injection: a method of executing a person by introducing deadly poison into his bloodstream.

Lex talionis: literally, the law of retaliation, which requires that one treat criminals in just the way they treated their victims.

STAT SHOT

1. The United States has executed 1,455 prisoners since 1976 (Figure 20.1).

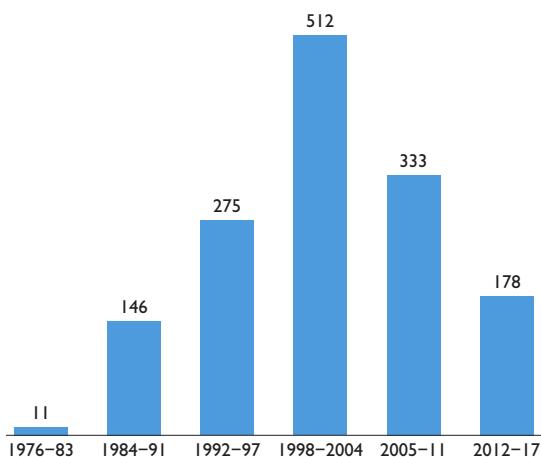


Figure 20.1.

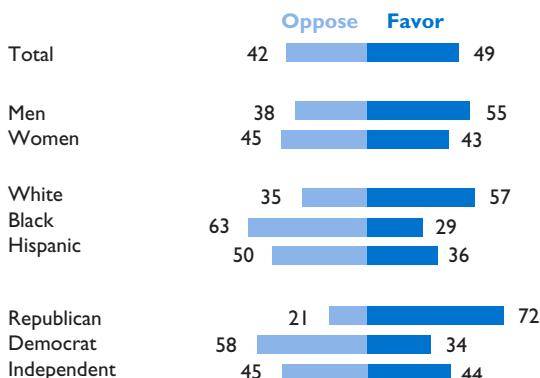
Source: <https://deathpenaltyinfo.org/documents/FactSheet.pdf>

2. Five US states executed people in 2016. Georgia (nine executions) and Texas (seven executions) together were responsible for 80 percent of the twenty executions during the year.¹
3. Since 1976, more than 155 people in twenty-seven states have been released from death row after courts reconsidered existing evidence or received new evidence of the prisoner's innocence.²
4. US citizens favor the death penalty more than they oppose it, but there are significant differences of opinion along gender, racial, and partisan lines (Figure 20.2).
5. Black people are executed for murdering white people much more often than white people are executed for murdering black people (Figure 20.3).

1. <https://www.amnesty.org/en/latest/news/2017/04/death-penalty-2016-facts-and-figures/>

2. <https://deathpenaltyinfo.org/documents/FactSheet.pdf>

% who Oppose the death penalty for persons convicted of murder



Note: Whites and blacks include only those who are not Hispanic; Hispanics are of any race. Don't know responses not shown.

Figure 20.2.

Source: <http://www.pewresearch.org/fact-tank/2017/04/24/5-facts-about-the-death-penalty/>

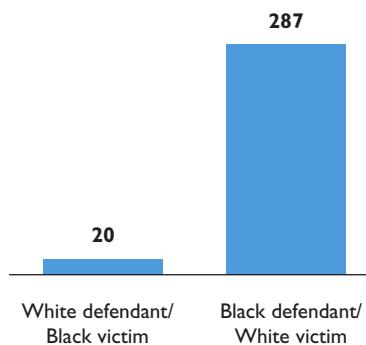


Figure 20.3

Source: <https://deathpenaltyinfo.org/documents/FactSheet.pdf>

Premeditated: planned or thought out in advance.

Retributivism: the view that punishment is justified if, only if, and because it gives a criminal his just deserts.

Special deterrence: using the threat of punishment to deter the criminal himself.

Unconstitutional: not permitted by, or in violation of, a country's political constitution.

supporters were Pope John Paul II, Jesse Jackson, televangelist Pat Robertson, the European Parliament, and even Deborah Thornton's brother, Ronald Carlson. These appeals fell on deaf ears. Governor George W. Bush refused to block her execution and on February 3, 1998, Tucker was executed by lethal injection.

1. <http://www.nytimes.com/1998/02/04/us/execution-texas-overview-divisive-case-killer-two-ends-texas-executes-tucker.html>

Cases for Critical Thinking

The Pickax Murders

After binging on drugs for an entire weekend in June of 1983, Karla Faye Tucker and David Garrett broke into Jerry Dean's house and brutally murdered him by beating him over the head with a hammer and hacking him to death with a pickax. After Dean was dead, Tucker and Garrett noticed that another person, Deborah Thornton, was in the room and shivering under the bed covers. Tucker and Garrett proceeded to murder Thornton in the same way they murdered Dean. Far from showing remorse, Tucker bragged to her friends and would later testify in court that she experienced intense sexual satisfaction with each blow of the pickax. The case quickly became known worldwide for the events that followed.¹

While awaiting her trial in jail, Tucker claimed to experience a powerful religious conversion. She was now a born-again Christian, she said. Though she originally pleaded not guilty to the murders, after her conversion, Tucker confessed and expressed deep sorrow and remorse for what she had done. She began counseling her fellow inmates and married the prison minister. Nevertheless, Tucker and Garrett were sentenced to death.

During the process of appealing her sentence, many people and organizations across the world asked the state of Texas to commute Tucker's sentence to life in prison. Among the

Questions

1. Suppose Tucker's apparent change of heart was sincere and that she was enormously sorry for her past crimes. Suppose that she completely turned her life around and was, as she claimed during her trial, not a threat to society but rather a positive contributor. If so, should Tucker's sentence have been commuted to life in prison? More generally, should juries or legal officials consider whether an inmate is genuinely remorseful or rehabilitated when deliberating about whether to issue a death sentence? Why or why not?
2. Tucker and Garrett committed their crimes under the influence of powerful drugs. Does this fact affect what sort of sentence they ought to receive? Why or why not?
3. Many in the popular media were upset that the state of Texas would execute a woman. In the United States, women are executed much less often than men—only 16 of the 1,455 people executed since 1976 were women. Tucker was the first woman executed in the state of Texas since 1863. Do you think this disparity is indicative of a bias in favor of women when it comes to death sentences? Do you think this disparity should be corrected or is it appropriate? If you think the disparity should be corrected, how should it be done: by executing more women or by executing fewer men?

4. Tucker confessed to committing the murder. While false confessions do happen, Tucker's doesn't seem like a plausible candidate. Hers seems about as genuine as they come. Should murderers be rewarded for confessing by being exempt from the death penalty? Or should those who confess be prime candidates for the death penalty since, one might think, we can be much more confident that those who confess are guilty?

Botched Executions

The people performing executions (in most countries, at least) try to make the process as painless as possible for the prisoner. But no human being is perfect and that includes the people who perform executions. Sometimes things go awry. These are called botched executions. A botched execution usually results in the death of the prisoner, but only after the prisoner experiences a prolonged period of pain and suffering. Other times, the execution fails entirely, so that the execution must be postponed for another day or canceled altogether.¹ In any case, when an execution is botched, things can get pretty gruesome.

For instance, Pedro Medina, who in 1997 was executed by electric chair in Florida, was subjected to two minutes of painful electrocution before he was killed. Witnesses reported that a "crown of foot-high flames shot from the headpiece during the execution, filling the execution chamber with a stench of thick smoke and gagging the two dozen official witnesses." Investigators later determined that the error was caused by "the improper application of a sponge" designed to conduct electricity to Medina's head.² Commenting on a different botched electrocution in Florida two years later, Florida Supreme Court Justice Leander Shaw commented that "The color photos of [the executed inmate] depict a man who—for all appearances—was brutally tortured to death by the citizens of Florida."³

Lethal injections can be botched, too. Usually it's because prison staff have difficulty finding a vein suitable for the catheter carrying the lethal drugs. This results in long periods, sometimes hours, of prison staff repeatedly sticking the inmate with a needle until they can locate a suitable vein. All the while the prisoner is left to contemplate his fate. Other times, the problem is that prison staff poke the needle all the way through the vein so that the lethal drugs are injected into soft tissue rather than the bloodstream. This is what happened to Angel Diaz in a 2006 execution in Florida. It took thirty-four minutes for the lethal drugs to finally stop Diaz's heart—plenty of time for the anesthesia to wear off and for Diaz to experience intense pain.⁴

1. <http://www.cnn.com/2016/08/23/us/ohio-death-row-inmate-supreme-court/index.html>
2. https://deathpenaltyinfo.org/some-examples-post-furman-botched-executions#_edn3
3. http://articles.chicagotribune.com/1999-10-27/news/9910270092_1_electric-chair-allen-lee-tiny-davis-thomas-provenzano
4. http://www.nbcnews.com/id/16241245/ns/us_news-crime_and_courts/t/botched-execution-likely-painful-doctors-say/
5. https://deathpenaltyinfo.org/some-examples-post-furman-botched-executions#_edn3

Questions

1. Does the treatment that Medina and Diaz received constitute cruel and unusual punishment? If not, what would it take for a punishment to qualify as cruel and unusual?
2. For each individual execution, the chances of botching it are small. But, over time, the chances that some execution or other will be botched and that a prisoner will endure extraordinary suffering is very high—a near certainty. There have been dozens of botched executions since 1979.⁵ Does this fact affect how you think about the moral

permissibility of the death penalty? Why or why not?

3. It's not a legal requirement for medical professionals to be present at an execution. Nevertheless, states often have medical professionals on hand to help if anything goes wrong. Many in the medical profession think that doctors should refuse to participate in executions, since, in their view, helping to execute a prisoner violates a doctor's duty to heal, and not to harm, people under their care. Do you think doctors have a duty to refrain from participating in executions? Why or why not?

Jury Selection and Race

In 1986, Timothy Tyrone Foster, an eighteen-year-old African American man, brutally tortured and murdered Queen Madge White, an elderly white woman, in her home in Rome, Georgia. Her jaw was broken, she had gashes on the top of her head, and she had been sexually assaulted and strangled. Foster confessed to everything and was sentenced to death. Later, Foster challenged his sentence in a court of appeals, claiming that there was racial bias in the jury selection process for his sentencing. He claimed that prosecutors purposely struck all four black prospective jurors, leaving his sentencing to an all-white jury.¹

1. <https://www.nytimes.com/2016/05/24/us/supreme-court-black-jurors-death-penalty-georgia.html>

Questions

1. It's well known that the United States has a history of racism and discrimination against African Americans. It's also well known that African Americans are significantly overrepresented in the death row population, while white people are significantly underrepresented. Given these facts, do you think it's fair for a black person to be sentenced to death by an all-white jury? If so, why? If not, why not? And what should be done to make the process fair?
2. The brutal nature of White's murder led many to speculate that Foster suffered from some sort of mental illness. Foster never received such a diagnosis. If, however, a doctor had diagnosed Foster with a mental illness that made him more likely to commit such a brutal murder, would that influence your view about what sort of punishment Foster ought to receive? Why or why not?
3. When Foster murdered White, he was eighteen years old. But suppose he had been a few months younger and was only seventeen. Would that influence your view about what punishment Foster ought to receive? More generally, should mature minors, or very young adults, be liable to receive the death penalty for brutal murders? Why or why not?

READINGS

On Deterrence and the Death Penalty**Ernst van den Haag**

When deciding whether considerations of deterrence favor the death penalty, you might confront this argument from abolitionists:

1. The death penalty is morally justified only if there is substantial evidence that it is an effective deterrent.
2. We lack such evidence.

Therefore,

3. The death penalty is not morally justified.

Van den Haag rejects the first premise of this argument. He mentions, very briefly, that he is also attracted to a retributivist justification—he believes that the death penalty is justified because it gives murderers their just deserts. Perhaps more interesting, though, is that he accepts the second premise. He believes that, from a deterrence perspective, considerations of deterrence can justify imposing the death penalty even if we lack evidence that it does a good job at preventing crime.

He makes three points in defense of this view. The first is designed to prevent an error on the part of his critics, who sometimes claim that death's irrevocability means that we must have better evidence of its deterrent effects than we do for less severe penalties. Van den Haag replies that this is not so; all we need is reason to believe that the death penalty will yield more deterrence than a lesser penalty would. And, second, we do have such reason, in the form of this general principle: the more fearful a penalty is, the greater its deterrent effect. Most people fear death more than any other potential punishment, so we have reason to think that capital punishment is indeed a more effective deterrent than lesser punishments. Van den Haag's third point is that given our uncertainty about the deterrent effects of the death penalty, we are bound to be risking lives no matter whether we impose the death penalty or abolish it. Given that we are risking things either way, van den Haag believes that we should risk the life of a convicted murderer so as to spare the lives of potential innocent victims.

If rehabilitation and the protection of society from unrehabilitated offenders were the only purposes of legal punishment the death penalty could be

From Ernst van den Haag, "On Deterrence and the Death Penalty," *The Journal of Criminal Law, Criminology, and Political Science* 60, no. 2 (1969), pp. 141–147. Reprinted by special permission of Northwestern University School of Law, *The Journal of Criminal Law and Criminology*.

Notes have not been reprinted.

abolished: it cannot attain the first end, and is not needed for the second. No case for the death penalty can be made unless "doing justice," or "deterring others," are among our penal aims. Each of these purposes can justify capital punishment by itself; opponents, therefore, must show that neither actually does, while proponents can rest their case on either.

Although the argument from justice is intellectually more interesting, and, in my view, decisive

enough, utilitarian arguments have more appeal: the claim that capital punishment is useless because it does not deter others, is most persuasive. I shall, therefore, focus on this claim. . . .

For I doubt that the presence or absence of a deterrent effect of the death penalty is likely to be demonstrable by statistical means. . . .

It is on our uncertainty that the case for deterrence must rest. If we do not know whether the death penalty will deter others, we are confronted with two uncertainties. If we impose the death penalty, and achieve no deterrent effect thereby, the life of a convicted murderer has been expended in vain (from a deterrent viewpoint). There is a net loss. If we impose the death sentence and thereby deter some future murderers, we spared the lives of some future victims (the prospective murderers gain too; they are spared punishment because they were deterred). In this case, the death penalty has led to a net gain, unless the life of a convicted murderer is valued more highly than that of the unknown victim, or victims (and the non-imprisonment of the deterred non-murderer).

The calculation can be turned around, of course. The absence of the death penalty may harm no one and therefore produce a gain—the life of the convicted murderer. Or it may kill future victims of murderers who could have been deterred, and thus produce a loss—their life.

To be sure, we must risk something certain—the death (or life) of the convicted man, for something uncertain—the death (or life) of the victims of murderers who may be deterred. This is in the nature of uncertainty—when we invest, or gamble, we risk the money we have for an uncertain gain. Many human actions, most commitments—including marriage and crime—share this characteristic with the deterrent purpose of any penalization, and with its rehabilitative purpose (and even with the protective).

More proof is demanded for the deterrent effect of the death penalty than is demanded for the deterrent effect of other penalties. This is not justified by the absence of other utilitarian purposes such as protection and rehabilitation; they involve no less uncertainty than deterrence.

Irrevocability may support a demand for some reason to expect more deterrence than revocable

penalties might produce, but not a demand for more proof of deterrence, as has been pointed out above. The reason for expecting more deterrence lies in the greater severity, the terrifying effect inherent in finality. Since it seems more important to spare victims than to spare murderers, the burden of proving that the greater severity inherent in irrevocability adds nothing to deterrence lies on those who oppose capital punishment. Proponents of the death penalty need show only that there is no more uncertainty about it than about greater severity in general.

The demand that the death penalty be proved more deterrent than alternatives can not be satisfied any more than the demand that six years in prison be proved to be more deterrent than three. But the uncertainty which confronts us favors the death penalty as long as by imposing it we might save future victims of murder. This effect is as plausible as the general idea that penalties have deterrent effects which increase with their severity. Though we have no proof of the positive deterrence of the penalty, we also have no proof of zero, or negative effectiveness. I believe we have no right to risk additional future victims of murder for the sake of sparing convicted murderers; on the contrary, our moral obligation is to risk the possible ineffectiveness of executions. However rationalized, the opposite view appears to be motivated by the simple fact that executions are more subjected to social control than murder. However, this applies to all penalties and does not argue for the abolition of any.

Ernst van den Haag: On Deterrence and the Death Penalty

1. Van den Haag claims that we are not required to provide more proof of capital punishment's deterrent effect than of other punishments' deterrent effect. Can you think of a good reason to support this claim?
2. Is it true that the more fearful a punishment is, the more deterrence it will yield?
3. Explain the way (if any) in which the death penalty is uniquely irrevocable. Does this status impose any special argumentative burdens on defenders of the death penalty? If so, which ones?

4. Given that we are unsure of the deterrent effects of the death penalty, is it acceptable to take the life of a convict—a certain loss, according to van den Haag—for the chance that doing so will save innocent lives in the future? Why or why not?
5. Do you think it plausible to support the death penalty on deterrence grounds even if we are unsure of its deterrent effects? If your answer is yes, explain how your case agrees with or differs from van den Haag's. If your answer is no, defend your belief that such support is implausible.

Civilization, Safety, and Deterrence

Jeffrey H. Reiman

Jeffrey Reiman believes that murderers deserve to die. But he denies that the death penalty is morally justified. By sparing the life of a murderer, we communicate the great value of human life, the disvalue of pain, and the horror at allowing one person complete control over another. Reiman also believes that by sending this message, we will, over the long run, contribute to a society that is more civilized, more respectful of human life, and consequently less violent. In short, sparing the lives of convicted murderers may well have a deterrent effect.

Reiman devotes the bulk of this selection to critiquing Ernst van den Haag's claim that capital punishment is likely to be our most effective deterrent because it inspires more fear than any other punishment. Reiman identifies four grounds of suspicion.

First, a less fearful punishment may be fearful enough, and may deter all who can be deterred. Second, people assess risks in a very crude fashion, so even if people fear death more than other punishments, the prospect of facing death may not deter them from their criminal preparations. Third, while van den Haag claims that capital punishment deters by sending a message of the wrongness of murder, Reiman counters (as earlier) that refraining from executing murderers sends a civilizing message that stands an equal chance of preventing crime. Finally, Reiman alleges that van den Haag's argument proves too much. If it were sound, then we should torture people to death, since that is more feared than lethal injection; since we shouldn't torture people to death, it follows that van den Haag's argument is unsound.

... By placing execution alongside torture in the category of things we will not do to our fellow human beings even when they deserve them, we broadcast the message that totally subjugating a

person to the power of others *and* confronting him with the advent of his own humanly administered demise is too horrible to be done by civilized human beings to their fellows even when they have earned it: too horrible to do, and too horrible to be capable of doing. And I contend that broadcasting this message loud and clear would in the long run contribute to the general detestation of murder and

From Jeffrey H. Reiman, "Civilization, Safety, and Deterrence," *Philosophy and Public Affairs* 14 (1985), pp. 142–147.

be, to the extent to which it worked itself into the hearts and minds of the populace, a deterrent. In short, refusing to execute murderers though they deserve it both reflects and continues the taming of the human species that we call civilization. Thus, I take it that the abolition of the death penalty, though it is a just punishment for murder, is part of the civilizing mission of modern states. . . .

... I said that judging a practice too horrible to do even to those who deserve it does not exclude the possibility that it could be justified if necessary to avoid even worse consequences. Thus, were the death penalty clearly proven a better deterrent to the murder of innocent people than life in prison, we might have to admit that we had not yet reached a level of civilization at which we could protect ourselves without imposing this horrible fate on murderers, and thus we might have to grant the necessity of instituting the death penalty. But this is far from proven. The available research by no means clearly indicates that the death penalty reduces the incidence of homicide more than life imprisonment does. . . .

Conceding that it has not been proven that the death penalty deters more murders than life imprisonment, van den Haag has argued that neither has it been proven that the death penalty does *not* deter more murders, and thus we must follow common sense which teaches that the higher the cost of something, the fewer people will choose it, and therefore at least some potential murderers who would not be deterred by life imprisonment will be deterred by the death penalty. Van den Haag writes:

... our experience shows that the greater the threatened penalty, the more it defers.

... Life in prison is still life, however unpleasant. In contrast, the death penalty does not just threaten to make life unpleasant—it threatens to take life altogether. This difference is perceived by those affected. We find that when they have the choice between life in prison and execution, 99 percent of all prisoners under sentence of death prefer life in prison. . . .

From this unquestioned fact a reasonable conclusion can be drawn in favor of the superior deterrent effect of the death penalty. Those who have the choice in practice . . . fear death more than they

fear life in prison. . . . If they do, it follows that the threat of the death penalty, all other things equal, is likely to deter more than the threat of life in prison. One is most deterred by what one fears most. From which it follows that whatever statistics fail, or do not fail, to show, the death penalty is likely to be more deterrent than any other.¹

Those of us who recognize how common sensical it was, and still is, to believe that the sun moves around the earth, will be less willing than Professor van den Haag to follow common sense here, especially when it comes to doing something awful to our fellows. Moreover, there are good reasons for doubting common sense on this matter. Here are four:

1. From the fact that one penalty is more feared than another, it does not follow that the more feared penalty will deter more than the less feared, unless we know that the less feared penalty is not fearful enough to deter everyone who can be deterred—and this is just what we don't know with regard to the death penalty. Though I fear the death penalty more than life in prison, I can't think of any act that the death penalty would deter me from that an equal likelihood of spending my life in prison wouldn't deter me from as well. Since it seems to me that whoever would be deterred by a given likelihood of death would be deterred by an *equal* likelihood of life behind bars, I suspect that the commonsense argument only seems plausible because we evaluate it unconsciously assuming that potential criminals will face larger likelihoods of death sentences than of life sentences. If the likelihoods were equal, . . . where life imprisonment was improbable enough to make it too distant a possibility to worry much about, a similar low probability of death would have the same effect. After all, we are undeterred by small likelihoods of death every time we walk the streets. And if life imprisonment were sufficiently probable to pose a real deterrent threat, it would pose as much of a deterrent threat as death. And this is just what most of

the research we have on the comparative deterrent impact of execution versus life imprisonment suggests.

2. In light of the fact that roughly 500 to 700 suspected felons are killed by the police in the line of duty every year, and the fact that the number of privately owned guns in [the United States] is substantially larger than the number of households..., it must be granted that anyone contemplating committing a crime *already* faces a substantial risk of ending up dead.... It's hard to see why anyone *who is not already deterred by this* would be deterred by the addition of the more distant risk of death after apprehension, conviction, and appeal. Indeed, this suggests that people consider risks in a much cruder way than van den Haag's appeal to common sense suggests—which should be evident to anyone who contemplates how few people use seatbelts (14 percent of drivers, on some estimates), when it is widely known that wearing them can spell the difference between life (outside prison) and death.
3. Van den Haag has maintained that deterrence does not work only by means of cost-benefit calculations made by potential criminals. It works also by the lesson about the wrongfulness of murder that is slowly learned in a society that subjects murderers to the ultimate punishment.² But if I am correct in claiming that the refusal to execute even those who deserve it has a civilizing effect, then the refusal to execute also teaches a lesson about the wrongfulness of murder. My claim here is admittedly speculative, but no more so than van den Haag's to the contrary. [My] view has the added virtue of accounting for the failure of research to show an increased deterrent effect from executions *without having to deny the plausibility of van den Haag's commonsense argument that at least some additional potential murders will be deterred by the prospect of the death penalty*. If there is a deterrent effect from *not executing*, then... while executions will deter some murderers,

this effect will be balanced by the weakening of the deterrent effect of not executing, such that no net reduction in murders will result. And this... also disposes of van den Haag's argument that, in the absence of knowledge one way or the other on the deterrent effect of executions, we should execute murderers rather than risk the lives of innocent people whose murders might have been deterred.... If there is a deterrent effect of not executing, it follows that we risk innocent lives either way. And if this is so, it seems that the only reasonable course of action is to refrain from imposing what we know is a horrible fate.

4. Those who still think that van den Haag's commonsense argument for executing murderers is valid will find that the argument proves more than they bargained for. Van den Haag maintains that, in the absence of conclusive evidence on the relative deterrent impact of the death penalty versus life imprisonment, we must follow common sense and assume that if one punishment is more fearful than another, it will deter some potential criminals not deterred by the less fearful punishment. Since people sentenced to death will almost universally try to get their sentences changed to life in prison, it follows that death is more fearful than life imprisonment, and thus... will deter some additional murderers. Consequently, we should institute the death penalty to save the lives these additional murderers would have taken. But, since people sentenced to be tortured to death would surely try to get their sentences changed to simple execution, the same argument proves that death-by-torture will deter still more potential murderers. Consequently, we should institute death-by-torture to save the lives these additional murderers would have taken. Anyone who accepts van den Haag's argument is then confronted with a dilemma: Until we have conclusive evidence that capital punishment is a greater deterrent to murder than life imprisonment, he must grant *either*

that we should not follow common sense and not impose the death penalty; or we should follow common sense and torture murderers to death. In short, either we must abolish the electric chair or reinstitute the rack. Surely, this is the *reductio ad absurdum* of van den Haag's commonsense argument.

NOTES

1. Ernest van den Haag and John P. Conrad, *The Death Penalty: A Debate* (New York: Plenum Press, 1983), pp. 68–69.
2. *Ibid.*, p. 63.

Jeffrey Reiman: Civilization, Safety, and Deterrence

1. Reiman claims that abolishing the death penalty advances the cause of civilization. Do you think he is right about that?

2. Do you think that abolishing the death penalty would have as much deterrent effect as retaining it? Why or why not?
3. Deterrence theorists argue that we should impose the least harmful punishment that can effectively deter crime. Does this thought help to answer Reiman's claim that van den Haag's argument proves too much?
4. There is plenty of evidence that people fail to assess risk in a rational way. How does Reiman use this evidence to argue against van den Haag? Are his critiques on this point sound?
5. Reiman claims that if the prospect of life imprisonment doesn't deter a would-be murderer, then the chance of the death penalty won't, either. Do you think Reiman is right about that? Why or why not?

Justifying Legal Punishment

Igor Primoratz

In this excerpt from his book *Justifying Legal Punishment* (1989), Igor Primoratz defends the retributivist idea that a punishment is justified only if it gives a criminal his just deserts. But what do criminals deserve? Primoratz argues for the following principle: criminals deserve to be deprived of the same value that they deprived their victims of. Primoratz regards all human beings as possessed of lives of equal moral worth, and also believes that nothing is as valuable as human life. So murderers deserve to die. Since justice is a matter of giving people what they deserve, it follows that justice demands that murderers be executed.

Primoratz considers the most popular arguments of the opposing camp, and finds problems for each of them. Opponents claim that capital punishment violates a murderer's right to life; that killing murderers is contradictory; that capital punishment is disproportionately harsh; that the innocent are inevitably going to be executed; and that systematic discrimination undermines any chance at moral legitimacy. Primoratz carefully considers each objection and offers his replies. In the end, he thinks that justice requires the death penalty, that justice is the supreme legal virtue, and that none of the objections is strong enough to undermine the case for capital punishment. Therefore the state ought to execute convicted murderers.

... According to the retributive theory, consequences of punishment, however important from the practical point of view, are irrelevant when it comes to its justification; the moral consideration is its justice. Punishment is morally justified insofar as it is meted out as retribution for the offense committed. When someone has committed an offense, he deserves to be punished: it is just, and consequently justified, that he be punished. The offense is the sole ground of the state's right and duty to punish. It is also the measure of legitimate punishment: the two ought to be proportionate. So the issue of capital punishment within the retributive approach comes down to the question, Is this punishment ever proportionate retribution for the offense committed, and thus deserved, just, and justified?

The classic representatives of retributivism believed that it was, and that it was the only proportionate and hence appropriate punishment, if the offense was *murder*—that is, criminal homicide perpetrated voluntarily and intentionally or in wanton disregard of human life. In other cases, the demand for proportionality between offense and punishment can be satisfied by fines or prison terms; the crime of murder, however, is an exception in this respect, and calls for the literal interpretation of the *lex talionis*. The uniqueness of this crime has to do with the uniqueness of the value which has been deliberately or recklessly destroyed. We come across this idea as early as the original formulation of the retributive view—the biblical teaching on punishment: “You shall accept no ransom for the life of a murderer who is guilty of death; but he shall be put to death.”¹ The rationale of this command—one that clearly distinguishes the biblical conception of the criminal law from contemporaneous criminal law systems in the Middle East—is that man was not only created

From Igor Primoratz, *Justifying Legal Punishment* (Amherst, NY: Humanity Books, 1989), pp. 158–159, 161–166. Copyright © 1989 by Igor Primoratz. All rights reserved. Used with permission of the publisher; www.prometheusbooks.com.

by God, like every other creature, but also, alone among all the creatures, *in the image of God*:

That man was made in the image of God... is expressive of the peculiar and supreme worth of man. Of all creatures, Genesis 1 relates, he alone possesses this attribute, bringing him into closer relation to God than all the rest and conferring upon him the highest value. . . . This view of the uniqueness and supremacy of human life . . . places life beyond the reach of other values. The idea that life may be measured in terms of money or other property . . . is excluded. Compensation of any kind is ruled out. The guilt of the murderer is infinite because the murdered life is invaluable; the kinsmen of the slain man are not competent to say when he has been paid for. An absolute wrong has been committed, a sin against God which is not subject to human discussion. . . . Because human life is invaluable, to take it entails the death penalty.²

This view that the value of human life is not commensurable with other values, and that consequently there is only one truly equivalent punishment for murder, namely death, does not necessarily presuppose a theistic outlook. It can be claimed that, simply because we have to be alive if we are to experience and realize any other value at all, there is nothing equivalent to the murderous destruction of a human life except the destruction of the life of the murderer. Any other retribution, no matter how severe, would still be less than what is proportionate, deserved, and just. As long as the murderer is alive, no matter how bad the conditions of his life may be, there are always at least *some* values he can experience and realize. This provides a plausible interpretation of what the classical representatives of retributivism as a philosophical theory of punishment, such as Kant and Hegel, had to say on the subject.³

It seems to me that this is essentially correct. With respect to the larger question of the

justification of punishment in general, it is the retributive theory that gives the right answer. Accordingly, capital punishment ought to be retained where it obtains, and reintroduced in those jurisdictions that have abolished it, although we have no reason to believe that, as a means of deterrence, it is any better than a very long prison term. It ought to be retained, or reintroduced, for one simple reason: that justice be done in cases of murder, that murderers be punished according to their deserts.

There are a number of arguments that have been advanced against this rationale of capital punishment. . . .

[One] abolitionist argument . . . simply says that capital punishment is illegitimate because it violates the right to life, which is a fundamental, absolute, sacred right belonging to each and every human being, and therefore ought to be respected even in a murderer.

If any rights are fundamental, the right to life is certainly one of them; but to claim that it is absolute, inviolable under any circumstances and for any reason, is a different matter. If an abolitionist wants to argue his case by asserting an absolute right to life, she will also have to deny moral legitimacy to taking human life in war, revolution, and self-defense. This kind of pacifism is a consistent but farfetched and hence implausible position.

I do not believe that the right to life (nor, for that matter, any other right) is absolute. I have no general theory of rights to fall back upon here; instead, let me pose a question. Would we take seriously the claim to an absolute, sacred, inviolable right to life—coming from the mouth of a *confessed murderer*? I submit that we would not, for the obvious reason that it is being put forward by the person who confessedly denied another human being this very right. But if the murderer cannot plausibly claim such a right for himself, neither can *anyone else* do that in his behalf. This suggests that there is an element of reciprocity in our general rights, such as the right to life or property. I can convincingly

claim these rights only so long as I acknowledge and respect the same rights of others. If I violate the rights of others, I thereby lose the same rights. If I am a murderer, I have no *right* to live.

Some opponents of capital punishment claim that a criminal law system which includes this punishment is contradictory, in that it prohibits murder and at the same time provides for its perpetration: “It is one and the same legal regulation which prohibits the individual from murdering, while allowing the state to murder. . . . This is obviously a terrible irony, an abnormal and immoral logic, against which everything in us revolts.”⁴

This seems to be one of the more popular arguments against the death penalty, but it is not a good one. If it were valid, it would prove too much. Exactly the same might be claimed of other kinds of punishment: of prison terms, that they are “contradictory” to the legal protection of liberty; of fines, that they are “contradictory” to the legal protection of property. Fortunately enough, it is not valid, for it begs the question at issue. In order to be able to talk of the state as “murdering” the person it executes, and to claim that there is “an abnormal and immoral logic” at work here, which thrives on a “contradiction,” one has to use the word “murder” in the very same sense—that is, in the usual sense, which implies the idea of the *wrongful* taking the life of another—both when speaking of what the murderer has done to the victim and of what the state is doing to him by way of punishment. But this is precisely the question at issue: whether capital punishment is “murder,” whether it is wrongful or morally justified and right.

The next two arguments attack the retributive rationale of capital punishment by questioning the claim that it is only this punishment that satisfies the demand for proportion between offense and punishment in the case of murder. The first points out that any two human lives are different in many important respects, such as age, health, physical and mental capability, so that it does not make much sense to consider them equally valuable. What if the

murdered person was very old, practically at the very end of her natural life, while the murderer is young, with most of his life still ahead of him, for instance? Or if the victim was gravely and incurably ill, and thus doomed to live her life in suffering and hopelessness, without being able to experience almost anything that makes a human life worth living, while the murderer is in every respect capable of experiencing and enjoying things life has to offer? Or the other way round? Would not the death penalty in such cases amount either to taking a more valuable life as a punishment for destroying a less valuable one, or *vice versa*? Would it not be either too much, or too little, and in both cases disproportionate, and thus unjust and wrong, from the standpoint of the retributive theory itself?

Any plausibility this argument might appear to have is the result of a conflation of differences between, and value of, human lives. No doubt, any two human lives are *different* in innumerable ways, but this does not entail that they are not *equally valuable*. I have no worked-out general theory of equality to refer to here, but I do not think that one is necessary in order to do away with this argument. The modern humanistic and democratic tradition in ethical, social, and political thought is based on the idea that all human beings are equal. This finds its legal expression in the principle of equality of people under the law. If we are not willing to give up this principle, we have to stick to the assumption that, all differences notwithstanding, any two human lives, *qua* human lives, are equally valuable. If, on the other hand, we allow that, on the basis of such criteria as age, health, or mental or physical ability, it can be claimed that the life of one person is more or less valuable than the life of another, and we admit such claims in the sphere of law, including criminal law, we shall thereby give up the principle of equality of people under the law. In all consistency, we shall not be able to demand that property, physical and personal integrity, and all other rights and interests of individuals be given equal consideration in courts

of law either—that is, we shall have to accept systematic discrimination between individuals on the basis of the same criteria across the whole field. I do not think anyone would seriously contemplate an overhaul of the whole legal system along these lines.

The second argument having to do with the issue of proportionality between murder and capital punishment draws our attention to the fact that the law normally provides for a certain period of time to elapse between the passing of a death sentence and its execution. It is a period of several weeks or months; in some cases it extends to years. This period is bound to be one of constant mental anguish for the condemned. And thus, all things considered, what is inflicted on him is disproportionately hard and hence unjust. It would be proportionate and just only in the case of “a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months.”⁵

The first thing to note about this argument is that it does not support a full-fledged abolitionist stand; if it were valid, it would not show that capital punishment is *never* proportionate and just, but only that it is *very rarely* so. Consequently, the conclusion would not be that it ought to be abolished outright, but only that it ought to be restricted to those cases that would satisfy the condition cited above. Such cases do happen, although, to be sure, not very often; the murder of Aldo Moro, for instance, was of this kind. But this is not the main point. The main point is that the argument actually does not hit at capital punishment itself, although it is presented with that aim in view. It hits at something else: a particular way of carrying out this punishment, which is widely adopted in our time. Some hundred years ago and more, in the Wild West, they frequently hanged the man convicted to die almost immediately after pronouncing the sentence. I am not arguing here that we should follow this example today; I mention this piece of historical fact only in order to show that the

interval between sentencing someone to death and carrying out the sentence is not a *part* of capital punishment itself. However unpalatable we might find those Wild West hangings, whatever objections we might want to voice against the speed with which they followed the sentencing, surely we shall not deny them the *description* of “executions.” So the implication of the argument is not that we ought to do away with capital punishment altogether, nor that we ought to restrict it to those cases of murder where the murderer had warned the victim weeks or months in advance of what he was going to do to her, but that we ought to reexamine the procedure of carrying out this kind of punishment. We ought to weigh the reasons for having this interval between the sentencing and executing, against the moral and human significance of the repercussions such an interval inevitably carries with it.

These reasons, in part, have to do with the possibility of miscarriages of justice and the need to rectify them. Thus we come to the argument against capital punishment which, historically, has been the most effective of all: many advances of the abolitionist movement have been connected with discoveries of cases of judicial errors. Judges and jurors are only human, and consequently some of their beliefs and decisions are bound to be mistaken. Some of their mistakes can be corrected upon discovery; but precisely those with most disastrous repercussions—those which result in innocent people being executed—can never be rectified. In all other cases of mistaken sentencing we can revoke the punishment, either completely or in part, or at least extend compensation. In addition, by exonerating the accused we give moral satisfaction. None of this is possible after an innocent person has been executed; capital punishment is essentially different from all other penalties by being completely irrevocable and irreparable. Therefore, it ought to be abolished.

A part of my reply to this argument goes along the same lines as what I had to say on the previous one. It is not so far-reaching as abolitionists

assume; for it would be quite implausible, even fanciful, to claim that there have *never* been cases of murder which left no room whatever for reasonable doubt as to the guilt and full responsibility of the accused. Such cases may not be more frequent than those others, but they do happen. Why not retain the death penalty at least for them?

Actually, this argument, just as the preceding one, does not speak out against capital punishment itself, but against the existing procedures for trying capital cases. Miscarriages of justice result in innocent people being sentenced to death and executed, even in the criminal-law systems in which greatest care is taken to ensure that it never comes to that. But this does not stem from the intrinsic nature of the institution of capital punishment; it results from deficiencies, limitations, and imperfections of the criminal law procedures in which this punishment is meted out. Errors of justice do not demonstrate the need to do away with capital punishment; they simply make it incumbent on us to do everything possible to improve even further procedures of meting it out.

To be sure, this conclusion will not find favor with a diehard abolitionist. “I shall ask for the abolition of Capital Punishment until I have the infallibility of human judgement demonstrated to me,” that is, as long as there is even the slightest possibility that innocent people may be executed because of judicial errors, Lafayette said in his day.⁶ Many an opponent of this kind of punishment will say the same today. The demand to do away with capital punishment altogether, so as to eliminate even the smallest chance of that ever happening—the chance which, admittedly, would remain even after everything humanly possible has been done to perfect the procedure, although then it would be very slight indeed—is actually a demand to give a privileged position to murderers as against all other offenders, big and small. For if we acted on this demand, we would bring about a situation in which proportionate penalties would be meted out for all offenses, *except* for murder. Murderers would not be receiving the only punishment

truly proportionate to their crimes, the punishment of death, but some other, lighter, and thus disproportionate penalty. All other offenders would be punished according to their deserts; only murderers would be receiving less than *they* deserve. In all other cases justice would be done in full; only in cases of the gravest of offenses, the crime of murder, justice would not be carried out in full measure. It is a great and tragic miscarriage of justice when an innocent person is mistakenly sentenced to death and executed, but systematically giving murderers advantage over all other offenders would also be a grave injustice. Is the fact that, as long as capital punishment is retained, there is a possibility that over a number of years, or even decades, an injustice of the first kind may be committed, unintentionally and unconsciously, reason enough to abolish it altogether, and thus end up with a system of punishments in which injustices of the second kind are perpetrated daily, consciously, and inevitably?

There is still another abolitionist argument that actually does not hit out against capital punishment itself, but against something else. Figures are sometimes quoted which show that this punishment is much more often meted out to the uneducated and poor than to the educated, rich, and influential people; in the United States, much more often to blacks than to whites. These figures are adduced as a proof of the inherent injustice of this kind of punishment. On account of them, it is claimed that capital punishment is not a way of doing justice by meting out deserved punishment to murderers, but rather a means of social discrimination and perpetuation of social injustice.

I shall not question these findings, which are quite convincing, and anyway, there is no need to do that in order to defend the institution of capital punishment. For there seems to be a certain amount of discrimination and injustice not only in sentencing people to death and executing them, but also in meting out other penalties. The social structure of the death rows in American prisons, for instance, does not seem

to be basically different from the general social structure of American penitentiaries. If this argument were valid, it would call not only for abolition of the penalty of death, but for doing away with other penalties as well. But it is not valid; as Burton Leiser has pointed out,

... this is not an argument, either against the death penalty or against any other form of punishment. It is an argument against the unjust and inequitable distribution of penalties. If the trials of wealthy men are less likely to result in convictions than those of poor men, then something must be done to reform the procedure in criminal courts. If those who have money and standing in the community are less likely to be charged with serious offenses than their less affluent fellow citizens, then there should be a major overhaul of the entire system of criminal justice. . . . But the maldistribution of penalties is no argument against any particular form of penalty.⁷

NOTES

1. Numbers 35.31 (R.S.V.).
2. M. Greenberg, "Some Postulates of Biblical Criminal Law," in J. Goldin (ed.), *The Jewish Expression* (New York: Bantam, 1970), pp. 25–26. (Post-biblical Jewish law evolved toward the virtual abolition of the death penalty, but that is of no concern here.)
3. "There is no *parallel* between death and even the most miserable life, so that there is no equality of crime and retribution [in the case of murder] unless the perpetrator is judicially put to death" (I. Kant, "The Metaphysics of Morals," *Kant's Political Writings*, ed. H. Reiss, trans. H. B. Nisbet [Cambridge: Cambridge University Press, 1970], p. 156). "Since life is the full compass of a man's existence, the punishment [for murder] cannot simply consist in a 'value,' for none is great enough, but can consist only in taking away a second life" (G. W. F. Hegel, *Philosophy of Right*, trans. T. M. Knox [Oxford: Oxford University Press, 1965], p. 247).
4. S. V. Vulović, *Problem smrtne kazne* (Belgrade: Geca Kon, 1925), pp. 23–24.

5. A. Camus, "Reflections on the Guillotine," *Resistance, Rebellion and Death*, trans. J. O'Brien (London: Hamish Hamilton, 1961), p. 143.
6. Quoted in E. R. Calvert, *Capital Punishment in the Twentieth Century* (London: G. P. Putnam's Sons, 1927), p. 132.
7. B. M. Leiser, *Liberty, Justice and Morals: Contemporary Value Conflicts* (New York: Macmillan, 1973), p. 225.

Igor Primoratz: Justifying Legal Punishment

1. Retributivists such as Primoratz hold that the punishment of a crime ought to be proportional to the offense. Do you find such a view plausible? Are there any other morally relevant considerations when considering how someone should be punished?
2. Primoratz argues that the only punishment proportional to the offense of murder is the

death penalty. What reasons does he give for thinking this? Do you think he is correct?

3. Some argue that capital punishment violates the right to life. Primoratz responds that the right to life is not "absolute." What does he mean by this, and how does he argue for it? Do you agree with him?
4. How does Primoratz respond to the objection that the death penalty is hypocritical because it involves killing people for the offense of killing other people? Do you find his response convincing?
5. Many people object to the death penalty on the grounds that it sometimes results in innocent people being executed, and is often applied in a discriminatory way. Why doesn't Primoratz think these concerns justify abolishing the death penalty? Do you agree?

An Eye for an Eye?

Stephen Nathanson

In this excerpt from his book *An Eye for an Eye?* (1987), Stephen Nathanson argues against the classic retributivist principle of punishment: *lex talionis*. This principle tells us to treat criminals just as they treated their victims—an eye for an eye, a tooth for a tooth. Nathanson finds two major problems for *lex talionis*. First, it advises us to commit highly immoral actions—raping a rapist, for instance, or torturing a torturer. Second, it is impossible to apply in many cases of deserved punishment—for instance, the principle offers no advice about what to do with drunk drivers, air polluters, embezzlers, or spies.

Retributivists might replace *lex talionis* with a principle of proportional punishment, according to which increasingly bad crimes must be met with increasingly harsher punishment. This proposal is plausible, says Nathanson, but it offers no justification for the death penalty. All it tells us is that the worst crimes ought to be met with the harshest punishments. But it says nothing about how harsh those punishments should be.

Nathanson concludes by discussing the symbolism of abolishing the death penalty, and claims that we express a respect for each person's inalienable rights by refraining from depriving a murderer of his life.

Suppose we . . . try to determine what people deserve from a strictly moral point of view. How shall we proceed?

The most usual suggestion is that we look at a person's actions because what someone deserves would appear to depend on what he or she does. A person's actions, it seems, provide not only a basis for a moral appraisal of the person but also a guide to how he should be treated. According to the *lex talionis* or principle of "an eye for an eye," we ought to treat people as they have treated others. What people deserve as recipients of rewards or punishments is determined by what they do as agents.

This is a powerful and attractive view, one that appears to be backed not only by moral common sense but also by tradition and philosophical thought. The most famous statement of philosophical support for this view comes from Immanuel Kant, who linked it directly with an argument for the death penalty. Discussing the problem of punishment, Kant writes,

What kind and what degree of punishment does legal justice adopt as its principle and standard? None other than the principle of equality . . . the principle of not treating one side more favorably than the other. Accordingly, any undeserved evil that you inflict on someone else among the people is one that you do to yourself. If you vilify, you vilify yourself; if you steal from him, you steal from yourself; if you kill him, you kill yourself. Only the law of retribution (*jus talionis*) can determine exactly the kind and degree of punishment.¹

Kant's view is attractive for a number of reasons. First, it accords with our belief that what a person deserves is related to what he does. Second, it appeals to a moral standard and does not seem to rely on any particular legal or political institutions. Third, it seems to provide a measure of appropriate punishment that can be used as a guide to creating laws and instituting punishments. It tells us that the punishment is to be identical with the crime. Whatever the criminal did to the victim is to be done in turn to the criminal.

From Stephen Nathanson, *An Eye for an Eye?* (Totowa, NJ: Rowman and Littlefield, 1987), pp. 72–77, 138–140, 145.

In spite of the attractions of Kant's view, it is deeply flawed. When we see why, it will be clear that the whole "eye for an eye" perspective must be rejected.

PROBLEMS WITH THE EQUAL PUNISHMENT PRINCIPLE

... [Kant's view] does not provide an adequate criterion for determining appropriate levels of punishment.

... We can see this, first, by noting that for certain crimes, Kant's view recommends punishments that are not morally acceptable. Applied strictly, it would require that we rape rapists, torture torturers, and burn arsonists whose acts have led to deaths. In general, where a particular crime involves barbaric and inhuman treatment, Kant's principle tells us to act barbarically and inhumanly in return. So, in some cases, the principle generates unacceptable answers to the question of what constitutes appropriate punishment.

This is not its only defect. In many other cases, the principle tells us nothing at all about how to punish. While Kant thought it obvious how to apply his principle in the case of murder, his principle cannot serve as a general rule because it does not tell us how to punish many crimes. Using the Kantian version or the more common "eye for an eye" standard, what would we decide to do to embezzlers, spies, drunken drivers, airline hijackers, drug users, prostitutes, air polluters, or persons who practice medicine without a license? If one reflects on this question, it becomes clear that there is simply no answer to it. We could not in fact design a system of punishment simply on the basis of the "eye for an eye" principle.

In order to justify using the "eye for an eye" principle to answer our question about murder and the death penalty, we would first have to show that it worked for a whole range of cases, giving acceptable answers to questions about amounts of punishment. Then, having established it as a satisfactory general principle, we could apply it to the case of murder. It turns out, however, that when we try to apply the principle generally, we find that it either gives wrong answers or no answers at all. Indeed, I suspect that the principle of "an eye for an eye" is no longer even

a principle. Instead, it is simply a metaphorical disguise for expressing belief in the death penalty. People who cite it do not take it seriously. They do not believe in a kidnapping for a kidnapping, a theft for a theft, and so on. Perhaps “an eye for an eye” once was a genuine principle, but now it is merely a slogan. Therefore, it gives us no guidance in deciding whether murderers deserve to die.

In reply to these objections, one might defend the principle by saying that it does not require that punishments be strictly identical with crimes. Rather, it requires only that a punishment produce an amount of suffering in the criminal which is equal to the amount suffered by the victim. Thus, we don’t have to hijack airplanes belonging to airline hijackers, spy on spies, etc. We simply have to reproduce in them the harm done to others.

Unfortunately, this reply really does not solve the problem. It provides no answer to the first objection, since it would still require us to behave barbarically in our treatment of those who are guilty of barbaric crimes. Even if we do not reproduce their actions exactly, any action which caused equal suffering would itself be barbaric. Second, in trying to produce equal amounts of suffering, we run into many problems. Just how much suffering is produced by an airline hijacker or a spy? And how do we apply this principle to prostitutes or drug users, who may not produce any suffering at all? We have rough ideas about how serious various crimes are, but this may not correlate with any clear sense of just how much harm is done.

Furthermore, the same problem arises in determining how much suffering a particular punishment would produce for a particular criminal. People vary in their tolerance of pain and in the amount of unhappiness that a fine or a jail sentence would cause them. Recluses will be less disturbed by banishment than extroverts. Nature lovers will suffer more in prison than people who are indifferent to natural beauty. A literal application of the principle would require that we tailor punishments to individual sensitivities, yet this is at best impractical. To a large extent, the legal system must work with standardized and rather crude estimates of the negative impact that punishments have on people.

The move from calling for a punishment that is identical to the crime to favoring one that is equal in the harm done is no help to us or to the defense of the principle. “An eye for an eye” tells us neither what people deserve nor how we should treat them when they have done wrong.

PROPORTIONAL RETRIBUTIVISM

The view we have been considering can be called “equality retributivism,” since it proposes that we repay criminals with punishments equal to their crimes. In the light of problems like those I have cited, some people have proposed a variation on this view, calling not for equal punishments but rather for punishments which are *proportional* to the crime. In defending such a view as a guide for setting criminal punishments, Andrew von Hirsch writes:

If one asks how severely a wrongdoer deserves to be punished, a familiar principle comes to mind: Severity of punishment should be commensurate with the seriousness of the wrong. Only grave wrongs merit severe penalties; minor misdeeds deserve lenient punishments. Disproportionate penalties are undeserved—severe sanctions for minor wrongs or vice versa. This principle has variously been called a principle of “proportionality” or “just deserts”; we prefer to call it commensurate deserts.²

Like Kant, von Hirsch makes the punishment which a person deserves depend on that person’s actions, but he departs from Kant in substituting proportionality for equality as the criterion for setting the amount of punishment.

In implementing a punishment system based on the proportionality view, one would first make a list of crimes, ranking them in order of seriousness. At one end would be quite trivial offenses like parking meter violations, while very serious crimes such as murder would occupy the other. In between, other crimes would be ranked according to their relative gravity. Then a corresponding scale of punishments would be constructed, and the two would be correlated. Punishments would be proportionate to crimes so long as we could say that the more serious the crime was, the higher on the punishment scale was the punishment administered.

This system does not have the defects of equality retributivism. It does not require that we treat those guilty of barbaric crimes barbarically. This is because we can set the upper limit of the punishment scale so as to exclude truly barbaric punishments. Second, unlike the equality principle, the proportionality view is genuinely general, providing a way of handling all crimes. Finally, it does justice to our ordinary belief that certain punishments are unjust because they are too severe or too lenient for the crime committed.

The proportionality principle does, I think, play a legitimate role in our thinking about punishments. Nonetheless, it is no help to death penalty advocates, because it does not require that murderers be executed. All that it requires is that if murder is the most serious crime, then murder should be punished by the most severe punishment on the scale. The principle does not tell us what this punishment should be, however, and it is quite compatible with the view that the most severe punishment should be a long prison term.

This failure of the theory to provide a basis for supporting the death penalty reveals an important gap in proportional retributivism. It shows that while the theory is general in scope, it does not yield any *specific* recommendations regarding punishment. It tells us, for example, that armed robbery should be punished more severely than embezzling and less severely than murder, but it does not tell us how much to punish any of these. This weakness is, in effect, conceded by von Hirsch, who admits that if we want to implement the “commensurate deserts” principle, we must supplement it with information about what level of punishment is needed to deter crimes.³ In a later discussion of how to “anchor” the punishment system, he deals with this problem in more depth, but the factors he cites as relevant to making specific judgments (such as available prison space) have nothing to do with what people deserve. He also seems to suggest that a range of punishments may be appropriate for a particular crime. This runs counter to the death penalty supporter’s sense that death alone is appropriate for some murderers.⁴

Neither of these retributive views, then, provides support for the death penalty. The equality

principle fails because it is not in general true that the appropriate punishment for a crime is to do to the criminal what he has done to others. In some cases this is immoral, while in others it is impossible. The proportionality principle may be correct, but by itself it cannot determine specific punishments for specific crimes. Because of its flexibility and open-endedness, it is compatible with a great range of different punishments for murder.⁵ . . .

THE SYMBOLISM OF ABOLISHING THE DEATH PENALTY

What is the symbolic message that we would convey by deciding to renounce the death penalty and to abolish its use?

I think that there are two primary messages. The first is the most frequently emphasized and is usually expressed in terms of the sanctity of human life, although I think we could better express it in terms of respect for human dignity. One way we express our respect for the dignity of human beings is by abstaining from depriving them of their lives, even if they have done terrible deeds. In defense of human well-being, we may punish people for their crimes, but we ought not to deprive them of everything, which is what the death penalty does.

If we take the life of a criminal, we convey the idea that by his deeds he has made himself worthless and totally without human value. I do not believe that we are in a position to affirm that of anyone. We may hate such a person and feel the deepest anger against him, but when he no longer poses a threat to anyone, we ought not to take his life.

But, one might ask, hasn’t the murderer forfeited whatever rights he might have had to our respect? Hasn’t he, by his deeds, given up any rights that he had to decent treatment? Aren’t we morally free to kill him if we wish?

These questions express important doubts about the obligation to accord any respect to those who have acted so deplorably, but I do not think that they prove that any such forfeiture has occurred. Certainly, when people murder or commit other crimes, they do forfeit some of the rights that are possessed by the law-abiding. They lose a certain right to be left alone. It becomes permissible to bring them to trial and, if they are convicted,

to impose an appropriate—even a dreadful—punishment on them.

Nonetheless, they do not forfeit all their rights. It does not follow from the vileness of their actions that we can do anything whatsoever to them. This is part of the moral meaning of the constitutional ban on cruel and unusual punishments. No matter how terrible a person's deeds, we may not punish him in a cruel and unusual way. We may not torture him, for example. His right not to be tortured has not been forfeited. Why do these limits hold? Because this person remains a human being, and we think that there is something in him that we must continue to respect in spite of his terrible acts.

One way of seeing why those who murder still deserve some consideration and respect is by reflecting again on the idea of what it is to *deserve* something. In most contexts, we think that what people deserve depends on what they have done, intended, or tried to do. It depends on features that are qualities of individuals. The best person for the job deserves to be hired. The person who worked especially hard deserves our gratitude. We can call the concept that applies in these cases *personal* desert.

There is another kind of desert, however, that belongs to people by virtue of their humanity itself and does not depend on their individual efforts or achievements. I will call this impersonal kind of desert *human* desert. We appeal to this concept when we think that everyone deserves a certain level of treatment no matter what their individual qualities are. When the signers of the Declaration of Independence affirmed that people had inalienable rights to "life, liberty, and the pursuit of happiness," they were appealing to such an idea. These rights do not have to be earned by people. They are possessed "naturally," and everyone is bound to respect them.

According to the view that I am defending, people do not lose all of their rights when they commit terrible crimes. They still deserve some level of decent treatment simply because they remain living, functioning human beings. This level of moral desert need not be earned, and it cannot be forfeited. This view may sound controversial, but in fact everyone who believes that cruel and unusual punishment should be forbidden implicitly agrees with it. That is, they agree that even

after someone has committed a terrible crime, we do not have the right to do anything whatsoever to him.

What I am suggesting is that by renouncing the use of death as a punishment, we express and reaffirm our belief in the inalienable, unforfeitable core of human dignity.

Why is this a worthwhile message to convey? It is worth conveying because this belief is both important and precarious. Throughout history, people have found innumerable reasons to degrade the humanity of one another. They have found qualities in others that they hated or feared, and even when they were not threatened by these people, they have sought to harm them, deprive them of their liberty, or take their lives from them. They have often felt that they had good reasons to do these things, and they have invoked divine commands, racial purity, and state security to support their deeds.

These actions and attitudes are not relics of the past. They remain an awful feature of the contemporary world. By renouncing the death penalty, we show our determination to accord at least minimal respect even to those whom we believe to be personally vile or morally vicious. This is, perhaps, why we speak of the *sanctity* of human life rather than its value or worth. That which is sacred remains, in some sense, untouchable, and its value is not dependent on its worth or usefulness to us. Kant expressed this ideal of respect in the famous second version of the Categorical Imperative: "So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as a means only." . . .

When the state has a murderer in its power and could execute him but does not, this conveys the idea that even though this person has done wrong and even though we may be angry, outraged, and indignant with him, we will nonetheless control ourselves in a way that he did not. We will not kill him, even though we could do so and even though we are angry and indignant. We will exercise restraint, sanctioning killing only when it serves a protective function.

Why should we do this? Partly out of a respect for human dignity. But also because we want the state to set an example of proper behavior. We do

not want to encourage people to resort to violence to settle conflicts when there are other ways available. We want to avoid the cycle of violence that can come from retaliation and counter-retaliation. Violence is a contagion that arouses hatred and anger, and if unchecked, it simply leads to still more violence. The state can convey the message that the contagion must be stopped, and the most effective principle for stopping it is the idea that only defensive violence is justifiable. Since the death penalty is not an instance of defensive violence, it ought to be renounced.

We show our respect for life best by restraining ourselves and allowing murderers to live, rather than by following a policy of a life for a life. Respect for life and restraint of violence are aspects of the same ideal. The renunciation of the death penalty would symbolize our support of that ideal.

NOTES

1. Kant, *Metaphysical Elements of Justice*, translated by John Ladd (Indianapolis: Bobbs-Merrill, 1965), p. 101.
2. *Doing Justice* (New York: Hill & Wang, 1976), p. 66; reprinted in *Sentencing*, edited by H. Gross and A. von Hirsch (Oxford University Press, 1981), p. 243. For a more recent discussion and further defense by von Hirsch, see his *Past or Future Crimes* (New Brunswick, N.J.: Rutgers University Press, 1985).
3. Von Hirsch, *Doing Justice*, pp. 93–94. My criticisms of proportional retributivism are not novel. For helpful discussions of the view, see Hugo Bedau, “Concessions to Retribution in Punishment,” in *Justice and Punishment*, edited by J. Cederblom and W. Blizek (Cambridge, Mass.:

Ballinger, 1977), and M. Golding, *Philosophy of Law* (Englewood Cliffs, N.J.: Prentice Hall, 1975), pp. 98–99.

4. See von Hirsch, *Past or Future Crimes*, ch. 8.
5. For more positive assessments of these theories, see Jeffrey Reiman, “Justice, Civilization, and the Death Penalty,” *Philosophy and Public Affairs* 14 (1985): 115–48; and Michael Davis, “How to Make the Punishment Fit the Crime,” *Ethics* 93 (1983).

Stephen Nathanson: An Eye for an Eye?

1. Nathanson rejects the principle of *lex talionis*, according to which we ought to treat criminals as they have treated others. What reasons does he give for rejecting this principle? Do you find his reasons convincing?
2. Nathanson considers the following modification of the principle of *lex talionis*: “a punishment [should] produce an amount of suffering in the criminal which is equal to the amount suffered by the victim.” Do you think this is a plausible principle? What objections does Nathanson offer to the principle?
3. What is the principle of proportional retributivism? Why doesn’t Nathanson think that this principle supports the death penalty? Do you agree with him?
4. What symbolic message does Nathanson think that abolishing the death penalty would convey? Is this a good reason to abolish the death penalty?
5. Are there any reasons for supporting the death penalty that Nathanson does not consider? If so, are these reasons ever strong enough to justify sentencing someone to death?

Drugs

JUST THE FACTS

Drugs are chemicals that, when introduced into the bloodstream (e.g., by drinking, smoking, snorting, injecting), predictably alter the way we feel. We'll focus specifically on recreational drugs—those used to have fun, rather than for medical purposes.

Recreational drugs fall into four broad categories: depressants, stimulants, opioids, and psychedelics. Depressants, colloquially known as “downers,” produce a feeling of calmness and relaxation. These include substances such as alcohol, marijuana, Xanax, Valium, Ambien, and ketamine. Stimulants, by contrast, also known as “uppers,” enhance users’ concentration and give them a sense of energy and alertness. These include caffeine, nicotine, Adderall, MDMA (ecstasy), cocaine, and methamphetamine. Opioids, such as morphine, heroin, fentanyl, methadone, oxycodone, and hydrocodone, are a family of drugs that function as painkillers. With the exceptions of heroin, these drugs usually enter circulation by being prescribed by a doctor. Finally, psychedelics give users what’s often described as a “trippy” experience, altering or heightening their visual and auditory experiences and giving them an enhanced sense of openness. Psychedelics include LSD, mescaline (peyote’s active ingredient), DMT, and hallucinogenic mushrooms.

One of the major concerns people have about drugs is **drug addiction**—a chronic disease characterized by drug seeking and use that is compulsive, or difficult to control, despite harmful consequences.¹ Most recreational drugs work

by affecting the brain’s reward circuit, flooding it with the chemical messenger dopamine. This overstimulation of the reward circuit causes the intensely pleasurable “high” that leads users to take a drug again and again. Over time, the brain adjusts to the excess dopamine, thereby reducing the high that users feel compared to the high they felt when they first started taking the drug—an effect known as **tolerance**. Addicts eventually become physically dependent on their drug of choice. When they go for a while without it, they begin to exhibit symptoms of withdrawal—anxiety, fatigue, vomiting, depression, seizures, or hallucinations associated with denying the body a substance on which it depends. To avoid these symptoms, and to achieve their usual high, users take more of their drug of choice. Thus begins a vicious cycle of taking more drugs, building more tolerance, becoming more addicted, and taking still more drugs. Too often, the cycle ends in lethal **overdose**. Drug overdose is the leading cause of accidental death in the United States, with 52,404 lethal drug overdoses in 2015.²

Recently, the United States has seen a significant increase in drug overdoses due to opioids, especially prescription painkillers. The United States makes up 4 percent of the world’s population but consumes 75 percent of the world’s prescription drugs.³ More than 15 million Americans abuse prescription drugs, and 52 million Americans over the age of twelve have used prescription

1. <https://www.drugabuse.gov/publications/drugfacts/understanding-drug-use-addiction>

2. <https://www.asam.org/docs/default-source/advocacy/opioid-addiction-disease-facts-figures.pdf>

3. <https://www.cnbc.com/2016/04/27/americans-consume-almost-all-of-the-global-opioid-supply.html>

drugs nonmedically in their lifetime.⁴ The use of heroin, a cheaper alternative to prescription opioids, rose by 75 percent between 2007 and 2011. Four in five new heroin users started out misusing prescription painkillers. As a result, the number of men who lost their lives to opioid overdoses rose 250 percent between 1999 and 2010. For women, that number increased even more dramatically—rising 415 percent in the same period.

While opioid use is on the rise, by far the most used and abused drug across the world is alcohol. One in six US adults **binge drinks**—that is, drinks heavily in a short time to get severely intoxicated—about four times a month, consuming about eight drinks per binge.⁵ According to a 2015 study, 26.9 percent of people aged eighteen or older reported that they engaged in binge drinking in the past month. Also, 15.1 million adults ages eighteen and older (6.2 percent of this age group) had alcohol use disorder (AUD)—9.8 million men and 5.3 million women. About 1.3 million of these adults received treatment for AUD at a specialized facility; this represents only 8.3 percent of adults who needed treatment.⁶ An estimated 88,000 people die from alcohol-related causes annually, making alcohol the fourth leading preventable cause of death in the United States.

The abuse of alcohol has brought with it enormous costs. According to the Centers for Disease Control and Prevention, drinking too much, including binge drinking, cost the United States \$249 billion in 2010. These costs resulted from losses in workplace productivity, health care expenditures, criminal justice costs, and other expenses. Binge drinking was responsible for 77 percent of these costs—about \$191 billion.⁷

4. <http://www.drugfreeworld.org/drugfacts/prescription/abuse-international-statistics.html>

5. <https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics>

6. <https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics>

7. <https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics>

After alcohol, marijuana is the most commonly used drug in the United States. In 2013, there were 19.8 million marijuana users in the United States—about 7.5 percent of people aged twelve or older.⁸ The drug is now legal in nine states—Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, Vermont, and Washington—and the District of Columbia. As with many drugs in the United States, most of the supply of marijuana comes from Mexico. Mexican drug cartels are estimated to earn between \$19 billion and \$29 billion annually from the United States.⁹ As a result, violence associated with the drug trade is a major problem in Mexico. For instance, since the beginning (in 2006) of Mexico's war on drugs, an estimated 200,000 people have been killed and 28,000 are missing. In the first ten months of 2016 alone, there were more than 17,000 reported homicides.¹⁰

A very large number of people in America are incarcerated for drug crimes. According to the Bureau of Prisons, 207,847 people were incarcerated in federal prisons in 2015. Roughly half (48.6 percent) were in for drug offenses.¹¹ The average prison sentence for federal drug offenders was more than eleven years. Almost all (99.5 percent) drug offenders in federal prison were serving sentences for drug trafficking—not simple possession or use.¹²

The punishment for drug crimes falls disproportionately on people of color. For instance, black people make up 50 percent of the state and local prisoners incarcerated for drug crimes.

8. <https://www.drugabuse.gov/publications/drugfacts/nationwide-trends>

9. <https://borgenproject.org/facts-about-mexican-drug-cartels/>

10. <https://borgenproject.org/facts-about-mexican-drug-cartels/>

11. <https://fivethirtyeight.com/features/releasing-drug-offenders-wont-end-mass-incarceration/>

12. <https://www.bjs.gov/content/pub/pdf/dofp12.pdf>

And black youth (under eighteen) are 10 times more likely to be arrested for drug crimes than white youths—even though white youths are more likely to abuse drugs.¹³

In 2013, the United States spent \$25.6 billion on drug prevention and law enforcement; \$15 billion of that went to law enforcement, interdiction, and international efforts.¹⁴ The pro-reform Drug Policy Alliance estimates that when we combine state and local spending on everything from drug-related arrests to prison, the total cost adds up to at least \$51 billion per year. Over four decades, the group says, enforcing drug laws has cost American taxpayers about \$1 trillion.¹⁵

ARGUMENT ANALYSIS

When discussing the morality of drugs, it is essential to make at least two important distinctions. The first is between the *morality* and *legality* of drug use. The moral status of drug use is one thing; its legal status, another. We can ask whether drug use is itself immoral; we can also ask whether laws that prohibit such use are immoral. As we will see, many believe that there should be tight connections between our answers to these questions, though others disagree, and think that even if there is nothing immoral about drug use, laws that prohibit such use are morally acceptable.

The second distinction is between *drug use*, on the one hand, and a drug's *manufacture and sale*, on the other. As we will see, it is possible to have one set of views about the morality of drug use and the laws that regulate such use, while having a quite different set of opinions about the morality and legality of making and selling drugs. For instance, though there has been

relatively little public discussion of this option, one might think that drug use is morally acceptable and should be decriminalized, while also arguing that its sale and manufacture are immoral and ought to be illegal.

In the discussion that follows, we'll focus primarily (but not exclusively) on this question: should drug use be criminalized? As we'll see, addressing this question requires us to consider the morality of drug use as well.

Let's begin with those who defend the idea that laws prohibiting drug use are morally justified. One reason that is often offered in support of criminalization is that drug use leads to a great deal of harm to others. People under the influence engage in all sorts of harmful behavior. And a desire or need for drugs among those who can't pay for their habit often leads to theft, robbery, battery, and assault. These concerns can be expressed in

The Harm to Others Argument

1. If an activity ordinarily imposes serious and wrongful harm on others, then it is rightly outlawed.
2. Drug use ordinarily imposes wrongful harm on others.

Therefore,

3. Drug use is rightly outlawed.

Premise 1 is plausible, but only because it includes its qualifications about the kind of harm that triggers criminalization. That an action *occasionally* harms someone else does not by itself justify legal prohibition—after all, driving a car occasionally leads to serious harm to others, but this doesn't justify a legal ban on driving. Indeed, that a kind of action *ordinarily* harms others is still not enough to justify criminalizing it—football players routinely harm one another, but since they have consented to the risks, this should be enough to protect them from going to jail for playing their sport. We need to show something more: namely, that that the harms occur with some frequency, and

13. <http://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/>

14. http://www.huffingtonpost.com/2013/04/08/drug-war-mass-incarceration_n_3034310.html

15. http://www.huffingtonpost.com/2013/04/08/drug-war-mass-incarceration_n_3034310.html

that those harms are also **wrongs**—violations of rights. Even this is not enough, however. If those wrongful harms are of only minor importance, then it's best not to get the law involved. But if the wrongful harms are serious ones, then it is appropriate to make them illegal.

Premise 2, though, isn't very plausible. It's true, of course, that drug users under the influence do sometimes wrongfully harm others. But they very often do not. Further, the wrongful harms do not consist of taking drugs—that in itself violates no one's rights. The wrongs occur when a user, under the influence, commits actions that are already criminalized. To see why this is important, consider that people under the influence of alcohol sometimes drive drunk, beat their spouses, or start fights at bars. Such behavior should be outlawed, whether it is fueled by alcohol or not. But having a glass of wine with a meal, or a bourbon after dinner, is not itself an action that wrongfully harms others. Drinking alcohol violates no one's rights. The same can be said about the use of other drugs.

That said, suppose that there was a drug that reliably caused its users to become violent or terribly reckless toward others. Even if the use of that drug did not itself violate anyone's rights, still, it would ordinarily lead to behavior that *did* wrongfully harm others. In that case, premise 2 would be true of such a drug; assuming the truth of premise 1, we would have a sound argument in support of some drug criminalization.

But most drugs do *not* routinely lead users to harm others. It's true that some addicts may, in desperation, rob or steal from others in order to support their habit. But that is not itself a strong reason to criminalize drug use. After all, this sort of desperate behavior is true of most kinds of addiction. Some sex addicts rob and steal in order to pay for their habit—we should not thereby criminalize sex. Once again, we should criminalize the behavior that itself wrongfully harms others—robbery and theft, for instance—but this does not yet provide any

reason to criminalize most drug use, which is only occasionally linked with these wrongs.

Another reason offered in support of criminalizing drug use is that people often harm *themselves* when using drugs, and it is the state's job to protect people from such dangerous behavior. The list of such harms is substantial: one might die from an overdose, suffer cognitive damage, degrade one's personality, or ruin oneself financially. If the state can prevent its citizens from suffering such fates, shouldn't it do so?

That question reveals a commitment to the idea that **paternalism** is a legitimate goal of the criminal law. Paternalism has us limit the liberty of others, for their own good, against their will. In this case, advocates of drug criminalization argue that laws prohibiting drug use will spare thousands of users the terrible outcomes just mentioned. That thought underlies

The Paternalism Argument

1. Most drug users are subject to a significant chance of serious harm from their drug use.
2. The government should prohibit people from doing things that threaten a significant chance of serious harm to themselves.

Therefore,

3. The government should prohibit drug use.

Premise 1 is true of many drugs, though it is false of others. Let's focus on those drugs that do pose a serious threat (heroin and other opioids, for instance). On behalf of premise 2, many think of the government's proper role in consequentialist terms—the purpose of government is to do what it can to minimize harm to its citizens, and this includes self-harm, as well as harm to others. This is what permits the government to require that we wear seat belts, that motorcyclists use helmets, and that boat owners have life vests on board.

Despite the substantial good that has been achieved by these laws, they represent a

contentious vision of the state's proper role. (For more discussion of this general issue, see Chapter 16.) Many critics of paternalism argue that it amounts to treating adults as children, as if they either didn't know what's good for them, or did not have the moral authority to engage in risky behavior. The state, they argue, should limit criminal sanctions to actions that threaten to violate the rights of others. We shouldn't send people to jail for consuming unhealthy foods, participating in dangerous sports or hobbies, marrying unwisely, or placing all of their money in extremely risky investments. And yet such activities pose substantial risk of harm to their participants.

The defender of the Paternalism Argument could agree with these verdicts but offer the following reply: Of course the state should not be in the business of protecting citizens from *every* sort of risk. Sometimes—as in the case in which people marry unwisely—the state should keep a hands-off policy, because state officials lack the knowledge it would take to prevent bad marriages, and the damage to privacy of enacting such a law would be very high. In short, the costs of such a marriage law would outweigh the benefits. But this isn't always the case with paternalistic laws. Think again about seat belt laws, for instance. Like all paternalistic laws, these are harmful to some extent, precisely because they limit our freedom. Those who don't want to wear a seat belt are forced to do something they don't want to do. Thinking in consequentialist terms, however, policies that impose some harms can be justified if they are the least costly way of minimizing overall harm. Seat belt laws prevent a huge amount of harm, at relatively little cost to personal freedom. Further, there doesn't seem to be any less costly way to save all the lives that seat belt laws do. So, if consequentialism is correct, seat belt laws are morally justified.

Can we say the same thing of drug laws? That depends on two things: (a) whether some form of consequentialism is correct, and (b) whether criminalizing drug use is the least costly way to

prevent harms to drug users. Many of the pros and cons of consequentialism were discussed in Chapter 5, and we won't pause to rehearse them here. It is important to note, however, that some consequentialists *reject* the Paternalism Argument, because they are skeptical about (b): they doubt that criminalization really is the most effective way to reduce the harms associated with drug use. After all, criminalizing conduct is itself very costly, not only economically, but also in terms of the loss of a convict's liberty, and the harms suffered by any family members who depend on him or her for economic and emotional support. Given these costs, sending someone to jail should always be a last resort. Consequentialist doubts about whether this last resort is justified for drug use take the form of

The Efficiency Argument for Legalization

1. Criminal sanctions are morally justified only if they are the most efficient (i.e., least costly and most likely to succeed) means of reducing harm.
2. Criminal sanctions against drug use are not the most efficient means of reducing harm.

Therefore,

3. Criminal sanctions against drug use are not morally justified.

Premise 1 is a straightforward application of consequentialism. Supporters of premise 2 argue that spending the money we do on criminal prohibition (see Just the Facts for more detail) would yield much greater benefit if it were spent instead on educating citizens about the harmful effects of drug use, on drug rehabilitation programs, and on a variety of social programs that would increase the prospects of those who have resorted to drugs to numb them to life's miseries. *If* they are right—a question too complex to consider here—then consequentialists would be best advised to affirm this argument and so reject the Paternalistic Argument.

Another argument for the legalization of drug use comes not from a focus on results but rather on the nature of punishment. Punishment is a unique kind of harm, in response to a unique kind of offense—a violation of the criminal law. The state can hurt you in a lot of ways—by upping your tax rate, denying you citizenship, forcing you to fulfill the terms of a contract you breached, making you pay stiff licensing fees to register your car or business, or by requiring that you compensate your neighbor for damaging her property. But punishment is different. Not only does punishment hurt (sometimes literally), it, unlike all of these other state responses, is *intended* to hurt. Furthermore, it is designed to convey condemnation for the convict's wrongful conduct; the expression of the community's moral outrage is essential to punishment.

These thoughts provide the basis for the

Legal Punishment Requires Immorality Argument

1. Actions are justifiably criminalized only if they are immoral.
2. Drug use is not immoral.

Therefore,

3. Drug use is not justifiably criminalized.

Premise 1 is pretty plausible. Here is an argument for it:

- (A) Actions are justifiably criminalized only if it is morally justified to condemn their performance.

This follows from the understanding of legal punishment given earlier, and is part of what distinguishes punishment from those other legal responses, such as licensing fees. Further,

- (B) It is morally justified to condemn the performance of an action only if it is immoral.

Suppose an action *isn't* immoral—then it wouldn't be right to morally condemn someone for performing it. (A) and (B) together entail

premise 1. In other words, if (A) and (B) are true, then so is premise 1.

What of premise 2? We can assess its pros and cons by considering the three most prominent criticisms of it. One might think that drug use is immoral because (1) it is against the law, or (2) it wrongfully harms others, or (3) it harms drug users themselves. Let's review these in order.

The first option is not very plausible. We can't show that drug use is immoral just by showing that it is illegal. In the first case, there are some jurisdictions where drug use is *legal*. Even where drug use is illegal, though, the important point is that an action's illegality is not sufficient for its immorality. There are lots of counterproductive or morally bankrupt laws; violating such laws need not be immoral. Those who peacefully protested the segregationist Jim Crow laws in the 1950s and 1960s were violating the law but were not acting immorally. Perhaps drug laws are like these laws in being morally unjustified. I'm not saying they are. But neither can we just assume that drug laws are morally justified, since their moral status is precisely the matter under investigation!

The second option is also problematic. As we noted earlier, drug use itself does not wrongfully harm others, although in some cases it does lead to such harm, as when a user, under the influence, becomes violent or recklessly endangers the lives of others. These actions are indeed immoral, and are already rightly criminalized. But drug use, considered in itself, does not wrongfully harm others.

There is a wrinkle here, noted earlier. Some actions, though they do not wrongfully harm others, nevertheless very reliably lead to such harm. Think about conspiracy. This is just a bunch of folks talking to one another. Such talk doesn't harm anyone. Still, conspiring to commit harm is immoral, precisely because of its reliable connection to wrongfully harming others. I think there is a parallel here to certain drugs, such as crack cocaine. Their use doesn't by itself harm anyone else. But for certain users, there is a reliable connection between taking these drugs and harming others. If you take a

drug that is known to reliably cause its users to harm others, then, at the very least, this reveals a kind of recklessness, an indifference to the well-being of others, and that is morally suspect. In most cases, though, drug use does not reliably lead most users to commit such harms. For those drugs, then, this second basis for thinking that drug use is immoral will not work.

According to the third option, harming *oneself* can be immoral. Drug use sometimes becomes drug abuse; when this happens, the harms to oneself are sometimes as grave as can be. Those who overdose or become addicts have certainly harmed themselves. Still, it's unclear whether these unfortunate people are also thereby acting immorally, by virtue of having harmed themselves. Of course, if one becomes the sort of addict who neglects one's children, or betrays one's friend or spouse, then we have grounds for condemnation—but once again, on the basis of these harms to others, rather than the drug use itself. If we focus on a case where drug abuse does not lead to harm to others but does lead to real self-harm—say, by contracting HIV from dirty needles or by becoming financially ruined—then it may be more apt to judge this person's behavior to be pitiable, unwise, or imprudent, rather than immoral.

Questions about whether self-harm is immoral are deep ones; I don't pretend to have resolved the matter here, but I invite you to reflect further on whether such harm can qualify as immoral. It's important to note that consequentialists (see Chapter 5) answer in the affirmative: if, in harming yourself, you are failing to do the most good you can, then your action is immoral. Kantians (see Chapter 6) also think that self-harm can be immoral, if it is prompted by a maxim that cannot be universalized. Natural law theorists (see Chapter 8) claim that certain types of self-harm, such as suicide, are immoral, because they are contrary to our nature.

Abolitionists—those who seek to abolish laws, in this case, those that criminalize drug use—have another argument against criminalizing

drug laws. This one relies on the idea that we have certain **moral rights**—moral entitlements or liberties that protect our interests and choices. According to the argument we are about to consider, one of these rights is the right to use drugs. It is wrong to punish people for exercising their rights. So it is wrong to punish people for using drugs:

The Rights Argument

1. If people have a moral right to do X, then punishing them for doing X is unjust.
2. In most cases, people have a moral right to take drugs.

Therefore,

3. In most cases, punishing people for taking drugs is unjust.

Premise 1 is plausible. If I am morally entitled to air my views, or peacefully assemble, or practice a given faith, then it would be wrong of the government to criminalize such conduct. As we have seen, the proper role of the government is contested. But nearly everyone agrees that legitimate governments are designed, at the very least, to *protect* the moral rights of their citizens. Governments become illegitimate—they are moral failures whose coercion of citizens is morally unjustified—when they fail to protect those rights or, even worse, actively violate them. So if people have a moral right to do something, then governments should not punish people for exercising those rights. That is what premise 1 says.

But what of premise 2—why think that people have a moral right to use drugs? Here is an answer, by way of an argument:

- (A) If an action violates no one else's rights, then one has a moral right to do it.
- (B) In most cases, drug use violates no one else's rights.

Therefore,

2. In most cases, people have a moral right to take drugs.

Premise (A) rests on the general idea that we are autonomous, sovereign beings who get to determine how we are to live our lives. Other people may advise us and seek to influence us, but we are morally at liberty to resist such advice and influence. This moral right to self-determination is not unlimited, of course. As the old adage goes, the liberty to swing my fist ends where your nose begins. Other people's rights limit one's own. But, as a general point, so long as I am respecting your rights, I am morally at liberty to do as I please.

Premise (B) is also plausible. There are some cases, discussed above, where taking a drug would reliably lead to violence or recklessness towards others. In such cases, drug use would violate the rights of others. But most cases of drug use are not like this. (A) and (B) together entail premise 2; if they are true, premise 2 is true.

A final argument for drug legalization is a familiar one. It begins by noting that alcohol and tobacco are also drugs. We do not criminalize their use, even though their consumption does *far* more damage than illegal drug use does. We are being inconsistent if we forbid the use of some recreational drugs, like cigarettes and beer, while outlawing the use of others. We should either criminalize them all or legalize them all. Since we shouldn't criminalize alcohol and tobacco use, we should legalize all recreational drugs. We can summarize this line of reasoning in

The Tobacco-Alcohol Argument

1. If tobacco and alcohol use should be legal, then other recreational drug use should be legal.
2. Tobacco and alcohol use should be legal.

Therefore,

3. Other recreational drug use should be legal.

Nowadays very few people object to premise 2, for reasons given in the two preceding arguments. If adults know the dangers of using

alcohol and tobacco but opt to drink or smoke, it's their decision to make—the government should not prevent us from engaging in risky behavior if we know what we're doing. And few people regard smoking or having a drink as immoral. There just doesn't seem to be a good reason to send millions of people to jail for using tobacco or having a beer.

Defenders of premise 1 rely on these points to support their analogy between alcohol, tobacco, and other recreational drugs. Tobacco is highly addictive and is a primary cause of millions of deaths around the world—over 480,000 per year in the United States alone.¹⁶ This is nearly *ten times* the number of deaths from all other drugs (except alcohol) combined.¹⁷ Abolitionists often point to figures such as these in the service of their cause. But we need to be careful with statistics here (as elsewhere), since the number of drug deaths and other harms from drug use would almost certainly increase if we were to legalize their use—more people would use drugs, and current users may well use more often, if the threat of legal punishment disappeared. That said, the harm caused by tobacco use is *huge*. Though we can expect a substantial increase in drug-related harms if we legalize their use, we lack good evidence for thinking that those harms would come close to those caused by tobacco use. If such harm is not sufficient to justify criminalization, then it is not clear why the harms caused by other drugs should warrant their criminalization.

One reply is that harms from tobacco use (leaving second-hand smoke aside for now) are harms to the users themselves, which should not be punished. This abandons the paternalistic rationale for drug laws. But other drugs are mood altering and consciousness altering, making

16. https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm

17. <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates>

their users liable to cause harm to *others*. We have examined this form of argument already, but it's worth making a new point in the present context: alcohol use is also mood and consciousness altering, and also causes a huge amount of harm to others. Again, we have no way of reasonably predicting how much more harm would result from legalizing drugs that are currently prohibited. But the point made at the end of the last paragraph holds for alcohol as well: if we refrain from criminalizing alcohol use despite the massive harms it causes, then it's not clear why we should continue to send people to jail for using drugs that are no worse than alcohol in this regard.

An interesting hybrid view toward drug legalization has recently been aired. (See the reading by Peter de Marneffe later in this chapter.) The idea is that drug *use* ought to be decriminalized, though drug *manufacture* and *sale* ought to remain illegal. If you can get your hands on drugs, you're free to use them. But those who make and distribute these drugs should go to jail for doing so. This can sound paradoxical, but the basic idea is pretty straightforward. People have a moral right to use drugs, for reasons given in the discussion of the Rights Argument. And if you have a moral right to do something, you shouldn't be punished for doing it. But drug use does lead to a great deal of harm, and this is something that a society should try to prevent if it can. The best way to do it, while respecting the rights of its citizens, is to criminalize the manufacture and sale of drugs. Hence

The Social Harm Argument

1. If a law greatly reduces social harm and does not violate anyone's rights, then the law is morally justified.
2. Laws criminalizing drug manufacture and distribution greatly reduce social harm and do not violate anyone's rights.

Therefore,

3. Laws criminalizing drug manufacture and distribution are morally justified.

Premise 1 is meant to combine the best of both worlds—the consequentialist emphasis on reducing harm, with the nonconsequentialist focus on protecting rights. Both considerations are of central moral importance, and this premise captures that point.

We can support premise 2 as follows. Prohibiting the manufacture and sale of drugs will greatly reduce their supply. If we greatly reduce the supply, then we'll greatly reduce drug use. And if we greatly reduce drug use, then we'll greatly reduce the harms that come from such use. Further, because we would not criminalize drug use itself, we violate no one's rights. Though people have a moral right to use drugs, they don't have a moral right to make them or sell them. So prohibiting the sale and manufacture of drugs respects people's rights while greatly reducing social harm. That's what premise 2 says.

There are three points that might be pressed by critics of this line of argument. First, while prohibition usually does reduce supply and use of the prohibited item, it also has side effects that are themselves very harmful. As is well known, forbidding the manufacture and sale of a much-desired item, such as alcohol during Prohibition (1920–1933) or cocaine or heroin today, can lead to the creation of a lucrative and violent black market. The vast wealth to be made from the sale of illegal drugs also leads to the corruption of political institutions, from the local police to federal judges and, in some cases, all the way to the presidential palace. Imagine instead that the manufacture and sale of drugs were legal and heavily taxed. The violence associated with the black market would be greatly reduced. The added tax would increase cost, thereby reducing demand, and so moderating use. These tax revenues could provide the resources to invest in far more extensive drug rehabilitation services and better education about the harms wrought by drug use.

Second, as noted earlier, criminalizing behavior is a very costly social response. The United States spends billions of dollars each year on its "war on drugs." Legalizing drugs would allow

that money to be either returned to taxpayers or to be spent on social programs that might greatly reduce harm. So, while the consequences of prohibition are likely to be fewer harms from drug use, the consequences of legalization are likely to be far less drug-related violence and far more tax revenues that can be used for the social good. It's unclear at this point whether the outcomes of prohibiting the manufacture and sale of drugs are, on the whole, better than those we might see with legalization.

Third, it may be that, contrary to premise 2, people *do* have a moral right to manufacture and sell drugs. Recall another point made earlier, when discussing the Rights Argument: we have a moral right to do what we like, so long as this does not violate the rights of others. It doesn't seem that growing marijuana, for instance, or selling it to willing buyers or distributors, violates anyone's moral rights. The same holds for "harder" drugs, such as cocaine or heroin. Given that processing tobacco leaves into cigarettes or distilling gin from juniper berries doesn't violate anyone's moral rights, it is difficult to see why processing coca leaves into cocaine or poppies into heroin would do so. It's true that selling cigarettes, alcohol, or other drugs to minors could be understood as violating their rights, because they may suffer serious harm without being able to adequately understand the risks. But it is not easy to see how selling any of these drugs violates the rights of adults who are capable of making informed decisions about whether to use them. If this line of reasoning is correct, then people have as much of a right to make and sell drugs as they do to use them. *If* that is correct, then criminalizing the manufacture and sale of drugs would, after all, violate people's rights, thereby undermining premise 2 of the Social Harms Argument.

CONCLUSION

Many tens of thousands of our fellow citizens are in jail or prison today because of drug possession charges. Is that morally legitimate?

Those who defend the status quo say yes. They argue that drug use often leads to serious harm—either to users themselves, to others who are harmed by users who are under the influence, or both. These defenders say that it is society's responsibility to reduce such harm, and that the most effective way to do so is by criminalizing drug use.

Those who argue for legalization claim that drug use is not immoral—indeed, that there is a moral right to use drugs if we wish—thereby casting doubt on the legitimacy of criminalizing drug use. These abolitionists allow, of course, that drug use sometimes leads people to perform actions that wrongfully harm others, but they insist that criminalization be reserved for those harms, rather than drug use itself. Legalizers also argue by analogy: if tobacco and alcohol users should not be sent to jail for their indulgence, neither should those who use "harder" drugs.

Perhaps a compromise can be struck, according to which drug use should be legal, though drug manufacture and sales should not. The basis for this compromise is the thought that adults have a right to self-determination that entitles them to do as they please, so long as they respect the rights of others. The success of this compromise position depends on whether the right to self-determination also entitles us to make and sell drugs.

ESSENTIAL CONCEPTS

Abolitionists: those who seek to abolish laws (in this case, laws that criminalize drug use).

Binge drinking: consuming an excessive amount of alcohol in a short period of time to become severely intoxicated.

Drug addiction: a chronic disease characterized by drug seeking and use that is compulsive, or difficult to control, despite harmful consequences.

Drugs: chemicals that, when introduced into the bloodstream, predictably alter the way we feel.

STAT SHOT

Do you think the use of marijuana should be made legal, or not? (%)



1. Abuse of tobacco, alcohol, and illicit drugs costs the United States more than \$740 billion annually in costs related to crime, lost work productivity, and health care.¹
2. In 2015, a slim majority of Americans supported legalizing marijuana. Younger Americans tended to support legalizing marijuana more than older Americans (Figure 21.1).

1. <https://www.drugabuse.gov/related-topics/trends-statistics>

Figure 21.1

Source: <http://www.people-press.org/2015/04/14/in-debate-over-legalizing-marijuana-disagreement-over-drugs-dangers/#current-opinion-on-legalizing-marijuana>

Moral rights: moral entitlements or liberties that protect our interests and choices.

Overdose: a dangerously excessive and sometimes lethal amount of a drug.

Paternalism: the practice of limiting someone's liberty, against his will, for his own good.

Tolerance: the effect that occurs when the brain adjusts to a pattern of drug use, in which the high that users feel, compared to the high they felt when they first started taking a drug, is reduced.

Wrongs: violations of rights.

Cases for Critical Thinking

DanceSafe: Raving Mad?

A rave is an electronic music dance party that lasts all night. They're usually held in dark rooms, such as dance clubs or abandoned warehouses, filled with lasers and strobe lights. When raves began their rise to popularity in the late 1980s, many participants used the drug

ecstasy to enhance the experience of pulsing music, bright lights, and wild dancing. Ecstasy is still popular, but rave-goers nowadays also use cocaine, methamphetamine, and hallucinogens.

Since these drugs are illegal in the United States, there is always the danger that they are “cut” with harmful substances. Illegal drugs often contain cutting agents (or bulking agents), such as sugar, baking soda, caffeine, laundry detergent, or pesticides.¹ Dealers include these cheap substances in their drugs to make it appear as if their drugs contain more of the active ingredient than they really do. This allows dealers to make more money from a given supply of drugs than if they did not cut them. Some cutting agents are harmless, but some are toxic—especially when combined with powerful drugs such as ecstasy, cocaine, and methamphetamine.

DanceSafe is an organization that attends rave parties and offers to test drugs for dangerous cutting agents.² The idea is that rave-goers are going to take drugs no matter what. It’s best to make sure that the drugs they take are safe rather than potentially lethal. DanceSafe also sells drug testing kits that can be used at home when drug users are by themselves.

Some have applauded DanceSafe’s potentially life-saving efforts. Others, however, worry that, when DanceSafe gives users assurance that their drugs are pure, it is causing significant harm by further encouraging people to use powerful and potentially deadly drugs. This, critics worry, pushes drug addicts further into addiction. Critics also worry that the service makes attending raves even more attractive. Though there aren’t enough data to confirm or disconfirm this, many worry that raves are places with significantly increased rates of heatstroke (due to overheating while dancing on drugs), STI (sexually transmitted infection) transmission, sexual assault, and rape. If DanceSafe makes taking drugs safer, then, the thought goes, more people will attend raves and be harmed by these associated dangers.

1. <http://www.cph.org.uk/wp-content/uploads/2012/08/cut-a-guide-to-the-adulterants-bulking-agents-and-other-contaminants-found-in-illicit-drugs.pdf>

2. <https://dancesafe.org/>

Questions

1. Do DanceSafe and similar services encourage drug use? If so, is that a reason to think that they morally ought to stop providing their services? Why or why not?
2. Suppose data came in confirming the claim that raves are places with significantly increased rates of heatstroke, STI transmission, sexual assault, and rape. Would it be morally justified for DanceSafe to continue to provide their service at raves?
3. According to DanceSafe, the US government has never arrested a DanceSafe employee for providing drug testing services. Nor has anyone who has had his or her drugs tested by DanceSafe been arrested on that basis. Law enforcement lets DanceSafe provide their service without any interference. Is this the correct stance for law enforcement to take toward DanceSafe and similar services? Why or why not?

Drug Cartels

On August 25, 2010, the corpses of seventy-two migrants from South and Central America were discovered on a ranch in Tamaulipas, Mexico. These fifty-eight men and fourteen women were kidnapped by the Los Zetas cartel and killed for refusing to traffic drugs. In April 2011, several mass graves holding 177 bodies were discovered in the same area—almost certainly victims of the cartels, too. In July 2011, Edgar Jimenez Lugo, known as “El Ponchis” or “The Cloak,” a fourteen-year-old American citizen with drug cartel ties, was found guilty of beheading at least four people. In September of that same year, a murdered man and woman were found hanging from a bridge in Nuevo Laredo, Mexico. Near their mutilated bodies was a sign saying they were killed for denouncing drug cartel activities on a social

media site. The sign also threatened to kill others who post “funny things on the internet.” And in March of 2017, a mass grave containing more than 250 human skulls—more victims of drug cartels—was uncovered in Veracruz, Mexico.¹

Many Americans who buy illegal drugs are convinced that there is nothing morally problematic about merely using recreational drugs. But most of the illegal drugs in the United States were either produced or trafficked through Mexico by the Mexican drug cartels. Thus, a large proportion of the money paid to buy illegal drugs in the United States is likely to find its way back to these violent organizations.

Questions

1. Is buying illegal marijuana morally permissible if there is a fairly high likelihood that the money used for such purchases will end up in the hands of exceedingly violent drug cartels? Why or why not?
2. Many argue that the drug cartels’ biggest fear is that drugs will be legalized in the United States.² If this happened, they say, then US citizens could safely buy, sell, and produce cheap marijuana and other drugs on their own. This would significantly reduce the cartels’ demand and significantly reduce their violent activities. Does this sound plausible? Why or why not? Suppose that it’s correct. Would this justify legalizing drugs, or at least marijuana, in the United States?
3. Many argue that the only reason that drug cartels are violent is that marijuana and other drugs are illegal in Mexico. After all, almost no one is killed in the alcohol trade in Mexico, since alcohol is legal there. According to proponents of this idea, cartels resort to violence only because they cannot safely settle their business disputes in the

1. <http://www.cnn.com/2013/09/02/world/americas/mexico-drug-war-fast-facts/index.html>

2. <http://www.npr.org/templates/transcript/transcript.php?storyId=280741858>

court system. Does this sound plausible? Why or why not? Suppose that it’s correct—that violence would be significantly reduced if drugs were legalized in Mexico. Would this justify legalizing drugs in Mexico, or at least less powerful drugs such as marijuana? Why or why not?

The Ethics of Staged Interventions

It’s often heartbreaking to watch a loved one deal with the consequences of drug addiction: loss of interest in things they once loved, depression, erratic behavior, theft, lying, significant health problems, and so on. To help a loved one escape the grip of addiction, friends and family sometimes stage an intervention. This is a planned confrontation by an addict’s loved ones for the addict’s benefit. In an intervention, each loved one is given an opportunity to express love for the addicted family member or friend and is invited to describe the harmful effects drug addiction has had on their relationship. Then there is usually a request for the addict to agree to get professional help. The request often comes in the form of an ultimatum: go into rehabilitation immediately or risk losing contact, income, or other privileges from the loved ones who staged the intervention. The hope is that such a drastic measure will help addicts to see that their addiction needs to be addressed.

Questions

1. Interventions are often a desperate measure used by family members after years of difficult conversations that have failed. Loved ones often know that addicts would never willingly attend an intervention. Thus, they must often resort to deception and even lying to get an addict to walk into an intervention. Is it morally justified for people to lie to and deceive their addicted loved one in an effort to help them overcome addiction?
2. Sometimes parents with addicted adult sons or daughters living in their house

threaten to kick them out if they don't agree to treatment. This would leave the addicted son or daughter homeless. But the hope is that facing such a desperate situation will influence the addict to get help. Is it morally justified for parents to refuse to house their addicted adult sons or daughters if they refuse treatment? Why or why not?

3. Sometimes family members destroy their addicted loved one's stash of drugs (or alcohol) by flushing them down the toilet or throwing them in the garbage. The hope is that this will make it more difficult to use

the drugs that are doing such harm. But drugs and alcohol can be incredibly expensive or dangerous to obtain. Is it morally justified to destroy a stash of drugs or alcohol as a way of helping an addict? Why or why not?

4. Staged interventions work (when they do) because they put enormous social pressure on an addict to get help. Are such measures objectionably paternalistic, since addicts for whom an intervention is necessary would almost never willingly agree to get professional help for their addiction?

READINGS

Against the Legalization of Drugs

Peter de Marneffe

Peter de Marneffe argues for a moderate position on the sale and use of drugs. On the one hand, he believes that drug use ought to be decriminalized. According to de Marneffe, people have a moral right to self-sovereignty—a right to do as they please, so long as their actions do not harm or wrong others—that entitles them to put into their bodies anything they like, so long as this does not involve violating the rights of others. The right to self-sovereignty implies that people have a moral right to use drugs, so long as such use is not likely to lead to drug users violating the rights of others. And if they have a moral right to use drugs, then it is wrong of the government to criminalize such use.

On the other hand, the government does have the moral authority to criminalize the manufacture and sale of substantial amounts of drugs. And, according to de Marneffe, the government is fully justified in using that authority to criminalize such behavior. The argument against drug legalization is simple: if the sale and manufacture of drugs is legalized, then many more people will abuse drugs, or abuse them more often than they currently do. Such abuse has terrible consequences. Governments should do what they can to reduce the terrible consequences that beset their citizens. So governments should make the manufacture and sale of drugs illegal.

De Marneffe devotes the bulk of his article to presenting and then replying to a variety of objections to his proposal. These include the objection that such

governmental prohibitions are ineffective; that they are objectionably paternalistic; that they violate the rights of drug users; that they have led to the many problems of the so-called War on Drugs; that they have immoral effects on imprisoned youth; that they lead to and reinforce racial discrimination; that they only increase the amount of violence in society; that they foster the corruption of government officials in the foreign countries where drugs are manufactured; that it is inconsistent to legally allow the sale and manufacture of cigarettes and alcohol while prohibiting the sale and manufacture of other drugs; that if drugs ought to be illegal then so too should the sale and manufacture of unhealthy foods; and, finally, that there is no scientific proof that drug abuse would increase with the legalization of drugs.

INTRODUCTION

By the *legalization* of drugs I mean the removal of criminal penalties for the manufacture, sale, and possession of large quantities of recreational drugs, such as marijuana, cocaine, heroin, and methamphetamine. In this chapter, I present an argument against drug legalization in this sense. But I do not argue against *drug decriminalization*, by which I mean the removal of criminal penalties for recreational drug use and the possession of small quantities of recreational drugs. Although I am against drug legalization, I am for drug decriminalization. So one of my goals here is to explain why this position makes sense as a matter of principle.

The argument against drug legalization is simple. If drugs are legalized, they will be less expensive and more available. If drugs are less expensive and more available, drug use will increase, and with it, proportionately, drug abuse. So if drugs are legalized, there will be more drug abuse. By *drug abuse* I mean drug use that is likely to cause harm.

INEFFECTIVENESS OBJECTION

A common objection is that drug laws do not work. The imagined proof is that people still use drugs even though they are illegal. But this is a bad argument. People are still murdered even though murder is illegal, and we do not conclude that murder laws do not work or that they ought to be repealed. This

is because we think these laws work well enough in reducing murder rates to justify the various costs of enforcing them. So even if drug laws do not eliminate drug abuse, they might likewise reduce it by enough to justify their costs.

Why should we think that drug laws reduce drug abuse? For one thing, our general knowledge of human psychology and economic behavior provides a good basis for predicting that drug use will increase if drugs are legalized. People use drugs because they enjoy them. If it is easier and less expensive to do something enjoyable, more people will do it and those who do it already will do it more often. Laws against the manufacture and sale of drugs make drugs less available, because they prohibit their sale in convenient locations, such as the local drug or liquor or grocery store, and more expensive, because the retail price of illegal drugs reflects the risk to manufacturers and sellers of being arrested and having their goods confiscated. So if drugs are legalized, the price will fall and they will be easier to get. “Hey honey, feel like some heroin tonight?” “Sure, why not stop at Walgreens on the way home from picking up the kids?”

The claim that drug laws reduce drug abuse is also supported by the available empirical evidence. During Prohibition it was illegal to manufacture, sell, and transport “intoxicating liquors” (but not illegal to drink alcoholic beverages or to make them at home for one’s own use). During this same period, deaths from cirrhosis of the liver and admissions to state hospitals for alcoholic psychosis declined dramatically compared to the previous decade (Warburton, 1932, pp. 86, 89). Because cirrhosis and

From Andrew I. Cohen and Christopher Heath Wellman, eds., *Contemporary Debates in Applied Ethics*, second edition (Wiley, 2014), pp. 346–357.

alcoholic psychosis are highly correlated with heavy drinking, this is good evidence that Prohibition reduced heavy drinking substantially. Recent studies of alcohol consumption also conclude that heavy drinking declines with increases in price and decreases in availability (Edwards et al., 1994; Cook, 2007). Further evidence that drug use is correlated with availability is that the use of controlled psychoactive drugs is significantly higher among physicians and other health care professionals (who have much greater access to these drugs) than it is among the general population (Goode, 2012, pp. 454–455), and that veterans who reported using heroin in Vietnam, where it was legal, reported not using it on returning to the USA, where it was illegal (Robins et al., 1974).

For all these reasons it is a safe bet that drug abuse would increase if drugs were legalized, and it is hard to find an expert on drug policy who denies this. This alone, however, does not settle whether laws against drugs are a good policy because we do not know by how much drug abuse would increase if drugs were legalized and we do not know how much harm would result from this increase in drug abuse. It is important to recognize, too, that drug laws also cause harm by creating a black market, which fosters violence and government corruption, and by sending people to prison. It is possible that the harms created by drug laws outweigh their benefits in reducing drug abuse. I will say more about this possibility below, but first I address some philosophical objections to drug laws.

PATERNALISM OBJECTION

One objection is that drug laws are paternalistic: they limit people's liberty for their own good. A related objection is that drug laws are moralistic: they impose the view that drug use is wrong on everyone, including those who think it is good. It is true that drug use can be harmful, but most people who use drugs do not use them in a way that harms someone or that creates a significant risk of harm. This is true even of so-called "hard drugs" such as heroin and cocaine. Is it not wrong for the government to prohibit us from doing something we enjoy if it causes no harm?

To oppose drug legalization, however, is to oppose the removal of penalties for the *commercial*

manufacture and sale and possession of large quantities of drugs; it is not to support criminal penalties for the use or possession of small quantities of drugs. To oppose drug legalization is therefore not to hold that anyone should be prohibited from doing something they enjoy for their own good, or that the government should impose the controversial view that drug use is wrong on everyone.

VIOLATION OF RIGHTS OBJECTION

A more fundamental objection to drug laws is that they violate our rights. I believe there is some truth to this. So I want to explain why it makes sense to oppose drug legalization even though some drug laws do violate our rights.

Each of us has a right of self-sovereignty: a moral right to control our own minds and bodies. Laws that prohibit people from using drugs or from possessing small quantities of them violate this right because the choice to use drugs involves an important form of control over our minds and bodies, and recreational drug use does not usually harm anyone or pose a serious risk of harm. The choice to use drugs involves an important form of control over our minds partly because recreational drug use is a form of mood control, which is an important aspect of controlling our minds. There are also perceptual experiences that we can have only as the result of using certain drugs, such as LSD, and certain kinds of euphoria that we can experience only as the result of using certain drugs, such as heroin. The choice to put a drug into one's body—to snort it, smoke it, inject it, or ingest it—is also an important form of control over one's body. Because we have a right to control our own minds and bodies, the government is justified in prohibiting us from using a drug only if the choice to use this drug is likely to harm someone, which is not true of most recreational drug use. Laws that prohibit us from using recreational drugs therefore violate our right of self-sovereignty and for this reason should be repealed.

The choice to manufacture or sell drugs, in contrast, does not involve an important form of control over one's own mind or body—no more than the choice to manufacture or sell any commercial product does. These are choices to engage in a commercial enterprise for profit, and may therefore be regulated or restricted for reasons of public welfare,

just as any other commercial enterprise may be. One might think that there is something “hypocritical” or “inconsistent” about prohibiting the manufacture and sale of drugs and not prohibiting their possession and use, but this is confused. If one opposes drug legalization on the ground that the government should do whatever it can to reduce drug abuse, regardless of whether it violates anyone’s rights, then it would be inconsistent to oppose drug criminalization. But it is not inconsistent to oppose drug criminalization if one opposes drug legalization on the ground that the government should do whatever it can to reduce drug abuse consistent with respect for individual rights. This is because it makes sense to hold that whereas drug criminalization violates the right of self-sovereignty, non-legalization does not (de Marneffe, 2013).

Some might argue that non-legalization violates the right of self-sovereignty too, because it is not possible to use drugs if no one is legally permitted to sell them. But this is obviously false because people still use drugs even though selling them is illegal. Although this fact is sometimes cited to demonstrate the futility of drug control, ironically it makes drug control easier to justify. If drug non-legalization really did make it impossible to use drugs, and so to have the unique experiences they provide, this policy would arguably violate the right of self-sovereignty on this ground. But drug control laws do not make drug use impossible; they only increase the price and reduce the availability of drugs. This is no more a violation of self-sovereignty than a decision by the local supermarket not to carry a certain food or to double its price.

HIGH COSTS OF THE DRUG WAR OBJECTION

Laws against the manufacture and sale of drugs might of course still be a bad policy even if they do not violate the right of self-sovereignty. This is because these laws have costs, and these costs might outweigh the benefits of these laws in reducing drug abuse. Laws against the manufacture and sale of drugs create a black market, which fosters violence, because when disputes arise in an illegal trade the disputants cannot go to the legal system for resolution. The black market also fosters government

corruption, because those in an illegal trade must pay government officials for protection from arrest and confiscation. Drug laws also cost money to enforce, which might be better spent in other ways. Finally, drug laws result in some people being arrested and imprisoned and being left with criminal records. It is certainly possible that these costs outweigh the benefits of drug control in reducing drug abuse.

It is important to understand, though, that drug control policy need not be as costly as the so-called War on Drugs, which is current US policy. So even if the War on Drugs is too costly, as critics maintain, it does not follow that drugs should be legalized. The case against drug legalization rests on the assumption that the benefits of drug control in reducing drug abuse are sufficient to justify the costs of drug control *once these costs are reduced as much as possible consistent with effective drug control*. By effective drug control, I mean a policy that reduces drug abuse substantially compared to the amount of drug abuse that would exist if drugs were legalized. I do not mean a policy that eliminates drug abuse altogether. It is no more possible to eliminate drug abuse than it is to eliminate crime. But just as effective crime control is still possible, effective drug control is possible too. And if it is possible to have effective drug control without the high costs of the War on Drugs, then the benefits of prohibiting the manufacture and sale of drugs are more likely to justify the costs.

One compelling objection to the War on Drugs is to the sentencing rules for drug law violations, which require judges to impose long prison terms for drug trafficking offenses. Critics rightly argue that mandatory sentences and long prison terms for selling drugs are morally indefensible. These are not, however, necessary features of effective drug control policy. They are not features of European drug control policy, for example. So it makes sense to oppose harsh mandatory penalties while also opposing drug legalization.

Drug control works primarily by increasing price and reducing availability, which can be accomplished by reliably enforcing laws against the manufacture and sale of drugs with moderate penalties. Where it is illegal to manufacture and sell drugs, most business persons avoid the drug

trade because they do not want to be arrested and have their goods confiscated. This reduces supply, which increases price. Where it is illegal to sell drugs, stores that aim to retain their licenses also do not sell them, which reduces availability. Heavy penalties no doubt drive the price up even higher and decrease availability even more by increasing the risks of drug trafficking—but the biggest increases in price and the biggest reductions in availability come simply from the illegality of the trade itself together with reliable enforcement of laws against manufacture and sale (Kleiman et al., 2011, pp. 48–50). If effective drug control does not require harsh mandatory penalties, then the fact that such penalties are unjustifiable is not a good argument for drug legalization.

EFFECT ON IMPRISONED YOUTHS OBJECTION

Another objection to US drug control policy is that it results in many young people being arrested, imprisoned, and left with criminal records, who would otherwise not suffer these misfortunes. Some might retort that if a person chooses to deal drugs illegally, he cannot legitimately complain about the foreseeable consequences of his choice. But this response is inadequate because by making drugs illegal the government creates a hazard that otherwise would not exist. By making the manufacture and sale of drugs illegal, the government creates a lucrative illegal market, and the money-making opportunities that this market creates are attractive, especially to young people who lack a college education or special training, because they can make much more money by dealing drugs than by doing anything else. When the government creates a system of penalties for manufacturing and selling drugs it therefore creates a hazard; it creates a tempting opportunity to make money and then imposes penalties for making money in this way.

In general, the government has an obligation to reduce the risk to individuals of being harmed by the hazards it creates. When the government tests weapons, for example, it must take care that people do not wander into the testing areas. Bright signs are not enough; it must also build fences and

monitor against trespass. The government also has an obligation to help young people avoid the worst consequences of their willingness to take unwise risks. It has an obligation to require teenagers to wear helmets when they ride a motorcycle, for example. So when the government creates the hazard of imprisonment by making the manufacture and sale of drugs illegal, it must guard against the likelihood of imprisonment, and it must take special care to reduce this likelihood for young people who commonly lack a proper appreciation of the negative impact that conviction and imprisonment will have on their lives. For all these reasons, the government must structure drug laws so that young people have an adequate opportunity to avoid being imprisoned for drug offenses, and to avoid acquiring a criminal record. This means, among other things, that no one should be arrested for a drug offense prior to receiving an official warning; no penalty for a first conviction should involve prison time; initial jail or prison sentences should be short and subject to judicial discretion; and imprisonment for subsequent convictions should increase in length only gradually and also be subject to judicial discretion.

RACIAL DISCRIMINATION OBJECTION

A related objection to the War on Drugs is that those imprisoned for drug offenses in the USA are disproportionately black inner city males (Alexander, 2012). This objection would be addressed to some degree by the changes in sentencing policy just proposed, but one might predict that any effective drug control policy would result in the same sort of disproportionality, which some might see as an argument for drug legalization. However, it also is important to consider the potential negative impact of drug legalization on inner city communities. Drug legalization will result in a substantial increase in drug abuse. Drug abuse commonly leads parents to neglect their children, and to neglect their own health and jobs, which harms their children indirectly. Drug abuse also distracts teenagers from their schoolwork, interferes with the development of a sense of responsibility, and makes young people less likely to develop the skills necessary for acquiring good jobs as adults.

If drugs are legalized, there will therefore be more child neglect as a result and more truancy by teenagers. This is likely to have an even more devastating impact on the life prospects of young people in non-affluent inner city communities than it has on the life prospects of young people in affluent suburbs. I suspect this is the primary reason why many inner city community leaders oppose drug legalization.

It is true that incarcerating large numbers of inner city youths for drug offenses also has a negative impact on inner city communities. A man who is in jail cannot be present as a parent or make money to support his children, and a person with a criminal record has a harder time finding a decent job. These consequences alone would warrant drug legalization if there were no downside. If we assume, however, that drug legalization would result in a substantial increase in child neglect and adolescent truancy, then legalization does not seem like a good way to improve the life prospects of inner city youth overall. It seems better to maintain laws against the manufacture and sale of drugs, and reduce the number of those who are convicted and imprisoned for drug offenses. This would be consistent with effective drug control because the number of dealers in prison could be reduced dramatically without making drugs noticeably cheaper or easier to get (Kleiman et al., 2011, p. 203).

INCREASE IN VIOLENCE OBJECTION

Another objection to US drug control policy is that it has increased violence in other countries, particularly Mexico. Americans enjoy using drugs and are willing to pay for them. Because it is illegal to manufacture and sell drugs in the USA, American drug control policy creates opportunities for people south of the border to get rich by making drugs and selling them wholesale to retailers north of the border. Because those in the drug trade use violence to control market share and to intimidate law enforcement, US drug laws result in violence. If drugs were legalized in the USA, the recreational drug market would presumably be taken over by large US drug, liquor, and food companies and it would not be possible for anyone in Mexico to get

rich by selling illegal drugs to Americans, which would eliminate the associated violence there.

Drug legalization, however, is not the only way to reduce drug-related violence abroad. Here are some alternative strategies:

- The USA might legalize the private production of marijuana for personal use (the way it was legal during Prohibition to make alcoholic beverages at home). Because much of the Mexican drug trade is in marijuana, this would reduce its profitability, and so presumably the associated violence.
- The USA might also concentrate its drug enforcement efforts in Mexico on the most violent drug trafficking organizations, as opposed to concentrating on the biggest and most profitable organizations, which would create incentives for those in the Mexican drug trade to be less violent.
- The USA might also ease border control at entry points not on the US-Mexico border. The violence in Mexico is created partly by the fact that it is the primary conduit of cocaine from South and Central America to North America. If the USA were to loosen border control in Florida, fewer drugs would travel through Mexico. Because the USA imports so many goods, it is not possible to stop drugs from coming into this country. Some would cite this as proof that drug control is futile, but this conclusion is unwarranted because border controls still raise the retail price of drugs substantially, which results in less drug abuse (Kleiman et al., 2011, pp. 162–163). The suggestion here is that a general policy of border control is consistent with US law enforcement experimenting with different border control policies with an eye to reducing violence abroad (Kleiman et al., 2011, p. 170).

None of these proposals would eliminate drug-related violence in Mexico, but it is unrealistic to think that criminal violence in Mexico would be eliminated by drug legalization in the USA. After all, what will career criminals in Mexico do once they cannot make money via the drug trade?

Presumably they will turn to other criminal activities, such as kidnapping, extortion, and human trafficking, which also involve violence.

CORRUPTION OF FOREIGN GOVERNMENTS OBJECTION

Another objection to US drug control policy is that it fosters the corruption of foreign governments. Because those in the foreign drug trade need protection from arrest, prosecution, and confiscation of assets, because they are willing to pay government officials to look the other way, and because some government officials are willing to accept this payment, the drug trade increases government corruption. If drugs were legalized in the USA, this would destroy the illegal market abroad, which would remove an important contributing factor in government corruption.

It is naive, though, to think that US drug control policy is the primary cause of government corruption abroad. Although we associate police corruption with drug trafficking, the latter tends to flourish where government officials are already corrupt (Kleiman et al., 2011, p. 177). [A] foreign police force that is not fully professionalized will be susceptible to financial corruption regardless of whether the USA legalizes drugs.

THE INCONSISTENCY OBJECTION

Another argument against drug laws is that it is hypocritical or inconsistent for our government to prohibit the manufacture and sale of heroin, cocaine, and methamphetamine while permitting the manufacture and sale of alcohol and cigarettes. Drinking and smoking cause far more harm than other kinds of recreational drug use. This is partly because there is so much more drinking and smoking, which is partly because the manufacture and sale of alcohol and cigarettes are legal. But drinking and smoking are also inherently more harmful than other forms of drug use. Drinking alcohol is correlated much more highly with violence, property crime, and accidental injury than the use of heroin is, and a regular user of heroin who uses it safely—in moderate doses with clean equipment—does not face any significant health risk as a result, whereas cigarette smoking is known to cause heart and lung disease. So it can seem that if the government is

justified in prohibiting the manufacture and sale of heroin, it must also be justified in prohibiting the manufacture and sale of alcohol and cigarettes.

This would be a good objection to drug laws if laws against the manufacture and sale of alcoholic beverages and cigarettes were wrong in principle, but it is hard to see why they would be. After all, drinking and smoking cause a lot of harm and neither policy would violate the right of self-sovereignty discussed above, because a law that prohibits only the manufacture and sale of a drug does not prohibit its possession or make its use impossible. Of course, the suggestion that alcohol prohibition might be justified is commonly dismissed with the incantation that Prohibition was a disastrous failure, but historians agree that Prohibition succeeded in substantially reducing heavy drinking, and it would have been even more effective had its enforcement been adequately funded and had it been administered from the outset by law enforcement professionals instead of by political appointees (Okrent, 2010, pp. 134–145, 254–261). Prohibition did fail politically, but so did Reconstruction and the Equal Rights Amendment. The fact that a policy is rejected or abandoned does not show that it was wrong in principle. Finally, it is worth noting that alcohol prohibition still exists in some parts of this country, on Indian reservations, for example, and that these policies make sense as part of an effort to reduce alcoholism and the harms associated with it.

It is not necessary, though, to advocate alcohol prohibition in order to defend other drug laws, because there are relevant differences between them. For one thing, the institution of alcohol prohibition now is likely not to reduce heavy drinking by as much as drug non-legalization reduces drug abuse. Drinking is widely accepted and a part of normal social rituals, in a way that heroin, cocaine, and methamphetamine use is not. This means that alcohol prohibition now would not work in tandem with a strong social stigma, which would presumably reduce its effectiveness in reducing alcohol abuse. It is possible, too, that in an environment of social acceptance, sharply increasing the excise taxes on alcoholic beverages would achieve almost as much as prohibition in reducing the harms caused by heavy drinking with none of the costs of prohibition (though it is worth noting here that

liquor industry lobbying has been more effective in preventing excise tax increases than it was in preventing Prohibition). There are also important ways in which instituting alcohol prohibition now would be more burdensome than continuing with drug non-legalization. Many people have built their lives around the alcoholic beverage industry. If alcohol were now prohibited, many of these people would lose their jobs, and many companies, restaurants and bars would go out of business, which would be a serious hardship for owners and employees. In contrast, people who go into the drug trade do so knowing that it is illegal. So the burden on them of maintaining drug laws is not as great as the burden that alcohol prohibition would impose on those who have built their lives around the liquor trade on the assumption that the manufacture and sale of alcohol will remain legal. Ironically, it is drug *legalization* that would burden those in the illegal drug trade, in much the same way as Prohibition burdened those in the legal liquor trade: by depriving them of their livelihood.

There are also important differences between illicit drugs and cigarettes. Drug legalization, I assume, would result in a substantial increase in drug abuse, which, I assume, would also result in a substantial increase in child neglect and adolescent truancy, which would have a substantial negative impact on the life prospects of many young people. Cigarette smoking, in contrast, does not make someone a worse parent or a worse student or employee. Furthermore, because heavy smoking typically has a negative impact on a person's life only toward the end when he or she is older, smoking as a young person is less likely than adolescent drug abuse to have a negative impact on the *kind* of life a person has. Finally, although psychologically challenging, it is quite possible to quit smoking as an adult and so to reduce the long-term health consequences of starting to smoke as a teenager—much easier than it is to reverse the long-term negative consequences of having had inadequate parenting or having failed out of high school as the result of drug abuse. Given these differences between the consequences of smoking and drug abuse, one can consistently oppose the legalization of drugs for the reasons I have given here without advocating prohibiting the manufacture and sale of cigarettes.

In explaining above how one might consistently oppose the legalization of drugs without advocating alcohol prohibition, I observed that drinking is so widespread and socially accepted that alcohol prohibition is likely to reduce heavy drinking by less than drug abuse is reduced by laws against the manufacture and sale of illicit drugs. This same point might now be given as an argument for legalizing marijuana: marijuana use is so widespread and socially accepted that laws against the manufacture and sale of marijuana do not do very much to reduce it. It might also be argued that legalizing marijuana would not result in a dramatic increase in drug abuse because marijuana is less subject to abuse than other drugs (including alcohol). Finally, legalizing marijuana in the USA would dramatically reduce the drug trade in Mexico, which would result in a corresponding reduction in violence and government corruption there. Should not marijuana be legalized, then, even if other drugs should not be?

In this chapter I am arguing against the view that the manufacture and sale of *all* drugs should be legalized; I am not arguing that there is *no* drug that should be legalized. Suppose that marijuana legalization would not result in a substantial increase in drug abuse. Suppose that most of those who would use marijuana if it were legalized are already using it and using it almost as much as they want to. Or suppose that marijuana use itself is harmless and does not lead to the use of more harmful drugs. If either of these things is true, then marijuana should be legalized. It is also possible, though, that, as a result of legalization, many more young people would use marijuana than do now, and that a sizable fraction of them would use it in ways that interfere with their education or employment, and that a sizable fraction of them would go on to abuse more harmful drugs who would otherwise never have tried them. Because I am not sure that these things would not happen, I do not support legalizing marijuana. With more information, though, I might change my mind. So it is important to make clear that whether a drug should be legalized depends on the consequences of legalizing it, and not on whether any *other* drug should be legalized. Hence, even if marijuana should be legalized, it would not follow that heroin, cocaine, and methamphetamine should be legalized too.

UNHEALTHY FOODS OBJECTION

Another argument against drug laws is that if the government is justified in prohibiting us from putting a drug into our bodies for our own good, then it is also justified in prohibiting us from putting unhealthy foods into our bodies for our own good. The suggestion that the government is entitled to control what we eat strikes many of us as outrageous. Why is it not likewise outrageous for the government to prohibit us from using recreational drugs?

For the reasons given above, I think it is. Laws that prohibit us from using drugs—or drinking alcohol or smoking cigarettes—violate our right of self-sovereignty in the same way that laws that prohibit us from eating high fat or high sugar foods would. However, just as laws that prohibit the manufacture and sale of drugs do not violate our self-sovereignty, laws that regulate the sale of fatty or sugary foods do not either. So if the government prohibits fast food restaurants from selling humongous hamburgers, or prohibits convenience stores from selling sugary soda in giant cups, or prohibits vending machines in schools from stocking items with high fat or sugar content, no one's right of self-sovereignty is violated. Whether these policies are a good idea is a separate question, but if they are a bad idea, it is not because they violate anyone's rights.

NO SCIENTIFIC PROOF OBJECTION

In arguing against drug legalization, I assume that drug abuse would increase substantially if drugs were legalized. Some might now object that there is no proof of this, and this is true, but there is also no proof that murder rates will rise if murder is decriminalized. That is, this assumption is not warranted by any set of controlled laboratory experiments or randomized field trials. Should murder therefore be decriminalized? Obviously not. Some might say that the freedom to murder is not a very important liberty, so the standard of proof need not be so high. But most of us also support on the basis of assumptions for which there is no scientific proof policies that do impinge on important liberties. For example, many of us support restrictions on campaign contributions on the assumption that unrestricted contributions would result in more political corruption. But there is no scientific proof of this, and restrictions on

campaign contributions impinge on the important freedom of political speech. Many of us also support immigration laws on the assumption that unrestricted immigration would lower our quality of life. But there is also no scientific proof of this, and freedom of movement is also an important liberty. Should we withdraw our support for these policies just because we support them on the basis of scientifically unproven assumptions? I think not. In general we are justified in supporting a legal restriction for a reason if two conditions are met: (a) this reason would justify this restriction if it was based on true assumptions, and (b) we are warranted by the available evidence in believing that the relevant assumptions are true. So if we are warranted by the available evidence in believing that drug abuse will increase if drugs are legalized, then we are justified in making this assumption for the purpose of evaluating drug control policy. And we are warranted in making this assumption—by what we know about patterns of alcohol and drug consumption and more generally about human psychology and economic behavior.

CONCLUSION

If drug abuse would increase substantially if drugs were legalized, and laws that prohibit the manufacture and sale of drugs do not violate our right of self-sovereignty, and effective drug control requires only moderate penalties reliably and conscientiously enforced, then it makes sense to oppose drug legalization. This, in essence, is the argument I have made here. In evaluating drug policy, it is important, too, to consider how public policy would be shaped if drugs were legalized. Beer, liquor, and cigarette companies already do as much as they can to prevent the government from adopting policies that would reduce drinking and smoking and so their associated harms. They do as much as they can to prevent increases in excise taxes, which increase the price of alcohol and cigarettes, and so reduce their sales, and so smoking and drinking. They do as much as they can to prevent restrictions on the hours and locations of the sale of alcohol and cigarettes. They do as much as they can to prevent licensing and rationing policies, which would reduce the amount of alcohol consumed by problem drinkers. And they do as much as they can to make their products attractive through advertising,

particularly to young people. We should expect that if drugs are legalized, drug companies will behave in the same way: that they will do everything they can to prevent the enactment of laws that restrict the marketing and sale of heroin, cocaine, and methamphetamine, and that they will do everything they can to market these drugs successfully, particularly to young people, who will be their most profitable market. Because drug use is currently stigmatized, drug companies are unlikely to be as successful as liquor companies in preventing sound public policy, at least initially. But if we envision a world in which legal drug companies are legally trying to persuade consumers to buy recreational drugs from legal vendors and legally trying to prevent any socially responsible legislation that reduces their legal sales, it is hard to envision a world that does not have much more drug abuse.

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Peter de Marneffe: Against the Legalization of Drugs

1. Is it consistent to favor drug decriminalization while also urging that the sale and manufacture of drugs be illegal? Why or why not?
2. Reconstruct the argument from self-sovereignty in support of drug decriminalization. Is that argument sound?
3. Is there another objection to the criminalization of the sale and manufacture of drugs that de Marneffe has failed to consider and that you find compelling? If so, what is it?
4. De Marneffe has considered eleven objections to his argument. Are any of these objections stronger than he supposes? If so, which ones?

America's Unjust Drug War

Michael Huemer

Michael Huemer argues that the recreational use of drugs, including cocaine and heroin, ought to be legal, and that the long-standing U.S. policy of criminalizing their possession and sale is morally unjustified. He presents, and then seeks to rebut, what he regards as the two most prominent arguments for their criminalization.

The first argument is that drugs are very harmful to those who use them, and the prevention of such harm justifies the state in criminalizing drug use. The second is that drug use reliably causes harm to third parties, and since the state's mission is to

prevent such harm, the state is again justified in outlawing drug use. Huemer agrees that there are some cases in which drug use does threaten others (such as when one drives while under the influence), and agrees that such activity ought to be prohibited. But, he argues, this represents a small minority of cases—in all other situations, drug use ought to be legally permitted.

Huemer then turns from criticizing prohibitionist arguments, and offers a positive argument for decriminalization. This argument claims that we have a natural moral right—i.e., one that exists independently of its recognition by society—to use our bodies as we please, so long as we do not violate the rights of others in doing so. Unusual exceptions aside, we do not violate another's rights when we use drugs. Therefore we have a moral right to use drugs. Huemer thinks that the government thus violates our moral rights when it prohibits most drug use.

Should the recreational use of drugs such as marijuana, cocaine, heroin, and LSD, be prohibited by law? *Prohibitionists* answer yes. They usually argue that drug use is extremely harmful both to drug users and to society in general, and possibly even immoral, and they believe that these facts provide sufficient reasons for prohibition. *Legalizers* answer no. They usually give one or more of three arguments: First, some argue that drug use is not as harmful as prohibitionists believe, and even that it is sometimes beneficial. Second, some argue that drug prohibition “does not work,” in other words, it is not very successful in preventing drug use and/or has a number of very bad consequences. Lastly, some argue that drug prohibition is unjust or violates rights.

I won’t attempt to discuss all these arguments here. Instead, I will focus on what seem to me the three most prominent arguments in the drug legalization debate: first, the argument that drugs should be outlawed because of the harm they cause to drug users; second, the argument that they should be outlawed because they harm people other than the user; and third, the argument that drugs should be legalized because drug prohibition violates rights. I shall focus on the moral/philosophical issues that these arguments raise, rather than medical or sociological issues. I shall show that the two arguments

for prohibition fail, while the third argument, for legalization, succeeds.

I. DRUGS AND HARM TO USERS

The first major argument for prohibition holds that drugs should be prohibited because drug use is extremely harmful to the users themselves, and prohibition decreases the rate of drug abuse. This argument assumes that the proper function of government includes preventing people from harming themselves. Thus, the argument is something like this:

1. Drug use is very harmful to users.
2. The government should prohibit people from doing things that harm themselves.
3. Therefore, the government should prohibit drug use.

Obviously, the second premise is essential to the argument; if I believed that drug use was very harmful, but I did *not* think that the government should prohibit people from harming themselves, then I would not take this as a reason for prohibiting drug use. But premise (2), if taken without qualification, is extremely implausible. Consider some examples of things people do that are harmful (or entail a risk of harm) to themselves: smoking tobacco, drinking alcohol, eating too much, riding motorcycles, having unprotected or promiscuous sex, maintaining relationships with inconsiderate or abusive boyfriends and girlfriends, maxing out their credit cards, working in dead-end jobs, dropping out of college, moving to New Jersey, and being rude to their

From Michael Huemer, “America’s Unjust Drug War,” in Bill Masters, ed., *The New Prohibition* (Accurate Press, 2004), pp. 133–144. www.accuratepress.net

bosses. Should the government prohibit all of these things?¹ Most of us would agree that the government should not prohibit *any* of these things, let alone all of them. And this is not merely for logistical or practical reasons; rather, we think that controlling those activities is not the business of government.

Perhaps the prohibitionist will argue, not that the government should prohibit *all* activities that are harmful to oneself, but that it should prohibit activities that harm oneself in a certain way, or to a certain degree, or that also have some other characteristic. It would then be up to the prohibitionist to explain how the self-inflicted harm of drug use differs from the self-inflicted harms of the other activities mentioned above. Let us consider three possibilities.

(1) One suggestion would be that drug use also harms people other than the user; we will discuss this harm to others in section II. If, as I will contend, neither the harm to drug users nor the harm to others justifies prohibition, then there will be little plausibility in the suggestion that the combination of harms justifies prohibition. Of course, one could hold that a certain threshold level of total harm must be reached before prohibition of an activity is justified, and that the combination of the harm of drugs to users and their harm to others passes that threshold even though neither kind of harm does so by itself. But if, as I will contend, the “harm to users” and “harm to others” arguments both fail because it is not the government’s business to apply criminal sanctions to prevent the kinds of harms in question, *then* the combination of the two harms will not make a convincing case for prohibition.

(2) A second suggestion is that drug use is generally *more* harmful than the other activities listed above. But there seems to be no reason to believe this. As one (admittedly limited) measure of harmfulness, consider the mortality statistics. In the year 2000, illicit drug use directly or indirectly caused an estimated 17,000 deaths in the United States.² By contrast, tobacco caused an estimated 435,000 deaths.³ Of course, more people use tobacco than use illegal drugs,⁴ so let us divide by the number of users: tobacco kills 4.5 people per 1000 at-risk persons per year; illegal drugs kill 0.66 people per 1000 at-risk persons per year.⁵ Yet almost no one favors outlawing tobacco and putting smokers in prison. On a

similar note, obesity caused an estimated 112,000 deaths in the same year (due to increased incidence of heart disease, strokes, and so on), or 1.8 per 1000 at-risk persons.⁶ Health professionals have warned about the pandemic of obesity, but no one has yet called for imprisoning obese people.

There are less tangible harms of drug use—harms to one’s general quality of life. These are difficult to quantify. But compare the magnitude of the harm to one’s quality of life that one can bring about by, say, dropping out of high school, working in a dead-end job for several years, or marrying a jerk—these things can cause extreme and lasting detriment to one’s well-being. And yet no one proposes jailing those who drop out, work in bad jobs, or make poor marriage decisions. The idea of doing so would seem ridiculous, clearly beyond the state’s prerogatives.

(3) Another suggestion is that drug use harms users *in a different way* than the other listed activities. What sorts of harms do drugs cause? First, illicit drugs may worsen users’ health and, in some cases, entail a risk of death. But many other activities—including the consumption of alcohol, tobacco, and fatty foods; sex; and (on a broad construal of “health”) automobiles—entail health risks, and yet almost no one believes those activities should be criminalized.

Second, drugs may damage users’ relationships with others—particularly family, friends, and lovers—and prevent one from developing more satisfying personal relationships.⁷ Being rude to others can also have this effect, yet no one believes you should be put in jail for being rude. Moreover, it is very implausible to suppose that people should be subject to criminal sanctions for ruining their personal relationships. I have no general theory of what sort of things people should be punished for, but consider the following example: suppose that I decide to break up with my girlfriend, stop calling my family, and push away all my friends. I do this for no good reason—I just feel like it. This would damage my personal relationships as much as anything could. Should the police now arrest me and put me in jail? If not, then why should they arrest me for doing something that only has a *chance* of indirectly bringing about a similar result?

The following seems like a reasonable political principle: If it would be wrong (because not part of the government's legitimate functions) to punish people for *directly bringing about* some result, then it would also be wrong to punish people for doing some other action on the grounds that the action has a *chance* of bringing about that result indirectly. If the state may not prohibit me from *directly cutting off* my relationships with others, then the fact that my drug use *might have the result* of damaging those relationships does not provide a good reason to prohibit me from using drugs.

Third, drugs may harm users' financial lives, costing them money, causing them to lose their jobs or not find jobs, and preventing them from getting promotions. The same principle applies here: if it would be an abuse of government power to prohibit me from directly bringing about those sorts of negative financial consequences, then surely the fact that drug use might indirectly bring them about is not a good reason to prohibit drug use. Suppose that I decide to quit my job and throw all my money out the window, for no reason. Should the police arrest me and put me in prison?

Fourth and finally, drugs may damage users' moral character, as James Q. Wilson believes:

[I]f we believe—as I do—that dependency on certain mind-altering drugs *is* a moral issue and that their illegality rests in part on their immorality, then legalizing them undercuts, if it does not eliminate altogether, the moral message. That message is at the root of the distinction between nicotine and cocaine. Both are highly addictive; both have harmful physical effects. But we treat the two drugs differently not simply because nicotine is so widely used as to be beyond the reach of effective prohibition, but because its use does not destroy the user's essential humanity. Tobacco shortens one's life, cocaine debases it. Nicotine alters one's habits, cocaine alters one's soul. The heavy use of crack, unlike the heavy use of tobacco, corrodes those natural sentiments of sympathy and duty that constitute our human nature and make possible our social life.⁸

In this passage, Wilson claims that the use of cocaine (a) is immoral, (b) destroys one's humanity, (c) alters one's soul, and (d) corrodes one's sense

of sympathy and duty. One problem with Wilson's argument is the lack of evidence supporting claims (a)–(d). Before we put people in prison for corrupting their souls, we should require some objective evidence that their souls are in fact being corrupted. Before we put people in prison for being immoral, we should require some argument showing that their actions are in fact immoral. Perhaps Wilson's charges of immorality and corruption all come down to the charge that drug users lose their sense of sympathy and duty—that is, claims (a)–(c) all rest upon claim (d). It is plausible that *heavy* drug users experience a decreased sense of sympathy with others and a decreased sense of duty and responsibility. Does this provide a good reason to prohibit drug use?

Again, it seems that one should not prohibit an activity on the grounds that it may indirectly cause some result, unless it would be appropriate to prohibit the direct bringing about of that result. Would it be appropriate, and within the legitimate functions of the state, to punish people for being unsympathetic and undutiful, or for behaving in an unsympathetic and undutiful way? Suppose that Howard—though not a drug user—doesn't sympathize with others. When people try to tell Howard their problems, he just tells them to quit whining. Friends and coworkers who ask Howard for favors are rudely rebuffed. Furthermore—though he does not harm others in ways that would be against our current laws—Howard has a poor sense of duty. He doesn't bother to show up for work on time, nor does he take any pride in his work; he doesn't donate to charity; he doesn't try to improve his community. All around, Howard is an ignoble and unpleasant individual. Should he be put in jail?

If not, then why should someone be put in jail merely for doing something that would have a *chance* of causing them to become like Howard? If it would be an abuse of governmental power to punish people for being jerks, then the fact that drug use may cause one to become a jerk is not a good reason to prohibit drug use.

II. DRUGS AND HARM TO OTHERS

Some argue that drug use must be outlawed because drug use harms the user's family, friends, and coworkers, and/or society in general. A report

produced by the Office of National Drug Control Policy states:

Democracies can flourish only when their citizens value their freedom and embrace personal responsibility. Drug use erodes the individual's capacity to pursue both ideals. It diminishes the individual's capacity to operate effectively in many of life's spheres—as a student, a parent, a spouse, an employee—even as a coworker or fellow motorist. And, while some claim it represents an expression of individual autonomy, drug use is in fact inimical to personal freedom, producing a reduced capacity to participate in the life of the community and the promise of America.⁹

At least one of these alleged harms—dangerous driving—is clearly the business of the state. For this reason, I entirely agree that people should be prohibited from driving while under the influence of drugs. But what about the rest of the alleged harms?

Return to our hypothetical citizen Howard. Imagine that Howard—again, for reasons having nothing to do with drugs—does not value freedom, nor does he embrace personal responsibility. It is unclear exactly what this means, but, for good measure, let us suppose that Howard embraces a totalitarian political ideology and denies the existence of free will. He constantly blames other people for his problems and tries to avoid making decisions. Howard is a college student with a part-time job. However, he is a terrible student and worker. He hardly ever studies and frequently misses assignments, as a result of which he gets poor grades. As mentioned earlier, Howard comes to work late and takes no pride in his work. Though he does nothing against our current laws, he is an inattentive and inconsiderate spouse and parent. Nor does he make any effort to participate in the life of his community, or the promise of America. He would rather lie around the house, watching television and cursing the rest of the world for his problems. In short, Howard does all the bad things to his family, friends, coworkers, and society that the ONDCP says *may* result from drug use. And most of this is voluntary.

Should Congress pass laws against what Howard is doing? Should the police then arrest him, and the district attorney prosecute him, for being a loser?

Once again, it seems absurd to suppose that we would arrest and jail someone for behaving in these ways, undesirable as they may be. Since drug use only has a *chance* of causing one to behave in each of these ways, it is even more absurd to suppose that we should arrest and jail people for drug use on the grounds that drug use has these potential effects.

III. THE INJUSTICE OF DRUG PROHIBITION

Philosopher Douglas Husak has characterized drug prohibition as the greatest injustice perpetrated in the United States since slavery.¹⁰ This is no hyperbole. If the drug laws are unjust, then America has over half a million people unjustly imprisoned.¹¹

Why think the drug laws are *unjust*? Husak's argument invokes a principle with which few could disagree: it is unjust for the state to punish people without having a good reason for doing so.¹² We have seen the failure of the most common proposed rationales for drug prohibition. If nothing better is forthcoming, then we must conclude that prohibitionists have no rational justification for punishing drug users. We have deprived hundreds of thousands of people of basic liberties and subjected them to severe hardship conditions, for no good reason.

This is bad enough. But I want to say something stronger: it is not merely that we are punishing people for no good reason. We are punishing people for exercising their natural rights. Individuals have a right to use drugs. This right is neither absolute nor exceptionless; suppose, for example, that there existed a drug which, once ingested, caused a significant proportion of users, without any further free choices on their part, to attack other people without provocation. I would think that stopping the use of this drug would be the business of the government. But no existing drug satisfies this description. Indeed, though I cannot take time to delve into the matter here, I think it is clear that the drug laws cause far more crime than drugs themselves do.

The idea of a right to use drugs derives from the idea that individuals own their own bodies. That is, a person has the right to exercise control over his own body—including the right to decide how it should be used, and to exclude others from using it—in a manner similar to the way one may

exercise control over one's (other) property. This statement is somewhat vague; nevertheless, we can see the general idea embodied in common sense morality. Indeed, it seems that if there is *anything* one would have rights to, it would be one's own body. This explains why we think others may not physically attack you or kidnap you. It explains why we do not accept the use of unwilling human subjects for medical experiments, even if the experiments are beneficial to society—the rest of society may not decide to use your body for its own purposes without your permission. It explains why some believe that women have a right to an abortion—and why some others do not. The former believe that a woman has the right to do what she wants with her own body; the latter believe that the fetus is a distinct person, and a woman does not have the right to harm *its* body. Virtually no one disputes that, *if* a fetus is merely a part of the woman's body, *then* a woman has a right to choose whether to have an abortion; just as virtually no one disputes that, *if* a fetus is a distinct person, then a woman lacks the right to destroy it. Almost no one disputes that persons have rights over their own bodies but not over others' bodies.

The right to control one's body cannot be interpreted as implying a right to use one's body in *every* conceivable way, any more than we have the right to use our property in every conceivable way. Most importantly, we may not use our bodies to harm others in certain ways, just as we may not use our property to harm others. But drug use seems to be a paradigm case of a legitimate exercise of the right to control one's own body. Drug consumption takes place in and immediately around the user's own body; the salient effects occur *inside* the user's body. If we consider drug use merely as altering the user's own body and mind, it is hard to see how anyone who believes in rights at all could deny that it is protected by a right, for: (a) it is hard to see how anyone who believes in rights could deny that individuals have rights over their own bodies and minds, and (b) it is hard to see how anyone who believes in such rights could deny that drug use, considered merely as altering the user's body and mind, is an example of the exercise of one's rights over one's own body and mind.

Consider two ways a prohibitionist might object to this argument. First, a prohibitionist might argue that drug use does not *merely* alter the user's own

body and mind, but also harms the user's family, friends, co-workers, and society. I responded to this sort of argument in section II. Not just *any* way in which an action might be said to "harm" other people makes the action worthy of criminal sanctions. Here we need not try to state a general criterion for what sorts of harms make an action worthy of criminalization; it is enough to note that there are some kinds of "harms" that virtually no one would take to warrant criminal sanctions, and that these include the "harms" I cause to others by being a poor student, an incompetent worker, or an apathetic citizen.¹³ That said, I agree with the prohibitionists at least this far: no one should be permitted to drive or operate heavy machinery while under the influence of drugs that impair their ability to do those things; nor should pregnant mothers be permitted to ingest drugs, if it can be proven that those drugs cause substantial risks to their babies (I leave open the question of what the threshold level of risk should be, as well as the empirical questions concerning the actual level of risk created by illegal drugs). But, in the great majority of cases, drug use does not harm anyone in any *relevant* ways—that is, ways that we normally take to merit criminal penalties—and should not be outlawed.

Second, a prohibitionist might argue that drug use fails to qualify as an exercise of the user's rights over his own body, because the individual is not truly acting freely in deciding to use drugs. Perhaps individuals only use drugs because they have fallen prey to some sort of psychological compulsion, because drugs exercise a siren-like allure that distorts users' perceptions, because users don't realize how bad drugs are, or something of that sort. The exact form of this objection doesn't matter; in any case, the prohibitionist faces a dilemma. If users do not freely choose to use drugs, then it is unjust to *punish* them for using drugs. For if users do not choose freely, then they are not morally responsible for their decision, and it is unjust to punish a person for something he is not responsible for. But if users *do* choose freely in deciding to use drugs, then this choice is an exercise of their rights over their own bodies.

I have tried to think of the best arguments prohibitionists could give, but in fact prohibitionists have remained puzzlingly silent on this issue. When a country goes to war, it tends to focus on how to

win, sparing little thought for the rights of the victims in the enemy country. Similarly, one effect of America's declaring "war" on drug users seems to have been that prohibitionists have given almost no thought to the rights of drug users. Most either ignore the issue or mention it briefly only to dismiss it without argument.¹⁴ In an effort to discredit legalizers, the Office of National Drug Control Policy produced the following caricature—

The easy cynicism that has grown up around the drug issue is no accident. Sowing it has been the deliberate aim of a decades-long campaign by proponents of legalization, critics whose mantra is "nothing works," and whose central insight appears to be that they can avoid having to propose the unmentionable—a world where drugs are ubiquitous and where use and addiction would skyrocket—if they can hide behind the bland management critique that drug control efforts are "unworkable."¹⁵

apparently denying the existence of the central issues I have discussed in this essay. It seems reasonable to assume that an account of the state's right to forcibly interfere with individuals' decisions regarding their own bodies is not forthcoming from these prohibitionists.

IV. CONCLUSION

Undoubtedly, the drug war has been disastrous in many ways that others can more ably describe—in terms of its effects on crime, on police corruption, and on other civil liberties, to name a few. But more than that, the drug war is morally outrageous in its very conception. If we are to call ours a free society, we cannot deploy force to deprive people of their liberty and property for whimsical reasons. The exercise of such coercion requires a powerful and clearly-stated rationale. Most of the reasons that have been proposed in the case of drug prohibition would be considered feeble if advanced in other contexts. Few would take seriously the suggestion that people should be imprisoned for harming their own health, being poor students, or failing to share in the American dream. It is still less credible that we should imprison people for an activity that only *may* lead to those consequences. Yet these and other, similarly weak arguments form the core of prohibition's defense.

Prohibitionists are likewise unable to answer the argument that individuals have a right to use drugs. Any such answer would have to deny either that persons have rights of control over their own bodies, or that consuming drugs constituted an exercise of those rights. We have seen that the sort of harms drug use allegedly causes to society do not make a case against its being an exercise of the user's rights over his own body. And the claim that drug users can't control their behavior or don't know what they are doing renders it even more mysterious why one would believe drug users deserve to be punished for what they are doing.

I will close by responding to a query posed by prohibition-advocate James Inciardi:

The government of the United States is not going to legalize drugs anytime soon, if ever, and certainly not in this [the 20th] century. So why spend so much time, expense, and intellectual and emotional effort on a quixotic undertaking? . . . [W]e should know by now that neither politicians nor the polity respond positively to abrupt and drastic strategy alterations.¹⁶

The United States presently has 553,000 people unjustly imprisoned. Inciardi may—tragically—be correct that our government has no intention of stopping its flagrant violations of the rights of its people any time soon. Nevertheless, it remains the duty of citizens and of political and social theorists to identify the injustice, and not to tacitly assent to it. Imagine a slavery advocate, decades before the Civil War, arguing that abolitionists were wasting their breath and should move on to more productive activities, such as arguing for incremental changes in the way slaves are treated, since the southern states had no intention of ending slavery any time soon. The institution of slavery is a black mark on our nation's history, but our history would be even more shameful if no one at the time had spoken against the injustice.

Is this comparison overdrawn? I don't think so. The harm of being unjustly imprisoned is qualitatively comparable (though it usually ends sooner) to the harm of being enslaved. The increasingly popular scapegoating and stereotyping of drug users and sellers on the part of our nation's leaders is comparable to the racial prejudices of previous generations.

Yet very few seem willing to speak on behalf of drug users. Perhaps the unwillingness of those in public life to defend drug users' rights stems from the negative image we have of drug users and the fear of being associated with them. Yet these attitudes remain baffling. I have used illegal drugs myself. I know of many decent and successful individuals who have used illegal drugs. Nearly half of all Americans over the age of 11 have used illegal drugs—including at least two United States Presidents, one Vice-President, one Speaker of the House, and one Supreme Court Justice.¹⁷ But now leave aside the absurdity of recommending criminal sanctions for all these people. My point is this: if we are convinced of the injustice of drug prohibition, then—even if our protests should fall on deaf ears—we can not remain silent in the face of such a large-scale injustice in our own country. And, fortunately, radical social reforms *have* occurred, more than once in our history, in response to moral arguments.

NOTES

1. Douglas Husak (*Legalize This! The Case for Decriminalizing Drugs*, London: Verso, 2002, pages 7, 101–103) makes this sort of argument. I have added my own examples of harmful activities to his list.
2. Ali Mokdad, James Marks, Donna Stroup, and Julie Gerberding, "Actual Causes of Death in the United States, 2000," *Journal of the American Medical Association* 291, no. 10, 2004: 1238–45, p. 1242. The statistic includes estimated contributions of drug use to such causes of death as suicide, homicide, motor vehicle accidents, and HIV infection.
3. Mokdad et al., p. 1239; the statistic includes estimated effects of secondhand smoke. The Centers for Disease Control provides an estimate of 440,000 ("Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Economic Costs—United States, 1995–1999," *Morbidity and Mortality Weekly Report* 51, 2002: 300–303, <http://www.cdc.gov/mmwr/PDF/wk/mm5114.pdf>, page 300).
4. James Inciardi ("Against Legalization of Drugs" in Arnold Trebach and James Inciardi, *Legalize It? Debating American Drug Policy*, Washington, D.C.: American University Press, 1993, pp. 161, 165) makes this point, accusing drug legalizers of "sophism." He does not go on to calculate the number of deaths per user, however.
5. I include both current and former smokers among "at risk persons." The calculation for tobacco is based on Mokdad et al.'s report (p. 1239) that 22.2% of the adult population were smokers and 24.4% were former smokers in 2000, and the U.S. Census Bureau's estimate of an adult population of 209 million in the year 2000 ("Table 2: Annual Estimates of the Population by Sex and Selected Age Groups for the United States: April 1, 2000 to July 1, 2007 [NC-EST2007-02]," release date May 1, 2008, <http://www.census.gov/popest/national/asrh/NC-EST2007/NC-EST2007-02.xls>). The calculation for illicit drugs is based on the report of the Office of National Drug Control Policy (hereafter, ONDCP) that, in the year 2000, 11% of persons aged 12 and older had used illegal drugs in the previous year ("Drug Use Trends," October 2002, <http://www.whitehousedrugpolicy.gov/publications/factsht/druguse/>), and the U.S. Census Bureau's report of a population of about 233 million Americans aged 12 and over in 2000 ("Table 1: Annual Estimates of the Population by Sex and Five-Year Age Groups for the United States: April 1, 2000 to July 1, 2007 [NC-EST2007-01]," release date May 1, 2008, <http://www.census.gov/popest/national/asrh/NC-EST2007/NC-EST2007-02.xls>). Interpolation was applied to the Census Bureau's "10 to 14" age category to estimate the number of persons aged 12 to 14. In the case of drugs, if "at risk persons" are considered to include only those who admit to having used illegal drugs in the past month, then the death rate is 1.2 per 1000 at-risk persons.
6. Based on 112,000 premature deaths caused by obesity in 2000 (Katherine Flegal, Barry Graubard, David Williamson, and Mitchell Gail, "Excess Deaths Associated With Underweight, Overweight, and Obesity," *Journal of the American Medical Association* 293, no. 15, 2005: 1861–7), a 30.5% obesity rate among U.S. adults in 2000 (Allison Hedley, Cynthia Ogden, Clifford Johnson, Margaret Carroll, Lester Curtin, and Katherine Flegal, "Prevalence of Overweight and Obesity Among U.S. Children, Adolescents, and Adults, 1999–2002," *Journal of the American Medical Association* 291, no. 23, 2004: 2847–2850) and

- a U.S. adult population of 209 million in 2000 (U.S. Census Bureau, "Table 2," *op. cit.*).
7. Inciardi, pp. 167, 172.
 8. James Q. Wilson, "Against the Legalization of Drugs," *Commentary* 89, 1990: 21–8, p. 26.
 9. NDCP, *National Drug Control Strategy 2002*, Washington, D.C.: Government Printing Office, <http://www.whitehousedrugpolicy.gov/publications/policy/o3ndcs/>, pp. 1–2.
 10. Husak, *Legalize This!*, p. 2.
 11. In 2006, there were approximately 553,000 people in American prisons and jails whose most serious offense was a drug offense. This included 93,751 federal inmates (U.S. Department of Justice, "Prisoners in 2006," December 2007, <http://www.ojp.usdoj.gov/bjs/pub/pdf/po6.pdf>, p. 9). State prisons held another 269,596 drug inmates, based on the 2006 state prison population of 1,377,815 ("Prisoners in 2006," p. 2) and the 2004 rate of 19.57% of state prisoners held on drug charges ("Prisoners in 2006," p. 24). Local jails held another 189,204 drug inmates, based on the 2006 local jail population of 766,010 ("Prisoners in 2006," p. 3) and the 2002 rate of 24.7% of local inmates held on drug charges (U.S. Department of Justice, "Profile of Jail Inmates 2002," published July 2004, revised October 12, 2004, <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjio2.pdf>, p. 1). In all cases, I have used the latest statistics available as of this writing.
 12. Husak, *Legalize This!*, p. 15. See his chapter 2 for an extended discussion of various proposed rationales for drug prohibition, including many issues that I lack space to discuss here.
 13. Husak (*Drugs and Rights*, Cambridge University Press, 1992, pp. 166–168), similarly, argues that no one has a *right* that I be a good neighbor, proficient student, and so on, and that only harms that violate rights can justify criminal sanctions.
 14. See Inciardi for an instance of ignoring and Daniel Lungren ("Legalization Would Be a Mistake" in Timothy Lynch, ed., *After Prohibition*, Washington, D.C.: Cato Institute, 2000, page 180) for an instance of unargued dismissal. Wilson (p. 24) addresses the issue, if at all, only by arguing that drug use makes users worse parents, spouses, employers, and co-workers. This fails to refute the contention that individuals have a right to use drugs.
 15. ONDCP, *National Drug Control Strategy 2002*, p. 3.
 16. Inciardi, p. 205.
 17. In 2006, 45% of Americans aged 12 and over reported having used at least one illegal drug (U.S. Department of Health and Human Services, "National Survey on Drug Use and Health," 2006, Table 1.1B, <http://www.oas.samhsa.gov/NSDUH/2k6NSDUH/tabs/Sect1peTabs1to46.htm>). Bill Clinton, Al Gore, Newt Gingrich and Clarence Thomas have all acknowledged past drug use (reported by David Phinney, "Dodging the Drug Question," ABC News, August 19, 1999, http://abcnews.go.com/sections/politics/Daily-News/prez_questions990819.html). George W. Bush has refused to state whether he has ever used illegal drugs. Barack Obama has admitted to cocaine and marijuana use (*Dreams from My Father*, New York: Random House, 2004, p. 93).

Michael Huemer: America's Unjust Drug War

1. Huemer admits that using drugs can be harmful to the user, but points out that alcohol, tobacco, unhealthy food, and unsafe sex can also be harmful. Is there any morally relevant difference between the harms caused by drugs and the harms caused by these other activities?
2. Huemer invokes the following principle: "if it would be wrong to punish people for *directly bringing about* some result, then it would also be wrong to punish people for doing some other action on the grounds that the action has a *chance* of bringing about that result indirectly." Do you find this principle plausible? Why or why not?
3. Consider Huemer's case involving Howard. Should Howard be punished for acting the way he does? If not, does it follow that we should not punish drug users?
4. Do individuals have a right to use drugs? What is Huemer's argument for thinking that they do? Do you find it convincing?
5. Suppose that we accept Huemer's contention that we ought to legalize recreational drug use. Does it follow that all of those currently in prison for drug-related offenses have been unjustly imprisoned?

Permissible Paternalism: Saving Smokers from Themselves

Robert E. Goodin

Paternalism involves the frustration of an individual's choices for her own good. Paternalism is usually thought by political liberals (those who place great value on personal liberty) to be unjustifiable, since they believe that the only basis for restricting a person's liberty is to prevent the violation of rights. Self-regarding behavior—behavior that affects only oneself—cannot violate rights, or so it is thought. And so such behavior should not, by the liberal's lights, be legally regulated at all.

Goodin disagrees. He begins his case by making a distinction between objective and subjective interests. The latter are those that are endorsed by the person herself; the former are what makes a person's life go better for her even if she disagrees. Goodin claims that paternalism is justified only if it protects or advances a person's subjective interests. In other words, permissible paternalistic interference must be based on "some warrant in that person's own value judgments." Further, paternalism is morally acceptable only for life's big decisions—those where the stakes are high and the potential harms one might suffer from one's choices are substantially irreversible.

The strongest case for paternalistic legislation arises when all four of the following conditions are met. First, one's preferences have been formed as a result of misinformation or false belief. Second, one's preferences are limited to a certain time of life, and run counter to preferences one has at other times. Third, one prefers not to have the preference that is thwarted by paternalistic legislation. Finally, one's preferences are inauthentic, having been shaped by influences that sidestep one's judgment. Goodin illustrates each condition with the example of a smoker, Rose Cipollone, whose preference for smoking resulted in part from misleading advertisements, ran contrary to preferences she had later in life, was one she wished she didn't have, and was formed by taking in the subliminal messages conveyed by advertising.

Paternalism is desperately out of fashion. Nowadays notions of "children's rights" severely limit what even parents may do to their own offspring, in their children's interests but against their will. What public officials may properly do to adult citizens, in their interests but against their will, is presumably even more tightly circumscribed. So the project I have set for myself—carving out a substantial sphere of morally permissible paternalism—might

seem simply preposterous in present political and philosophical circumstances.

Here I shall say no more about the paternalism of parents toward their own children. My focus will instead be upon ways in which certain public policies designed to promote people's interests might be morally justifiable even if those people were themselves opposed to such policies.

Neither shall I say much more about notions of rights. But in focusing upon people's interests rather than their rights, I shall arguably be sticking closely to the sorts of concerns that motivate rights theorists. Of course, what it is to have a right

From Robert E. Goodin, "Permissible Paternalism: Saving Smokers from Themselves," *The Responsive Community* 1 (Summer 1991), pp. 42–51.

is itself philosophically disputed; and on at least one account (the so-called “interest theory”) to have a right is nothing more than to have a legally protected interest. But on the rival account (the so-called “choice theory”) the whole point of rights is to have a legally protected choice. There, the point of having a right is that your choice in the matter will be respected, even if that choice actually runs contrary to your own best interests.

It is that understanding of rights which leads us to suppose that paternalism and rights are necessarily at odds, and there are strict limits in the extent to which we might reconcile the two positions. Still, there is some substantial scope for compromise between the two positions.

Those theorists who see rights as protecting people’s choices rather than promoting their interests would be most at odds with paternalists who were proposing to impose upon people what is judged to be *objectively* good for them. That is to say, they would be most at odds if paternalists were proposing to impose upon people outcomes which are judged to be good for those people, whether or not there were any grounds for that conclusion in those people’s own subjective judgments of their own good.

Rights theorists and paternalists would still be at odds, but less at odds, if paternalists refrained from talking about interests in so starkly objective a way. Then, just as rights command respect for people’s choices, so too would paternalists be insisting that we respect choices that people themselves have or would have made. The two are not quite the same, to be sure, but they are much more nearly the same than the ordinary contrast between paternalists and rights theorists would seem to suggest.

That is precisely the sort of conciliatory gesture that I shall here be proposing. In paternalistically justifying some course of action on the grounds that it is in someone’s interests, I shall always be searching for some warrant in that person’s own value judgments for saying that it is in that person’s interests.

“Some warrant” is a loose constraint, to be sure. Occasionally will we find genuine cases of what philosophers call “weakness of will”: people being possessed of a powerful, conscious present desire to do something that they nonetheless just cannot bring themselves to do. Then public policy forcing them

to realize their own desire, though arguably paternalistic, is transparently justifiable even in terms of people’s own subjective values. More often, though, the subjective value to which we are appealing is one which is present only in an inchoate form, or will only arise later, or can be appreciated only in retrospect.

Paternalism is clearly paternalistic in imposing those more weakly-held subjective values upon people in preference to their more strongly held ones. But, equally clearly, it is less offensively paternalistic thanks to this crucial fact: at least it deals strictly in terms of values that are or will be subjectively present, at some point or another and to some extent or another, in the person concerned.

I. THE SCOPE OF PATERNALISM

When we are talking about public policies (and maybe even when we are talking of private, familial relations), paternalism surely can only be justified for the “big decisions” in people’s lives. No one, except possibly parents and perhaps not even they, would propose to stop you from buying candy bars on a whim, under the influence of seductive advertising and at some marginal cost to your dental health.

So far as public policy is concerned, certainly, to be a fitting subject for public paternalism a decision must first of all involve high stakes. Life-and-death issues most conspicuously qualify. But so do those that substantially shape your subsequent life prospects. Decisions to drop out of school or to begin taking drugs involve high stakes of roughly that sort. If the decision is also substantially irreversible—returning to school is unlikely, the drug is addictive—then that further bolsters the case for paternalistic intervention.

The point in both cases is that people would not have a chance to benefit by learning from their mistakes. If the stakes are so high that losing the gamble once will kill you, then there is no opportunity for subsequent learning. Similarly, if the decision is irreversible, you might know better next time but be unable to benefit from your new wisdom.

II. EVALUATING PREFERENCES

The case for paternalism, as I have cast it, is that the public officials might better respect your own preferences than you would have done through your

own actions. That is to say that public officials are engaged in evaluating your (surface) preferences, judging them according to some standard of your own (deeper) preferences. Public officials should refrain from paternalistic interference, and allow you to act without state interference, only if they are convinced that you are acting on:

- *relevant* preferences;
- *settled* preferences;
- *preferred* preferences; and, perhaps,
- *your own* preferences.

In what follows, I shall consider each of those requirements in turn. My running example will be the problem of smoking and policies to control it. Nothing turns on the peculiarities of that example, though. There are many others like it in relevant respects.

It often helps, in arguments like this, to apply generalities to particular cases. So, in what follows, I shall further focus in on the case of one particular smoker, Rose Cipollone. Her situation is nowise unique—in all the respects that matter here, she might be considered the proto-typical smoker. All that makes her case special is that she (or more precisely her heir) was the first to win a court case against the tobacco companies whose products killed her.

In summarizing the evidence presented at that trial, the judge described the facts of the case as follows.

Rose . . . Cipollone . . . began to smoke at age 16, . . . while she was still in high school. She testified that she began to smoke because she saw people smoking in the movies, in advertisements, and looked upon it as something “cool, glamorous and grown-up” to do. She began smoking Chesterfields . . . primarily because of advertising of “pretty girls and movie stars.” and because Chesterfields were described as “mild.” . . .

Mrs. Cipollone attempted to quit smoking while pregnant with her first child . . . , but even then she would sneak cigarettes. While she was in labor she smoked an entire pack of cigarettes, provided to her at her request by her doctor, and after the birth . . . she resumed smoking. She smoked a minimum of a pack a day and as much as two packs a day.

In 1955, she switched . . . to L&M cigarettes . . . because . . . she believed that the filter would trap whatever was “bad” for her in cigarette smoking. She relied upon advertisements which supported that contention. She . . . switched to Virginia Slims . . . because the cigarettes were glamorous and long, and were associated with beautiful women—and the liberated woman. . . .

Because she developed a smoker’s cough and heard reports that smoking caused cancer, she tried to cut down her smoking. These attempts were unsuccessful. . . .

Mrs. Cipollone switched to lower tar and nicotine cigarettes based upon advertising from which she concluded that those cigarettes were safe or safer . . . [and] upon the recommendation of her family physician. In 1981 her cancer was diagnosed, and even though her doctors advised her to stop she was unable to do so. She even told her doctors and her husband that she had quit when she had not, and she continued to smoke until June of 1982 when her lung was removed. Even thereafter she smoked occasionally—in hiding. She stopped smoking in 1983 when her cancer had metastasized and she was diagnosed as fatally ill.

This sad history contains many of the features that I shall be arguing make paternalism most permissible.

Relevant Preferences

The case against paternalism consists in the simple proposition that, morally, we ought to respect people’s own choices in matters that affect themselves and by-and-large only themselves. But there are many questions we first might legitimately ask about those preferences, without in any way questioning this fundamental principle of respecting people’s autonomy.

One is simply whether the preferences in play are genuinely *relevant* to the decision at hand. Often they are not. Laymen often make purely factual mistakes in their means-ends reasoning. They think—or indeed, as in the case of Rose Cipollone, are led by false advertising to suppose—that an activity is safe when it is not. They think that an activity like smoking is glamorous, when the true facts of the matter are that smoking may well cause circulatory

problems requiring the distinctly unglamorous amputation of an arm or leg.

When people make purely factual mistakes like that, we might legitimately override their surface preferences (the preference to smoke) in the name of their own deeper preferences (to stay alive and bodily intact). Public policies designed to prevent youngsters from taking up smoking when they want to, or to make it harder (more expensive or inconvenient) for existing smokers to continue smoking when they want to, may be paternalistic in the sense of running contrary to people's own manifest choices in the matter. But this overriding of their choices is grounded in their own deeper preferences, so such paternalism would be minimally offensive from a moral point of view.

Settled Preferences

We might ask, further, whether the preferences being manifested are "settled" preferences or whether they are merely transitory phases people are going through. It may be morally permissible to let people commit euthanasia voluntarily, if we are sure they really want to die. But if we think that they may subsequently change their minds, then we have good grounds for supposing that we should stop them.

The same may well be true with smoking policy. While Rose Cipollone herself thought smoking was both glamorous and safe, youngsters beginning to smoke today typically know better. But many of them still say that they would prefer a shorter but more glamorous life, and that they are therefore more than happy to accept the risks that smoking entails. Say what they may at age sixteen, though, we cannot help supposing that they will think differently when pigeons eventually come home to roost. The risk-courting preferences of youth are a characteristic product of a peculiarly dare-devil phase that virtually all of them will, like their predecessors, certainly grow out of.

Insofar as people's preferences are not settled—insofar as they choose one option now, yet at some later time may wish that they had chosen another—we have another ground for permissible paternalism. Policy-makers dedicated to respecting people's own choices have, in effect, two of the person's own

choices to choose between. How such conflicts should be settled is hard to say. We might weigh the strength or duration of the preferences, how well they fit with the person's other preferences, and so on.

Whatever else we do, though, we clearly ought not privilege one preference over another just because it got there first. Morally, it is permissible for policy-makers to ignore one of a person's present preferences (to smoke, for example) in deference to another that is virtually certain later to emerge (as was Rose Cipollone's wish to live, once she had cancer).

Preferred Preferences

A third case for permissible paternalism turns on the observation that people have not only multiple and conflicting preferences but also preferences for preferences. Rose Cipollone wanted to smoke. But, judging from her frequent (albeit failed) attempts to quit, she also wanted *not to want* to smoke.

In this respect, it might be said, Rose Cipollone's history is representative of smokers more generally. The US Surgeon General reports that some 90 percent of regular smokers have tried and failed to quit. That recidivism rate has led the World Health Organization to rank nicotine as an addictive substance on a par with heroin itself.

That classification is richly confirmed by the stories that smokers themselves tell about their failed attempts to quit. Rose Cipollone tried to quit while pregnant, only to end up smoking an entire pack in the delivery room. She tried to quit once her cancer was diagnosed, and once again after her lung was taken out, even then only to end up sneaking an occasional smoke.

In cases like this—where people want to stop some activity, try to stop it but find that they cannot stop—public policy that helps them do so can hardly be said to be paternalistic in any morally offensive respect. It overrides people's preferences, to be sure. But the preferences which it overrides are ones which people themselves wish they did not have.

The preferences which it respects—the preferences to stop smoking (like preferences of reformed alcoholics to stay off drink, or of the obese to lose weight)—are, in contrast, preferences that the people concerned themselves prefer. They would themselves

rank those preferences above their own occasional inclinations to backslide. In helping them to implement their own preferred preferences, we are only respecting people's own priorities.

Your Own Preferences

Finally, before automatically respecting people's choices, we ought to make sure that they are really their *own* choices. We respect people's choices because in that way we manifest respect for them as persons. But if the choices in question were literally someone else's—the results of a post-hypnotic suggestion, for example—then clearly there that logic would provide no reason for our respecting those preferences.

Some people say that the effects of advertising are rather like that. No doubt there is a certain informational content to advertising. But that is not all there is in it. When Rose Cipollone read the tar and nicotine content in advertisements, what she was getting was information. What she was getting when looking at the accompanying pictures of movie stars and glamorous, liberated women was something else altogether.

Using the power of subliminal suggestion, advertising implants preferences in people in a way that largely or wholly bypasses their judgment. Insofar as it does so, the resulting preferences are not authentically that person's own. And those implanted preferences are not entitled to the respect that is rightly reserved for a person's authentic preferences, in consequence.

Such thoughts might lead some to say that we should therefore ignore altogether advertising-induced preferences in framing our public policy. I demur. There is just too much force in the rejoinder that, "Wherever those preferences came from in the first instance, they are mine now." If we want our policies to respect people by (among other things) respecting their preferences, then we will have to respect all of those preferences with which people now associate themselves.

Even admitting the force of that rejoinder, though, there is much that still might be done to curb the preference-shaping activities of, for example, the tobacco industry. Even those who say "they're my preferences now" would presumably have preferred, ahead of time, to make up their

own minds in the matter. So there we have a case, couched in terms of people's own (past) preferences, for severely restricting the advertising and promotion of products—especially ones which people will later regret having grown to like, but which they will later be unable to resist.

III. CONCLUSIONS

What, in practical policy terms, follows from all that? Well, in the case of smoking, which has served as my running example, we might ban the sale of tobacco altogether or turn it into a drug available only on prescription to registered users. Or, less dramatically, we might make cigarettes difficult and expensive to obtain—especially for youngsters, whose purchases are particularly price-sensitive. We might ban all promotional advertising of tobacco products, designed as it is to attract new users. We might prohibit smoking in all offices, restaurants, and other public places, thus making it harder for smokers to find a place to partake and providing a further inducement for them to quit.

All of those policies would be good for smokers themselves. They would enjoy a longer life expectancy and a higher quality of life if they stopped smoking. But that is to talk the language of interests rather than of rights and choices. In those latter terms, all those policies clearly go against smokers' manifest preferences, in one sense or another. Smokers want to keep smoking. They do not want to pay more or drive further to get their cigarettes. They want to be able to take comfort in advertisements constantly telling them how glamorous their smoking is.

In other more important senses, though, such policies can be justified even in terms of the preferences of smokers themselves. They do not want to die, as a quarter of them eventually will (and ten to fifteen years before their time) of smoking-related diseases; it is only false beliefs or wishful thinking that make smokers think that continued smoking is consistent with that desire not to avoid a premature death. At the moment they may think that the benefits of smoking outweigh the costs, but they will almost certainly revise that view once those costs are eventually sheeted home. The vast majority of smokers would like to stop smoking but, being addicted, find it very hard now to do so.

Like Rose Cipollone, certainly in her dying days and intermittently even from her early adulthood, most smokers themselves would say that they would have been better off never starting. Many even agree that they would welcome anything (like a workplace ban on smoking) that might now make them stop. Given the internally conflicting preferences here in play, smokers also harbor at one and the same time preferences pointing in the opposite direction; that is what might make helping them to stop seem unacceptably paternalistic. But in terms of other of their preferences—and ones that deserve clear precedence, at that—doing so is perfectly well warranted.

Smoking is unusual, perhaps, in presenting a case for permissible paternalism on all four of the fronts here canvassed. Most activities might qualify under only one or two of the headings. However, that may well be enough. My point here is not that paternalism is always permissible but merely that it may always be.

In the discourse of liberal democracies, the charge of paternalism is typically taken to be a knock-down objection to any policy. If I am right, that knee-jerk response is wrong. When confronted with the charge of paternalism, it should always be open to us to say, “Sure, this proposal is paternalistic—but is the paternalism in view permissible or impermissible, good or bad?” More

often than not, I think we will find, paternalism might prove perfectly defensible along the lines sketched here.

Robert E. Goodin: Permissible Paternalism: Saving Smokers from Themselves

1. What is the “conciliatory gesture” that Goodin speaks of? Do you find it plausible?
2. Goodin believes that paternalism can be justified only for life’s “big decisions.” Do you agree? Consider, for instance, some municipal policies that sought to ban the sale of large sodas, with the aim of improving health. Can such a policy be justified? Why or why not?
3. What should the default be with regard to government paternalism? Are governments presumptively justified in restricting their citizens’ choices, for their own good? Or are citizens presumptively immune from such restrictions?
4. What is the best case you can put together for the idea that paternalism is sometimes morally justified in order to protect a person’s *objective* interests?
5. Can we distinguish, in theory and in practice, between authentic and inauthentic preferences? If so, how? If not, how does this affect the case for paternalism?

Genetic Engineering

JUST THE FACTS

Genetic engineering is the direct manipulation of an organism's DNA to alter its characteristics. When this manipulation is undertaken to improve a human's form or functioning beyond the level necessary for health, it's called **genetic enhancement**. **Genetically modified organisms** (GMOs) are those whose DNA has been directly manipulated.

Genetic engineering is distinct from other methods of manipulating an organism's DNA. Such manipulation might be done, for instance, by **artificial selection**—the process by which humans develop desirable traits in plants or animals by selecting which males or females will reproduce together. Farmers, scientists, and breeders have done this for ages, selectively breeding prized fruits, vegetables, livestock, and sport and show animals. Artificial selection is limited to naturally occurring variations within species.¹ By contrast, when an organism is genetically engineered, its DNA is directly manipulated. This can be done through changing a base pair, deleting a section of DNA, introducing a copy of a gene, or even inserting DNA extracted from a different organism (sometimes from a different species).² Both **germline cells**, which are reproductive, and **somatic cells**, which are not, can be manipulated. The former type of genetic engineering is more controversial when applied to humans, since changes

made in germline cells will be passed on to the next generation.³

The first organism to be genetically engineered was a bacterium, in 1973. In 1974, scientists genetically engineered a mouse. By 1994, similar methods were applied to plants, and GMOs became a commercial product available to consumers.⁴ Scientists have now engineered tomatoes that resist freezing temperatures by inserting genetic material from a fish—the winter flounder. They've created potatoes that don't bruise and apples that don't brown.⁵

The promise of GMOs is tremendous: genetic engineering is used to make crops more resilient, more nutritious, and faster growing. It can make certain crops immune to certain pesticides—it can even make pesticides unnecessary, in some cases. It's not hard to see how this could produce huge benefits: farmers will produce better crops, lose fewer of them to weather or insects, and they can perform the whole process faster and in some cases with less intervention. This would all mean higher efficiency, which means more food at lower cost. It might also allow foods to be grown in regions that have previously been hard to farm in. This could not only make the lives of average Americans better, but could help to solve the global famine problem as well.

Genetic engineering of human and nonhuman animals promises huge benefits as well. In one instance, scientists took DNA from a spider

1. <https://www.nature.com/scitable/topicpage/genetically-modified-organisms-gmos-transgenic-crops-and-732>

2. <https://www.yourgenome.org/facts/what-is-genetic-engineering>

3. <https://www.yourgenome.org/facts/what-is-crispr-cas9>

4. <https://www.yourgenome.org/facts/what-is-genetic-engineering>

5. <https://www.livescience.com/40895-gmo-facts.html>

and engineered a goat that produces silk in its milk, allowing for production of an incredibly strong silk fabric.⁶ Sheep have been engineered whose milk can be used to treat cystic fibrosis. Worms that have been manipulated to glow in the dark can be used to learn about Alzheimer's. Yeast and bacteria have even been used to produce insulin, which then is used to treat people with Type 1 diabetes.⁷ Directly manipulating the human genome might bring yet greater advances: we might someday eliminate genetic disease—everything from color blindness to Down syndrome. It may even help cure cancer.⁸

Genetic enhancement offers the promise of yet further benefits. By altering a human's genes, it's possible that we could increase his intelligence, make him more attractive, and improve his memory. We could make someone more musically adept, require less sleep, and live longer.⁹ We could even improve someone's reasoning capacity and make her more altruistic.¹⁰ Some have even suggested that genetic engineering could make humans have less of a negative impact on the environment: for example, we could make human eyes that need less light.¹¹

While much of this is still in the future, **CRISPR-cas9** (usually referred to just as "CRISPR"—short for clustered regularly

interspaced short palindromic repeats) has started to bridge the gap between science fiction and science fact. CRISPR is a gene-editing tool that allows scientists to target specific sequences of DNA and either alter or delete them, or insert new genetic material altogether. For a long time, scientists had to rely on imprecise methods involving chemicals or radiation to cause random mutations in genes. They couldn't control where in the genome those changes occurred. CRISPR changed all that. It was developed out of a naturally occurring feature of some bacteria: they keep parts of the DNA of viruses that infect them.¹²

Genetic engineering is not without its critics. Some argue that widespread cultivation of GMOs could result in "super-insects" and "super-weeds" that are resistant to pesticides. The worry is that farmers will overuse certain pesticides, since they don't hurt the crops, and that insects and weeds will adapt to these pesticides, creating the need for even stronger pesticides to yield the same benefits. Others are concerned that the pesticide use that GMOs encourage will harm beneficial insect species, or even upend an ecosystem by spreading genetic material into non-GMO plants. Many worry that we don't have enough evidence that GMOs are truly safe—for all we know, GMOs may cause horrible damage to humans or to the environment.¹³

Concerns about human genetic engineering and genetic enhancement run even deeper. According to the Pew Research Center, 68 percent of US adults are worried about using genetic engineering even when it comes to reducing the risk of disease to human babies.¹⁴ Again, many worry that we simply can't see far enough down the road to know what the effects of genetic

6. <http://www.bbc.com/news/av/science-environment-16554357/the-goats-with-spider-genes-and-silk-in-their-milk>

7. <https://www.yourgenome.org/facts/what-is-genetic-engineering>

8. <http://www.asgct.org/general-public/educational-resources/gene-therapy-and-cell-therapy-for-diseases/cancer-gene-and-cell-therapy>

9. <https://www.genome.gov/10004767/genetic-enhancement/>

10. <https://www.psychologytoday.com/blog/how-do-life/201604/human-genetic-enhancement>

11. <https://www.theatlantic.com/technology/archive/2012/03/how-engineering-the-human-body-could-combat-climate-change/253981/>

12. <https://www.yourgenome.org/facts/what-is-crispr-cas9>

13. <http://www.popsci.com/article/science/core-truths-10-common-gmo-claims-debunked>

14. http://www.pewinternet.org/2016/07/26/u-s-public-wary-of-biomedical-technologies-to-enhance-human-abilities/ps_2016-07-26_human-enhancement-survey_o-01/

engineering will be. Some worry that we will end up eliminating genetic disorders, such as high-functioning autism, that have huge benefits to society.¹⁵ Another potential problem is that the benefits of genetic enhancement may very well accrue disproportionately to the wealthy. After all, genetic enhancements will be very expensive when they first become available to the public. In the United States and many other countries, this could serve to deepen the already large inequalities between the rich and the poor—or even between the rich and the middle class.¹⁶

It might seem as well that while genetic engineering is a tool that could be used for good, it could end up being used for nefarious purposes. One such purpose is **eugenics**, the attempt to use science to eliminate “undesirable” qualities from a human population.¹⁷ Eugenics movements in the United States led to the forced sterilization of various already marginalized populations—between 1907 and 1931, thirty states enacted such laws, leading to the forced sterilization of more than 64,000 people, almost all of whom were poor and undereducated.¹⁸ Though we look back on that episode as a deeply misguided one, critics of human genetic engineering worry that the association of “inferior” traits with members of marginalized communities is still with us, and that allowing genetic engineering will invariably lead to practices that marginalize them yet further.

ARGUMENT ANALYSIS

Though genetic engineering can take many forms, here we will restrict our focus to just two of them: the genetic enhancements of human

beings, and the production of GMOs. As we will see, a few of the arguments we consider can be applied with equal force to both kinds of genetic engineering. Let’s start with one of these arguments, which cites (in part) the promise of great benefits as a basis for the moral legitimacy of genetic engineering:

The Benefits Argument

1. If a practice provides great benefits to many people and violates no one’s rights, then it is morally legitimate.
2. Genetic enhancement and the production of GMOs provide great benefits to many people and violate no one’s rights.

Therefore,

3. Genetic enhancement and the production of GMOs are morally legitimate.

The benefits referred to in premise 2 are real—see the Just the Facts section earlier for details. But does genetic engineering also avoid violating people’s rights? This is a difficult question whose full answer would require a lot more space than we have here, so let me make just a few brief remarks, first about genetic enhancement and then about GMOs.

Genetic enhancement would make individuals who receive it better off—more attractive, smarter, faster, and so on. This doesn’t violate *their* rights. And it doesn’t seem to violate the rights of others, either. True, it can give the recipients of genetic enhancement an advantage over those who do not have it. But it’s not clear that this violates the rights of the “unenhanced.”

Suppose that others are better looking than I am because they were more fortunate in the “natural lottery”—they were born with great genes. That doesn’t violate my rights. Now suppose that others are better looking than I am because they paid for “cosmetic enhancement”—plastic surgery that involves no genetic manipulation, but leaves them looking way better than I do. That doesn’t seem to violate my rights, either. But then it’s unclear why obtaining this social advantage via genetic manipulation, rather than

15. <https://www.psychologytoday.com/blog/how-do-life/201604/human-genetic-enhancement>

16. <https://www.genome.gov/10004767/genetic-enhancement/>

17. https://www.washingtonpost.com/news/in-theory/wp/2016/02/22/whats-the-difference-between-genetic-engineering-and-eugenics/?utm_term=.obo2dcc56ed6

18. <https://www.nature.com/scitable/forums/genetics-generation/america-s-hidden-history-the-eugenics-movement-123919444>

good fortune or cosmetic surgery, would violate my rights. And things don't appear to be any different when we are talking, not about good looks, but about cognitive or athletic or personality advantages that might be obtained through genetic enhancement.

There is an exception here: competitions that forbid contestants who have been enhanced. If the rules of a beauty pageant exclude entrants who have been surgically or genetically enhanced, then if some such contestant sneaks into the competition, that *does* violate the rights of the other participants. But this is because such behavior amounts to cheating—deliberately breaking the agreed-on rules so as to gain an unfair advantage. Most genetic enhancements are not forms of cheating, however. And so we don't as yet have reason to believe that genetic enhancements violate the rights of others.

When it comes to GMOs, they too can provide great benefits to human beings. Further, since we are not forced to use GMOs, it is difficult to see how their production or sale violates anyone's rights. One might think that we have a right that others refrain from genetically modifying organisms, but the basis of such a right is unclear, as we shall see later. At this point, then, since both genetic enhancements and GMOs yield substantial benefits, and since they don't appear to violate rights (except when they constitute cheating), premise 2 of the Benefits Argument seems fairly plausible.

We have already considered a variation of premise 1 (see the Social Harm Argument in Chapter 21). It combines a consequentialist element—the emphasis on generating excellent results—with a nonconsequentialist focus on individual rights. While this combination has a lot of appeal, it also has at least one vulnerability. Imagine a practice that generates lots of good results and violates no rights. Still, that practice might produce lots of *terrible* results, too. Those might be enough to outweigh the benefits and to sink the claim to moral legitimacy.

Unsurprisingly, reasonable opponents of genetic engineering allow that it may yield real

benefits. But their concern is with its potential harms, which they see as substantial. Though genetic enhancements are only in their infancy, and GMOs have not yet been shown to have caused substantial harms, it is relatively early days for these practices. Critics have worried that once these forms of genetic engineering become more widespread, significant harms are bound to arise. This worry provides the basis for

The Conservative Argument

1. We should legalize risky social policies only if we have excellent evidence that they will not lead to disaster.
2. We lack such evidence when it comes to genetic enhancements and GMOs.

Therefore,

3. We should not legalize genetic enhancements or GMOs.

The name of this argument has nothing to do with various right-wing causes. Rather, as traditionally understood, a **conservative** position is one that either seeks to preserve the status quo, or claims that we ought to change the traditional ways of doing things only if there is compelling evidence that doing so would be an improvement. In short, conservatives want to *conserve* what is already in place; their default setting is to resist change.

It's not clear what to say about premise 2. On the one hand, we have not yet experienced any disastrous results from GMOs or from genetic enhancement. So that might seem to undermine this premise. But the absence of evidence is not evidence of absence. Because genetic enhancements are still in their infancy, we lack evidence about whether they will cause long-term harms. The lack of evidence about their long-term effects does not amount to evidence that they are safe. GMOs have been widely on the market for a little more than two decades. Critics of genetic engineering claim that we won't be in a position to assess its long-term results for many years to come. But defenders of GMOs argue that since two decades is ample time to record the many

benefits that GMOs have provided, then that span is long enough to gather evidence about whether GMOs have had disastrous effects. As a result, they claim that there is now excellent evidence that GMOs are safe. Rather than try to resolve the matter here, we should note only that, as a general matter, it is difficult to identify a neutral standpoint for determining what counts as *enough* time to gather evidence about the potentially disastrous results of some innovative social policy.

Premise 1 does a good job of expressing the core conservative idea. Reasonable conservatives will not reject all social innovations. They will just insist that these innovations be thoroughly tested before being introduced on a broad scale. When innovations carry not only the chance of great benefit but also great harm, we need to ensure that we can avoid those harms before authorizing the social experiment.

While this sounds very plausible, there is a Catch-22 problem here. Premise 1 allows us to legalize social innovations only if we have good evidence of their safety. But we can acquire such evidence only if we are allowed to implement those innovations and see how they do! In other words, premise 1 assigns a necessary condition for legalizing social innovations (namely, gathering evidence of their safety) and then forbids any action that would enable us to meet that necessary condition.

Actually, things are not quite so bad for premise 1. We might be able to get evidence that a new practice avoids terrible results by looking to *other* societies that have implemented the practice. But there are two difficulties here. First, such evidence is available only because those other societies have violated premise 1. If they had obeyed the conservative principle, they would not have allowed those innovations to be tested in the first place. The second difficulty is what we might call the **extrapolation problem**. This is the difficulty of concluding that outcomes in one context will carry over to a different context. There are lots of extrapolation problems

with animal experimentation, for instance—there are many cases in which a drug found to be helpful when tested on animals has proven ineffective or harmful when used on humans. In the present case, the extrapolation problem arises because social innovations that work well in one culture may prove to be quite harmful in another (and vice versa).

Careful readers will have noticed the similarity between the Conservative Argument and the slippery slope arguments that we have discussed in other chapters (see Chapters 15 and 19). Slippery slope arguments predict that disaster will occur if we allow a social innovation, and argue, on consequentialist grounds, that we should therefore ban that innovation. The difference between the two arguments is this: the Conservative Argument issues no predictions about the likely results of the relevant innovation, while the Slippery Slope Argument does precisely that. In effect, the Conservative Argument says that we ought to ban social innovations until we have a solid basis for predicting its safety, whereas the Slippery Slope Argument says that we ought to ban an innovation because it is likely to have unsafe results. It is easy to craft a slippery slope argument against genetic engineering—just specify the terrible results you anticipate from genetic enhancement or GMOs, and add the claim that we ought to ban practices that are likely to yield terrible results. The trick, of course, is to see whether it is possible to substantiate such predictions.

I leave that as an exercise for you. In the meantime, let's look at another argument against genetic engineering that incorporates an interesting mix of consequentialist and fairness-based considerations. This argument says that genetic engineering will have a specific kind of bad outcome—namely, an increase in *inequality* between the “haves,” who can afford to receive genetic enhancement, and the “have-nots,” who can't. Those who are wealthier will become even better looking, will become immune to various diseases, and will be able to enhance

their intelligence through genetic engineering, thereby increasing the already very wide gap between the life prospects of the wealthy and the less well-to-do. This worry serves as the basis of

The Inequality Argument

1. If a social policy is very likely to increase inequality by improving the lives of the better-off and leaving the worse-off behind, then that social policy is immoral.
2. Allowing genetic engineering is very likely to increase inequality by improving the lives of the better-off and leaving the worse-off behind.

Therefore,

3. Allowing genetic engineering is an immoral social policy.

Premise 2 is probably true, at least in the short run. A typical pattern with social innovation is that the wealthy and powerful reap the bulk of the initial advantages. In some cases, that is the end of the story. But in many others, the less-well-off also benefit, as the innovations become more commonplace and less expensive. (Think of TVs, cars, or computers—all initially within the reach of just a few, but widely accessible to middle and many lower income families in a relatively short amount of time.) It's not clear whether the distribution of the benefits of genetic engineering would follow the first path or the second. That said, innovations in genetic engineering need not increase inequality. We *could* design social policies so that the poorer among us receive subsidized genetic enhancements and free access to GMOs (should they want it). If we chose to do that, premise 2 would be false.

There is a lot to say about premise 1. But we have already said a good deal—see the Argument Analysis section in Chapter 16, which is almost entirely devoted to discussing the morality of social policies that allow or promote specifically economic inequalities. Though the inequalities we are considering in this chapter range more broadly, to cover appearance, intelligence,

character traits, and physical skills, the underlying basis for most of the arguments in Chapter 16 can be easily carried over to discussions of these broader inequalities. As a result, I leave it to you to apply those arguments in the context of genetic engineering, in order to determine whether social policies that result in unequal distributions of benefits are always or usually immoral.

Each of the arguments we have looked at so far highlights the anticipated results of genetic engineering. Let's shift our attention to arguments that focus instead on its nature. These arguments are largely critical, and claim that there is something wrong, in itself, with genetic enhancements or with GMOs. These arguments allow that genetic engineering might have excellent results. But according to those who advance these arguments, there is something intrinsically immoral about genetic engineering.

The first of these criticisms is focused on genetic enhancements, not GMOs, and says that such enhancements rob us of our true selves. To be genetically enhanced is to lose our authenticity, to change us from who we really are to some artificial substitute:

The Authenticity Argument

1. If a practice undermines our authenticity, then it is immoral.
2. Genetic enhancement undermines our authenticity.

Therefore,

3. Genetic enhancement is immoral.

On behalf of premise 2, some argue that part of the human condition is to be limited in various ways and to be forced to face challenges based on one's limitations. An achievement is truly your own only if you gain it via effort that utilizes your own traits. Genetic enhancement is a shortcut that makes your elevated level of appearance, performance, or aptitude not truly your own. Defenders of genetic enhancement, though, say that part of our authentic self is the ability to choose how to move forward in our

lives, how to change ourselves in desirable ways. Choosing to become better through enhancement may be an authentic choice—informed, freely selected, and expressive of our deepest commitments. These critics of premise 2 will say that if an outcome is a result of an authentic choice, then the outcome itself is authentic.

Regarding premise 1: there are certainly some practices that undermine our authenticity and are immoral. Think of cases where totalitarian government officials lobotomize political prisoners, or administer personality-altering drugs in an effort to neutralize the prisoner's opposition to the regime. These ways of undermining our authenticity are immoral, however, because they are done without the victim's consent. What about cases in which people voluntarily seek to change who they are in a very significant way?

Sometimes such changes are for the worse. Imagine an admittedly strange case—one in which a person is bored with who she is and decides to become a drug addict. She succeeds. We might call her decision unwise or imprudent; it's not clear, though, that she has done something immoral. (One reason for this, explored in the Legal Punishment Requires Immorality Argument in Chapter 21, is that it is unclear whether self-harm *per se* is ever immoral.) If she has done something wrong—say, because she is now neglecting her children—the immorality most clearly consists in that neglect, rather than in becoming a different sort of person. After all, sometimes we can engage in transformative change for the better. We can leave at least a significant part of our old selves behind, and become more compassionate, more open-minded, more hopeful, kinder, and wiser. These sorts of fundamental changes in personality or character do not seem to be immoral.

This last point gives us some reason to think that changing who we are is not in itself immoral. A lot depends on the sort of change we are talking about—if it is an improvement, then all seems to be morally OK. And enhancements are, by definition,

improvements. So it seems that enhancing oneself is not immoral, contrary to premise 1.

Critics will claim that there is a fundamental difference between improving oneself through hard work, on the one hand, and genetic enhancement, on the other. It matters whether your better self emerges from your own extended efforts or whether it comes from paying someone else to perform a medical procedure. I think this is right. You deserve much more credit in the first case. But this is not enough to show that you have acted immorally if you go the easier, second route. Some people who effectively purchase their improvements may not deserve any credit for doing so, but that is different from showing that their actions have been immoral.

The last two arguments we'll consider target both genetic enhancement and GMOs. The first of these arguments comes from the core idea that inspires the natural law theory (see Chapter 8): what is natural is good or right, and what is unnatural is bad or wrong. Genetic engineering is designed to alter nature—our own, when it comes to genetic enhancements, or the nature of the food we eat, when it comes to GMOs. The worry here is not that tinkering with nature will lead to disastrous results down the road—that is the focus of a slippery slope or conservative argument. Rather, the idea is that there is something problematic, in and of itself, with acting contrary to nature:

The Unnaturalness Argument

1. Unnatural actions are immoral.
2. Genetic engineering is unnatural.

Therefore,

3. Genetic engineering is immoral.

The apparent simplicity of this argument is deceptive. That's because the notion of *being unnatural* is ambiguous—it has more than one meaning. As a result, defenders of the Unnaturalness Argument need to be very clear about which understanding of “unnatural” they have in mind when pressing their case against genetic engineering.

Perhaps the best way to assess the premises of this argument is just to run through the most common definitions of being natural or unnatural. We've already done this in Chapter 8, though, and the upshot is that premise 1 is deeply problematic on all four readings of "natural" that we discussed there. For ease of reference: "natural" could refer to what we share with other animals, what is innate, what all things of a given kind have in common, or what something is designed to be or do. Rather than repeat that discussion, let's consider two more understandings of what it is to be natural or unnatural. These are the ones that are likely to work best for the opponent of genetic engineering.

On the first view, to be natural is to be unchanged by human manipulation or intervention. Natural traits are opposed to acquired ones; unnatural activities are those that involve changing something or someone from a pristine, unmodified state. Genetic engineering is unnatural in this sense, because both genetic enhancement and GMO manufacture involve human intervention to modify someone or something from its "natural" state. In this sense, though, premise (1) is mistaken, because many human interventions that change things from their natural state are improvements. We act unnaturally in this sense when we educate children, modifying their understanding of the world, or when a furniture maker takes a piece of wood and transforms it into an elegant table. Contrary to premise 1, though, such activities are not immoral.

On the second understanding, natural activities are defined as those that *preserve* something's essence; unnatural activities are ones that change it. GMOs are unnatural in this sense, since they involve altering the genetic essence of crops or other foodstuffs. So premise 2 of the Unnaturalness Argument is true as applied to GMOs. But it's not so clear when it comes to genetic enhancements. Some cases—changing someone's eye color or height, for instance—seem more superficial, and don't

involve modifying a person's essence. Premise 2 is false when it comes to such changes, and so this argument would not justify condemning this sort of genetic enhancement. Other genetic changes, though, do seem to go "deeper," and involve a transformation of who the person is at a more fundamental level. Premise 2 would be true of these instances.

Even with regard to these more essential changes, however, premise 1 remains problematic. It's not clear why changing something's nature need be immoral. For instance, by genetically modifying the germline of the *anopheles* mosquito—the insect responsible for transmitting malaria—scientists might be able to save the lives of millions of people over the course of the next few decades. Or by developing a new type of apple the old-fashioned way—through conventional, non-GMO means—farmers have modified the essence of the old species, but don't seem to have done anything immoral thereby. When it comes to human beings, things may be more controversial, but a large part of the explanation here has to do with doubts about whether humans have natures. If they don't, then genetic enhancements cannot be unnatural (on this last understanding of what it is to be unnatural). But suppose that people do have natures. In that case, is it always immoral to change them?

It doesn't seem so. After all, some such natures may be bad. Suppose that someone recognizes that he has a deeply flawed nature and wants to improve it. He sets out to do so—he goes to therapy, reads self-help books, and seeks religious counseling. Imagine that this combination is successful; he really does become a much better person, in part by removing the flaws that used to define him. The current understanding makes this sort of transformation unnatural. But contrary to premise 1, there doesn't seem to be anything immoral about it.

We've now canvassed six understandings of what it is to be natural or unnatural. None of these six definitions yields the result that premise 1 is true. This doesn't show that the

Unnaturalness Argument is unsound, however, for there may be a seventh understanding that does the trick. If you're a fan of this argument, then, your job is to identify that further definition and to defend the claim that both premise 1 and premise 2 are true when utilizing that definition.

Let's now consider a final argument about the morality of genetic engineering. This one is based on the thought that such activity expresses a kind of arrogance. It is presumptuous of humans to assume that we are entitled to change nature to suit our tastes and preferences. In effect, when we set out to tinker with the genetic make-up of things, we are playing God:

The Playing God Argument

1. We are morally forbidden from playing God.
2. Engaging in genetic engineering amounts to playing God.

Therefore,

3. We are morally forbidden from engaging in genetic engineering.

In order to make sense of this argument, we need to unpack the metaphor of *playing God* in such a way that premise 2 comes out as true. We can then investigate whether playing God is, as premise 1 declares, really such a bad thing.

We can set aside the vexed question of whether God exists and ask instead about what God's role would be *if* God were to exist. There are many answers to this question, but perhaps the most relevant is this: God is the creator of all things, and has the final say about life and death. God decides when it is appropriate to end a life, when it is right to sustain or create it, and when it is acceptable to render a fundamental change in the nature of His creation. We play God when we take unto ourselves the authority to do these things.

On this understanding of what it is to play God, premise 2 is usually true. GMO production

creates new life forms. Genetic enhancement would in many (though not all) cases render a fundamental change in the nature of those who receive it. But premise 1 is problematic. Parents who intend to conceive a child are playing God, on the current understanding, but need not be doing anything immoral thereby. Soldiers who sacrifice themselves to save their comrades are also playing God in this sense, as are emergency room doctors who are making life-and-death decisions. But such soldiers need not be acting immorally; the same can be said of these doctors. And as we've seen in the previous discussion, regarding the last of the definitions of "unnatural," there needn't be anything wrong in seeking to change something's fundamental nature.

The notion of playing God, like the notion of being unnatural, admits of many different understandings. I've selected the one that I think has the best shot at getting critics of genetic engineering what they want. As we've seen, this understanding does not succeed. But perhaps another one will. As before, the task for opponents of genetic enhancements and GMOs is to identify that different understanding and then to defend the premises that incorporate it.

CONCLUSION

While there is relatively little controversy about the morality of developing genetic *therapies*—procedures designed to restore health to the sick—there is substantial disagreement about whether genetic enhancements and GMOs are morally acceptable. The main reason in support of such efforts is that they promise to do so much good, without violating anyone's rights. But conservative and slippery slope critics argue that we should put the brakes on such research until we have good evidence of its safety, while other critics argue that these forms of genetic engineering will only increase social inequality.

Other objections to genetic engineering focus on its intrinsic nature, rather than on its expected results. Such criticisms claim that

STAT SHOT

- More than 90 percent of all soybean and corn acreage in the United States is used to grow GMOs.¹
- The United States, Brazil, and Argentina are the top GMO producers, accounting for 76.3 percent of all GMO crops (Figure 22.1).
- According to a Harvard poll, 65 percent of US adults think that it should be illegal to genetically modify unborn babies. Eighty-three percent said it should be illegal to engage in genetic enhancement to enhance intelligence or physical attributes.²
- Most countries in Europe have laws requiring that GMOs be labeled. Most countries in North America don't (Figure 22.2).

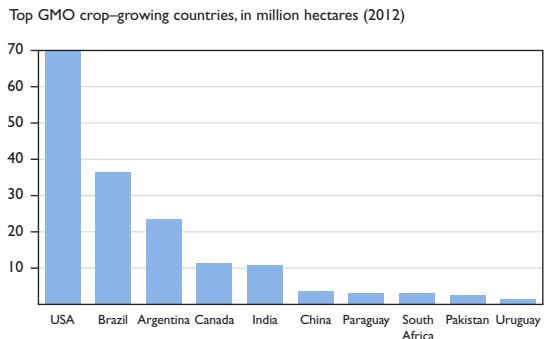


Figure 22.1

Source: <http://www.gmoinside.org/gmos-in-animal-feed/>

- <http://time.com/3840073/gmo-food-charts/>
- <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2016/01/STAT-Harvard-Poll-Jan-2016-Genetic-Technology.pdf>

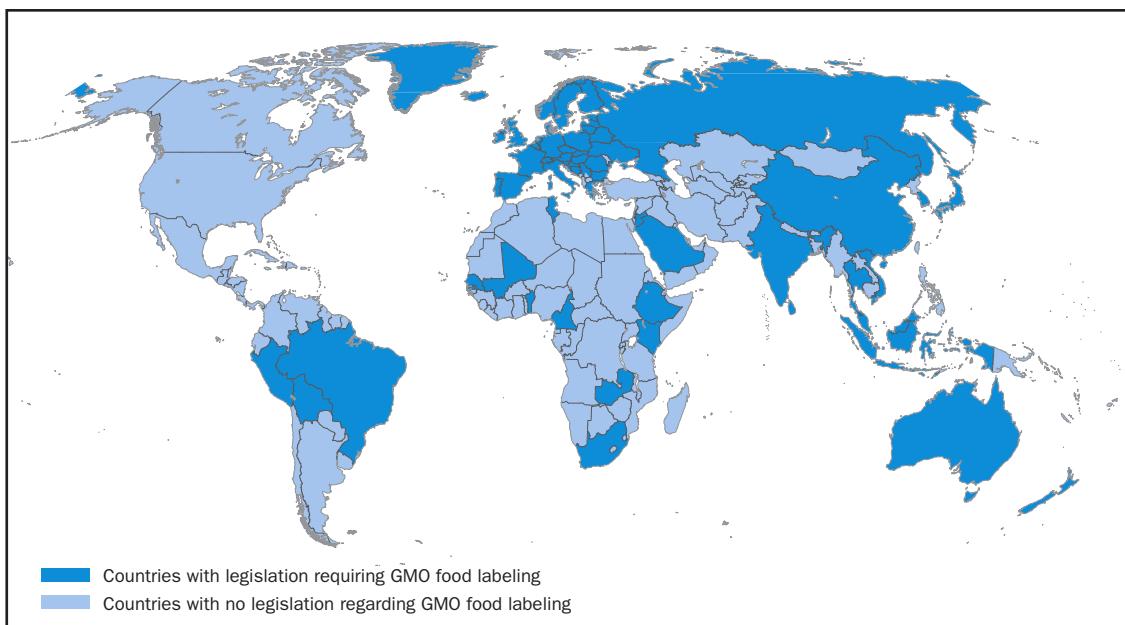


Figure 22.2. GMO labeling laws worldwide (2013).

Source: <http://familywellnesshq.com/what-do-us-canada-and-most-of-the-third-world-countries-have-in-common-gmo-food/>

genetic enhancements are inauthentic, or that such enhancements and GMOs are unnatural or are instances of playing God. As we've seen, these critiques are not yet well-supported, though the jury is still out as to whether critics are able to identify other notions of unnaturalness or playing God that can serve their purposes.

ESSENTIAL CONCEPTS

Artificial selection: the process by which humans develop desirable traits in plants or animals by selecting which males or females will reproduce together. It's sometimes called "selective breeding."

Conservative: a position that either seeks to preserve the status quo or claims that we ought to change the traditional ways of doing things only if there is compelling evidence that doing so would be better.

CRISPR-cas9: a gene-editing tool that allows scientists to target specific sequences of DNA

and either alter or delete them, or insert new genetic material altogether.

Eugenics: the use of selective breeding to develop desirable traits in human beings, or the use of sterilization to eradicate undesirable traits in human beings.

Extrapolation problem: the difficulty of concluding that outcomes in one context will carry over to a different context.

Genetic engineering: the direct manipulation of an organism's DNA to alter its characteristics.

Genetic enhancement: the direct manipulation of an organism's DNA to improve its form or functioning beyond the level necessary for health.

Genetically modified organism (GMO): organisms whose DNA has been directly altered for human purposes.

Germline cells: reproductive cells.

Somatic cells: nonreproductive cells.

Cases for Critical Thinking

Growth Hormones: Just for the Deficient?

Some children have a hormone deficiency that causes them to be much shorter than average. In the 1980s, human growth hormone was approved for addressing their situation. Prescribing this hormone to such children allowed them to enjoy all the benefits of a typical height: for example, they could often compete in basketball, whereas otherwise they couldn't. However, in the 1990s, doctors started to prescribe growth hormone to children who didn't have a hormone deficiency, but whose short stature was due to their parents' height. By 1996, this kind of use accounted for 40 percent of human growth hormone prescriptions.¹

1. <https://www.theatlantic.com/magazine/archive/2004/04/the-case-against-perfection/302927/>

Questions

1. Is normal height a benefit for people? If so, what makes it beneficial?
2. Is there any relevant difference between those children whose height resulted from a hormone deficiency and those whose height resulted from having inherited their parents' genes, such that it is permissible to prescribe growth hormones to the former but not the latter?
3. Suppose Jack is of a typical height for boys his age and, given his family history, can expect to be roughly the average height for US males. But Jack has always dreamed of playing professional basketball. If we can permissibly prescribe growth hormones to those whose height is owing to their genetic inheritance, is it also permissible for Jack's doctor to prescribe them to him?

GMO Labeling Laws

In 2012, California voters decided against Proposition 37, which would have required that foods containing GMOs be labeled as such. (It also would have prohibited labeling them as “natural” or “certified organic,” along with some other labels.) However, in June 2016, President Obama signed into law a bill requiring that foods with GMOs be labeled as such.¹ Many other countries have similar laws, including Australia, Japan, Russia, China, and twenty-eight countries in the European Union.²

1. <http://www.foodsafetynews.com/2016/09/the-new-gmo-labeling-law-a-matter-of-perspective/#.WcwF38iGPU>

2. <http://www.justlabelit.org/right-to-know-center/labeling-around-the-world/>

Questions

1. Ought we to have such laws, or is it permissible for us not to have them? Why?
2. Suppose we did enough research to know that GMOs—or at least the ones available to consumers—had no adverse health consequences. Would labeling laws be morally advisable in that case? Why or why not?
3. In the United States, all processed foods must contain nutritional information. And tobacco products are required to display the Surgeon General’s warning about the adverse health effects of tobacco use. Are these requirements justified? If not, why not? If so, do the arguments used to justify them also justify a requirement that GMOs be labeled as such?

Doping and Genetic Enhancement

Lance Armstrong won the Tour de France a record seven straight times. Those victories

were voided when it was discovered that he was using performance-enhancing drugs. Similar episodes have plagued most major sports: Jon Jones, for example, the UFC light heavyweight champion and believed by many to be the greatest UFC fighter ever, was stripped of his title in 2017 when both of his urine samples came back positive for a banned substance. In March 2016, tennis star Maria Sharapova was banned from professional tennis for over a year as a result of having failed a drug test conducted during the Australian Open two months earlier.

Questions

1. Do you think that performance-enhancing drugs ought to be banned from professional sports? Why or why not?
2. Suppose performance-enhancing drugs ought to be banned from professional sports. Many individuals naturally have higher levels of hormones, such as testosterone, that give them athletic advantages. Should we also ban such people from competing, since they get the same kind of unearned advantage as those who use performance-enhancing drugs?
3. Suppose, as is currently the case, that we shouldn’t ban competitors who have naturally higher levels of advantageous hormones. Does it follow that we should allow competitors who have had genetic enhancements? If not, what’s the relevant difference between the two types of advantage?



READINGS

The Case Against Perfection

Michael Sandel

Michael Sandel argues against genetic enhancement and engineering by asking us to focus on what he calls “the gifted character of human powers and achievements.” By this he means that our talents and our abilities are not entirely a product of our efforts. And this, he argues, is a very good thing. That much of what is important in a life is effectively outside of our control should encourage in us a degree of humility about our accomplishments. Genetic enhancement and engineering are an effort to control the key elements of our appearance, fitness, and personality in a way that supports pride and arrogance rather than humility. Further, we expand our human sympathies and sense of social solidarity if we recognize that the problems and difficulties confronted by others are not always of their own making.

Sandel draws a parallel between genetic engineering and the kind of “hyperparenting” in which parents obsessively attend to every detail of their children’s lives. In both cases, a quest for perfection “represents the anxious excess of mastery and dominion that misses the sense of life as a gift.” Recognizing a child’s limitations and vulnerabilities not only helps a parent to develop important moral virtues such as compassion, sympathy, and empathy, but also provides an opportunity to appreciate the frailty and imperfections that come in every life.

Another worry about genetic engineering is that it is really no different from the eugenics programs of old. Those state-run programs forcibly sterilized or compelled abortions of members of unpopular minority groups in the name of creating a finer “race” of human beings. Although the state coercion at the heart of such programs is certainly morally troubling, Sandel argues that the impulse to genetically engineer a more perfect next generation is still morally problematic, even if we imagine that such engineering is done without any coercion at all.

... It is commonly said that genetic enhancements undermine our humanity by threatening our capacity to act freely, to succeed by our own efforts, and to consider ourselves responsible—worthy of praise or blame—for the things we do and for the way we are. It is one thing to hit seventy home runs as the result of disciplined training and effort, and something else, something less, to hit them with the help of steroids or genetically enhanced muscles. Of

From Michael J. Sandel, “The Case Against Perfection,” *Atlantic Monthly* (April 2004), pp. 56–62. <https://www.theatlantic.com/magazine/archive/2004/04/the-case-against-perfection/302927/>

course, the roles of effort and enhancement will be a matter of degree. But as the role of enhancement increases, our admiration for the achievement fades—or, rather, our admiration for the achievement shifts from the player to his pharmacist. This suggests that our moral response to enhancement is a response to the diminished agency of the person whose achievement is enhanced.

Though there is much to be said for this argument, I do not think the main problem with enhancement and genetic engineering is that they undermine effort and erode human agency. The deeper danger is that they represent a kind of

hyperagency—a Promethean aspiration to remake nature, including human nature, to serve our purposes and satisfy our desires. The problem is not the drift to mechanism but the drive to mastery. And what the drive to mastery misses and may even destroy is an appreciation of the gifted character of human powers and achievements.

To acknowledge the giftedness of life is to recognize that our talents and powers are not wholly our own doing, despite the effort we expend to develop and to exercise them. It is also to recognize that not everything in the world is open to whatever use we may desire or devise. Appreciating the gifted quality of life constrains the Promethean project and conduces to a certain humility. It is in part a religious sensibility. But its resonance reaches beyond religion.

It is difficult to account for what we admire about human activity and achievement without drawing upon some version of this idea. Consider two types of athletic achievement. We appreciate players like Pete Rose, who are not blessed with great natural gifts but who manage, through striving, grit, and determination, to excel in their sport. But we also admire players like Joe DiMaggio, who display natural gifts with grace and effortlessness. Now, suppose we learned that both players took performance-enhancing drugs. Whose turn to drugs would we find more deeply disillusioning? Which aspect of the athletic ideal—effort or gift—would be more deeply offended?

Some might say effort: the problem with drugs is that they provide a shortcut, a way to win without striving. But striving is not the point of sports; excellence is. And excellence consists at least partly in the display of natural talents and gifts that are no doing of the athlete who possesses them. This is an uncomfortable fact for democratic societies. We want to believe that success, in sports and in life, is something we earn, not something we inherit. Natural gifts, and the admiration they inspire, embarrass the meritocratic faith; they cast doubt on the conviction that praise and rewards flow from effort alone. In the face of this embarrassment we inflate the moral significance of striving, and deprecate giftedness. This distortion can be seen, for example, in network-television coverage of the Olympics, which focuses less on the feats the athletes perform

than on heartrending stories of the hardships they have overcome and the struggles they have waged to triumph over an injury or a difficult upbringing or political turmoil in their native land.

But effort isn't everything. No one believes that a mediocre basketball player who works and trains even harder than Michael Jordan deserves greater acclaim or a bigger contract. The real problem with genetically altered athletes is that they corrupt athletic competition as a human activity that honors the cultivation and display of natural talents. From this standpoint, enhancement can be seen as the ultimate expression of the ethic of effort and willfulness—a kind of high-tech striving. The ethic of willfulness and the biotechnological powers it now enlists are arrayed against the claims of giftedness.

The ethic of giftedness, under siege in sports, persists in the practice of parenting. But here, too, bioengineering and genetic enhancement threaten to dislodge it. To appreciate children as gifts is to accept them as they come, not as objects of our design or products of our will or instruments of our ambition. Parental love is not contingent on the talents and attributes a child happens to have. We choose our friends and spouses at least partly on the basis of qualities we find attractive. But we do not choose our children. Their qualities are unpredictable, and even the most conscientious parents cannot be held wholly responsible for the kind of children they have. That is why parenthood, more than other human relationships, teaches what the theologian William F. May calls an “openness to the unbidden.”

May's resonant phrase helps us see that the deepest moral objection to enhancement lies less in the perfection it seeks than in the human disposition it expresses and promotes. The problem is not that parents usurp the autonomy of a child they design. The problem lies in the hubris of the designing parents, in their drive to master the mystery of birth. Even if this disposition did not make parents tyrants to their children, it would disfigure the relation between parent and child, and deprive the parent of the humility and enlarged human sympathies that an openness to the unbidden can cultivate.

To appreciate children as gifts or blessings is not, of course, to be passive in the face of illness or disease. Medical intervention to cure or prevent illness

or restore the injured to health does not desecrate nature but honors it. Healing sickness or injury does not override a child's natural capacities but permits them to flourish.

Nor does the sense of life as a gift mean that parents must shrink from shaping and directing the development of their child. Just as athletes and artists have an obligation to cultivate their talents, so parents have an obligation to cultivate their children, to help them discover and develop their talents and gifts. As May points out, parents give their children two kinds of love: accepting love and transforming love. Accepting love affirms the being of the child, whereas transforming love seeks the well-being of the child. Each aspect corrects the excesses of the other, he writes: "Attachment becomes too quietistic if it slackens into mere acceptance of the child as he is." Parents have a duty to promote their children's excellence.

These days, however, overly ambitious parents are prone to get carried away with transforming love—promoting and demanding all manner of accomplishments from their children, seeking perfection. "Parents find it difficult to maintain an equilibrium between the two sides of love," May observes. "Accepting love, without transforming love, slides into indulgence and finally neglect. Transforming love, without accepting love, badgers and finally rejects." May finds in these competing impulses a parallel with modern science: it, too, engages us in beholding the given world, studying and savoring it, and also in molding the world, transforming and perfecting it.

The mandate to mold our children, to cultivate and improve them, complicates the case against enhancement. We usually admire parents who seek the best for their children, who spare no effort to help them achieve happiness and success. Some parents confer advantages on their children by enrolling them in expensive schools, hiring private tutors, sending them to tennis camp, providing them with piano lessons, ballet lessons, swimming lessons, SAT-prep courses, and so on. If it is permissible and even admirable for parents to help their children in these ways, why isn't it equally admirable for parents to use whatever genetic technologies may emerge (provided they are safe) to enhance their children's intelligence, musical ability, or athletic prowess?

The defenders of enhancement are right to this extent: improving children through genetic engineering is similar in spirit to the heavily managed, high-pressure child-rearing that is now common. But this similarity does not vindicate genetic enhancement. On the contrary, it highlights a problem with the trend toward hyperparenting. One conspicuous example of this trend is sports-crazed parents bent on making champions of their children. Another is the frenzied drive of overbearing parents to mold and manage their children's academic careers.

As the pressure for performance increases, so does the need to help distractible children concentrate on the task at hand. This may be why diagnoses of attention deficit and hyperactivity disorder have increased so sharply. Lawrence Diller, a pediatrician and the author of *Running on Ritalin*, estimates that five to six percent of American children under eighteen (a total of four to five million kids) are currently prescribed Ritalin, Adderall, and other stimulants, the treatment of choice for ADHD. (Stimulants counteract hyperactivity by making it easier to focus and sustain attention.) The number of Ritalin prescriptions for children and adolescents has tripled over the past decade, but not all users suffer from attention disorders or hyperactivity. High school and college students have learned that prescription stimulants improve concentration for those with normal attention spans, and some buy or borrow their classmates' drugs to enhance their performance on the SAT or other exams. Since stimulants work for both medical and nonmedical purposes, they raise the same moral questions posed by other technologies of enhancement.

However those questions are resolved, the debate reveals the cultural distance we have traveled since the debate over marijuana, LSD, and other drugs a generation ago. Unlike the drugs of the 1960s and 1970s, Ritalin and Adderall are not for checking out but for buckling down, not for beholding the world and taking it in but for molding the world and fitting in. We used to speak of nonmedical drug use as "recreational." That term no longer applies. The steroids and stimulants that figure in the enhancement debate are not a source of recreation but a bid for compliance—a way of answering a competitive

society's demand to improve our performance and perfect our nature. This demand for performance and perfection animates the impulse to rail against the given. It is the deepest source of the moral trouble with enhancement.

Some see a clear line between genetic enhancement and other ways that people seek improvement in their children and themselves. Genetic manipulation seems somehow worse—more intrusive, more sinister—than other ways of enhancing performance and seeking success. But morally speaking, the difference is less significant than it seems. Bioengineering gives us reason to question the low-tech, high-pressure child-rearing practices we commonly accept. The hyperparenting familiar in our time represents an anxious excess of mastery and dominion that misses the sense of life as a gift. This draws it disturbingly close to eugenics.

The shadow of eugenics hangs over today's debates about genetic engineering and enhancement. Critics of genetic engineering argue that human cloning, enhancement, and the quest for designer children are nothing more than "privatized" or "free-market" eugenics. Defenders of enhancement reply that genetic choices freely made are not really eugenic—at least not in the pejorative sense. To remove the coercion, they argue, is to remove the very thing that makes eugenic policies repugnant.

Sorting out the lesson of eugenics is another way of wrestling with the ethics of enhancement. The Nazis gave eugenics a bad name. But what, precisely, was wrong with it? Was the old eugenics objectionable only insofar as it was coercive? Or is there something inherently wrong with the resolve to deliberately design our progeny's traits?

James Watson, the biologist who, with Francis Crick, discovered the structure of DNA, sees nothing wrong with genetic engineering and enhancement, provided they are freely chosen rather than state-imposed. And yet Watson's language contains more than a whiff of the old eugenic sensibility. "If you really are stupid, I would call that a disease," he recently told *The Times* of London. "The lower 10 percent who really have difficulty, even in elementary school, what's the cause of it? A lot of people would like to say, 'Well, poverty, things like that.' It probably isn't. So I'd like to get rid of that, to help the

lower 10 percent." A few years ago Watson stirred controversy by saying that if a gene for homosexuality were discovered, a woman should be free to abort a fetus that carried it. When his remark provoked an uproar, he replied that he was not singling out gays but asserting a principle: women should be free to abort fetuses for any reason of genetic preference—for example, if the child would be dyslexic, or lacking musical talent, or too short to play basketball.

Watson's scenarios are clearly objectionable to those for whom all abortion is an unspeakable crime. But for those who do not subscribe to the pro-life position, these scenarios raise a hard question: If it is morally troubling to contemplate abortion to avoid a gay child or a dyslexic one, doesn't this suggest that something is wrong with acting on any eugenic preference, even when no state coercion is involved?

Consider the market in eggs and sperm. The advent of artificial insemination allows prospective parents to shop for gametes with the genetic traits they desire in their offspring. It is a less predictable way to design children than cloning or pre-implantation genetic screening, but it offers a good example of a procreative practice in which the old eugenics meets the new consumerism. A few years ago some Ivy League newspapers ran an ad seeking an egg from a woman who was at least five feet ten inches tall and athletic, had no major family medical problems, and had a combined SAT score of 1400 or above. The ad offered \$50,000 for an egg from a donor with these traits. More recently a Web site was launched claiming to auction eggs from fashion models whose photos appeared on the site, at starting bids of \$15,000 to \$150,000.

On what grounds, if any, is the egg market morally objectionable? Since no one is forced to buy or sell, it cannot be wrong for reasons of coercion. Some might worry that hefty prices would exploit poor women by presenting them with an offer they couldn't refuse. But the designer eggs that fetch the highest prices are likely to be sought from the privileged, not the poor. If the market for premium eggs gives us moral qualms, this, too, shows that concerns about eugenics are not put to rest by freedom of choice.

A tale of two sperm banks helps explain why. The Repository for Germinal Choice, one of America's

first sperm banks, was not a commercial enterprise. It was opened in 1980 by Robert Graham, a philanthropist dedicated to improving the world's "germ plasm" and counteracting the rise of "retrograde humans." His plan was to collect the sperm of Nobel Prize-winning scientists and make it available to women of high intelligence, in hopes of breeding supersmart babies. But Graham had trouble persuading Nobel laureates to donate their sperm for his bizarre scheme, and so settled for sperm from young scientists of high promise. His sperm bank closed in 1999.

In contrast, California Cryobank, one of the world's leading sperm banks, is a for-profit company with no overt eugenic mission. Cappy Rothman, M.D., a co-founder of the firm, has nothing but disdain for Graham's eugenics, although the standards Cryobank imposes on the sperm it recruits are exacting. Cryobank has offices in Cambridge, Massachusetts, between Harvard and MIT, and in Palo Alto, California, near Stanford. It advertises for donors in campus newspapers (compensation up to \$900 a month), and accepts less than five percent of the men who apply. Cryobank's marketing materials play up the prestigious source of its sperm. Its catalogue provides detailed information about the physical characteristics of each donor, along with his ethnic origin and college major. For an extra fee prospective customers can buy the results of a test that assesses the donor's temperament and character type. Rothman reports that Cryobank's ideal sperm donor is six feet tall, with brown eyes, blond hair, and dimples, and has a college degree—not because the company wants to propagate those traits, but because those are the traits his customers want: "If our customers wanted high school dropouts, we would give them high school dropouts."

Not everyone objects to marketing sperm. But anyone who is troubled by the eugenic aspect of the Nobel Prize sperm bank should be equally troubled by Cryobank, consumer-driven though it be. What, after all, is the moral difference between designing children according to an explicit eugenic purpose and designing children according to the dictates of the market? Whether the aim is to improve humanity's "germ plasm" or to cater to consumer preferences, both practices are eugenic insofar as both make children into products of deliberate design.

A number of political philosophers call for a new "liberal eugenics." They argue that a moral distinction can be drawn between the old eugenic policies and genetic enhancements that do not restrict the autonomy of the child. "While old-fashioned authoritarian eugenicists sought to produce citizens out of a single centrally designed mould," writes Nicholas Agar, "the distinguishing mark of the new liberal eugenics is state neutrality." Government may not tell parents what sort of children to design, and parents may engineer in their children only those traits that improve their capacities without biasing their choice of life plans. A recent text on genetics and justice, written by the bioethicists Allen Buchanan, Dan W. Brock, Norman Daniels, and Daniel Wikler, offers a similar view. The "bad reputation of eugenics," they write, is due to practices that "might be avoidable in a future eugenic program." The problem with the old eugenics was that its burdens fell disproportionately on the weak and the poor, who were unjustly sterilized and segregated. But provided that the benefits and burdens of genetic improvement are fairly distributed, these bioethicists argue, eugenic measures are unobjectionable and may even be morally required.

The libertarian philosopher Robert Nozick proposed a "genetic supermarket" that would enable parents to order children by design without imposing a single design on the society as a whole: "This supermarket system has the great virtue that it involves no centralized decision fixing the future human type(s)."

Even the leading philosopher of American liberalism, John Rawls, in his classic *A Theory of Justice* (1971), offered a brief endorsement of noncoercive eugenics. Even in a society that agrees to share the benefits and burdens of the genetic lottery, it is "in the interest of each to have greater natural assets," Rawls wrote. "This enables him to pursue a preferred plan of life." The parties to the social contract "want to insure for their descendants the best genetic endowment (assuming their own to be fixed)." Eugenic policies are therefore not only permissible but required as a matter of justice. "Thus over time a society is to take steps at least to preserve the general level of natural abilities and to prevent the diffusion of serious defects."

But removing the coercion does not vindicate eugenics. The problem with eugenics and genetic engineering is that they represent the one-sided triumph of willfulness over giftedness, of dominion over reverence, of molding over beholding. Why, we may wonder, should we worry about this triumph? Why not shake off our unease about genetic enhancement as so much superstition? What would be lost if biotechnology dissolved our sense of giftedness?

From a religious standpoint the answer is clear: To believe that our talents and powers are wholly our own doing is to misunderstand our place in creation, to confuse our role with God's. Religion is not the only source of reasons to care about giftedness, however. The moral stakes can also be described in secular terms. If bioengineering made the myth of the "self-made man" come true, it would be difficult to view our talents as gifts for which we are indebted, rather than as achievements for which we are responsible. This would transform three key features of our moral landscape: humility, responsibility, and solidarity.

In a social world that prizes mastery and control, parenthood is a school for humility. That we care deeply about our children and yet cannot choose the kind we want teaches parents to be open to the unbidden. Such openness is a disposition worth affirming, not only within families but in the wider world as well. It invites us to abide the unexpected, to live with dissonance, to rein in the impulse to control. A *Gattaca*-like world in which parents became accustomed to specifying the sex and genetic traits of their children would be a world inhospitable to the unbidden, a gated community writ large. The awareness that our talents and abilities are not wholly our own doing restrains our tendency toward hubris.

Though some maintain that genetic enhancement erodes human agency by overriding effort, the real problem is the explosion, not the erosion, of responsibility. As humility gives way, responsibility expands to daunting proportions. We attribute less to chance and more to choice. Parents become responsible for choosing, or failing to choose, the right traits for their children. Athletes become responsible for acquiring, or failing to acquire, the talents that will help their teams win.

One of the blessings of seeing ourselves as creatures of nature, God, or fortune is that we are not

wholly responsible for the way we are. The more we become masters of our genetic endowments, the greater the burden we bear for the talents we have and the way we perform. Today when a basketball player misses a rebound, his coach can blame him for being out of position. Tomorrow the coach may blame him for being too short. Even now the use of performance-enhancing drugs in professional sports is subtly transforming the expectations players have for one another; on some teams players who take the field free from amphetamines or other stimulants are criticized for "playing naked."

The more alive we are to the chanced nature of our lot, the more reason we have to share our fate with others. Consider insurance. Since people do not know whether or when various ills will befall them, they pool their risk by buying health insurance and life insurance. As life plays itself out, the healthy wind up subsidizing the unhealthy, and those who live to a ripe old age wind up subsidizing the families of those who die before their time. Even without a sense of mutual obligation, people pool their risks and resources and share one another's fate.

But insurance markets mimic solidarity only insofar as people do not know or control their own risk factors. Suppose genetic testing advanced to the point where it could reliably predict each person's medical future and life expectancy. Those confident of good health and long life would opt out of the pool, causing other people's premiums to skyrocket. The solidarity of insurance would disappear as those with good genes fled the actuarial company of those with bad ones.

The fear that insurance companies would use genetic data to assess risks and set premiums recently led the Senate to vote to prohibit genetic discrimination in health insurance. But the bigger danger, admittedly more speculative, is that genetic enhancement, if routinely practiced, would make it harder to foster the moral sentiments that social solidarity requires.

Why, after all, do the successful owe anything to the least-advantaged members of society? The best answer to this question leans heavily on the notion of giftedness. The natural talents that enable the successful to flourish are not their own doing but, rather, their good fortune—a result of the genetic

lottery. If our genetic endowments are gifts, rather than achievements for which we can claim credit, it is a mistake and a conceit to assume that we are entitled to the full measure of the bounty they reap in a market economy. We therefore have an obligation to share this bounty with those who, through no fault of their own, lack comparable gifts.

A lively sense of the contingency of our gifts—a consciousness that none of us is wholly responsible for his or her success—saves a meritocratic society from sliding into the smug assumption that the rich are rich because they are more deserving than the poor. Without this, the successful would become even more likely than they are now to view themselves as self-made and self-sufficient, and hence wholly responsible for their success. Those at the bottom of society would be viewed not as disadvantaged, and thus worthy of a measure of compensation, but as simply unfit, and thus worthy of eugenic repair. The meritocracy, less chastened by chance, would become harder, less forgiving. As perfect genetic knowledge would end the simulacrum of solidarity in insurance markets, so perfect genetic control would erode the actual solidarity that arises when men and women reflect on the contingency of their talents and fortunes.

Thirty-five years ago Robert L. Sinsheimer, a molecular biologist at the California Institute of Technology, glimpsed the shape of things to come. In an article titled “The Prospect of Designed Genetic Change” he argued that freedom of choice would vindicate the new genetics, and set it apart from the discredited eugenics of old.

To implement the older eugenics. . . . would have required a massive social programme carried out over many generations. Such a programme could not have been initiated without the consent and co-operation of a major fraction of the population, and would have been continuously subject to social control. In contrast, the new eugenics could, at least in principle, be implemented on a quite individual basis, in one generation, and subject to no existing restrictions.

According to Sinsheimer, the new eugenics would be voluntary rather than coerced, and also more humane. Rather than segregating and eliminating

the unfit, it would improve them. “The old eugenics would have required a continual selection for breeding of the fit, and a culling of the unfit,” he wrote. “The new eugenics would permit in principle the conversion of all the unfit to the highest genetic level.”

Sinsheimer’s paean to genetic engineering caught the heady, Promethean self-image of the age. He wrote hopefully of rescuing “the losers in that chromosomal lottery that so firmly channels our human destinies,” including not only those born with genetic defects but also “the 50,000,000 ‘normal’ Americans with an IQ of less than 90.” But he also saw that something bigger than improving on nature’s “mindless, age-old throw of dice” was at stake. Implicit in technologies of genetic intervention was a more exalted place for human beings in the cosmos. “As we enlarge man’s freedom, we diminish his constraints and that which he must accept as given,” he wrote. Copernicus and Darwin had “demoted man from his bright glory at the focal point of the universe,” but the new biology would restore his central role. In the mirror of our genetic knowledge we would see ourselves as more than a link in the chain of evolution: “We can be the agent of transition to a whole new pitch of evolution. This is a cosmic event.”

There is something appealing, even intoxicating, about a vision of human freedom unfettered by the given. It may even be the case that the allure of that vision played a part in summoning the genomic age into being. It is often assumed that the powers of enhancement we now possess arose as an inadvertent by-product of biomedical progress—the genetic revolution came, so to speak, to cure disease, and stayed to tempt us with the prospect of enhancing our performance, designing our children, and perfecting our nature. That may have the story backwards. It is more plausible to view genetic engineering as the ultimate expression of our resolve to see ourselves astride the world, the masters of our nature. But that promise of mastery is flawed. It threatens to banish our appreciation of life as a gift, and to leave us with nothing to affirm or behold outside our own will.

Michael J. Sandel: The Case Against Perfectionism

1. Explain the difference between “accepting love” and “transforming love.” To illustrate,

- give an example of each. Why does Sandel think both are important and how does he think they should be balanced? According to Sandel, what implications does this have for how parents should treat their children? Do you agree? Why or why not?
2. Explain how “liberal eugenics” differs from “old-fashioned authoritarian eugenics.” Under what conditions do the proponents of “liberal eugenics” think that genetic engineering is morally permissible? Do you think that these conditions could ever be met? If they could be met, do you agree that in such circumstances genetic engineering would be morally permissible? Why or why not?
3. What does Sandel think the point of sports is? Explain the distinction between talent and striving, and how each contributes to our assessments of athletes and athletic performances. How do these considerations mirror those relevant to the moral permissibility of human enhancement? What lesson does Sandel draw from his consideration of athletics?
4. Sandel thinks that the practice of bioengineering will “[dissolve] our sense of giftedness,” which in turn will “transform three key features of our moral landscape.” Identify these three features and explain how Sandel thinks bioengineering would transform them. Do you agree with his assessment? Do you think the likely effects of bioengineering are a good reason to reject it? Defend your answer.
5. What does Sandel mean by “the ethic of giftedness”? What obligations does it impose upon us? What kind of obligations do we have that conflict with giftedness? According to Sandel, what implications does the ethic of giftedness have for the moral permissibility of human enhancement? Do you agree with this assessment? Why or why not?

Genetic Interventions and the Ethics of Enhancement of Human Beings

Julian Savulescu

Julian Savulescu offers three arguments in defense of the genetic enhancement of human beings.

First, suppose that parents could greatly improve their child’s intelligence by altering the child’s diet. They are lazy and fail to do this. We would condemn the parents for their laziness. Things are no different when it comes to genetic enhancements. If parents have the opportunity to greatly benefit their children, but deliberately or negligently fail to do so, then they have acted wrongly. It doesn’t matter whether the benefit is conferred by enhanced diet or by introducing genetic changes.

Second, consistency requires that we treat “environmental” and biological enhancements in the same way. We train our children to be cooperative, intelligent, and well behaved. Such parental “interventions” alter a child’s brain structure in irreversible but highly beneficial ways. This is exactly what many genetic interventions do. Instilling useful and enjoyable traits in one’s child is morally required. Genetic enhancement helps parents to meet this requirement.

Third, if we accept the treatment and prevention of disease as an important goal, then we should accept genetic interventions. Diseases undermine health, which in turn

undermines a person's well-being and quality of life. Failure to prevent diseases by the use of genetic intervention is just as bad as failure to prevent them by the use of available drugs or surgeries.

Savulescu then replies to various objections that have been leveled against genetic enhancement. (1) Such practices amount to "playing God." Reply: we rightly make life-or-death decisions all the time, and many are permissible. (2) Genetic interventions will have discriminatory results. Reply: many people are born with serious biological handicaps, and genetic intervention can level the playing field and thus erase much existing disparity between those who were favored in the "natural lottery" and those who weren't. (3) Genetic engineering will lead to a single model of a desired child, and a sterile world where the surprise and mystery of life would disappear. Reply: manipulating genes will never erase differences among people and will still leave huge elements of our lives subject to chance. (4) Genetic enhancement is contrary to human nature. Reply: our nature as human beings is to be rational, and that requires us to use our reason to determine how best to improve our lives. Genetic engineering will do just that. (5) Genetic enhancement is self-defeating; its goal of making some people superior—more beautiful, intelligent, hard-working than others—will fail if everyone is genetically enhanced. Reply: critics have mistaken the goal of such enhancement: it is not to create or reinforce social divisions, but rather to improve people's lives.

Should we use science and medical technology not just to prevent or treat disease, but to intervene at the most basic biological levels to improve biology and enhance people's lives? By 'enhance', I mean help them to live a longer and/or better life than normal. There are various ways in which we can enhance people but I want to focus on biological enhancement, especially genetic enhancement.

THE ETHICS OF ENHANCEMENT

I will now give three arguments in favour of enhancement and then consider several objections.

First Argument for Enhancement: Choosing Not to Enhance Is Wrong

Consider the case of the Neglectful Parents. The Neglectful Parents give birth to a child with a special condition. The child has a stunning intellect but requires a simple, readily available, cheap dietary supplement

to sustain his intellect. But they neglect the diet of this child and this results in a child with a stunning intellect becoming normal. This is clearly wrong.

But now consider the case of the Lazy Parents. They have a child who has a normal intellect but if they introduced the same dietary supplement, the child's intellect would rise to the same level as the child of the Neglectful Parent. They can't be bothered with improving the child's diet so the child remains with a normal intellect. Failure to institute dietary supplementation means a normal child fails to achieve a stunning intellect. The inaction of the Lazy Parents is as wrong as the inaction of the Neglectful Parents. It has exactly the same consequence: a child exists who could have had a stunning intellect but is instead normal.

Some argue that it is not wrong to fail to bring about the best state of affairs. This may or may not be the case. But in these kinds of case, when there are no other relevant moral considerations, the failure to introduce a diet that sustains a more desirable state is as wrong as the failure to introduce a diet that brings about a more desirable state. The costs of inaction are the same, as are the parental obligations.

From Julian Savulescu, "Genetic Interventions and the Ethics of Enhancement of Human Beings," in *The Oxford Handbook of Bioethics* (Oxford University Press, 2007), Bonnie Steinbock (ed.), pp. 516–535. By permission of Oxford University Press.

If we substitute 'biological intervention' for 'diet', we see that in order not to wrong our children, we should enhance them. Unless there is something special and optimal about our children's physical, psychological, or cognitive abilities, or something different about other biological interventions, it would be wrong not to enhance them.

Second Argument: Consistency

Some will object that, while we do have an obligation to institute better diets, biological interventions like genetic interventions are different from dietary supplementation. I will argue that there is no difference between these interventions.

In general, we accept environmental interventions to improve our children. Education, diet, and training are all used to make our children better people and increase their opportunities in life. We train children to be well behaved, cooperative, and intelligent. Indeed, researchers are looking at ways to make the environment more stimulating for young children to maximize their intellectual development. But in the study of the rat model of Huntington's Chorea, the stimulating environment acted to change the brain structure of the rats. The drug Prozac acted in just the same way. These environmental manipulations do not act mysteriously. They alter our biology.

The most striking example of this is a study of rats that were extensively mothered and rats that were not mothered. The mothered rats showed genetic changes (changes in the methylation of the DNA) that were passed on to the next generation. . . . More generally, environmental manipulations can profoundly affect biology. Maternal care and stress have been associated with abnormal brain (hippocampal) development, involving altered nerve growth factors and cognitive, psychological, and immune deficits later in life.

Some argue that genetic manipulations are different because they are irreversible. But environmental interventions can equally be irreversible. Child neglect or abuse can scar a person for life. It may be impossible to unlearn the skill of playing the piano or riding a bike, once learnt. One may be wobbly, but one is a novice only once. Just as the example of mothering of rats shows that environmental interventions can cause biological changes

that are passed onto the next generation, so too can environmental interventions be irreversible, or very difficult to reverse, within one generation.

Why should we allow environmental manipulations that alter our biology but not direct biological manipulations? What is the moral difference between producing a smarter child by immersing that child in a stimulating environment, giving the child a drug, or directly altering the child's brain or genes?

One example of a drug that alters brain chemistry is Prozac, which is a serotonin reuptake inhibitor. Early in life it acts as a nerve growth factor, but it may also alter the brain early in life to make it more prone to stress and anxiety later in life by altering receptor development. . . . Drugs like Prozac and maternal deprivation may have the same biological effects.

If the outcome is the same, why treat biological manipulation differently from environmental manipulation? Not only may a favourable environment improve a child's biology and increase a child's opportunities, so too may direct biological interventions. Couples should maximize the genetic opportunity of their children to lead a good life and a productive, cooperative social existence. There is no relevant moral difference between environmental and genetic intervention.

Third Argument: No Difference from Treating Disease

If we accept the treatment and prevention of disease, we should accept enhancement. The goodness of health is what drives a moral obligation to treat or prevent disease. But health is not what ultimately matters—health enables us to live well; disease prevents us from doing what we want and what is good. Health is instrumentally valuable—valuable as a resource that allows us to do what really matters, that is, lead a good life.

What constitutes a good life is a deep philosophical question. According to hedonistic theories, what is good is having pleasant experiences and being happy. According to desire fulfilment theories, and economics, what matters is having our preferences satisfied. According to objective theories, certain activities are good for people: developing deep personal relationships, developing talents, understanding oneself and the world, gaining knowledge, being a part

of a family, and so on. We need not decide on which of these theories is correct in order to understand what is bad about ill health. Disease is important because it causes pain, is not what we want, and stops us engaging in those activities that give meaning to life. Sometimes people trade health for well-being: mountain climbers take on risk to achieve, smokers sometimes believe that the pleasures outweigh the risks of smoking, and so on. Life is about managing risk to health and life to promote well-being.

Beneficence—the moral obligation to benefit people—provides a strong reason to enhance people in so far as the biological enhancement increases their chance of having a better life. But can biological enhancements increase people's opportunities for well-being? There are reasons to believe that they might.

Many of our biological and psychological characteristics profoundly affect how well our lives go. In the 1960s Walter Mischel conducted impulse control experiments in which 4-year-old children were left in a room with one marshmallow, after being told that if they did not eat the marshmallow, they could later have two. Some children would eat it as soon as the researcher left; others would use a variety of strategies to help control their behaviour and ignore the temptation of the single marshmallow. A decade later they reinterviewed the children and found that those who were better at delaying gratification had more friends, better academic performance, and more motivation to succeed. Whether the child had grabbed for the marshmallow had a much stronger bearing on their SAT scores than did their IQ (Mischel *et al.* 1988).

Impulse control has also been linked to socio-economic control and avoiding conflict with the law. The problems of a hot and uncontrollable temper can be profound.

Shyness too can greatly restrict a life. I remember one newspaper story about a woman who blushed violet every time she went into a social situation. This led her to a hermitic, miserable existence. She eventually had the autonomic nerves to her face surgically cut. This revolutionized her life and had a greater effect on her well-being than the treatment of many diseases.

Buchanan and colleagues have discussed the value of 'all purpose goods' (Buchanan *et al.* 2000). These are traits that are valuable regardless of the kind of life a person chooses to live. They give us

greater all-round capacities to live a vast array of lives. Examples include intelligence, memory, self-discipline, patience, empathy, a sense of humour, optimism, and just having a sunny temperament. All of these characteristics—sometimes described as virtues—may have some biological and psychological basis capable of manipulation using technology.

Technology might even be used to improve our *moral character*. We certainly seek through good instruction and example, discipline, and other methods to make better children. It may be possible to alter biology to make people predisposed to be more moral by promoting empathy, imagination, sympathy, fairness, honesty, etc.

In so far as these characteristics have some genetic basis, genetic manipulation could benefit us. There is reason to believe that complex virtues like fair-mindedness may have a biological basis. In one famous experiment a monkey was trained to perform a task and rewarded with either a grape or a piece of cucumber. He preferred the grape. On one occasion he performed the task successfully and was given a piece of cucumber. He watched as another monkey who had not performed the task was given a grape and he became very angry. This shows that even monkeys have a sense of fairness and desert—or at least self-interest!

At the other end, there are characteristics that we believe do not make for a good and happy life. One Dutch family illustrates the extreme end of the spectrum. For over thirty years this family recognized that there were a disproportionate number of male family members who exhibited aggressive and criminal behaviour (Morell 1993). This was characterized by aggressive outbursts resulting in arson, attempted rape, and exhibitionism. When a family tree was constructed, the pattern of inheritance was clearly X-linked recessive. This means, roughly, that women can carry the gene without being affected; 50 per cent of men at risk of inheriting the gene get the gene and are affected by the disease.

Genetic analysis suggested that the likely defective gene was a part of the X chromosome known as the monoamine oxidase region. This region codes for two enzymes that assist in the breakdown of neurotransmitters. Neurotransmitters are substances that play a key role in the conduction of nerve

impulses in our brain. Enzymes like the monoamine oxidases are required to degrade the neurotransmitters after they have performed their desired task. It was suggested that the monoamine oxidase activity might be disturbed in the affected individuals. Urine analysis showed a higher than normal amount of neurotransmitters being excreted in the urine of affected males (Morell 1993). These results were consistent with a reduction in the functioning of one of the enzymes (monoamine oxidase A).

How can such a mutation result in violent and antisocial behaviour? A deficiency of the enzyme results in a build-up of neurotransmitters. These abnormal levels of neurotransmitters result in excessive, and even violent, reactions to stress. This hypothesis was further supported by the finding that genetically modified mice that lack this enzyme are more aggressive.

This family is an extreme example of how genes can influence behaviour: it is the only family in which this mutation has been isolated. Most genetic contributions to behaviour will be weaker predispositions, but there may be some association between genes and behaviour that results in criminal and other antisocial behaviour.

How could information such as this be used? Some criminals have attempted a 'genetic defence' in the United States, stating that their genes caused them to commit the crime, but this has never succeeded. However, it is clear that couples should be allowed to test to select offspring who do not have the mutation that predisposes them to act in this way, and if interventions were available, it might be rational to correct it since children without the mutation have a better chance of a good life.

'Genes, Not Men, May Hold the Key to Female Pleasure' ran the title of one recent newspaper article (*The Age* 2005), which reported the results of a large study of female identical twins in Britain and Australia. It found that 'genes accounted for 31 per cent of the chance of having an orgasm during intercourse and 51 per cent during masturbation'. It concluded that the 'ability to gain sexual satisfaction is largely inherited' and went on to speculate that 'The genes involved could be linked to physical differences in sex organs and hormone levels or factors such as mood and anxiety.'

Our biology profoundly affects how our lives go. If we can increase sexual satisfaction by modifying biology, we should. Indeed, vast numbers of men attempt to do this already through the use of Viagra.

Summary: The Case for Enhancement

What matters is human well-being, not just treatment and prevention of disease. Our biology affects our opportunities to live well. The biological route to improvement is no different from the environmental. Biological manipulation to increase opportunity is ethical. If we have an obligation to treat and prevent disease, we have an obligation to try to manipulate these characteristics to give an individual the best opportunity of the best life.

HOW DO WE DECIDE?

If we are to enhance certain qualities, how should we decide which to choose? Eugenics was the movement early in the last century that aimed to use selective breeding to prevent degeneration of the gene pool by weeding out criminals, those with mental illness, and the poor, on the false belief that these conditions were simple genetic disorders. The eugenics movement had its inglorious peak when the Nazis moved beyond sterilization to extermination of the genetically unfit.

What was objectionable about the eugenics movement, besides its shoddy scientific basis, was that it involved the imposition of a state vision for a healthy population and aimed to achieve this through coercion. The movement was aimed not at what was good for individuals, but rather at what benefited society. Modern eugenics in the form of testing for disorders, such as Down syndrome, occurs very commonly but is acceptable because it is voluntary, gives couples a choice of what kind of child to have, and enables them to have a child with the greatest opportunity for a good life.

There are four possible ways in which our genes and biology will be decided:

1. nature or God;
2. 'experts' (philosophers, bioethicists, psychologists, scientists);
3. 'authorities' (government, doctors);
4. people themselves: liberty and autonomy.

It is a basic principle of liberal states like the United Kingdom that the state be 'neutral' to different conceptions of the good life. This means that we allow individuals to lead the life that they believe is best for themselves, implying respect for their personal autonomy or capacity for self-rule. The sole ground for interference is when that individual choice may harm others. Advice, persuasion, information, dialogue are permissible. But coercion and infringement of liberty are impermissible.

There are limits to what a liberal state should provide:

1. safety: the intervention should be reasonably safe;
2. harm to others: the intervention (like some manipulation that increases uncontrollable aggressiveness) should not result in harm. Such harm should not be direct or indirect, for example, by causing some unfair competitive advantage;
3. distributive justice: the interventions should be distributed according to principles of justice.

The situation is more complex with young children, embryos, and fetuses, who are incompetent. These human beings are not autonomous and cannot make choices themselves about whether a putative enhancement is a benefit or a harm. If a proposed intervention can be delayed until that human reaches maturity and can decide for himself or herself, then the intervention should be delayed. However, many genetic interventions will have to be performed very early in life if they are to have an effect. Decisions about such interventions should be left to parents, according to a principle of procreative liberty and autonomy. This states that parents have the freedom to choose when to have children, how many children to have, and arguably what kind of children to have.

Just as parents have wide scope to decide on the conditions of the upbringing of their children, including schooling and religious education, they should have similar freedom over their children's genes. Procreative autonomy or liberty should be extended to enhancement for two reasons. First, reproduction: bearing and raising children is a very private matter. Parents must bear much of

the burden of having children, and they have a legitimate stake in the nature of the child they must invest so much of their lives raising.

But there is a second reason. John Stuart Mill argued that when our actions only affect ourselves, we should be free to construct and act on our own conception of what is the best life for us. Mill was not a libertarian. He did not believe that such freedom is valuable solely for its own sake. He believed that freedom is important in order for people to discover for themselves what kind of life is best for themselves. It is only through 'experiments in living' that people discover what works for them and others come to see the richness and variety of lives that can be good. Mill strongly praised 'originality' and variety in choice as being essential to discovering which lives are best for human beings.

Importantly, Mill believed that some lives are worse than others. Famously, he said that it is better to be Socrates dissatisfied than a fool satisfied. He distinguished between 'higher pleasures' of 'feelings and imagination' and 'lower pleasures' of 'mere sensation' (Mill 1910: 7). He criticized 'ape-like imitation', subjugation of oneself to custom and fashion, indifference to individuality, and lack of originality (1910: 119–20, 123). Nonetheless, he was the champion of people's right to live their lives as they choose.

I have said that it is important to give the freest scope possible to uncustomary things, in order that it may appear in time which of these are fit to be converted into customs. But independence of action, and disregard of custom, are not solely deserving of encouragement for the chance they afford that better modes of action, and customs more worthy of general adoption, may be struck out; nor is it only persons of decided mental superiority who have a just claim to carry on their lives in their own way. There is no reason that all human existence should be constructed on some one or small number of patterns. If a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode (Mill 1910:125).

I believe that reproduction should be about having children with the best prospects. But to discover what are the best prospects, we must give individual couples the freedom to act on their own

value judgement of what constitutes a life with good prospects. 'Experiments in reproduction' are as important as 'experiments in living' (as long as they don't harm the children who are produced). For this reason, procreative freedom is important.

There is one important limit to procreative autonomy that is different from the limits to personal autonomy. The limits to procreative autonomy should be:

1. safety;
2. harm to others;
3. distributive justice;
4. *such that the parent's choices are based on a plausible conception of well-being and a better life for the child;*
5. *consistent with development of autonomy in the child and a reasonable range of future life plans.*

These last two limits are important. It makes for a higher standard of 'proof' that an intervention will be an enhancement because the parents are making choices for their child, not themselves. The critical question to ask in considering whether to alter some gene related to complex behaviour is: Would the change be better for the individual? Is it better for the individual to have a tendency to be lazy or hardworking, monogamous or polygamous? These questions are difficult to answer. While we might let adults choose to be monogamous or polygamous, we would not let parents decide on their child's predispositions unless we were reasonably clear that some trait was better for the child.

There will be cases where some intervention is plausibly in a child's interests: increased empathy with other people, better capacity to understand oneself and the world around, or improved memory. One quality is especially associated with socio-economic success and staying out of prison: impulse control. If it were possible to correct poor impulse control, we should correct it. Whether we should remove impulsiveness altogether is another question.

Joel Feinberg has described a child's right to an open future (Feinberg 1980). An open future is one in which a child has a reasonable range of possible lives to choose from and an opportunity to choose what kind of person to be; that is, to develop autonomy. Some critics of enhancement have argued that

genetic interventions are inconsistent with a child's right to an open future (Davis 1997). Far from restricting a child's future, however, some biological interventions may increase the possible futures or at least their quality. It is hard to see how improved memory or empathy would restrict a child's future. Many worthwhile possibilities would be open. But it is true that parental choice should not restrict the development of autonomy or reasonable range of possible futures open to a child. In general, fewer enhancements will be permitted in children than in adults. Some interventions, however, may still be clearly enhancements for our children, and so just like vaccinations or other preventative health care.

OBJECTIONS

Playing God or Against Nature

This objection has various forms. Some people in society believe that children are a gift, of God or of nature, and that we should not interfere in human nature. Most people implicitly reject this view: we screen embryos and fetuses for diseases, even mild correctable diseases. We interfere in nature or God's will when we vaccinate, provide pain relief to women in labour (despite objections of some earlier Christians that these practices thwarted God's will), and treat cancer. No one would object to the treatment of disability in a child if it were possible. Why, then, not treat the embryo with genetic therapy if that intervention is safe? This is no more thwarting God's will than giving antibiotics.

Another variant of this objection is that we are arrogant if we assume we could have sufficient knowledge to meddle with human nature. Some people object that we cannot know the complexity of the human system, which is like an unknowable magnificent symphony. To attempt to enhance one characteristic may have other unknown, unforeseen effects elsewhere in the system. We should not play God since, unlike God, we are not omnipotent or omniscient. We should be humble and recognize the limitations of our knowledge.

A related objection is that genes are pleiotropic—which means they have different effects in different environments. The gene or genes that predispose to manic depression may also be responsible for heightened creativity and productivity.

One response to both of these objections is to limit intervention, until our knowledge grows, to selecting between different embryos, and not intervening to enhance particular embryos or people. Since we would be choosing between complete systems on the basis of their type, we would not be interfering with the internal machinery. In this way, selection is less risky than enhancement.

But such a precaution could also be misplaced when considering biological interventions. When benefits are on offer, such objections remind us to refrain from hubris and over-confidence. We must do adequate research before intervening. And because the benefits may be fewer than when we treat or prevent disease, we may require the standards of safety to be higher than for medical interventions. But we must weigh the risks against the benefits. If confidence is justifiably high, and benefits outweigh harms, we should enhance.

Once technology affords us the power to enhance our own and our children's lives, to fail to do so would be to be responsible for the consequences. To fail to treat our children's diseases is to wrong them. To fail to prevent them from getting depression is to wrong them. To fail to improve their physical, musical, psychological, and other capacities is to wrong them, just as it would be to harm them if we gave them a toxic substance that stunted or reduced these capacities.

Another variant of the 'Playing God' objection is that there is a special value in the balance and diversity that natural variation affords, and enhancement will reduce this. But in so far as we are products of evolution, we are merely random chance variations of genetic traits selected for our capacity to survive long enough to reproduce. There is no design to evolution. Evolution selects genes, according to environment, that confer the greatest chance of survival and reproduction. Evolution would select a tribe that was highly fertile but suffered great pain the whole of their lives over another tribe that was less fertile but suffered less pain. Medicine has changed evolution: we can now select individuals who experience less pain and disease. The next stage of human evolution will be rational evolution, according to which we select children who not only have the greatest chance of surviving, reproducing,

and being free of disease, but who have the greatest opportunities to have the best lives in their likely environment. Evolution was indifferent to how well our lives went; we are not. We want to retire, play golf, read, and watch our grandchildren have children.

'Enhancement' is a misnomer. It suggests luxury. But enhancement is no luxury. In so far as it promotes well-being, it is the very essence of what is necessary for a good human life. There is no moral reason to preserve some traits—such as uncontrollable aggressiveness, a sociopathic personality, or extreme deviousness. Tell the victim of rape and murder that we must preserve diversity and the natural balance.

Genetic Discrimination

Some people fear the creation of a two-tier society of the enhanced and the unenhanced, where the inferior, unenhanced are discriminated against and disadvantaged all through life.

We must remember that nature allots advantage and disadvantage with no gesture to fairness. Some are born horribly disadvantaged, destined to die after short and miserable lives. Some suffer great genetic disadvantage while others are born gifted, physically, musically, or intellectually. There is no secret that there are 'gifted' children naturally. Allowing choice to change our biology will, if anything, be more egalitarian, allowing the un-gifted to approach the gifted. There is nothing fair about the natural lottery: allowing enhancement may be fairer.

But more importantly, how well the lives of those who are disadvantaged go depends not on whether enhancement is permitted, but on the social institutions we have in place to protect the least well off and provide everyone with a fair chance. People have disease and disability: egalitarian social institutions and laws against discrimination are designed to make sure everyone, regardless of natural inequality, has a decent chance of a decent life. This would be no different if enhancement were permitted. There is no necessary connection between enhancement and discrimination, just as there is no necessary connection between curing disability and discrimination against people with disability.

The Perfect Child, Sterility, and Loss of the Mystery of Life

If we engineered perfect children, this objection goes, the world would be a sterile, monotonous place where everyone was the same, and the mystery and surprise of life would be gone.

It is impossible to create perfect children. We can only attempt to create children with better opportunities of a better life. There will necessarily be difference. Even in the case of screening for disability, like Down syndrome, 10 per cent of people choose not to abort a pregnancy known to be affected by Down syndrome. People value different things. There will never be complete convergence. Moreover, there will remain massive challenges for individuals to meet in their personal relationships and in the hurdles our unpredictable environment presents. There will remain much mystery and challenge—we will just be better able to deal with these. We will still have to work to achieve, but our achievements may have greater value.

Against Human Nature

One of the major objections to enhancement is that it is against human nature. Common alternative phrasings are that enhancement is tampering with our nature or an affront to human dignity. I believe that what separates us from other animals is our rationality, our capacity to make normative judgements and act on the basis of reasons. When we make decisions to improve our lives by biological and other manipulations, we express our rationality and express what is fundamentally important about our nature. And if those manipulations improve our capacity to make rational and normative judgements, they further improve what is fundamentally human. Far from being against the human spirit, such improvements express the human spirit. To be human is to be better.

Enhancements Are Self-Defeating

Another familiar objection to enhancement is that enhancements will have self-defeating or other adverse social effects. A typical example is increase in height. If height is socially desired, then everyone will try to enhance the height of their children at great cost to themselves and the environment (as

taller people consume more resources), with no advantage in the end since there will be no relative gain.

If a purported manipulation does not improve well-being or opportunity, there is no argument in favour of it. In this case, the manipulation is not an enhancement. In other cases, such as enhancement of intelligence, the enhancement of one individual may increase that individual's opportunities only at the expense of another. So-called positional goods are goods only in a relative sense.

But many enhancements will have both positional and non-positional qualities. Intelligence is good not just because it allows an individual to be more competitive for complex jobs, but because it allows an individual to process information more rapidly in her own life, and to develop greater understanding of herself and others. These non-positional effects should not be ignored. Moreover, even in the case of so-called purely positional goods, such as height, there may be important non-positional values. It is better to be taller if you are a basketball player, but being tall is a disadvantage in balance sports such as gymnastics, skiing, and surfing.

Nonetheless, if there are significant social consequences of enhancement, this is of course a valid objection. But it is not particular to enhancement: there is an old question about how far individuals in society can pursue their own self-interest at a cost to others. It applies to education, health care, and virtually all areas of life.

Not all enhancements will be ethical. The critical issue is that the intervention is expected to bring about more benefits than harms to the individual. It must be safe and there must be a reasonable expectation of improvement. Some of the other features of ethical enhancements are summarized below.

WHAT IS AN ETHICAL ENHANCEMENT?

An ethical enhancement:

1. is in the person's interests;
2. is reasonably safe;
3. increases the opportunity to have the best life;
4. promotes or does not unreasonably restrict the range of possible lives open to that person;

5. does not unreasonably harm others directly through excessive costs in making it freely available;
6. does not place that individual at an unfair competitive advantage with respect to others, e.g. mind-reading;
7. is such that the person retains significant control or responsibility for her achievements and self that cannot be wholly or directly attributed to the enhancement;
8. does not unreasonably reinforce or increase unjust inequality and discrimination—economic inequality, racism.

What Is an Ethical Enhancement for a Child or Incompetent Human Being?

Such an ethical enhancement is all the above, but in addition:

1. the intervention cannot be delayed until the child can make its own decision;
2. the intervention is plausibly in the child's interests;
3. the intervention is compatible with the development of autonomy.

CONCLUSION

Enhancement is already occurring. In sport, human erythropoietin boosts red blood cells. Steroids and growth hormone improve muscle strength. Many people seek cognitive enhancement through nicotine, Ritalin, Modavigil, or caffeine. Prozac, recreational drugs, and alcohol all enhance mood. Viagra is used to improve sexual performance.

And of course mobile phones and aeroplanes are examples of external enhancing technologies. In the future, genetic technology, nanotechnology, and artificial intelligence may profoundly affect our capacities.

Will the future be better or just disease-free? We need to shift our frame of reference from health to life enhancement. What matters is how we live. Technology can now improve that. We have two options:

1. Intervention:
 - treating disease;
 - preventing disease;
 - supra-prevention of disease—preventing disease in a radically unprecedented way;

- protection of well-being;
 - enhancement of well-being.
2. No intervention, and to remain in a state of nature—no treatment or prevention of disease, no technological enhancement.

I believe that to be human is to be better. Or, at least, to strive to be better. We should be here for a *good* time, not just a *long* time. Enhancement, far from being merely permissible, is something we should aspire to achieve.

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Julian Savulescu: Genetic Interventions and the Ethics of Enhancement of Human Beings

1. What limits does Savulescu place on procreative autonomy over and above the limits placed on personal autonomy? Why does he think these limits are important? Do you think these limits are enough to protect the rights of children? Explain and defend your answer.
2. Explain Savulescu's consistency argument. What do you think the most powerful objection to this argument is? How do you think Savulescu would respond? Do you think this objection is ultimately successful? Why or why not?
3. Explain why eugenics might pose a problem for Savulescu's view. According to Savulescu,

who should decide when and how to enhance certain qualities? Do you think his account is enough to neutralize the eugenics worry? Defend your response.

4. Savulescu considers a number of objections to his account. Reconstruct one of the objections as a valid argument. Then, explain how Savulescu responds to this argument by saying which premise he rejects and why. Do you think his response is successful? Why or why not?
5. Savulescu defends genetic enhancement by arguing that it is analogous to treating disease.

Explain this argument. Then discuss the potential differences between treating disease and genetic enhancement. Is Savulescu right to say that there is *morally relevant* difference between the two? Defend your response.

6. Explain the principle of procreative liberty and autonomy. Then, explain the two reasons Savulescu cites for applying this principle to human enhancement. Do you think that this is enough to show that parents should have some freedom in determining their children's genes? Why or why not?

GMOs? Not So Fast

Roberta Millstein

Roberta Millstein argues that there are excellent reasons for the government to legally require the labeling of GMOs as such and to exercise stricter oversight over GMO testing. But she doesn't think that GMOs should be banned or outlawed. Indeed, she finds GMO research quite promising. Thus, Millstein takes what she describes as a "middle-ground position" on the topic of GMOs.

Those who have concerns about GMOs and want them to be labeled are often criticized for being anti-science. It's often claimed that the beliefs that underlie anti-GMO attitudes are no more credible than those that support the denial of climate change or evolution. Millstein offers six considerations against this anti-science charge. Her central claim is that much of what underlies concern about GMOs is not a failure to understand the science. It's rather concern about the values at stake—for instance, what counts as healthy, how to weigh risks versus benefits, or who has a right to know what they're eating. And these concerns, she argues, get their power not from ignorance of GMO technology, but rather from a deep understanding of it. Thus the charge that GMO critics are anti-science is mistaken.

Millstein thinks that many people reasonably wish to avoid eating GMOs—either for health or environmental reasons. But due to the widespread presence of GMOs and the lack of labeling regulations, it's impossible for such people to live as they wish. She thinks that requiring GMO labeling is a good way to balance the concerns of GMO critics with those who find GMOs unproblematic. Requiring GMO labeling allows people to live in accord with their values without outlawing GMOs or halting GMO research and development.

From Roberta Millstein, "GMOs? Not So Fast," *The Common Reader* (May 8, 2015). <https://commonreader.wustl.edu/c/gmos-not-so-fast/>

Genetically Modified Organisms (GMOs) have become a hot political issue. Thirty states have considered legislation that would label food containing GMOs. Two states, Maine and Connecticut, have passed GMO labeling laws that will go into effect if nearby states pass GMO labeling laws. Vermont's GMO labeling law will go into effect in 2016—barring the success of a lawsuit against it. Outside of the United States, 64 countries have GMO labeling laws. However, U.S. Rep. Mike Pompeo (R-Kan.) and Rep. G. K. Butterfield (D-N.C.) have introduced a bill in Congress that would block states from implementing their own labeling laws. Critics have lampooned the bill as the “Deny Americans the Right-to-Know” or DARK Act.

What is the fuss about? Are foods containing GMOs something that consumers should be worried about? Are they the product of unnatural tampering—are they “Frankenfoods”? Many scientists say “No.” Rather, they say that proponents of labeling are anti-science. The debate has become polarized.

As a philosopher of science, I think I can best help by sorting through some of the arguments concerning GMOs—arguments being a philosopher's stock-in-trade—in particular by showing how a proper understanding of science and values can help to understand the issues at stake. This is difficult to do, since some of the GMO studies themselves are controversial. So, I will try to be scrupulous with my sources, citing only peer-reviewed articles and well-accepted findings.

Let me put my cards on the table from the outset. I think there are good reasons to label GMOs. However, I am not “anti-GMO”—I don't think GMOs should be banned or outlawed, and some applications are promising. Research should continue. But there needs to be stricter oversight of GMO testing. In short, I take a middle-ground position which will no doubt antagonize both sides. But it is the middle ground that the arguments steer us toward.

WHAT ARE GMOS?

GMOs are organisms, including plants and animals that we eat, that are created using recombinant DNA methods (“genetic engineering”). These methods allow a gene from any species, including

distantly related species, to be inserted and subsequently expressed in a different species, such as a food crop. (When a gene is “expressed,” that means that it is producing a desired protein, which it will do if it is in the right genetic environment and the right external environment). There are also GMOs that are not designed to be eaten, such as GM bacteria for medical purposes.

Most GMOs on the market today have been designed in one of two ways. First, many crops are *resistant to herbicides*. For example, Monsanto's “Roundup Ready” crops are resistant to Monsanto's Roundup herbicide, which has glyphosate as its main ingredient. These crops allow farmers to spray their crops with the herbicide, killing the weeds but not killing the crop. Second, many crops *contain a pesticide*, usually *Bt* (*Bacillus thuringiensis*), which protects crops from pests such as the European corn borer. Here the pest eats the crop and dies; there is no need to spray.

Biotech companies claim that modifications like these will increase crop yields, save farmers time and money, and reduce the use of pesticides and herbicides.

The majority of GM plants are used to make ingredients that are used in other foods: soybean, canola, sugar beets, corn, cotton. These are contained in everyday foods such as cornstarch in soups and sauces; corn syrup as a general purpose sweetener; cottonseed oil, canola oil, and soybean oil in mayonnaise, salad dressings, cereals, breads, and snack foods. GMOs are also fed to livestock, leading to indirect human consumption of GMOs.

According to the FDA, in 2012, approximately 88 percent of corn, 93 percent of soybeans, and 94 percent of cotton produced in the United States was genetically modified. This suggests that unless you have made a special effort to avoid eating GMOs, you have almost certainly eaten them.

Other modifications of foods on the market include vitamin A enriched rice, virus-resistant papayas, and virus-resistant squash. Some modifications that have been proposed or are under research, but are not yet on the market, include apples and potatoes that resist browning, salmon that grow twice as fast as their un-engineered counterparts, and oranges that resist citrus greening disease.

THE LABELING QUESTION AND THE ANTI-SCIENCE CHARGE

Currently, labeling foods containing GMOs is purely voluntary. Foods that are labeled “organic” do not contain GMOs. The FDA supports *voluntary* labeling only, not mandatory labeling.

GMO critics say that voluntary labeling is not enough. Some say that GMOs may contain toxins or allergens. They point out that GMOs are in so many foods that it is almost impossible to avoid them. They want *mandatory* labels so that people can more easily decide for themselves if they want to eat food that contains GMOs.

GMO proponents, on the other hand, say that GMOs have been proven safe, so labels are unneeded—and unscientific. For example, the American Association for the Advancement of Science (AAAS) states that “crop improvement by the modern molecular techniques of biotechnology is safe” and that labels are “meant to alarm.”¹ A well-cited poll by the PEW Research Center² shows that the views of scientists and nonscientists diverge on a number of issues, including GMOs, climate change, evolution, among other topics; in a typical response, a *Slate* article casts this as a bipartisan anti-science problem. A recent cover of *National Geographic* calls it a “War on Science.”

It is true that some GMO critics go too far. Calling GMOs “Frankenfood” is simply a scare tactic; that genetically engineered food is “unnatural” is neither here nor there. Not all that is unnatural is unsafe (think life-saving drugs) and not all that is natural is safe (think naturally occurring poisons).

But is it really anti-science to raise any concerns about GMOs?

In short, no. It is a mistake to lump together climate change deniers, evolution deniers, and GMO critics, in part because the reasons for doubt in each case are different and in part because the so-called “precautionary principle” would incline us to accept climate change while rejecting GMOs, but also because (ironically) a proper understanding of evolution forms the basis for some of the concerns about GMOs. More specifically, I have identified six problems with the claim that GMO critics are anti-science.

Problem 1: The Anti-Science Charge Falsely Assumes That Science Is Value Free

Many philosophers have argued that values may be an intrinsic part of all sciences; value-free science might be a myth.

What are values? Values are things that are *important* to us. They can include moral values, political values, or aesthetic values.

Climate science is a clear-cut example of a value-laden science. We study the connection between fossil fuels and our changing climate because we value the benefits of using fossil fuels as energy but are concerned about harms to humans and other species. Another example of a value-laden science is medical science, which includes values such as improving health and well-being.

When people criticize a science, they are not necessarily criticizing theory, data, or inferences drawn from data—they might instead be criticizing *values* that are embedded in the scientific theory or practice itself.

Problem 2: The Anti-Science Charge Falsely Assumes That GMO Science Is Value Free

The stated and unstated reasons for developing GMOs in the first place were all value-laden: making money for biotech corporations and their shareholders, feeding the hungry, developing new and beneficial strains of food for consumers, reducing pesticide and herbicide use to save money and help the environment.

In other words, the production of GMOs is *not pure science for the sake of knowledge alone*. It is not “value-free” science. It is not even close.

Furthermore, GMO critics are not challenging the *truth* of genetic engineering technology or genetics, as some challenge the truth of climate change or evolution. At best, they might challenge the truth of studies that purport to show the safety of GMOs and evaluate risks. But note that studies that concern health and risk are value-laden—and individuals might reasonably differ on how they weigh risks.

Because GMOs were developed *specifically* in order to satisfy certain values means that it is reasonable for them be judged by those values—and other values.

Problem 3: The Anti-Science Charge Fails to Recognize That Questions about Rights Involve Questions about Values

The question over whether to label GMOs is a question about the public's *right to know* what they are eating and the *right to decide* what they eat, in accordance with their values. GMO science involves values, but it does not and cannot tell us what our rights are. The question of what our rights are is a question about values that falls outside of the domain of GMO science. Thus, to take a stand for labeling GMOs on the basis of rights is not anti-science.

Triclosan, an antibacterial agent used in some toothpastes and hand sanitizers, can serve as an analogy. There is some preliminary evidence that it is a hormone disrupter. For now, however, the FDA says that triclosan "is not currently known to be hazardous to humans." In the meantime, it is labeled. Consumers can decide whether to use those products.

However, some anti-labelers insist that the very labeling of GMOs as GMOs implies that there is something wrong with GMOs, akin to warning labels on cigarettes or alcohol. Similarly, they maintain, ingredient labels are there to inform those who may be allergic to or otherwise harmed by one of the ingredients. Thus, anti-labelers might think that proponents of labeling GMOs are anti-science *because label proponents refuse to accept the evidence that shows that GMOs are safe*. I will return to the issue of GMO safety momentarily.

Problem 4: There Really Is Something Biologically New about GMOs

GMO proponents claim that there is nothing new about GMOs because farmers have been genetically modifying food for centuries. And this is true to a certain extent. Artificial selection led to the domestication of many species, with significant modifications. More recent techniques include hybridization of inbred lines.

These statements are correct, but they are misleading. The techniques of genetic engineering are different from selection or hybridization. These techniques allow genes from one species to be introduced into a very distantly related species—for example, the insertion of a gene from a fish into a

tomato (created but never commercialized) or the insertion of a gene from a pig into an orange (currently under research).

These kinds of modifications have an "ick" factor, but we should avoid knee-jerk reactions; that is not the real problem. The worry of using distantly related genes—resulting in changes of a larger magnitude than would be likely to occur in nature or by most other methods—is how they will behave in a very different genetic context given that genes can affect the expression of other genes in unpredictable ways.

Problem 5: We Lack Good Evidence for GMO Safety

The evidence for the safety of GMOs is not as good as some GMO proponents claim because the scientific protocols are somewhat lax. In the United States, the testing of most GMOs is voluntary, not mandatory; according to the FDA, most GMOs are "generally recognized as safe." The American Medical Association, however, has called for mandatory safety testing. Currently, testing is performed by the companies who manufacture the GMOs *without FDA oversight*. The studies are for the most part short term (three months), meaning that the long-term effects of consuming various GMOs are simply unknown.

These are reasonable—and *scientifically-based*—concerns about the studies that have been performed to date. There is enough uncertainty about the studies of GMOs to make it reasonable for individuals to want to decide for themselves whether to eat GMOs or not.

Compare the many steps involved in the FDA's testing protocols for new drugs. Most notably, after performing FDA-reviewed laboratory and animal tests, the company performs a series of clinical trials in humans in three phases, *which the FDA monitors*, to test if the drug is effective and safe. Next, the company sends its data from all these tests to FDA's Center for Drug Evaluation and Research (CDER). A team of CDER physicians, statisticians, toxicologists, pharmacologists, chemists and other scientists review the data and proposed labeling. After a drug is approved for the market, the FDA continues to monitor its performance. A more cautious, scientifically based approach would include

FDA oversight for testing of new GMOs; the protocols would not necessarily need to be identical to those for new drugs, but they could be (and arguably should be) stronger than they are. . . .

People who say flatly that “GMOs are safe” are being unscientific in another way. A GMO is not a GMO. Each one needs to be tested; the safety of one does not show the safety of another, given that each genetic combination is different. For example, the safety of including *Bt* pesticide in corn is potentially quite different from including vitamin A in rice. And the safety of Roundup resistance in one plant is not necessarily the same as in another (since gene expression is affected by other genes).

Problem 6: Saying GMOs Are Safe Overlooks Environmental Concerns

This is arguably the most serious of the six problems. There are several categories of actual and possible environmental harms.

One is the evolution of herbicide-resistant and pesticide-resistant plants and animals (in other words, evolution of organisms no longer killed by herbicides like Roundup). This effect was predicted, although Monsanto denied that it would occur. It was known that weeds naturally varied in their response to Roundup (glyphosate), with some very susceptible and others less so (i.e., some were resistant). Spraying Roundup on the weeds killed the susceptible ones, in effect selecting for the resistant ones and allowing them to flourish without competition.

In 2012, the Weed Science Society of America (WSSA) website listed 22 Roundup-resistant weed species in the United States. Dow AgroSciences estimates that 100 million acres in the United States are already impacted by Roundup-resistant weeds; Dow has used this estimate to argue for the deregulation of 2,4-D corn.

2,4-D is considered a more toxic herbicide, with a heightened risk of birth defects, more severe impacts on aquatic ecosystems, and more damage to nearby crops and plants.

But why should we expect a different outcome this time? Where does the cycle of herbicide application leading to the evolution of herbicide resistance end?

Another environmental harm is that the evolution of Roundup-resistant crops has led to an

increased use of herbicides (not the promised decrease). According to Charles Benbrook, the Roundup-resistant weed phenotypes are forcing farmers to increase herbicide application rates, make multiple applications of herbicides, and apply additional herbicide active ingredients. Note that the World Health Organization has recently classified glyphosate as “probably carcinogenic to humans.”

On the other hand, *Bt* corn has led to a reduction in pesticide use so far. However, western corn rootworms have now evolved *Bt* resistance, as have other corn pests. So, that decrease may be short-lived, or as with Roundup, stronger pesticides may be proposed.

Yet another possible environmental harm is the transmission of genes (outcrossing or gene flow) from GMOs to wild weedy relatives. When GMOs reproduce with closely related wild species, transfer of herbicide-resistance to weeds can occur.

This creates the same problem as the evolution of herbicide resistance—herbicide-resistant weeds—but with a different cause. Susceptible species include rapeseed (canola), sugar beets, and corn. Roundup Ready wheat (not on the market yet) was found to be six times more likely than non-GMO control lines to produce outcrossed offspring.

Relatedly, there can be transmission of genes from GMOs to other, conventional (non-GMO or organic) crops. In a 2014 survey of 268 organic and non-GMO farmers in the United States, 31 percent said that they had found or suspected GMO presence in their crops. Of these, 52 percent said that they had been rejected by a buyer because of it.

In Oaxaca, Mexico, one of the places where diverse strains of maize (corn) are found, researchers found “a high level of gene flow from industrially produced maize towards populations of progenitor landraces.” This is concerning because these maize strains might otherwise be used to create new commercial corn varieties.

Finally, there are possible effects on other species that consume the GM crops. As with humans, there is no widely accepted evidence of *direct* harms yet (there is laboratory evidence that *Bt* corn harms Monarch butterflies, but no field evidence).

However, there is some evidence of *indirect* harms. Increased spraying of Roundup has led to

a loss of milkweed habitat for Monarch butterflies and contributed to a major decline in the size of their populations. Much Roundup Ready corn seed is coated with neonicotinoid pesticides; neonicotinoids have been shown to affect bee reproduction (whose pollination we rely on) and to persist and accumulate in the soil.

In sum, these concerns over environmental harms—concerns about evolution or transmission of pesticide resistance to weedy relatives, concerns about increased pesticide use, concerns about unwanted contamination of crops, and concerns over harms to other species—do not reflect a misunderstanding or rejection of “science.” On the contrary, they reflect an *understanding* of the relationships between different species and the sorts of evolutionary changes that can occur. *If someone is concerned about these environmental effects, they might want to avoid consuming GMOs on those grounds alone.*

Summarizing the six problems described above: given the role of values in the deployment of GMOs, given the lack of mandatory and long-term testing of GMOs with outside oversight, and given the demonstrated environmental harms, it is not anti-science to want to GMOs labeled as GMOs.

OTHER IMPORTANT VALUES IN THE GMO DEBATE

Monsanto claims that we need GMOs to feed the world, a commendable, value-laden goal.

Critics point out that as pesticide use has increased with GMOs while pesticide resistance among weedy and pest species has also increased, crop yields have been harmed. To combat the resistance problem, crops have been designed that contain *multiple* modifications (*stacked-trait* crops). However, a study commissioned by the USDA showed interactions between the introduced genes often reduced yield, and researchers were “surprised” not to find greater yields among the studied GM crops more generally (although they did find that GM crops were more stable over time). Another study by the USDA showed that in the United States 31 percent (133 billion pounds) of the 430 billion pounds of the available food supply in 2010 went uneaten. Here again, however, it is worth emphasizing that not all GMOs are the same, so that some

may do better than conventional crops under some conditions while some may do worse than conventional crops under different conditions.

There are other methods for improving crop yields, such as the System of Rice (Root) Intensification method or by making better use of the “available diversity of eminently adapted alternatives.” Perhaps more importantly, as Hugh Lacey suggests, we should put the same resources toward alternatives to GMOs as we have put toward GMOs themselves in order to truly know which methods are best.

The effects on farmers are another value-laden consideration, in part tied to crop yield. That is, if it turns out that GMOs increase crops yields, that ought to be good for farmers, but not if they are reduced. Other considerations are that farmers cannot save or trade GMO seeds, or they will face lawsuits. Seeds from GMOs tend to be more expensive than non-GMO seeds, and sometimes require buying the related pesticide (e.g., Roundup for Roundup Ready crops). More dramatically, there have been 250,000 farmer suicides in India, which some have blamed on the failure of *Bt* cotton to live up to its promises and subsequent farmer debt.

GMO proponents have sought to debunk some of the concerns I’ve mentioned in this section by pointing out that they result from faulty use of GMO technology by farmers. Some say that farmers failed to follow Monsanto’s recommendation that “refuges”—areas without GMO crops—be planted. This allows non-resistant pests a place to flourish where they can interbreed with, and thus dilute the numbers of, resistant pests. This may be 5 to 20 percent of total land, depending on the GMO.

Others suggest that farmers in India likewise were similarly to blame for poor results. For example, Guillaume Gruère and Debdatta Sengupta claim that farmers lacked information about growing conditions, pesticide use, the importance of planting proper seeds, and the earnings to be expected from using this technology. However, these same authors also admit the possibility “that *under the conditions in which it was introduced*, Bt cotton, an expensive technology that has been poorly explained, often misused and initially available in only a few varieties, might have played a role in the

overall indebtedness of certain farmers in some of the suicide-prone areas of these two states, particularly in its initial years" (emphasis added). They suggest that there is a "critical need to distinguish the effect of Bt cotton as a technology from the *context in which it was introduced*" (emphasis added).

I disagree. Context matters.

In discussing the values embedded in the use of GM crops, we must evaluate conditions as they in fact are. It might be the case that in some more perfect world, with different biotech companies using different practices, different GMOs, and different farmers, the problems I have talked about here would not have occurred. Perhaps, then, there is nothing wrong with GMO technology itself, only GMO practices. But so what? We do not live in that more perfect world. Technology is never deployed in a context-free situation. Imagine evaluating the efficacy of a traffic light without considering the context in which it is deployed—traffic patterns, traffic volumes, and traffic speeds. The result would be meaningless. The same is true for GMOs. *We have to evaluate technologies in their context.*

FINAL THOUGHTS

In truth it is hard to know how to weigh the varying values involved in the use of GMO crops, and there is still much that we do not know. Surely GMO research should continue, although with better testing protocols before the seeds are deployed. We should proceed more slowly and carefully. It might turn out that some GMOs are ones that are truly beneficial (e.g., by saving a species that cannot be saved any other way) with few or no downsides.

But here is what we do know.

If someone wants to follow their values and avoid GMOs, they have no way to do so. GMOs contain new proteins as compared to conventional crops, and any new protein could potentially be an allergen or toxin when consumed over time. It is almost impossible to avoid eating GMOs; most Americans are eating GMOs and foods made with GMOs without knowing what they are eating. There is little to no oversight of the production of GMOs in the United States; scientific protocols fall far short of what they could be. Thus, while there is no strong evidence that GMOs are harmful to humans, the tests have been

inadequate. Environmental harms, on the other hand, have occurred and are well-documented; here it is important to remember that the majority of GMOs on the market today are resistant to particular herbicides or contain a pesticide, and that we should evaluate particular GMOs in particular contexts, not abstract GMOs in abstract contexts.

People who would like to avoid GMOs, whether out of concerns for potential health harms or concerns over actual environmental harms, are not being allowed to judge the risks and make choices for themselves and their families. For these reasons—so that people can follow their reasonably held values—we ought to label GMOs as GMOs.

Roberta Millstein: GMOs? Not So Fast

1. Millstein argues that opposing GMOs because they are unnatural is mistaken, since not all that is unnatural is dangerous and not all that is natural is safe. Can you think of several safe unnatural substances and several dangerous natural substances?
2. What does it mean for science to be value laden? Why does Millstein think that GMO science is value laden? Do you agree?
3. GMO supporters worry that labeling GMOs will signal to the public that they are unsafe. Is this worry well founded? Why or why not? If it is well founded, do you think that Millstein adequately responds to it?
4. Do you think that people have a moral right to know if they're eating GMOs? If not, why not? If so, do you think that that makes it morally permissible for the government to force food producers to label their foods containing GMOs?
5. What do you think is the strongest consideration in favor of requiring food producers to label their foods containing GMOs? What do you think is the strongest consideration against it?

NOTES

1. Statement available at: <https://www.aaas.org/news/statement-aaas-board-directors-labeling-genetically-modified-foods>.
2. See <http://www.pewinternet.org/2015/01/29/public-and-scientists-views-on-science-and-society/>.

Ethics and Genetically Modified Foods

Gary Comstock

In this selection, Gary Comstock defends the use and development of genetically modified organisms (GMOs) against a host of objections. He divides the objections into two groups: extrinsic and intrinsic objections. Extrinsic objections focus on the harms that might result from the widespread adoption of GMOs. For example, some worry that, if GMOs are widely adopted, the result will be an increase in economic inequalities between developed and developing economies. And this, they think, provides strong reason to oppose such widespread adoption. Comstock doesn't find this objection especially compelling, because it fails to show that the supposed harmful consequences of GMOs are not outweighed by their many benefits. Nor does it rule out the possibility that proper government regulation could eliminate, or at least minimize, these harmful consequences. The other extrinsic objections, he argues, fail for the same reason.

According to intrinsic objections, by contrast, the adoption of GMOs would be morally objectionable in itself—quite apart from the consequences. Comstock thinks that these objections are more promising. Each intrinsic objection he considers is a variation of the claim that adopting GMOs would be unnatural. For example, some worry that adopting GMOs would amount to playing God, or introduce a world-changing technology, or illegitimately cross species boundaries, or commodify life in an objectionable way. Comstock rejects these objections because, he argues, each of them implausibly entails that other clearly good technologies are in fact morally problematic. For instance, he argues that if we ought to oppose GMOs because they constitute a world-changing technology, then we should oppose new herbal remedies for menstrual cramps or new anesthetics because such technology would also be world changing. But that it is clearly mistaken.

While Comstock is aware that there are practical difficulties attending the widespread adoption of GMOs—after all, he himself once opposed their adoption—he thinks that there are so far no compelling reasons to oppose them and excellent reasons to embrace them.

... ETHICAL ISSUES INVOLVED IN THE USE OF GENETIC TECHNOLOGY IN AGRICULTURE

Discussions of the ethical dimensions of agricultural biotechnology are sometimes confused by a conflation of two quite different sorts of objections to GM technology: intrinsic and extrinsic. It

From Gary Comstock, "Ethics and Genetically Modified Foods," in Franz-Theo Gottwald, H. W. Ingensiep, and Marc Meinhardt, eds., *Food Ethics* (Springer, 2010), pp. 52–57. Select references have been reprinted; notes have not been reprinted.

is critical not only that we distinguish these two classes, but keep them distinct throughout the ensuing discussion of ethics.

Extrinsic objections focus on the potential harms consequent upon the adoption of GMOs. Extrinsic objections hold that GM technology should not be pursued because of its anticipated results. Briefly stated, the extrinsic objections go as follows. GMOs may have disastrous effects on animals, ecosystems, and humans. Possible harms to humans include perpetuation of social inequities in modern agriculture, decreased food security for women and children on subsistence farms in developing countries,

a growing gap between well capitalized economies in the northern hemisphere and less capitalized peasant economies in the south, risks to the food security of future generations, and the promotion of reductionistic and exploitative science. Potential harms to ecosystems include possible environmental catastrophe, inevitable narrowing of germplasm diversity, and irreversible loss or degradation of air, soils, and waters. Potential harms to animals include unjustified pain to those used in research and production.

These are valid concerns, and nation-states must have in place testing mechanisms and regulatory agencies to assess the likelihood, scope, and distribution of potential harms through a rigorous and well funded risk assessment procedure. For this reason, I contend that GM technology must be developed responsibly and with appropriate caution. However, these extrinsic objections cannot by themselves justify a moratorium, much less a permanent ban, on GM technology, because they admit the possibility that the harms may be minimal and outweighed by the benefits. How can one decide whether the potential harms outweigh potential benefits unless one conducts the research, field tests, and data analysis necessary to make a scientifically informed assessment?

In sum, extrinsic objections raise important questions about GMOs, and each country using GMOs ought to have in place the organizations and research structures necessary to ensure their safe use.

There is, however, an entirely different sort of objection to GM technology, which, if it is sound, would indeed justify a permanent ban.

Intrinsic objections allege that the process of making GMOs is objectionable in itself. This belief is defended in several ways, but almost all of the formulations are related to one central claim—the “unnaturalness objection” (UE): It is unnatural to genetically engineer plants, animals, and foods.

If UE is true, then we ought not to engage in bioengineering, however unfortunate may be the consequences of halting the technology. Were a nation to accept UE as the conclusion of a sound argument, then much agricultural research would have to be terminated and potentially significant benefits from the technology sacrificed. A great deal is at stake.

In *Vexing Nature? On the Ethical Case Against Agricultural Biotechnology*, I discuss fourteen ways in which UE has been defended. For present purposes, those fourteen objections can be summarized as follows:

- To engage in ag biotech is to *play God*.
- To engage in ag biotech is to *invent world-changing technology*.
- To engage in ag biotech is *illegitimately to cross species boundaries*.
- To engage in ag biotech is to *commodify life*.

Let us consider each claim in turn.

To engage in ag biotech is to *play God*. In a western theological framework, humans are creatures, subjects of the Lord of the Universe, and it would be impious for them to arrogate to themselves roles and powers appropriate only for the Creator. Shifting genes around between individuals and species is taking on a task not appropriate for us, subordinate beings. Therefore, to engage in bioengineering is to play God.

There are several problems with this argument. First, there are different interpretations of God. Absent the guidance of any specific religious tradition, it is logically possible that God is a Being who wants to turn over to us all divine prerogatives; or explicitly wants to turn over to us at least the prerogative of engineering plants; or who does not care what we do. If God is any of these beings, then the argument fails because playing God in this instance is not a bad thing.

The argument seems to assume, however, that God is not like any of the gods just described. Assume that the orthodox Jewish and Christian view is correct, that God is the only personal, perfect, necessarily existing, all-loving, all-knowing, and all-powerful being. In this traditional western theistic view, finite humans should not aspire to infinite knowledge and power. To the extent that bioengineering is an attempt to control nature itself, the argument is that bioengineering is an unacceptable attempt to usurp God’s dominion.

The problem with this argument is that not all traditional Jews and Christians think that this God would rule out genetic engineering. I am a practicing evangelical Christian and the chairperson of my local Church Council. In my tradition, God is

thought to endorse creativity, scientific and technological development, including genetic improvement. Other traditions have similar views. In the mystical writings of the Jewish Kabbalah, God is understood as One who expects humans to be co-creators, technicians working with God to improve the world. At least one Jewish philosopher, Baruch Brody (personal communication), has suggested that biotechnology may be a vehicle ordained by God for the perfection of nature.

Personally, I hesitate to think that humans can “perfect” nature. However, I have become convinced that GM might help humans to rectify some of the damage we have already done to nature. And I believe God may endorse such an aim. For humans are made in the divine image. God desires that we exercise the spark of divinity within us. Inquisitiveness in science is part of our nature. Creative impulses are not found only in the literary, musical, and plastic arts. They are part of molecular biology, cellular theory, ecology, and evolutionary genetics, too. It is unclear why the desire to investigate and manipulate the chemical bases of life should not be considered as much a manifestation of our god-like nature as the writing of poetry and the composition of sonatas. As a way of providing theological content for UE, then, this argument is unsatisfactory because it is ambiguous and contentious.

To engage in ag biotech is to *invent world-changing technology*, an activity that should be reserved to God alone. Let us consider this in conjunction with a similar objection: to engage in ag biotech is to *arrogate historically unprecedented power* to ourselves. The latter argument here is not the strong one, that biotech gives us divine power, but the more modest one, that it gives us a power we have not had previously. Also it would be counterintuitive to judge an action wrong simply because it has never been performed. In this view, it would have been wrong to prescribe a new herbal remedy for menstrual cramps, or to administer a new anesthetic. But that seems absurd. More argumentation is needed to call historically unprecedented actions morally wrong. What is needed is to know to what extent our new powers will transform society, whether we have witnessed prior transformations of this sort, and whether those transitions are morally *acceptable*.

We do not know how extensive the ag biotech revolution will be, but let us assume that it will be as dramatic as its greatest proponents assert. Have we ever witnessed comparable transitions? The change from hunting and gathering to agriculture was an astonishing transformation. With agriculture came not only an increase in the number of humans on the globe, but the first appearance of complex cultural activities: writing, philosophy, government, music, the arts, and architecture. What sort of power did people arrogate to themselves when they moved from hunting and gathering to agriculture? The power of civilization itself.

Ag biotech is often oversold by its proponents. But suppose that they are right, that it will bring us historically unprecedented powers. Is this a reason to oppose it? Not if we accept agriculture and its accompanying advances, for when we accepted agriculture we arrogated to ourselves historically unprecedented powers.

In sum, these objections are not convincing.

To engage in ag biotech is *illegitimately to cross species boundaries*. The problems with this argument are both theological and scientific. I will leave it to others to argue the scientific case that nature gives ample evidence of generally fluid boundaries between species. The argument assumes that species boundaries are distinct, rigid and unchanging, whereas, in fact, species now appear to be messy, plastic, and mutable. To proscribe the crossing of species borders on the grounds that it is unnatural seems scientifically indefensible.

It is also difficult to see how this objective could be defended on theological grounds. None of the scriptural writings of the western religions proscribe genetic engineering, of course, because genetic engineering was undreamt of at the time the holy books were written. Now, one might argue that such a proscription may be derived from Jewish or Christian traditions of scriptural interpretation. Talmudic laws against mixing “kinds,” for example, might be taken to ground a general prohibition against inserting genes from “unclean” species into clean species. Here is one way the argument might go: for an observant Jew to do what scripture proscribes is morally wrong; Jewish oral and written law proscribe the mixing of kinds (e.g., eating milk

and meat from the same plate; yoking donkeys and oxen together) bioengineering is the mixing of kinds; therefore, for a Jew to engage in bioengineering is morally wrong.

But this argument fails to show that bioengineering is intrinsically objectionable in all of its forms for everyone. The argument might prohibit Jews from engaging in certain *kinds* of biotechnological activity but not all; it would not prohibit, for example, the transferring of genes *within* a species, nor, apparently, the transfer of genes from one clean species to another clean species. Incidentally, it is worth noting that the Orthodox community has accepted transgenesis in its food supply. Eighty to ninety percent of cheese produced in the United States is made using a GM product, chymosin. This cheese has been accepted as kosher by Orthodox rabbis.

In conclusion, it is difficult to find a persuasive defense for this objection either on scientific or on religious grounds.

To engage in ag biotech is to *commodify life*. The argument here is that genetic engineering treats life in a reductionistic manner, reducing living organisms to little more than machines. Life is sacred and not to be treated as a good of commercial value only, to be bought and sold to the highest bidder.

Could we apply this principle uniformly? Would not objecting to the products of GM technology on these grounds also require that we object to the products of ordinary agriculture on the same grounds? Is not the very act of bartering or exchanging crops and animals for cash vivid testimony to the fact that every culture on earth has engaged in the commodification of life for centuries? If one accepts commercial trafficking in non-GM wheat and pigs, then why should we object to commercial trafficking in GM wheat and GM pigs? Why should it be wrong for us to treat DNA the way we have previously treated animals, plants, and viruses?

Although this objection may be true, it is not a sufficient reason to object to GM technology because our values and economic institutions have long accepted the commodification of life. Now, one might object that various religious traditions have never accepted commodification, and that genetic engineering presents us with an opportunity to resist, to reverse course. Leon Kass (1988, 1998), for example,

has argued that we have gone too far down the road of dehumanizing ourselves and treating nature as a machine, and that we should pay attention to our emotional reactions against practices such as human cloning. Even if we cannot defend these feelings in rational terms, our revulsion at the very idea of cloning humans should carry great weight. Mary Midgley (2000) has argued that moving genes across species boundaries is not only "yukky" but, perhaps, a monstrous idea, a form of playing God.

Kass and Midgley have eloquently defended the relevance of our emotional reactions to genetic engineering but, as both admit, we cannot simply allow our emotions to carry the day. As Midgley writes, "Attention to . . . sympathetic feelings [can stir] up reasoning that [alters] people's whole world view" (Midgely, 2000, p. 10). But as much hinges on the reasoning as on the emotions.

Are the intrinsic objections sound? Are they clear, consistent, and logical? Do they rely on principles we are willing to apply uniformly to other parts of our lives? Might they lead to counter-intuitive results?

We hesitate to accept counter-intuitive results because they run counter to widely-shared considered moral intuitions. If a moral rule or principle leads to counter-intuitive results, then we have a strong reason to reject it. For example, consider the following moral principle, which we might call the doctrine of naïve consequentialism (NC): always improve the welfare of the most people. Were we to adopt NC, then we would be not only permitted but required to sacrifice one healthy person if by doing so we could save many others. If six people need organ transplants (two need kidneys, one needs a liver, one needs a heart, and two need lungs) then NC instructs us to sacrifice the life of the healthy person so as to transplant their six organs to the other six. But this result, that we are *obliged* to sacrifice innocent people to save strangers, is wildly counter-intuitive. This result gives us a strong reason to reject NC.

I have argued that the four formulations of the unnaturalness objection considered above are unsound insofar as they lead to counter-intuitive results. I do not take this position lightly. Twelve years ago. I wrote an article, *The Case Against bGH*, which,

I have been told, was one of the first papers by a philosopher to object to ag biotech on explicitly ethical grounds. I then wrote a series of other articles objecting to GM herbicide-resistant crops, transgenic animals, and, indeed, all of agricultural biotechnology. I am acquainted with worries about GM foods. But, for reasons that include the weakness of the intrinsic objections, I have come to change my mind. The sympathetic feelings on which my anti-GMO worldview was based did not survive the stirring up of reasoning.

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Gary Comstock: Ethics and Genetically Modified Foods

1. Comstock lists a number of harmful consequences that might result from the adoption of GMOs. Which do you think counts most strongly against the adoption of GMOs? Can you think of any other harmful consequences that he neglects to mention?
2. Which of the intrinsic objections do you find most plausible? Which do you find least plausible? Why?
3. Comstock considers several arguments against GMOs that begin with substantive religious claims. What role (if any) should religious claims play in ethical reasoning?
4. Comstock notes that many experience a feeling of disgust when they consider the prospect of adopting GMOs. Do you think feelings of disgust are good grounds for opposing GMOs? Why or why not?
5. Comstock asserts that "If a moral rule or principle leads to counter-intuitive results, then we have a strong reason to reject it." Do you accept this claim? Why or why not?

Sexual Morality

JUST THE FACTS

Questions of sexual morality are questions about the moral status of various sexual acts and sexual relationships, including, by extension, marital relationships. When we talk about sex, we sometimes mean sexual intercourse specifically, and sometimes mean sexual acts more generally. Sexual relationships are relationships that are defined in part by their general inclusion of a sexual component. Because marital relationships and other romantic relationships generally include such a component, they will also be discussed in this chapter.

Many questions about sexual morality ask whether or not it is morally acceptable to engage in certain kinds of sexual acts. Many kinds of sexual acts are defined by *who* is engaging in them. For example, heterosexual sex is sex between two people of the opposite sex, whereas homosexual sex is sex between two people of the same sex. **Premarital sex** is sex between two people who have not been married. **Casual sex** is sex between people who have expressed no commitment to each other. **Incest** is sex between two family members.

In many societies, traditional views about what kinds of sex are acceptable have been very restrictive. Such views often restrict permissible sex to heterosexual, marital sex and condemn all other sexual acts. In the United States, traditional attitudes about sexual morality have become less universal, but are still widespread. For example, the General Social Survey compiled by the National Opinion Research Center found that the percentage of Americans who answered that homosexual sex was “always wrong” decreased

from 70 percent in 1973 to 43.4 percent in 2012.¹ Recent research by the Pew Center suggests that roughly 60 percent of Americans believe that society should accept homosexuality.² Attitudes in other Western countries are even more liberal, with 80 percent of Canadians and 76 percent of Britons believing that society should accept homosexuality.³ However, in many non-Western countries, traditional views about homosexuality are still accepted by almost everyone—in countries such as Pakistan, Indonesia, Egypt, Turkey, and Nigeria, fewer than 10 percent thought that homosexuality should be accepted.⁴

In the United States, attitudes about premarital sex have also become more liberal over time. The General Social Survey found that the percentage of Americans who answered that sex before marriage was “not wrong at all” increased from 26.5 percent in 1972 to 56 percent in 2012.⁵ Such statistics suggest that sexual mores are trending away from the traditional view of sexual morality. But there are exceptions: between 1973 and 2012, the percentage of respondents who said that sex with someone other than one’s spouse was “always wrong” increased from 69.3 percent to 80.8 percent, and the percentage

1. http://www.norc.org/PDFs/sexmoralfinal_06-21_FINAL.PDF

2. <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/>

3. Ibid.

4. Ibid.

5. http://www.norc.org/PDFs/sexmoralfinal_06-21_FINAL.PDF

of respondents who said that sex between children under sixteen was “always wrong” remained around 66 percent. Furthermore, while statistics about attitudes toward incest and non-consensual sex are hard to come by, we can infer that questions about them are not included on surveys like the General Social Survey because it is assumed that they would be almost universally condemned.

Though the aforementioned data suggest that homosexual sex and premarital sex have come to be considered much more morally acceptable than they used to be, they remain controversial. In the United States, a sizable minority of the population still considers homosexual sex and premarital sex to be immoral. With regard to homosexuality, there are controversial issues surrounding not just the moral status of homosexual sex, but also the status of same-sex marriage. In the history of the United States, legal recognition of same-sex relationships is a relatively recent phenomenon. State marriage laws have differed over time as to whether they explicitly define marriage as between a man and a woman, but until recently, marriage was de facto reserved for opposite-sex couples. For example, in 1970, a same-sex couple in Minnesota applied for a marriage license and was denied on the grounds that they were both men. Their appeal of the ruling went to the Minnesota Supreme Court, who ruled in *Baker v. Nelson* that the state did not recognize same-sex marriages.⁶ In 1996, President Bill Clinton signed the Defense of Marriage Act, which defined marriage for federal purposes as between a man and a woman, and allowed states that had defined marriage as such to refuse to recognize same-sex marriages performed in other states.⁷ However, in 2014, the Supreme Court struck down the Defense of Marriage Act, ruling that states

cannot ban same-sex marriage, and making same-sex marriage legal throughout the United States.⁸ Same-sex marriage has also been legally recognized in Canada and much of Europe and Latin America.⁹

This shift toward legal recognition of same-sex marriage has corresponded with a dramatic shift in attitudes toward same-sex marriage. In 2001, the Pew Research Center found that Americans opposed the legalization of same-sex marriage by a margin of 57 percent to 35 percent. In 2017, Pew found that Americans supported the legalization of same-sex marriage by a margin of 62 percent to 32 percent.¹⁰ However, it is important to note that, based on the data cited earlier, both remain significantly controversial in the United States. While acceptance of homosexuality continues to gain traction, it is still far from universal.

Issues about homosexuality are not the only issues of sexual morality where moral and legal questions intersect. For example, there are also questions about the moral and legal status of **Polyamory**. Polyamorous relationships are sexual, romantic, or marital relationships between more than two people. Historically, many such relationships have been **Polygamous** relationships, in which a man has more than one wife at the same time. However, there are also **Polyandrous** relationships, in which a woman has more than one husband, as well as polyamorous relationships that are neither polygamous nor polyandrous. In the United States (and most other countries), polyamorous marriages are not legally recognized.¹¹ Furthermore, the practice of marrying more than

6. <http://moritzlaw.osu.edu/library/documents/BakervNelson.pdf>

7. <https://www.govtrack.us/congress/bills/104/hr3396/summary>

8. https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf

9. <http://www.pewforum.org/2017/08/08/gay-marriage-around-the-world-2013/>

10. <http://www.pewforum.org/fact-sheet/changing-attitudes-on-gay-marriage/>

11. <http://metro.co.uk/2015/06/22/where-exactly-is-polygamy-legal-5257418/>

one person is criminalized in the United States.¹² Polyamorous marriage has often been prohibited because of the prevalence of oppressive and exploitative polygamous relationships. For example, the United Nations Human Rights Committee has reported that the practice of polyamory, ostensibly because it is almost always polygamous, “violates the dignity of women” and “should be definitely abolished wherever it continues to exist.”¹³ Unfortunately, statistics about the acceptance of polyamory are hard to come by. However, questions about its moral and legal status have recently attracted increased public interest.¹⁴

Yet other questions of sexual morality are raised by **prostitution**, which is the act or practice of having sex in exchange for money. There are some practices, such as child prostitution and sex slavery, that are unquestionably immoral. However, the moral and legal status of prostitution by consenting adults is more controversial. Recent data on attitudes toward the morality of prostitution are sparse, but in data from 1996, 67 percent disagreed at least somewhat with the statement: “There is nothing inherently wrong with prostitution, so long as the health risks can be minimized. If consenting adults agree to exchange money for sex, that is their business.”¹⁵ More recent data are available on the question of whether or not to legalize prostitution. A 2016 Marist poll found that 49 percent thought that prostitution between consenting adults should be legalized, while 44 percent thought it should not be.¹⁶ In the United States, prostitution is currently illegal in every state except for Nevada.

12. <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=o12/llslo12.db&recNum=0532>

13. <http://hrlibrary.umn.edu/gencomm/hrcom28.htm>

14. <https://www.usatoday.com/story/news/nation/2015/08/10/polyamorous-relationships-become-more-visible/31439123/>

15. <https://gssdataexplorer.norc.org/variables/1871/vshow>

16. <http://www.pbs.org/wgbh/point-taken/blog/marist-should-prostitution-be-legalized/>

ARGUMENT ANALYSIS

When you think about it, there are *a lot* of prohibitions—conventional, moral, and legal—surrounding sexual behavior. The list of “don’ts” is extensive: don’t have sex outside of marriage; don’t masturbate; don’t have nonconsensual sex; don’t have sex with people your friends are romantically interested in; don’t have sex with family members, with animals, minors, or co-workers. And this is just a partial list.

Do these prohibitions have any rational basis, or are they outdated taboos? Though each of these prohibitions deserves its own consideration, our focus must be limited, as usual. Still, we can make substantial headway by considering what we might call the **liberal position regarding sexual morality**: the view that sex is morally permissible if and only if it is engaged in by consenting adults.

This position is liberal in the classical sense—namely, as describing a view that places supreme importance on personal liberty. The core idea is given in the first premise of

The Liberal Argument

1. We are morally permitted to do what we want with our fellow human beings, so long as they provide informed consent to our treatment.
2. Every type of sexual activity among humans, except rape and sex with children, can be performed by those giving informed consent.

Therefore,

3. Every type of sexual activity among humans, except rape and sex with children, can be morally permissible, so long as their participants have given informed consent.

Premise 2 is plausible. Rape is defined as non-consensual sex. And a child is someone who is defined, in part, as incapable of offering informed consent to engaging in sexual relations. In other words, if (say) a seventeen-year-old is

mature enough to provide informed consent to having sex, then that seventeen-year-old is no longer a child. These cases aside, the Liberal Argument implies that other kinds of sexual relations that have been the target of moral criticism—for example, polygamy, prostitution, and incest—have been wrongly condemned, so long as their participants have provided informed consent.

Of course, many of those who have had these sorts of sexual relations have *not* offered their informed consent in doing so. Polygamy often preys on young females and contributes to their oppression. A great many prostitutes are effectively slaves, “owned” by pimps and threatened with harm if they fail to comply with the pimp’s demands. Incest is usually rape. The Liberal Argument does not permit such behavior. What it says is that when those engaged in polygamy, prostitution and incest give their informed consent—this might be rare but it is not impossible—then (and only then) are such behaviors morally OK.

Premise 1 expresses a core liberal idea. It can be defended in at least two different ways. The first is by rule consequentialism (see Chapter 5). The thought is that if everyone were to follow the liberal idea, and behave toward others in ways they consented to, then the overall results would be terrific. Of course people are sometimes disappointed at how things turn out after having given their consent, but, the thought goes, they have no moral complaint in such cases. You’ll be sad if you make a risky investment and it falls through, but you won’t have any basis for morally criticizing your investment advisor if she warned you in advance of all the risks.

The second way to defend premise 1 is by a Kantian appeal to the importance of autonomy. We are able to decide for ourselves how best to live our life, and this ability gives each of us a moral right to do just that—so long as we respect the rights of others to live their life, too. Your ability to set your own goals, determine

which principles you will live by, and commit to a way of life is an exalted thing. This ability accounts for why human beings are so valuable. And that value needs protection, which moral rights offer—they protect our autonomy. To my mind, the toughest challenge to premise 1 is provided by a case I read about several years ago.¹⁷ A German computer technician, Armin Meiwes, posted an ad seeking a willing volunteer for “slaughter and consumption.” He apparently found one, a man named Bernd Brandes, who answered the ad and allowed himself to be killed and eaten by Meiwes. Though there was difficulty in determining whether Brandes really did consent to his death, let us suppose that the evidence clearly indicated that he did. Even so, most of us would recoil at the claim that what Meiwes did was morally acceptable.

The liberal has just two options—to argue that such consent can never be informed, or to allow that it can be, and that in such a case it is morally acceptable to kill and eat another human being. You might be tempted by the first option, thinking that Brandes could not be informed about the choice to be killed, since he had never had that experience. But that is too demanding a standard for informed consent. You can’t know what it’s truly like to skydive, have sex, or drive a car until you’ve actually done it. And yet first-timers are able to offer their informed consent to engage in each of these activities. True, the more dangerous the activity, the more information we require in order to judge that someone has given his informed consent to undertake it. So we are right to require that anyone who volunteers to be killed—whether fighting for one’s country, say, or indulging a very unusual desire for self-destruction—be very well aware of what he is getting himself into. But it’s not clear why

17. <http://www.nbcnews.com/id/11909486/ns/world-news/t/german-court-sentences-cannibal-life-jail/#.Wa2zQNGQw2w>

we should think that meeting this standard is impossible.

The alternative for the liberal is to bite the bullet and allow that in very rare cases, people are morally permitted to kill others who ask for death. This is the position taken, for instance, by those who endorse the morality of active euthanasia (see Chapter 15). The difference here is that Brandes was not suffering from a terminal illness and that he was asking to be cannibalized. These are important differences, to be sure. The liberal will say, however, that so long as Brandes knew what he was getting into, and gave his consent accordingly, then Meiweis did not act immorally. Liberals know we probably are not going to like that. But they will say that our revulsion in this case is on par with the disgust so many people have felt at homosexual sex or masturbation—quite real, but also quite groundless.

Is the liberal verdict here correct? Let's focus on homosexual sex as a test case. Liberals argue that when such sex is consensual, there is nothing immoral about it. Despite greater acceptance of homosexuality in some societies nowadays, the liberal position has long been a minority view, and even now, in some societies, people are socially ruined or even killed if they are discovered to have engaged in sexual relations with others of the same sex.

Perhaps the most common defense of the view that homosexual sex is immoral is the argument from unnaturalness—unnatural actions are immoral; homosexual sex is unnatural; therefore, such sex is immoral. We won't pause to assess this argument here, since we have already considered (in Chapters 8 and 22) the six most prominent interpretations of what it is to be unnatural, none of which support the claim that unnatural actions *per se* are immoral. We can also set to one side another popular argument, already examined in Chapter 6, which says that homosexual sex is immoral because if everyone engaged in such behavior,

then disastrous results would follow. Instead, let's focus on

The Family Values Argument

1. If a practice is contrary to family values, then it is immoral.
2. Homosexual relations are contrary to family values.

Therefore,

3. Homosexual relations are immoral.

Without a well-defined notion of what is meant by 'family values', it's not clear what to say about premise 1. When I think of such values, I think of love, honesty, loyalty, and devotion. On this reading of family values, however, premise 2 is false, since homosexual couples can exhibit these values just as well as heterosexual ones. If honoring family values implies, in addition, that one has sex only when one intends to or is able to have children, then premise 2 is true. But then premise 1 is false, since it is not immoral for postmenopausal women to have sex. The same holds for men who have had a vasectomy, women who have had a hysterectomy, or men or women who are infertile for other reasons.

Many have argued that homosexual sex is immoral because God forbids it. This view presupposes the divine command theory (discussed in Chapter 1.E), which says that God is the author of the moral law. We won't rehearse the details of that discussion here, except to note its important upshot: if God really exists and is all-wise and all-good, then God will not issue arbitrary commands. God's commands will be backed by the very best reasons there are. So if God really does forbid homosexual sex, then there must be excellent reasons to oppose it. But what are those reasons? Such sex can be highly pleasurable and consensual. It doesn't harm others. It doesn't violate the rights of others. In many cases it is the expression of deeply felt love; in others, it stems from an urgent physical

desire or passion. Though the image of same-sex couples having sex evokes disgust among many people, it fails to do so in many others, and in any event, disgust that arises from imagining sexual acts is not a morally reliable emotion. (Evidence: imagine your parents or grandparents having sex.)

As a glance at the Liberal Argument confirms, it does not pronounce a verdict just on the morality of sex among same-sex partners. It also has implications for the morality of prostitution and of casual sex—the focus of two of our readings in this chapter. So long as prostitutes are adults who are informed about the risks of their activities and consent to having sex for money, then, says the liberal, there is nothing immoral about their doing so. The same conditions apply to the morality of casual sex. According to the liberal, there is nothing intrinsically immoral about having sex just for the fun of it, even if such sex expresses only lust, not love, and even if it is clear that there is no expectation of any long-term relationship.

The liberal need not be blind to social reality. Many criticize prostitution because they claim, rightly, that a great many prostitutes are effectively sexual slaves, recruited under false pretenses and then forced against their will to engage in sex. And when it comes to casual sex, some of it certainly fails to be consensual; even when partners do consent, this is not always informed, as people sometimes withhold crucial information (e.g., that they have a sexually transmitted disease) from their sexual partners. Liberals, though, are in an especially good position to both acknowledge and explain why such behaviors are indeed morally wrong: when sexual activity among adults lacks informed consent, then it is immoral. But in those cases in which prostitutes or casual sex partners know what they are getting into and freely choose to engage in sexual activity, then, says the liberal, there is nothing immoral about doing so.

Some argue that prostitutes never give informed consent to having sex for money, because they do not truly consent to it: they are effectively coerced by their circumstances (of being poor, or undereducated, or abused) into becoming prostitutes. This is the basis of

The Prostitution Argument

1. Prostitution is morally acceptable only if the prostitute provides informed consent to selling sexual services.
2. Adult prostitutes do not provide informed consent to selling sexual services.

Therefore,

3. Adult prostitution is not morally acceptable.

The focus here is on adults, because child prostitution is unquestionably immoral, given a child's inability to provide informed consent to having sex.

Premise 1 states a plausible necessary condition on the moral acceptability of prostitution. But premise 2 needs further scrutiny. Assessing it requires being sensitive to two legitimate points. The first is that adults are presumed to be capable of making informed, autonomous decisions—one of which, for all we know, can be to receive money in exchange for sexual services. The second point is that prostitutes rarely have better options; they are often in positions of great insecurity (economic and otherwise), and it can seem that prostitution is essentially exploitative—taking advantage of a person's vulnerability to get her to do things she wouldn't otherwise agree to do.

Regarding the first point: as already indicated, many prostitutes do *not* consent to selling sexual services, but instead have been forced into doing so. Still, what of those who say that they know what they are doing and are not being coerced into it? Are they all mistaken?

Answering yes to this question runs the danger of treating adults—usually, but not always,

adult women—as if they are incapable of knowing their own mind. Of course we do sometimes mistake our own motives, and we also sometimes say things we don’t really mean. But it is presumptuous to insist, ahead of time, that no sex worker can offer informed consent when on the job. Those who do insist on this assume that such prostitutes must be either lying or ignorant (of their own motives). Such a position thus threatens to discredit the views of those who are already marginalized—something that is far too easy to do, and therefore something that we should be very cautious about.

Of course it’s true that almost no one grows up hoping to become a prostitute. This (and much else) is evidence that prostitution is usually a last resort, something that is far from intrinsically attractive. But the same can be said of a great many other things—being a trash collector, a migrant field worker, or a latrine cleaner, for instance. It’s possible for workers in such fields to give their informed consent to doing these jobs, unappealing as they are. For all we know, the same might be said of some sex workers. The upshot of these reflections is that while premise 2 is certainly true in many cases, because many sex workers have indeed been forced to engage in prostitution, this premise may be false in a number of others.

In addition to inquiring about the morality of various forms of sexual activity, we can also ask about the morality of laws that prohibit such behavior. For example, even if one agrees with the liberal in thinking that homosexual sex, prostitution, or incest among adults is morally acceptable when informed and consensual, one might reject the idea that we should legalize such behavior.

As a general matter, the burden is very high on those who want to criminalize morally acceptable behavior. That’s because, as we discussed in Chapter 20, legal punishment involves the expression of moral condemnation, which makes little sense if the behavior being punished

is acknowledged to be morally acceptable. Still, there are some now-familiar arguments—slippery slope arguments, for instance (surveyed in Chapters 15 and 19), or conservative arguments (reviewed in Chapter 22)—that can allow an action to be morally permissible even while seeking to show that such actions ought to be legally forbidden.

Rather than assessing such arguments once again, only in this case as applied to various forms of consensual sex, let’s consider some new arguments. As it happens, these are specific to same-sex marriage. For reasons we haven’t yet encountered, one might think that while sexual relations among same-sex couples are morally OK, still, we should not legalize same-sex marriage. One reason for thinking this is

The Definition of Marriage Argument

1. If marriage is, by definition, a relation between a man and a woman, then a homosexual relationship can never qualify as a marriage.
2. Marriage is, by definition, a relation between a man and a woman.

Therefore,

3. A homosexual relationship can never qualify as a marriage.

Premise 1 is true. But premise 2 is problematic. The basic reason is this: we can’t solve serious moral issues just by means of a definition. We can define our terms in many ways just to suit our own viewpoints, without doing anything to resolve the underlying moral question. For example, we could define marriage as a relation between adults of *the same race*. That was very widely accepted, and standard practice, for many decades. But the definition doesn’t settle the moral question of whether blacks and whites should be allowed to marry one another. Even if you want to define ‘marriage’ as a relation between a man and a woman, one can still

ask: should there be legal recognition of relations that are exactly like heterosexual marriage, only between members of the same sex? That moral question won't be solved by means of a definition.

Another popular argument against same-sex marriage is more challenging. It seeks to show that consistency requires supporters of same-sex marriage to support polygamy as well. After all, if homosexuals ought to be allowed to marry one another because they can give their informed consent to doing so, then presumably those engaged in polygamy should be able to be married, since they, too, can offer such consent. This is the basis for

The Polygamy Argument

1. If same-sex marriage should be legalized, then we should also legalize polygamy.
2. We shouldn't legalize polygamy.

Therefore,

3. We shouldn't legalize same-sex marriage.

Some will claim that premise 2 is false; they will say that if a man and multiple women each give their informed consent to be married, then they should be allowed to do that. Perhaps that's right. If so, then this argument is unsound.

But suppose that isn't right, and we *should* outlaw polygamy. Why would that be? One answer is that polygamy is immoral. It certainly is if, as it has often been practiced, a man's wives include young girls who are unable to give consent that is genuinely informed. But laws might be enacted to ensure that such things don't occur. Other arguments for the immorality of polygamy follow the same basic structure as arguments for the immorality of homosexuality—polygamy is unnatural, God has forbidden it, and so on. Perhaps the most promising argument for the immorality of polygamy starts with a recognition that polygamy strongly contributes to the oppression of women. Societies that allow polygamy are ones in which men are

likely to enjoy far greater economic and political status, and much greater household authority, than women. This doesn't seem to be an accident; there seems to be a causal relation, not just a correlation, between legalized polygamy and women's subservient status.

If this is right, then this provides a reason for rejecting premise 1. The thought here is that there is a relevant difference between same-sex marriage and polygamy, so that legalizing the former need not justify legalizing the latter. Allowing same-sex marriage actually works to *combat* oppression, since it confers legal status on relationships for people who have traditionally been social outcasts. It raises the status of homosexuals without downgrading the status of anyone else. Polygamy, by contrast, helps to reinforce the second-class status of women in society; if anything, it raises the status of men, who are already, as a class, at the top of the heap, and makes it yet more difficult for women to achieve social, political, economic, and domestic equality.

Those who endorse the Polygamy Argument usually assume that same-sex marriage can be justified only on the basis of the liberal claim that all informed, consensual conduct should be legalized, unless it violates anyone's rights. Since both same-sex and polygamous relations can meet these conditions, premise 1 seems to follow. But there are two potential problems with this line of reasoning.

First, one might claim that even if polygamy does not itself violate anyone's rights, its legalization is highly likely to do so, by contributing to oppression of the sort just discussed. If that were so, it would be similar to a case described in Chapter 21, in which someone takes a drug that reliably leads to violence on the part of users. Though taking the drug does not itself violate anyone's rights, its tendency to cause its users to violate the rights of others is a plausible basis for preventing its legalization.

But perhaps you are more skeptical than I am about the claim that polygamy is very

likely to enforce oppression against women, or that oppression involves the violation of rights. Still, there is a second difficulty with the line of reasoning sketched earlier, namely, that supporters of same-sex marriage do not in fact have to rely on the liberal assumption that we should legalize all consensual conduct. Such supporters could instead rely on this principle of equality: the government is morally required to provide all of its citizens with equal legal rights, unless there is a compelling reason for the government not to do so. The defender of same-sex marriage could then argue, along at least some of the lines discussed earlier, that there is no compelling reason for withholding marital rights to homosexuals when granting them to heterosexuals. If you disagree with this verdict, here's your assignment: identify a relevant difference between same-sex marriage and opposite-sex marriage that also provides a very strong reason to oppose the former while allowing the latter.

CONCLUSION

The liberal position regarding sexual morality judges all informed, consensual sexual activity to be morally permissible. This view is in obvious tension with some elements of traditional morality, which condemns such sexual activity as prostitution, homosexual sex, premarital sex, or incest among adults. The emphasis on informed consent as a necessary condition of morally acceptable sexual behavior is common ground between liberals and their critics. Where they part ways is in their view about whether such consent is a sufficient condition of morally acceptable behavior.

The liberal endorses this sufficient condition, and so affirms the morality of casual sex and prostitution, when their participants are informed and consenting. That said, liberals, like others, recognize that many instances of casual sex and sex work fail to qualify as informed or consensual, in which case liberals

join their opponents in refusing to approve of such behavior.

Even if the liberal position about sexual morality is correct, we might still ask about the wisdom of legalizing all forms of informed, consensual sex. There are slippery slope and conservative arguments against doing so, but there are also novel arguments against same-sex marriage that can allow that intimate homosexual relations may be morally acceptable. One such argument, which relies on defining marriage as a relation between a man and a woman, is not a very good one. Another is more challenging, and seeks to show that consistency requires defenders of same-sex marriage to support polygamy as well. As we've seen, there may be good reason to resist this argument, either because polygamy contributes to oppression while same-sex marriages do not, or because the ultimate justification for same-sex marriage derives from a principle of equality, rather than from a liberal principle that endorses the legalization of all behavior that violates no rights.

ESSENTIAL CONCEPTS

Casual sex: sex between people who have expressed no commitment to each other.

Incest: a sexual relationship between family members.

Liberal position regarding sexual morality: the view that sex is morally permissible if and only if it is engaged in by consenting adults.

Polyamorous relationships: sexual, romantic, or marital relationships among more than two people.

Polyandry: a social practice in which a woman has more than one husband at the same time.

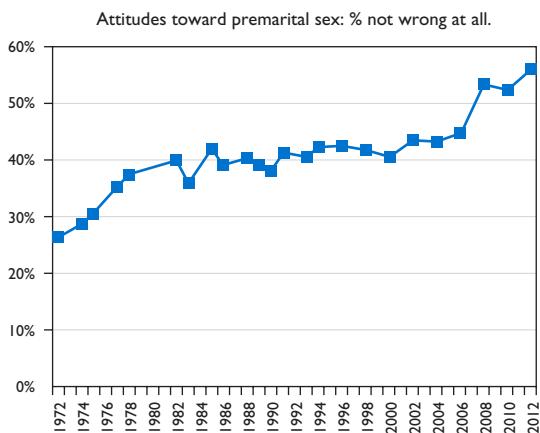
Polygamy: a social practice in which a man has more than one wife at the same time.

Premarital sex: sex between two people who have not been married.

Prostitution: having sex in exchange for payment.

STAT SHOT

1. Attitudes about whether society should accept homosexuality differ throughout the world. Canada and Western Europe are the most accepting of homosexuality (74–88 percent), followed by the United States (60 percent). The Middle East and Africa are on average the least accepting of homosexuality (in many countries less than 10 percent).¹
2. From 1972 to 2012, the attitudes of US adults toward premarital sex have become increasingly less traditional (Figure 23.1).
3. In a 2016 poll, 49 percent thought that prostitution between consenting adults should be legalized, while 44 percent thought it should not be.²
4. It is estimated that the world spends \$186 billion per year on prostitution, including \$14.6 billion in the United States, and that there are at least 13 million prostitutes around the world, including at least 1 million in the United States.³



1. <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/>

2. <http://www.pbs.org/wgbh/point-taken/blog/marist-should-prostitution-be-legalized/>

3. <http://www.havocscope.com/prostitution-statistics/>

Figure 23.1

Source: http://www.norc.org/PDFs/sexmoralfinal_06-21_FINAL.PDF

Cases for Critical Thinking

Polyamorous Relationships

In a column in the online magazine *Slate* about polyamory, writer Jillian Keenan tells a story about Richard, Vicki, Jim, and Maria, four people who ended up in a polyamorous relationship with one another.¹ The story begins with Richard meeting Vicki at a party—as the two describe it, they fell in love at first sight. Vicki had been married to Jim for nearly twenty years, but Jim and Vicki had an open relationship in

which they were both permitted to have sexual relations with others. Vicki and Richard started dating, and Vicki and Jim continued their marriage happily. Nine months later, Jim met a woman named Maria, and they began dating as well. Eventually, the four of them, Richard, Vicki, Jim, and Maria, were in a polyamorous relationship together, describing themselves as “a family.”

Richard, Vicki, Jim, and Maria’s relationship is a relationship including two men and two women, all of whom ostensibly have more or less equal status. In light of this, modern-day polyamorists like this foursome balk at their

relationships being compared to the more traditional polyamorous relationships, which are polygamous and likely to enforce oppression against women. They claim that far from being motivated by patriarchy or religious fundamentalism, they are simply doing what feels natural and healthy for them, and that their relationship is no less consensual and equal than a monogamous relationship would be.

¹ http://www.slate.com/articles/double_x/doublex/2013/06/polyamory_should_be_legal_it_s_consensual_and_fine_for_children.html

Questions

1. Should defenders of the liberal position regarding sexual morality be just as accepting of polyamorous relationships as they are of homosexual relationships?
2. Should polyamorous relationships like the one described here be eligible for legal recognition? Why or why not?
3. When thinking about the moral status of a sexual relationship, how much, if at all, should we take into account whether relationships of that kind have been unequal or oppressive in the past?
4. When thinking about the moral status of different kinds of relationships, how specific should we be about what kinds we are thinking about? Should we separate questions about the morality of polyamory from questions about the morality of polygamy or polyandry?

Incestuous Relationships

In 2016, *Vice* magazine published a human interest story about a pair of half-siblings who were in a consensual relationship.¹ Katherine, who was adopted at birth, didn't know she had a half-brother until Scott recognized her last name on Facebook and got in touch with her. During their correspondence, Katherine and Scott established that they were half-siblings. But they also found that they were both highly attracted to each other. They were aware that any sexual

relationship between them would be incest, and that it would be both illegal and socially unacceptable, but they decided to pursue it anyway. "Sometimes it's reciprocated and sometimes it's not, but it's perfectly normal when you haven't grown up with that person," Katherine told the interviewer about her relationship with Scott. "Knowing that, we felt a lot better about how we felt about each other, so we just kind of decided to let nature run its course."

Within two years, Katherine had moved across the country to live with Scott. Their friends and family members think that they're merely living together as siblings, and they're careful about maintaining this ruse. They keep their curtains drawn at home and never display their relationship in public. If Katherine and Scott were found out, they would face both social and legal consequences. "It's kind of sad when we go out in public. I'd like to be able to hold his hand sometimes or be able to give him a kiss when I'm happy," Katherine said about their relationship. "That's very sad to me, because we did not grow up together. If I had met him on the street and not known we were related, I think I would have still been attracted to him."

¹ https://broadly.vice.com/en_us/article/wjeq44/why-cant-i-consent-to-sex-with-my-brother-on-genetic-sexual-attraction

Questions

1. Does this case, and others like it, make you suspicious of the liberal position regarding sexual morality? Why or why not?
2. When thinking about the moral status of incest, should we take into consideration only the biological relationship between family members, or also (or instead) the social relationship between family members?
3. When thinking about the moral status of cases of consensual incest, how much, if at all, should we take into account the fact that most cases of incest have been nonconsensual?

4. How relevant is the kind of familial relationship (sibling, parent–child, etc.) to the moral status of an incestuous relationship?

What Is Consent?

It is uncontroversial that nonconsensual sex is morally unacceptable. But it's more controversial what *counts* as informed consent. The legal treatment of consent has often operated under the assumption that encounters are consensual by default, that is, consensual unless there was some clear indication given by one of the parties that consent was not being given. For example, in many states, it has long been the case that a sex act is considered rape only if one of the parties physically resisted it.

However, this standard for consent has been heavily criticized over the last few decades. The slogan “No Means No,” first coined by the Canadian Federation of Students, became a rallying cry for sexual assault activists. The idea behind “No Means No” is that a lack of physical resistance does not imply consent, because verbal resistance is sufficient to constitute a lack of consent.¹ According to this standard, if one of the involved parties verbally resists a sex act, by saying “No” or something similar to it, then that act is not consensual. In light of this, many states have been revising their rape laws to reflect the thought that verbal resistance is enough to withdraw the presumption of consent.²

While the “No Means No” standard raises the bar for consent, it still operates under the assumption that sex is consensual unless it is resisted in some way; it simply broadens what forms of resistance are counted as constituting a lack of consent. Recently, this assumption has also been called into question. The slogan “No Means No” has been replaced by activists with “Yes Means Yes.”³ The idea behind “Yes Means Yes” is that a lack of resistance isn't enough for

consent. Instead, sexual consent must be “affirmative,” in the sense that there is some explicit indication from all parties that they're willing to engage in it, rather than just a lack of resistance.⁴ The standard of affirmative consent throws out the idea that sexual acts are by default consensual and instead holds that sexual acts are by default *nonconsensual*; they only become consensual once consent is explicitly given. In 2014, California passed a law that requires universities to adopt affirmative consent policies toward campus sexual assault.⁵ However, questions remain as to the specifics of how affirmative consent works, such as what counts as explicitly giving consent and how explicit consent has to be.

1. <http://cfs-ns.ca/no-means-no/>
2. https://www.washingtonpost.com/local-md-politics/no-means-no-measure-on-sexual-assault-becomes-law-in-maryland/2017/04/18/10e1428e-244e-11e7-bb9d-8cd6118e1409_story.html
3. <http://www.pbs.org/newshour/rundown/means-enough-college-campuses/>
4. <http://system.suny.edu/sexual-violence-prevention-workgroup/policies/affirmative-consent/>
5. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB967

Questions

1. Should sex be considered consensual by default?
2. Which slogan more accurately describes what makes sex consensual, “No Means No” or “Yes Means Yes”?
3. Is a sex act rape if explicit, affirmative consent was not given by all parties?
4. Should our standards for what makes sex consensual be higher than our standards for what makes other activities consensual? Why or why not?



READINGS

Why Shouldn't Tommy and Jim Have Sex? A Defense of Homosexuality

John Corvino

In this article, John Corvino considers and rejects each of the four most popular kinds of arguments that seek to establish the immorality of homosexuality. The first of these arguments claims that homosexuality is unnatural, and is therefore immoral. Corvino distinguishes five different senses in which things can be unnatural, and concludes, for each of these meanings, that homosexuality is either perfectly natural or, if unnatural, is not unnatural in a way that makes it immoral.

The second kind of argument against homosexuality is that it is harmful, either to homosexuals themselves or to third parties. Corvino thinks that the harm-to-others charge would be very serious if it could be sustained. But he argues that it fails, as does the claim that partners in homosexual relations are likelier to harm other people than those involved in heterosexual relations.

The third argument is one based on biblical teaching. The Hebrew scriptures appear to contain explicit condemnations of male homosexual conduct, and both Jewish and Christian traditions have long condemned homosexuality. Corvino argues that a plausible interpretive principle for ancient texts enables us to justify a position, within these religious frameworks, that puts these condemnations in context and enables believers, in good faith, to emerge with a view that finds homosexuality morally acceptable.

The last argument takes the form of a slippery slope: If homosexuality is morally permitted, then so, too, are bestiality and polygamy. But these are immoral, and therefore so too is homosexuality. Corvino thinks that we can resist the slippery slope, because (as he argues) there are special reasons to condemn bestiality and polygamy that do not apply to the case of homosexuality.

Tommy and Jim are a homosexual couple I know. Tommy is an accountant; Jim is a botany professor. They are in their forties and have been together fourteen years, the last five of which they've lived in a Victorian house that they've lovingly restored. Although their relationship has had its challenges, each has made sacrifices for the sake of the other's happiness and the relationship's long-term success.

From John Corvino, "Why Shouldn't Tommy and Jim Have Sex?" in John Corvino, ed., *Same Sex: Debating the Ethics, Science and Culture of Homosexuality* (Totowa, NJ: Rowman and Littlefield, 1997), pp. 3–16.

I assume that Tommy and Jim have sex with each other (although I've never bothered to ask). Furthermore, I contend that they probably *should* have sex with each other. For one thing, sex is pleasurable. But it is also much more than that: a sexual relationship can unite two people in a way that virtually nothing else can. It can be an avenue of growth, of communication, and of lasting interpersonal fulfillment. These are reasons why most heterosexual couples have sex even if they don't want children, don't want children yet, or don't want additional children. And if these reasons are good enough for most heterosexual couples, then they should be good enough for Tommy and Jim.

Of course, having a reason to do something does not preclude there being an even better reason for not doing it. Tommy might have a good reason for drinking orange juice (it's tasty and nutritious) but an even better reason for not doing so (he's allergic). The point is that one would need a pretty good reason for denying a sexual relationship to Tommy and Jim, given the intense benefits widely associated with such relationships. The question I shall consider in this paper is thus quite simple: Why shouldn't Tommy and Jim have sex?

HOMOSEXUAL SEX IS “UNNATURAL”

Many contend that homosexual sex is “unnatural.” But what does that mean? Many things that people value—clothing, houses, medicine, and government, for example—are unnatural in some sense. On the other hand, many things that people detest—disease, suffering, and death, for example—are “natural” in the sense that they occur “in nature.” If the unnaturalness charge is to be more than empty rhetorical flourish, those who levy it must specify what they mean. Borrowing from Burton Leiser, I will examine several possible meanings of “unnatural.”¹

What Is Unusual or Abnormal Is Unnatural

One meaning of “unnatural” refers to that which deviates from the norm, that is, from what most people do. Obviously, most people engage in heterosexual relationships. But does it follow that it is wrong to engage in homosexual relationships? Relatively few people read Sanskrit, pilot ships, play the mandolin, breed goats, or write with both hands, yet none of these activities is immoral simply because it is unusual. As the Ramsey Colloquium, a group of Jewish and Christian scholars who oppose homosexuality, writes, “The statistical frequency of an act does not determine its moral status.”² So while homosexuality might be unnatural in the sense of being unusual, that fact is morally irrelevant.

What Is Not Practiced by Other Animals Is Unnatural

Some people argue, “Even animals know better than to behave homosexually; homosexuality must be wrong.” This argument is doubly flawed. First it rests on a false premise. Numerous studies—including

Anne Perkins’s study of “gay” sheep and George and Molly Hunt’s study of “lesbian” seagulls—have shown that some animals do form homosexual pair-bonds. Second, even if animals did not behave homosexually, that fact would not prove that homosexuality is immoral. After all, animals don’t cook their food, brush their teeth, participate in religious worship, or attend college; human beings do all of these without moral censure. Indeed, the idea that animals could provide us with our standards—especially our sexual standards—is simply amusing.

What Does Not Proceed from Innate Desires Is Unnatural

Recent studies suggesting a biological basis for homosexuality have resulted in two popular positions. One side proposes that homosexual people are “born that way” and that it is therefore natural (and thus good) for them to form homosexual relationships. The other side maintains that homosexuality is a lifestyle choice, which is therefore unnatural (and thus wrong). Both sides assume a connection between the origin of homosexual orientation, on the one hand, and the moral value of homosexual activity, on the other. And insofar as they share that assumption, both sides are wrong.

Consider first the pro-homosexual side: “They are born that way; therefore it’s natural and good.” This inference assumes that all innate desires are good ones (i.e., that they should be acted upon). But that assumption is clearly false. Research suggests that some people are born with a predisposition toward violence, but such people have no more right to strangle their neighbors than anyone else. So while people like Tommy and Jim may be born with homosexual tendencies, it doesn’t follow that they ought to act on them. Nor does it follow that they ought *not* to act on them, even if the tendencies are not innate. I probably do not have any innate tendency to write with my left hand (since I, like everyone else in my family, have always been right-handed), but it doesn’t follow that it would be immoral for me to do so. So simply asserting that homosexuality is a lifestyle choice will not show that it is an immoral lifestyle choice.

Do people “choose” to be homosexual? People certainly don’t seem to choose their sexual *feelings*,

at least not in any direct or obvious way. (Do you? Think about it.) Rather, they find certain people attractive and certain activities arousing, whether they “decide” to or not. Indeed, most people at some point in their lives wish that they could control their feelings more—for example, in situations of unrequited love—and find it frustrating that they cannot. What they *can* control to a considerable degree is how and when they act upon those feelings. In that sense, both homosexuality and heterosexuality involve lifestyle choices. But in either case, determining the origin of the feelings will not determine whether it is moral to act on them.

What Violates an Organ’s Principal Purpose Is Unnatural

Perhaps when people claim that homosexual sex is unnatural they mean that it cannot result in procreation. The idea behind the argument is that human organs have various natural purposes: eyes are for seeing, ears are for hearing, genitals are for procreating. According to this argument, it is immoral to use an organ in a way that violates its particular purpose.

Many of our organs, however, have multiple purposes. Tommy can use his mouth for talking, eating, breathing, licking stamps, chewing gum, kissing women, or kissing Jim; and it seems rather arbitrary to claim that all but the last use are “natural.” (And if we say that some of the other uses are “unnatural, but not immoral,” we have failed to specify a morally relevant sense of the term “natural.”)

Just because people can and do use their sexual organs to procreate, it does not follow that they should not use them for other purposes. Sexual organs seem very well suited for expressing love, for giving and receiving pleasure, and for celebrating, replenishing, and enhancing a relationship—even when procreation is not a factor. Unless opponents of homosexuality are prepared to condemn heterosexual couples who use contraception or individuals who masturbate, they must abandon this version of the unnaturalness argument. Indeed, even the Roman Catholic Church, which forbids contraception and masturbation, approves of sex for sterile couples and of sex during pregnancy, neither of which can lead to procreation. The Church

concedes here that intimacy and pleasure are morally legitimate purposes for sex, even in cases where procreation is impossible. But since homosexual sex can achieve these purposes as well, it is inconsistent for the Church to condemn it on the grounds that it is not procreative.

One might object that sterile heterosexual couples do not *intentionally* turn away from procreation, whereas homosexual couples do. But this distinction doesn’t hold. It is no more possible for Tommy to procreate with a woman whose uterus has been removed than it is for him to procreate with Jim. By having sex with either one, he is intentionally engaging in a non-procreative sexual act.

Yet one might press the objection further and insist that Tommy and the woman *could* produce children if the woman were fertile: whereas homosexual relationships are essentially infertile, heterosexual relationships are only incidentally so. But what does that prove? Granted, it might require less of a miracle for a woman without a uterus to become pregnant than for Jim to become pregnant, but it would require a miracle nonetheless. Thus it seems that the real difference here is not that one couple is fertile and the other not, nor that one couple “could” be fertile (with the help of a miracle) and the other not, but rather that one couple is male-female and the other male-male. In other words, sex between Tommy and Jim is wrong because it’s male-male—i.e., because it’s homosexual. But that, of course, is no argument at all.

What Is Disgusting or Offensive Is Unnatural

It often seems that when people call homosexuality “unnatural” they really just mean that it’s disgusting. But plenty of morally neutral activities—handling snakes, eating snails, performing autopsies, cleaning toilets, and so on—disgust people. Indeed, for centuries, most people found interracial relationships disgusting, yet that feeling—which has by no means disappeared—hardly proves that such relationships are wrong. In sum, the charge that homosexuality is unnatural, at least in its most common forms, is longer on rhetorical flourish than on philosophical cogency. At best it expresses an aesthetic judgment, not a moral judgment.

HOMOSEXUAL SEX IS HARMFUL

One might instead argue that homosexuality is harmful. The Ramsey Colloquium, for instance, argues that homosexuality leads to the breakdown of the family and, ultimately, of human society, and it points to the “alarming rates of sexual promiscuity, depression, and suicide and the ominous presence of AIDS within the homosexual subculture.”³ Thomas Schmidt marshals copious statistics to show that homosexual activity undermines physical and psychological health.⁴ Such charges, if correct, would seem to provide strong evidence against homosexuality. But are the charges correct? And do they prove what they purport to prove?

One obvious (and obviously problematic) way to answer the first question is to ask people like Tommy and Jim. It would appear that no one is in a better position to judge the homosexual lifestyle than those who know it firsthand. Yet it is unlikely that critics would trust their testimony. Indeed, the more homosexual people try to explain their lives, the more critics accuse them of deceitfully promoting an agenda. (It’s like trying to prove that you’re not crazy. The more you object, the more people think, “That’s exactly what a crazy person would say.”)

One might instead turn to statistics. An obvious problem with this tack is that both sides of the debate bring forth extensive statistics and “expert” testimony, leaving the average observer confused. There is a more subtle problem as well. Because of widespread antigay sentiment, many homosexual people won’t acknowledge their romantic feelings to themselves, much less to researchers. I have known a number of gay men who did not “come out” until their forties and fifties, and no amount of professional competence on the part of interviewers would have been likely to open their closets sooner. Such problems compound the usual difficulties of finding representative population samples for statistical study.

Yet even if the statistical claims of gay rights opponents were true, they would not prove what they purport to prove, for several reasons. First, as any good statistician realizes, correlation does not equal cause. Even if homosexual people were more likely to commit suicide, be promiscuous, or contract AIDS than the general population, it would not follow that their homosexuality causes them to do these things. An alternative—and very plausible—explanation is

that these phenomena, like the disproportionately high crime rates among African Americans, are at least partly a function of society’s treatment of the group in question. Suppose you were told from a very early age that the romantic feelings that you experienced were sick, unnatural, and disgusting. Suppose further that expressing these feelings put you at risk of social ostracism or, worse yet, physical violence. Is it not plausible that you would, for instance, be more inclined to depression than you would be without such obstacles? And that such depression could, in its extreme forms, lead to suicide or other self-destructive behaviors? (It is indeed remarkable that couples like Tommy and Jim continue to flourish in the face of such obstacles.)

A similar explanation can be given for the alleged promiscuity of homosexuals. The denial of legal marriage, the pressure to remain in the closet, and the overt hostility toward homosexual relationships are all more conducive to transient, clandestine encounters than they are to long-term unions. As a result, that which is challenging enough for heterosexual couples—settling down and building a life together—becomes far more challenging for homosexual couples. . . .

But what about AIDS? Opponents of homosexuality sometimes claim that even if homosexual sex is not, strictly speaking, immoral, it is still a bad idea, since it puts people at risk for AIDS and other sexually transmitted diseases. But that claim is misleading: it is infinitely more risky for Tommy to have sex with a woman who is HIV-positive than with Jim, who is HIV-negative. Obviously, it’s not homosexuality that’s harmful, it’s the virus; and the virus may be carried by both heterosexual and homosexual people.

Now it may be true (in the United States, at least) that homosexual males are statistically more likely to carry the virus than heterosexual females and thus that homosexual sex is *statistically* more risky than heterosexual sex (in cases where the partner’s HIV status is unknown). But opponents of homosexuality need something stronger than this statistical claim. For if it is wrong for men to have sex with men because their doing so puts them at a higher AIDS risk than heterosexual sex, then it is also wrong for women to have sex with men because their doing so puts them at a higher AIDS risk than

homosexual sex (lesbians as a group have the lowest incidence of AIDS). Purely from the standpoint of AIDS risk, women ought to prefer lesbian sex.

If this response seems silly, it is because there is obviously more to choosing a romantic or sexual partner than determining AIDS risk. And a major part of the decision, one that opponents of homosexuality consistently overlook, is considering whether one can have a mutually fulfilling relationship with the partner. For many people like Tommy and Jim, such fulfillment—which most heterosexuals recognize to be an important component of human flourishing—is only possible with members of the same sex....

In sum, there is nothing *inherently* risky about sex between persons of the same gender. It is only risky under certain conditions: for instance, if they exchange diseased bodily fluids or if they engage in certain “rough” forms of sex that could cause tearing of delicate tissue. Heterosexual sex is equally risky under such conditions. Thus, even if statistical claims like those of Schmidt and the Ramsey Colloquium were true, they would not prove that homosexuality is immoral. At best, they would prove that homosexual people—like everyone else—ought to take great care when deciding to become sexually active.

Of course, there’s more to a flourishing life than avoiding harm. One might argue that even if Tommy and Jim are not harming each other by their relationship, they are still failing to achieve the higher level of fulfillment possible in a heterosexual relationship, which is rooted in the complementarity of male and female. But this argument just ignores the facts: Tommy and Jim are homosexual *precisely because* they find relationships with men (and, in particular, with each other) more fulfilling than relationships with women. Even evangelicals (who have long advocated “faith healing” for homosexuals) are beginning to acknowledge that the choice for most homosexual people is not between homosexual relationships and heterosexual relationships, but rather between homosexual relationships and celibacy. What the critics need to show, therefore, is that no matter how loving, committed, mutual, generous, and fulfilling the relationship may be, Tommy and Jim would flourish more if they were celibate. Given the evidence of their lives (and of others like them), this is a formidable task indeed.

Thus far I have focused on the allegation that homosexuality harms those who engage in it. But what about the allegation that homosexuality harms other, nonconsenting parties? Here I will briefly consider two claims: that homosexuality threatens children and that it threatens society.

Those who argue that homosexuality threatens children may mean one of two things. First, they may mean that homosexual people are child molesters. Statistically, the vast majority of reported cases of child sexual abuse involve young girls and their fathers, stepfathers, or other familiar (and presumably heterosexual) adult males. But opponents of homosexuality argue that when one adjusts for relative percentage in the population, homosexual males appear more likely than heterosexual males to be child molesters. As I argued above, the problems with obtaining reliable statistics on homosexuality render such calculations difficult. Fortunately, they are also unnecessary.

Child abuse is a terrible thing. But when a heterosexual male molests a child (or rapes a woman or commits assault), the act does not reflect upon all heterosexuals. Similarly, when a homosexual male molests a child, there is no reason why that act should reflect upon all homosexuals. Sex with adults of the same sex is one thing; sex with *children* of the same sex is quite another. Conflating the two not only slanders innocent people, it also misdirects resources intended to protect children. Furthermore, many men convicted of molesting young boys are sexually attracted to adult women and report no attraction to adult men. To call such men “homosexual,” or even “bisexual,” is probably to stretch such terms too far.

Alternatively, those who charge that homosexuality threatens children might mean that the increasing visibility of homosexual relationships makes children more likely to become homosexual. The argument for this view is patently circular. One cannot prove that doing X is bad by arguing that it causes other people to do X, which is bad. One must first establish independently that X is bad. That said, there is not a shred of evidence to demonstrate that exposure to homosexuality leads children to become homosexual.

But doesn’t homosexuality threaten society? A Roman Catholic priest once put the argument to me

as follows: "Of course homosexuality is bad for society. If everyone were homosexual, there would be no society." Perhaps it is true that if everyone were homosexual, there would be no society. But if everyone were a celibate priest, society would collapse just as surely, and my friend the priest didn't seem to think that he was doing anything wrong simply by failing to procreate. . . .

I have argued that Tommy and Jim's sexual relationship harms neither them nor society. On the contrary, it benefits both. It benefits them because it makes them happier—not merely in a short-term, hedonistic sense, but in a long-term, "big picture" sort of way. And, in turn, it benefits society, since it makes Tommy and Jim more stable, more productive, and more generous than they would otherwise be. In short, their relationship—including its sexual component—provides the same kinds of benefits that infertile heterosexual relationships provide (and perhaps other benefits as well). Nor should we fear that accepting their relationship and others like it will cause people to flee in droves from the institution of heterosexual marriage. After all . . . the usual response to a gay person is not "How come *he* gets to be gay and I don't?"

HOMOSEXUALITY VIOLATES BIBLICAL TEACHING

At this point in the discussion, many people turn to religion. "If the secular arguments fail to prove that homosexuality is wrong," they say, "so much the worse for secular ethics. This failure only proves that we need God for morality." Since people often justify their moral beliefs by appeal to religion, I will briefly consider the biblical position.

At first glance, the Bible's condemnation of homosexual activity seems unequivocal. Consider, for example, the following two passages, one from the "Old" Testament and one from the "New":

You shall not lie with a male as with a woman; it is an abomination. (Lev. 18:22)

For this reason God gave them up to degrading passions. Their women exchanged natural intercourse for unnatural, and in the same way also the men, giving up natural intercourse with women, were consumed with passion for one another. Men committed shameless acts with men and received

in their own persons the due penalty for their error. (Rom. 1:26–27)

Note, however, that these passages are surrounded by other passages that relatively few people consider binding. For example, Leviticus also declares,

The pig . . . is unclean for you. Of their flesh you shall not eat, and their carcasses you shall not touch; they are unclean for you. (11:7–8)

Taken literally, this passage not only prohibits eating pork, but also playing football, since footballs are made of pigskin. (Can you believe that the University of Notre Dame so flagrantly violates Levitical teaching?)

Similarly, St. Paul, author of the Romans passage, also writes, "Slaves, obey your earthly masters with fear and trembling, in singleness of heart, as you obey Christ" (Eph. 6:5)—morally problematic advice if there ever were any. Should we interpret this passage (as Southern plantation owners once did) as implying that it is immoral for slaves to escape? After all, God himself says in Leviticus,

[Y]ou may acquire male and female slaves . . . from among the aliens residing with you, and from their families that are with you, who have been born in your land; and they may be your property. You may keep them as a possession for your children after you, for them to inherit as property. (25:44–46)

How can people maintain the inerrancy of the Bible in light of such passages? The answer, I think, is that they learn to interpret the passages *in their historical context*.

Consider the Bible's position on usury, the lending of money for interest (for *any* interest, not just excessive interest). The Bible condemns this practice in no uncertain terms. In Exodus God says that "if you lend money to my people, to the poor among you, you shall not exact interest from them" (22:25). Psalm 15 says that those who lend at interest may not abide in the Lord's tent or dwell on his holy hill (1–5). Ezekiel calls usury "abominable"; compares it to adultery, robbery, idolatry, and bribery; and states that anyone who "takes advanced or accrued interest . . . shall surely die; his blood shall be upon himself" (18:13).

Should believers therefore close their savings accounts? Not necessarily. According to orthodox Christian teaching, the biblical prohibition against

usury no longer applies. The reason is that economic conditions have changed substantially since biblical times, such that usury no longer has the same negative consequences it had when the prohibitions were issued. Thus, the practice that was condemned by the Bible differs from contemporary interest banking in morally relevant ways.

Yet are we not in a similar position regarding homosexuality? Virtually all scholars agree that homosexual relations during biblical times were vastly different from relationships like Tommy and Jim's. Often such relations were integral to pagan practices. In Greek society, they typically involved older men and younger boys. If those are the kinds of features that the biblical authors had in mind when they issued their condemnations, and such features are no longer typical, then the biblical condemnations no longer apply. As with usury, substantial changes in cultural context have altered the meaning and consequences—and thus the moral value—of the practice in question. Put another way, using the Bible's condemnations of homosexuality against contemporary homosexuality is like using its condemnations of usury against contemporary banking.

Let me be clear about what I am *not* claiming here. First, I am not claiming that the Bible has been wrong before and therefore may be wrong this time. The Bible may indeed be wrong on some matters, but for the purpose of this argument I am assuming its infallibility. Nor am I claiming that the Bible's age renders it entirely inapplicable to today's issues. Rather, I am claiming that when we do apply it, *we must pay attention to morally relevant cultural differences between biblical times and today*. Such attention will help us distinguish between specific time-bound prohibitions (for example, laws against usury or homosexual relations) and the enduring moral values they represent (for example, generosity or respect for persons). And as the above argument shows, my claim is not very controversial. Indeed, to deny it is to commit oneself to some rather strange views on slavery, usury, women's roles, astronomy, evolution, and the like.

Here, one might also make an appeal to religious pluralism. Given the wide variety of religious beliefs (e.g., the Muslim belief that women should cover their faces, the Orthodox Jewish belief against working on Saturday, the Hindu belief that cows are sacred and should not be eaten), each of us inevitably violates the

religious beliefs of others. But we normally don't view such violations as occasions for moral censure, since we distinguish between beliefs that depend on particular revelations and beliefs that can be justified independently (e.g., that stealing is wrong). Without an independent justification for condemning homosexuality, the best one can say is, "My religion says so." But in a society that cherishes religious freedom, that reason alone does not normally provide grounds for moral or legal sanctions. That people still fall back on that reason in discussions of homosexuality suggests that they may not have much of a case otherwise.

CONCLUSION

As a last resort, opponents of homosexuality typically change the subject: "But what about incest, polygamy, and bestiality? If we accept Tommy and Jim's sexual relationship, why shouldn't we accept those as well?" Opponents of interracial marriage used a similar slippery-slope argument in the 1960s when the Supreme Court struck down antimiscegenation laws.⁵ It was a bad argument then, and it is a bad argument now.

Just because there are no good reasons to oppose interracial or homosexual relationships, it does not follow that there are no good reasons to oppose incestuous, polygamous, or bestial relationships. One might argue, for instance, that incestuous relationships threaten delicate familial bonds, or that polygamous relationships result in unhealthy jealousies (and sexism), or that bestial relationships—do I need to say it?—aren't really "relationships" at all, at least not in the sense we've been discussing. Perhaps even better arguments could be offered (given much more space than I have here). The point is that there is no logical connection between homosexuality, on the one hand, and incest, polygamy, and bestiality, on the other.

Why, then, do critics continue to push this objection? Perhaps it's because accepting homosexuality requires them to give up one of their favorite arguments: "It's wrong because we've always been taught that it's wrong." This argument—call it the argument from tradition—has an obvious appeal: people reasonably favor tried-and-true ideas over unfamiliar ones, and they recognize the foolishness of trying to invent morality from scratch. But the argument from tradition is also a dangerous argument, as any honest look at history will reveal.

I conclude that Tommy and Jim's relationship, far from being a moral abomination, is exactly what it appears to be to those who know them: a morally positive influence on their lives and on others. Accepting this conclusion takes courage, since it entails that our moral traditions are fallible. But when these traditions interfere with people's happiness for no sound reason, they defeat what is arguably the very point of morality: promoting individual and communal well-being. To put the argument simply, Tommy and Jim's relationship makes them better people. And that's not just good for Tommy and Jim: that's good for everyone.

NOTES

1. Burton M. Leiser, *Liberty, Justice, and Morals: Contemporary Value Conflicts* (New York: Macmillan, 1986), pp. 51–57.
2. The Ramsey Colloquium, “The Homosexual Movement,” *First Things* (March 1994), pp. 15–20.
3. The Ramsey Colloquium, “Homosexual Movement,” p. 19.
4. Thomas Schmidt, “The Price of Love” in *Straight and Narrow? Compassion and Clarity in the Homosexuality Debate* (Downers Grove, IL: Inter-Varsity Press, 1995), chap. 6.
5. *Loving v. Virginia*, 388 U.S. 1967.

John Corvino: Why Shouldn't Tommy and Jim Have Sex? A Defense of Homosexuality

1. What reasons do Tommy and Jim have for having sex? Do you agree with Corvino that these are the same reasons that many heterosexual couples have for having sex?
2. What does it mean to say that an activity is “unnatural”? Is the fact that something is unnatural ever a good reason for concluding that it is morally wrong?
3. Is homosexual sex harmful or risky to those who engage in it, in a way that heterosexual sex is not? If so, is this a good reason to think that it is morally wrong?
4. Some people argue that public acceptance of homosexual relationships would make children more likely to become homosexual. Why doesn't Corvino think this is a good argument against homosexual relationships? Do you agree with him?
5. How does Corvino respond to religious arguments against homosexuality? Do you find his responses convincing?
6. What is a “slippery slope” argument? Why does Corvino think that slippery slope arguments against homosexuality are bad arguments? Do you agree with him?

Normal Marriage: Two Views

Maggie Gallagher

In this article, Maggie Gallagher distinguishes two prominent views about the nature of marriage. According to the “traditional” view—the one Gallagher favors—marriage is a public bond and sexual institution between members of the opposite sex that has as its central purpose the proper begetting and raising of the spouses’ biological children. The relationship view, by contrast, understands marriage to be an essentially private emotional bond between consenting adults that exists primarily to enhance the personal well-being of the married parties.

Gallagher holds that the approval of same-sex marriage is the “logical result” of accepting the relationship view of marriage. Since the relationship view does not define

marriage in terms of the biological reproduction of children, there is no essential barrier to nonheterosexual marriages. For this reason, Gallagher worries that the acceptance of same-sex marriage will only reinforce the relationship view in the minds of citizens, leading them to “sever, conceptually” the connection between sex and parenting.

Gallagher fears that this conceptual severing will further erode those marital norms that reinforce the bonds of obligation tying a parent to his or her child—bonds that Gallagher thinks depend on the existence of biological parent–child relations. To support her view, she cites statistics describing the number of children currently living without their biological fathers and social science research indicating that not being raised by one's married biological parents correlates with negative personal life outcomes.

In addition to concerns about the well-being of children who will be (or already have been) born, Gallagher worries that, unless we come to view marriage as essentially related to the begetting of children, modern nations will continue to reproduce at rates that cannot sustain their own populations over the long term.

Given these considerations, Gallagher questions whether it is responsible to further downplay the traditional view of marriage by enshrining same-sex marriages into law. This question is especially pressing. Gallagher argues, since the total number of people who would receive tangible legal benefits from same-sex marriage is relatively low, while the long-term societal benefits of same-sex marriage are uncertain.

What is marriage for?

Every known human society has some form of marriage. In every advanced society, marriage exists as a public, legal act and not merely a private romantic or religious rite. Why?

Advocates of same-sex unions have done us the favor of pushing the intellectual debate over marriage to the deepest questions. Before we can decide whether sex is irrelevant (or how it is relevant) to the public purposes of marriage, we have to decide what those public purposes are. Why does the state get involved in the intimate lives of its citizens?

There are two views at play in the public square, marriage as a public bond and sexual institution or marriage as a private emotional relationship. They are not mutually exclusive, in the sense that most Americans today draw their understanding of marriage from both streams. But ultimately these two competing visions of what marriage is for lead the law in dramatically opposing directions.

From Maggie Gallagher, “Normal Marriage: Two Views,” in Lynn Wardel, Mark Strasser, William Duncan, and David Orgon Coolidge, eds., *Marriage and Same-Sex Unions* (Praeger, 2003), pp. 13–24. Noted have been abridged.

THE RELATIONSHIP VIEW

Here is one view: Marriage is an essentially private, intimate, emotional relationship created by two people for their own personal reasons to enhance their own personal well-being. Marriage is created by the couple for the couple.

It is wrong and discriminatory, as well as counterproductive, therefore, for the state to privilege certain kinds of intimate relations over others. Marriage has a legal form but no specific content. Each person has the right to socially express his or her own inner vision of family, sexuality, and intimacy on an equal basis.

Sometimes this argument is made in its strongest possible form. As Rutgers law professor Drucilla Cornell put it, “The state should have no right to privilege or impose one form of family structure or sexuality over another. This would mean that some adults could choose *consensual* polygamy. Mormon men could have more than one wife. Four women who worship the mother goddess could also recognize and form a unity and call their relationship a marriage. There would be no state-enforced single relationship—not monogamy, heterosexual, polygamy, or polyandry. . . . [Legislating] love

and [conscripting] men is a sign of the fear of, not a solution to, the crisis of families. Intimate associations are different undertakings. They always have been so. The freedom to form families opens up the possibility of people creating their own families in the way most suitable to them.”

More often, it is tempered with an acknowledgment that the state does have a potential interest in regulating intimate relations, including marriage, but it is limited to the protection of existing dependents. To the extent that marriage protects the weak (children), the state may prefer marriage. But it makes no sense in this view for the state to deny the benefits of marriage to any two people, especially any two people with children. The only goods of marriage that the state confers are a small number of practical advantages in inheritance, Social Security, and health insurance law. There is no rational reason, therefore, to withhold these benefits from any couple who wishes to claim them on behalf of themselves or (especially) their dependents. When it comes to same-sex unions, these advocates typically rely on social science to uphold their claim that there is no rational reason why marriage should be understood as an inherently sexual (rather than unisex) institution.

More recent reviews of this body of literature call these claims into question. Due to problems in sample selection and size, study design, and other technical flaws, the current body of social science literature on gay parenting cannot tell us whether or not there are any important differences between children raised by their own two married mothers and fathers and children raised by two same-sex parents. Social science evidence, as it now stands, certainly does not refute the idea that children do better raised by their own two married mothers and fathers....

In the larger sweep of history, despite significant countercurrents, this view of marriage as emotional intimacy is gaining dramatic ground. In this sense, same-sex marriage is not an outlandish deviation; it is the logical result of the rather popular contemporary view of marriage as a personal right of the individual, created by the individual, for purposes that the individual alone defines. When two individuals who happen to have desires and tastes for

each other coincide for a lifetime, that is beautiful. If not, it just is not anybody else's business.

Of course, if this is what marriage is for, many things about the state's traditional regulation of marriage become difficult to understand. It is difficult to understand in this scheme why the state would be involved in marriage at all, or why marriage must be confined to the couple, or why, even at the most basic level, the word *marriage* requires intimacy at all. If fairness is the issue, why can a worker give his health insurance benefits only to someone he or she is sleeping with? Why do you have to live together? Why can't business partners declare their relationship a marriage and save on the insurance premiums?

Drucilla Cornell is correct, but she does not see far enough. If marriage is just another word for an intimate union, then the state has no legitimate reason to insist that it even be intimate unless the couple, or the quadruplets, want it so. For the individual to be truly free to make unconstrained intimate choices, marriage itself must be deconstructed.

What about the children? There the state will, as Cornell puts it, separate the parenting alliance from the sexual alliance. Adults will still have obligations to children, but they will be severed from their newly unfettered intimate adult lives. What then is the source of adult obligation to specific children? There are only two possible answers; biology and contract.

Advocates of the alternative have diligently pushed the idea that contract not biology, creates parental obligations, in part because it is the only possible way for same-sex couples to have children together. The old stubborn reality that the people who make the baby are its parents must be shoved aside to accommodate an infinite diversity of adult choice. The people who thought up the baby are its real parents. So, for example, a surrogate mother is not a mother—the baby she carries is not hers because she did not intend for it to be hers. The mind is more important than the body, especially to people with Ph.D.s.

Of course, this latter view coincides with one important reality. It is easy to make a baby, hard to love and protect and provide for children to adulthood. One important goal of state regulation of intimacy has been to ensure that children have what

they need. Advocates of family diversity tell us that it is therefore cruel to deprive any actual child of whatever benefit can be milked from the state by having the law prefer any family form. If the adults have decided to be parents, the state should applaud and enforce this decision, no matter how or who or even how many. So a *New York Times* story in 2000 applauded the growing legal acceptance of gay families, like those Joseph DeFillipis and his partner, David Koteles, are in the process of making. “[T]he men entered into an arrangement to conceive a child with a lesbian couple and to raise him or her jointly . . . The arrangement could lead to a tangle of legal questions should the foursome pull in different directions.” But “DeFillipis and his three prospective co-parents have not been to a lawyer. . . . Instead for the last two years, they have discussed every conceivable area of dispute, including religion, geography and finances.”² Two parents are good, four parents are better, in this view.

But its advocates, narrowly focused as they are on the urgent desires of a small number of adults to make their unorthodox family dreams come true, ignore the implications of this argument for vast numbers of children. Even today, most children are created by acts of the body, not the will. The best data indicate that about half of all pregnancies are unintended (including about a fifth of marital births and 58 percent of unwed births). Close to half of all women will experience an unintended pregnancy. Sex makes babies, sometimes on purpose, but frequently not. The womb also has its reasons, which reason knows not.

If it is choice and contract that create parental obligations, why do these mothers have any obligations for the creatures of their bodies? Why are they not legal strangers to their own babies unless they voluntarily choose to contract obligations? On a less theoretical plane, why are we hounding poor men for child support, for babies for which they never contracted? Why would any man ever feel an obligation to take care of—or even marry—the mother of the children his body created? If it is adult choice that creates parental obligation, we are imposing a monstrous injustice on some of the least privileged men in this society, as well as some of the better-off. . . .

Once we sever, conceptually, the sexual alliance and the parenting alliance, we sever children from their uncontested claim on their parents—especially their fathers—care and protection. It is the fathers who disappear, because while fathers and mothers are equally beloved and important to their children, fatherhood and motherhood are not equally natural or inevitable. Far more than mothers, reliable fathers are cultural creations, products of specific ideals, norms, rituals, and mating and parenting practices. Today, after thirty years of sexual revolution, only 60 percent of American children now live with their own two married parents. Of the remaining 40 percent, the overwhelming majority live with their single or remarried mothers.

A vast body of social science evidence shows that children who are not raised by their own married mother and father are at increased risk for just about every negative outcome social scientists know how to measure: including physical illness, mental illness, school failure, child abuse, substance abuse, early unwed pregnancy, and criminal misconduct.³ There is no evidence from the social sciences (including the literature on gay parenting) that credibly disrupts the assumption that a child does better raised by his or her own married mother and father. But even if better research showed that individual same-sex couples do a good job with their individual children, the institutionalization of same-sex unions as marriages still threatens the well-being of other children and the public purposes (or, to lapse into legal terminology, the state’s interest) in marriage.

Good fathers are made, not born. When family and sexual norms are weakened, it is generally children’s access to fathers, not mothers, that is at risk. When we tell adults that parenting obligations are created by free choices of adults that the law only sanctions after the fact, the well-being of children is put at risk.

Two questions are raised by the prospect of unisex marriage: (1) Can a society or culture reliably make men into good fathers while at the same time affirming in its governing family law that children do not need mothers and fathers, and that it is choice, not biology, that creates family obligations? (2) Can a society that adopts the set of ideas and ideals driving the postmodern family even survive?

I think that the answer to both these questions is, demonstrably, no.

MARRIAGE AS A UNIVERSAL HUMAN INSTITUTION

What is the alternate view of marriage? Some might call it traditional, but this is really not the right term, in the sense that this broad view of marriage is not the product of some specific tradition—custom, religion, or culture. The specific contours of our own inherited marriage tradition, deeply rooted in Judeo-Christian culture, which include reciprocal pledges of lifelong monogamy and fidelity, are, of course, not universal. Defending these particular contours is a task for another day.

But what every known human society calls marriage shares certain basic, recognizable features, including most especially the privileging of the reproductive couple, in order to protect both the interests of children and the interests of the society. Marriage is everywhere the word we use to describe a public sexual union between a man and a woman that creates rights and obligations between the couple and any children the union may produce. Marriage as a public tie obligates not only fathers, but fathers' kin to recognize the children of this union. Marriage is in every society the sexual union where childbearing and raising are not only tolerated but applauded and encouraged. Marriage is the way in which every society attempts to channel the erotic energies of men and women into a relatively narrow, but highly fruitful channel, to give every child the father his or her heart desires. Above all, normal marriage is normative. The society defines for its young what the relationship is and what purposes it serves. Successful societies do this not only because children need fathers, but also because societies need babies. It is a truism, frequently forgotten by large complex societies, that only societies that reproduce survive.

In the context of the contemporary Western family system, this point is not as academic as most people think. In addition to the direct pain and suffering caused by family breakdown (driven by the idea that, children do not need families consisting of mothers and fathers, and that the sexual desires and freedoms of adults are more important than family norms), the evidence of reproductive dysfunction

in all societies that adopt these postmodern family ideas is, at this point, overwhelming. For two generations every Western, industrialized nation has had subreplacement birthrates. In America, the crisis is still many generations off because our birthrates are closer to replacement and our social tolerance of immigration is higher. But many European nations are on the road to dying out, absent dramatic changes in reproductive patterns. By the year 2050, Italy's population is projected to decline by more than a quarter. The political, economic, and cultural implications of European depopulation are likely to be profound.

Normal marriage is normative. Marriage does not merely reflect individual desire; it shapes and channels it. Marriage as a social institution communicates that a certain kind of sexual union is, in fact, our shared ideal: one where a man and a woman join not only their bodies, but their hearts and their bank accounts, in a context where children are welcome. Of course, not everybody wants or achieves this social ideal. In important ways marriage regulates the relationships and sexual conduct even of people who are not married and may never even get married. Its social and legal prominence informs young lovers about the end toward which they aspire, the outward meaning of their most urgent, personal impulses. It signals to cohabiters the limitations of their own and/or their partners' commitment.

Marriage, as a universal human idea, does not require the ruthless or puritanical suppression of alternatives. It is consistent with a variety of attitudes toward alternate forms of sexual expression, from stigma to acceptance. What it is not consistent with is a legal regime such as that suggested by the Vermont court: that there is no rational relation between the law of marriage and procreation.⁴ Because some infertile people marry, and assisted reproductive technology is more common now, the court argued, marriage in Vermont now has nothing to do with its great universal anthropological imperative: family making in a way that encourages ties between fathers, mothers, and their children—and the successful reproduction of society.

Marriage as a universal human institution is, as I have said, consistent with a variety of attitudes toward alternative intimate and sexual relations, from stigma to tolerance. But if we lose the idea that marriage is about, at some basic level, the

reproduction of children and society, if our law rejects the presumption that children need mothers and fathers, and that marriage is the way in which we do our best to get them for children, then we cannot expect private tastes and opinions alone to sustain the marriage idea.

That is what same-sex marriage puts at risk. For what benefit? Responsible adults of all sexual orientations who care about children and society should be especially cautious about radical revisions of marriage law, given the extremely small number of couples on whose behalf we contemplate overturning normative marriage. The latest Census Bureau figures report that only about 0.5 percent of all households consist of same-sex couples. Most of these are likely to be gay or lesbian. But many of them, like many opposite-sex cohabitators, are likely uninterested in marriage.

Could we use registered domestic partners to get an idea how many same-sex couples are being denied matrimony by current law? In August 2001, I called the domestic partnership registries of the ten largest U.S. cities that have domestic partner registries. In these ten cities, same-sex registered domestic partners account for about 0.1 percent of the population.

How many domestic partners depend on one another for health benefits—another crude proxy for denial of marriage rights? I tried to obtain such data from the ten largest corporations that offer domestic partnership benefits: General Motors, Ford Motor Company, Citigroup, Enron Corporation, IBM, AT&T, Verizon Communications, Philip Morris, J.P. Morgan Chase and Company, and Bank of America Corporation. However, only one of these ten companies, General Motors, was willing to release the data: Out of a total of 1,330,000 employees, exactly 166 workers (or just over 0.01 percent) chose to extend their health insurance to a same-sex partner.

This is not surprising. No definitive research on the gay and lesbian population exists, but the majority of gay and lesbian individuals are likely not living with partners. Many who do live in sexual partnership may refuse financial responsibility for each other (just like many opposite-sex cohabitators). Even where same-sex couples do wish a financial union, most partners are likely working and maintaining their own insurance benefits.

Similarly, we suspect that the number of children who might benefit from, say, health insurance through same-sex marriage is quite small. Why? First, only 0.5 percent of households consist of same-sex couples. Only a minority of these have children from the union, through adoption or donor insemination. If the child is either the natural or adopted child of the parents, he or she is likely covered by the working parent's health insurance anyway. Finally, while married people's income is pooled for tax and welfare purposes, that of domestic partners (especially same-sex partners) is typically not. This means that unmarried partners are eligible for social insurance benefits unavailable to most married couples. So unlike married couples, if one parent in a domestic partnership drops out of the work force to care for a baby, he or she will likely qualify for Medicaid and other means-tested medical and financial benefits reserved for low-income and single parents.

The demand for same-sex-marriage benefits is not likely based on filling a huge unmet need for practical benefits. Children or adults are not being deprived of health care en masse because law and social policies favor married couples over unrelated cohabitators. Instead, the drive for same-sex marriage appears to be a largely symbolic cultural issue; the goal (or at any rate the main effect) is not filling a need for health insurance or other practical benefits, but making a powerful social statement: Same-sex unions are the functional equivalent of marriage, traditionally understood, and should be treated as such by law and public policy.

Is this a statement the law ought to make? Is it true? When it comes to child well-being, we could not begin to say that current social science research justifies this statement. To come to this conclusion, research following a nationally representative sample of children of same-sex couples over time, comparing children of same-sex couples to children living with their own mothers and fathers, with adequate controls for other background variables, would be necessary. This research has, as yet, not even been attempted. Meanwhile, a large body of social science evidence confirms the advantages of the intact mother-father family over alternate family forms, including other two-parent homes, such as remarriages.

Surely there can be no legal right to ask the law to, in essence, lie—to endorse unequivocally what

we do not yet know to be true: that same-sex unions are the functional equivalents of marriages when it comes to child rearing. Nor should the law of marriage focus only on the well-being of individual children of individual unions, but on the broader social impact that legal presumptions of marriage and parenthood have on the conduct of all parents, and therefore all children. When the law assumes and promulgates the idea that either mothers or fathers are dispensable, and that marriage is an essentially private matter whose form is determined by private adult desires, marriage in general and children in particular will inevitably suffer.

Marriage is an institution in crisis. Close to half of new marriages end in divorce. A third of our children are born out of wedlock. The majority of children, at current estimates, will experience a fatherless or motherless household. Making substantial new progress in actually reversing the trend toward family fragmentation requires that law and society reject the deepest presumptions driving the movement toward gay marriage: the ideas that marriage is essentially a private choice created by and for the couple, that children do just fine in whatever family forms their parents choose to create, and that babies are irrelevant to the public purposes of marriage.

People who wish to legislate same-sex unions do so in the name of high ideals: fairness, justice, compassion. I do not doubt their sincerity. But I do not share their own high estimate of their actions. To take the already troubled institution most responsible for the protection of children and the continuation of society and to gut its most basic presumption in the name of furthering adult interests in sexual liberty seems to me morally and socially cavalier.

NOTES

1. Drucilia Cornell, 1998, "Fatherhood and Its Discontents: Men, Patriarchy, and Freedom," in Cynthia R. Daniels (ed.), *Lost Fathers: The Politics of Fatherlessness in America* (New York: St. Martin's Press): 199.
2. John Leland, 2000, "O.K. You're Gay. So? Where's My Grandchild?" *New York Times* (December 21): F1.

See also accompanying story, John Leland, 2000, "State Laws Vary, but a Broad Trend Is Clear," *New York Times* (December 21): F4.

3. For a review of the evidence see Linda J. Waite and Maggie Gallagher, 2000, *The Case for Marriage: Why Married People Are Happier, Healthier, and Better Off Financially* (New York: Doubleday); Norval Glenn et al, 2002, *Why Marriage Matters: 21 Conclusions from the Social Sciences* (New York: Institute for American Values).
4. *Baker v. State*, 744 A.2d. 864 (Vt. 1999).

Maggie Gallagher: Normal Marriage: Two Views

1. Gallagher worries that same-sex marriage will lead to the erosion of marital norms, to the detriment of children. How might one argue that same-sex marriage could have the *opposite* effect? Which argument do you find more convincing?
2. Gallagher thinks that adult obligations to children arise from biology, not by contract. Do you find that convincing? Why or why not?
3. Gallagher argues that the relationship view of marriage cannot account for the connection between marriage and the begetting of new children. Does Gallagher's view imply that infertile couples should not be allowed to marry? Why or why not?
4. Regarding the relationship view of marriage, Gallagher says: "It is difficult to understand in this scheme why the state would be involved in marriage at all, or why marriage must be confined to the couple, or why, even at the most basic level, the word *marriage* requires intimacy at all." What is Gallagher's argument here? Do you find it convincing? Why or why not?
5. Gallagher claims that rejecting the traditional view of marriage has had negative large-scale social effects, especially on children. To what degree do you think our views on marriage and sexuality have contributed to the problems she cites? To what degree do you think these trends can be attributed to causes *other* than cultural attitudes toward marriage?

Virtue Ethics, Casual Sex, and Objectification

Raja Halwani

Casual sex is sex outside the context of a love relationship. Some have thought that casual sex is necessarily morally wrong because, when one has casual sex, one objectifies one's sex partner—that is, one treats the other as a mere object, or tool, rather than a being worthy of respect. Raja Halwani argues that this is mistaken—casual sex does not necessarily involve objectification. Thus it is not necessarily morally wrong. Indeed, on Halwani's view, casual sex is usually morally permissible.

Halwani takes a virtue ethical approach to the topic of casual sex. According to virtue ethics, an action's goodness or badness (or rightness or wrongness) depends, in part, on the acting agent's desires, intentions, and emotions. Halwani argues that the desire for casual sex is not, in itself, morally problematic. Of course, such a desire can be morally problematic if it consumes one's life or is motivated by revenge. But these are not the ordinary sort of case.

Halwani argues that there is no more reason to think that casual sex partners treat each other as mere objects than that one treats one's grocer as a mere object. For the most part, we just want groceries from our grocer—nothing more. But we don't thereby treat our grocer as a mere object, so long as we still treat him with respect by considering his desire to be treated kindly, not to be robbed, and so on. The same is true, Halwani argues, of casual sex partners. Casual sex partners interact with each other to get sexual pleasure. But in deriving sexual pleasure from their interactions, casual sex partners still consider the other's desires and needs. If so, then, Halwani argues, casual sex may be wrong in rare instances—namely, those in which one partner really does objectify the other—but not in the majority of cases.

Little has been written philosophically about casual sex. In any case, casual sex is not usually considered morally good, even if there is agreement that its practitioners tend to find it pleasurable. I shall discuss the ethics of casual sex, arguing that from the point of view of virtue whether casual sex is immoral depends on the case, but that in general it is not morally wrong in itself. I also discuss objectification, a phenomenon that is thought to find a natural home in casual sex, concluding that it does not deserve a sweeping negative moral judgment; it, too, requires case-sensitive judgments.

WHAT IS CASUAL SEX?

It is difficult to define "casual sex" if we understand this to mean the provision of necessary and sufficient conditions (Halwani 2006). Casual sex is sexual activity that occurs outside the context of a love relationship. Usually, but not invariably, the parties who engage in it do so with the sole intention of deriving sexual pleasure from the act. Typical examples include two people picking each other up in a bar for the purpose of sex, people meeting through the Internet for sex and anonymous encounters in gay bath houses and straight swingers' clubs. Note some departures. First, the parties to a casual sexual encounter may not be motivated solely by sexual pleasure. Some do it for the money, as in sex between a prostitute and client and sex between pornography actors. Second, people sometimes

From Raja Halwani, "Virtue Ethics, Casual Sex, and Objectification," in Alan Soble and Nicholas Power, eds., *Philosophy of Sex: Contemporary Readings*, 5th edition (Rowman and Littlefield, 2008), pp. 338–346.

engage in casual sex without intending to do so. Two people might pick each other up in a bar, proceed to have sex, yet they intended (or hoped) that it would lead to a relationship. As it happened, the sex does not lead to a relationship, so they end up having casual sex despite their intentions.

VIRTUE ETHICS

Virtue ethics is often construed as a moral theory independent of, and perhaps rivaling, other theories, such as consequentialism and Kantian ethics. Most virtue ethicists mine the writings of the ancient Greek philosophers, especially Aristotle, to develop a plausible version.

Virtues and vices are character traits that dispose their possessor, the agent, to act according to their dictates (so to speak). On an Aristotelian view, the virtues are infused with wisdom, a form of practical intelligence that allows the agent to differentiate between what is right or proper to do, and what is wrong or improper to do. The virtues incline their agents not only to behave rightly, thereby judging rightly how to proceed in a particular situation but also to exhibit, when applicable, the proper emotions.

Consider courage. According to Aristotle, this virtue allows its agent to handle fear and dangerous situations properly. He claims that the courageous agent feels the right amount of fear when in danger; otherwise he would be either rash or cowardly (*NE* 1115b17–20). The goods for the sake of which the agent faces fear must be worthwhile.¹ Overcoming one's fear and stepping into the bathroom despite the presence of a cockroach does not count as being courageous—the good at stake is trivial. By contrast, overcoming fear of retribution and reprisals and speaking up in a crowded and hostile room in defense of an innocent victim would count as being courageous. Aristotle also requires² that the agent must act for the right reason or out of the right motive (this is also required by Kant). To be virtuous, the agent must speak up because an innocent victim must be defended and an injustice stopped, not because he is motivated by anticipated rewards for doing so.

Thus the virtuous agent is one who makes the right decision about what to do in a particular situation, makes this decision for the right reason, and feels the right kind and amount of any associated emotion.

CASUAL SEX AND VIRTUE

A virtue ethics approach is neither inherently hostile to nor inherently in favor of sexual behavior. Aristotle's views on sex are found mostly in his treatment of temperance—the virtue that best expresses the proper attitudes and actions towards bodily desires. (Halwani 2003 [chap. 3], 2007a; Young 1988). Whether a sexual action or desire is permissible or worthwhile depends on the object of the actions or desire, much like whether fear is appropriate depends on its object.³ One question, then, is: Are people's desires for casual sex permissible or worthwhile? Is there anything wrong with desiring to have casual sex?

Further, assuming that desires for casual sex are morally permissible, ought they be acted on? The type of desire, say, a desire for heterosexual, vanilla sex, might be morally impeccable, yet acting on it in a particular case (having sex with my best friend's spouse) might not be. There might be types of casual sex such that desiring them is wrong and indicative of a lack of virtue. For example, rape is wrong; if it is casual sex, then it is wrong casual sex, and both desiring it and acting on the desire would be wrong. Similar reasoning applies to sex with children. What seems to be wrong about rape, pedophilia, and so forth, is something other than the fact that they are casual. They involve coercion, manipulation, deception, and harm, to name a few moral faults. In these cases, desire indicates a defective character.

If we focus on the usual cases of casual sex, they seem not to include these faults. If two adults pick each other up in a bar with the intention and the knowledge that they are to have casual sex, what might be wrong? Setting objectification aside for a moment, and assuming—*contra* Kant—that sexual desire is not inherently morally suspicious, it would seem that nothing is wrong with desiring casual sex or acting on the desire as long as, from a virtue-centered perspective, two conditions are satisfied (beyond that the type of casual sex desired must avoid the standard wrong-making features).

The first condition is one which the advocates of virtue ethics must insist, given virtue theory's inclusion of character and motives under the moral umbrella: The agent's desire for casual sex should not consume his or her life. That is, desires should

not be so strong or numerous that they overshadow other important aspects of life. Further, there might be something especially pernicious about letting sexual desire take control of one's life. The first condition is bound to be controversial. Why should no single activity take over one's life, if that activity is worthwhile? And if there is nothing morally wrong or vicious in general with a worthwhile activity taking control of one's life, why be suspicious of sex? Perhaps when it comes to casual sex the idea is that an agent's life being consumed by it is hard to defend, because sex is not sufficiently worthwhile to justify sacrificing other things. But casual sex is not special here, for life-consuming sex between a loving couple would perhaps not redeem such lives.

There is a tradition in philosophy and theology, which includes Plato, Augustine, and even John Stuart Mill, that doesn't view sexual pleasure as valuable. The pleasures and goods of sex, though intense, are brief and tend to vanish (as opposed to, say, the pleasures and goods of reading a book). One can fondly remember sexual encounters, and can even dwell on these memories, but this is not worthwhile, if the activities that one dwells on are not worthwhile to begin with. One can manifest excellence when it comes to sex, but this, too, amounts to little if the activity at which one excels is not worthwhile.

I think this view is largely correct. Although sex is pleasurable, it is not the sort of activity that ordinarily enriches the agent or leaves its mark on humanity. Here casual sex might be especially vulnerable, since one cannot redeem it even on the grounds that one meets interesting people and thereby enriches one's life (as is often said about taxi drivers). The meetings tend to be fleeting; they involve superficial conversations (if any) between strangers; one's partner (and oneself) may well be dull and shallow. Casual sex seems not to merit letting one's life revolve around it, let alone letting it consume one's life. However, the argument has limits: if casual sex and the desire for it are not all-consuming, they could satisfy the first condition.

The second condition is another one on which advocates of virtue ethics would insist: what motivates the parties in subject to moral assessment, and casual sex must be engaged in for the right reason.

Sometimes those who are motivated by desire for sexual pleasure have other motives that actually account for their behavior. Having casual sex with X in order to spite Y, to make Y jealous, or to exact revenge on Y are morally pernicious motives.

OBJECTIFICATION

To objectify a person is to treat him or her only as an object. For examples, a person treats another as an object if the first uses the second as a chair while reading the paper. If objectification is always morally wrong and is an essential feature of casual sex, casual sex is always wrong. It would not avoid one of the standard wrong-making characteristics of acts. Further, it would be tainted to the extent that the desire for casual sex included the vicious motive of objectifying one's partner. Objectification poses a problem for anyone who thinks that casual sex is morally permissible.

Why assume that objectification is always morally wrong? Its moral wrongness cannot simply be read off from the definition; it is not obvious why treating an entity that is not an object (in particular, a person) only as an object constitutes conclusive grounds for moral condemnation. Something else must be added, to the effect that the person does not merit object-like treatment in virtue of some characteristic he has that morally blocks object-like treatment. So, in treating the person only as an object, one is trespassing this moral boundary. For persons, it might be their rationality, sophisticated desires and mental structures, hopes, wishes, happiness, capacity for flourishing, or their affinity to God that morally elevated them above objects. Note that any of these features—not only rationality—could be on the basis on which persons can legitimately demand nonobjectifying treatment. Objectification, then, though it has its natural home and origin in Kantian ethics, is a concept that fits well with other moral frameworks, including virtue ethics.

Why assume that objectification is an essential feature of casual sex? In typical cases of casual sex, two people engage in sex only for sexual pleasure. In doing so, we might argue, they use each other—treating each other as objects, as sophisticated dildos or plastic vaginas—for the purpose of pleasure. Even when one party has other reasons or

motives (money), there is still objectification, for X uses Y to fulfill that purpose. This argument need not rely on the implausible assumption that in typical cases of casual sex the parties intend to objectify each other. Even if X does not intend to objectify Y, X still does so in and by using Y for sexual pleasure.

The defender of casual sex can argue that objectification is not an essential feature of casual sex, and that whether casual sex objectifies depends on the particular case. Casual partners do not usually think of each other as mere objects. A woman who picks up a man in a bar does so precisely because she thinks him a man, not a cleverly constructed robot or a penis with some sort of body attached to it. A gay man who sucks another's penis through a glory hole does so precisely because he thinks the penis is attached to a man, a man whom he likely saw earlier and was attracted to. Thus, the parties to casual sex usually desire interactions with other persons, not objects. On its own, this fact means little, for even as we know that our casual sexual partner is a person, we can nonetheless proceed to objectify him or her. But the fact is still important in reminding us that casual sexual interaction is close to many other types of human interaction, sexual and nonsexual. In casual sex, as elsewhere, we are aware of the humanity of others, and we usually attempt to respect their wishes, desires, and wants. Paying the grocer for the chewing gum, in a civil fashion, is a form of respect: I respect his wishes to be treated as a seller and kindly, not merely someone to be abused and robbed. This is no less true in casual sex; in typical cases, the partners attend each other's sexual needs, desires, and wishes.

Perhaps the defense of casual sex has gone through so easily because we have been employing a superficial definition of objectification. As argued by Martha Nussbaum (1995), objectification may be more complex, and treating someone as an object can take many forms and have different meanings. If so, a defense of casual sex should take this complexity into account. Of the seven senses of "objectification" Nussbaum lists, however, only two pose difficulties; the other five—denial of autonomy, inertness, violability, ownership, and denial of subjectivity—do not. On the contrary, what typically occurs during casual sex is the opposite. In taking into account

my partner's sexual desires, I consider him to have autonomy, self-determination, and agency. Furthermore, I do not consider him to be violable, for I attribute to him boundaries and integrity in two ways: first, by not treating him contrary to his desires and, second, precisely by treating him in accordance with his desires. I also, for the same reason, do not treat him as an owned object. Finally in taking his sexual desires into account, I certainly do not treat him "as something whose experience and feelings . . . need not be taken into account" (257).

This leaves us with two objectifications, instrumentality and fungibility. Instrumentality is a problem only if the person is treated merely as a tool (which Nussbaum acknowledges, 265). But people frequently use each other as tools (students use teachers for educational purposes; teachers use students for career purposes). In interactions with each other, if we use each other as tools but also, in doing so, act in accordance with each other's wishes and desires, it seems that objectification disappears. Since in casual sex the partners typically do this, instrumentalization, understood as the *mere* use of another as a tool, is not a problem.

Fungibility—the treatment of something or someone "as interchangeable (a) with other objects of the same type, and/or (b) with objects of other types" (Nussbaum 1995, 257)—is an interesting type of objectification. When we objectify someone, he would make perfect sense were he to say, "I demand that I not be treated this way," given that we ought not to objectify people. However, fungibility does not license such reactions. Suppose I enter a coffee shop, do not like the selection, and go somewhere else. In doing so, I treat the owner of the store as fungible with other coffee shop owners. Yet for him to protest that I have wronged him in this treatment would be silly. Similarly, if I go to a bar in search of casual sex, no one can demand that I pick him or her up. In considering people as "interchangeable with other objects of the same type" I do nothing wrong. When objectification is wrong, others can demand of objectifiers that they, the objectified, not be objectified. This seems out of place regarding fungibility. Unless I have preexisting obligations, no one can demand of me that I purchase coffee from his shop rather than another shop or that I have sex with him instead of someone else.

The reason why fungibility seems wrong is that it is like treating people like pens or paper cups, discarding one and using another for our own purposes. But this indicates that fungibility is wrong when it occurs with actions that are otherwise wrong, in which case fungibility itself is not the problem, or when it occurs in special relationships. If I kidnap my neighbor's child and bring them a child from the local shelter, declaring "Have this one; He'll do," the wrongness is fungibility, but only because I acted, wrongly, as if no special relationship has existed between parents and child, that is, as if any child of a certain age would for them be an adequate substitute. Now, if I were in a bar cruising for a one-night stand, eyeing potential sexual partners, I would be treating them as fungible; I view them, individually, as interchangeable with other men in general or with other men of a particular sort, say, thirty-something Indian or Pakistani men ("of the same type"). But since none of them can rightly demand of me that I sleep with him, and since I cannot sexually impose myself on any one of them or demand any one of them that he sleep with me, in treating them as fungible I not only do not do them wrong, I do not objectify them. So fungibility, when it comes to casual sex, should be stricken from the list of possible ways to objectify others.

I have argued that virtue ethics morally permits casual sex in some cases but not in others. Moreover objectification in casual sex is much less frequent than thought; it requires morally nasty behavior in which casual sexual partners do not usually engage.

NOTES

1. *NE* 1115a10–15.
2. *NE* 1105a30–1105b1.
3. *NE* 1118b25.

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Raja Halwani: Virtue Ethics, Casual Sex, and Objectification

1. On Halwani's virtue ethical approach, an agent's intentions and emotions influence the moral status of their action. Can you think of an example in which an act's moral status varies depending on what intentions or emotions the agent has?
2. Halwani says that "Casual sex seems not to merit letting one's life revolve around it, let alone letting it consume one's life." Are you inclined to agree? If not, why not? If so, what do you find objectionable about letting one's life revolve around casual sex?
3. What is the difference between treating a person as an object and treating a person *merely* as an object (or as a *mere* object)? Can you think of an example of each?
4. Are there other reasons to oppose casual sex on moral grounds that Halwani fails to consider? If so, how do you think Halwani would respond to those considerations?
5. Did Halwani convince you that casual sex partners can interact for the purposes of sexual pleasure without using one another as mere objects? Why or why not?

Alcohol and Rape

Nicholas Dixon

In this reading, Nicholas Dixon focuses on moral and legal issues surrounding impaired sex. These are sexual encounters that fall between two extremes. The first extreme represents clear cases of rape, illustrated by a case in which several men take turns having sex with a woman who has passed out after becoming deeply intoxicated at a party. The other extreme is a case of woman who has become slightly tipsy after an evening meal but whose consent makes the ensuing sexual encounter morally acceptable. Dixon focuses on the intermediate cases in which alcohol has impaired a woman's judgment to a significant extent—she's more than a bit tipsy, but not at the point of blacking out. If, in that condition, she consents to having sex and later comes to regret it, does this count as rape?

Dixon introduces a variety of complicating factors in answering this question. At the heart of his analysis is the familiar distinction within the criminal law between an *actus reus* (a wrongful act) and *mens rea* (a "guilty mind," i.e., a blameworthy mental state). Criminal behavior requires both. Dixon focuses especially on the question of whether men who have impaired sex exhibit *mens rea*. He concludes that in most cases, they do, although exceptions need to be made for cases in which a woman has given advance consent, while sober, for having certain forms of drunken sex, or where sexual partners are in a long-standing relationship.

He then turns his attention to the question of how the law ought to respond to cases of impaired sex. He argues that legal sanctions are probably inappropriate ways to deal with such cases. Dixon argues that criminalizing impaired sex runs the risk of underestimating women's ability to take responsibility for their drinking. It also risks being unfair to men, because the standard of impairment is inherently vague and therefore very difficult to apply in sexual contexts and in courtrooms after the fact.

Many date or acquaintance rapes, especially those that occur in a college setting, involve the use of alcohol by both rapist and victim. To what extent, if any, should the fact that a woman has been drinking alcohol before she has sexual relations affect our determination of whether or not she has been raped? I will consider the impact of the woman's intake of alcohol on both the *actus reus* ("guilty act") and *mens rea* ("guilty mind") elements of rape. A man is guilty

of rape only if he not only commits the *actus reus* of rape—sex without his partner's consent—but does so with the requisite guilty mind, that is, intentionally, knowingly, recklessly, or negligently. I will take for granted that, regardless of a woman's alcoholic intake, she has been raped whenever a man forces himself on her after she says "no" or otherwise resists. I will focus instead on situations when women who have been drinking provide varying levels of acquiescence to sex. Let us begin by considering two relatively straightforward examples, which we can use as limiting cases, of sexual encounters involving alcohol.

I. TWO LIMITING CASES

A. Fraternity Gang Rape

In 1988 four Florida State University fraternity members allegedly had sex with an 18-year-old female student after she had passed out with an almost lethal blood alcohol level of .349 percent. Afterwards, she was allegedly “dumped” in a different fraternity house.

If these events, which led to a five-year ban on the fraternity chapter, really happened, the woman was certainly raped. Since a woman who is unconscious after heavy drinking is unable to consent, the fraternity members committed the *actus reus* of rape. Moreover, any claim that they were unaware of her lack of consent, thus potentially negating the *mens rea* requirement, would ring hollow. We may extrapolate beyond this extreme case to situations where a person is so drunk that, while she is conscious, she is barely aware of where she is and who her partner is, and she has no recollection of what has happened the following day. She may acquiesce and give the physiological responses that indicate consent, and she may even say “yes” when asked whether she wants to have sex, but her mental state is so impaired by alcohol that she cannot give a sufficiently meaningful level of consent to rebut rape charges against the man with whom she has sexual relations.

B. A Regretted Sexual Encounter

A male and female college student go on a dinner date, and both drink a relatively small amount of alcohol, say a glass of wine or beer. The conversation flows freely, and she agrees to go back to his place to continue the evening. They have one more drink there, start kissing and making out, and he asks her to spend the night. She is not drunk and, impressed by his gentle and communicative manner, accepts his offer. However, she is not used to drinking, and, although she is not significantly cognitively impaired—her speech is not slurred and her conversation is lucid—her inhibitions have been markedly lowered by the alcohol. When she wakes up alongside him the following morning, she bitterly regrets their lovemaking.

No rape has occurred. While she now regrets having spent the night with her date, and would quite likely not have agreed to do so had she not drunk any alcohol, her consent at the time was sufficiently voluntary to rule out any question of rape. While their sexual encounter violated her more lasting values, this no more entails that she did not “really” consent than the fact that my overeating at dinner violates my long-term plan to diet entails that my indulgence was not an autonomous action. Moreover, even if we granted for the sake of argument the far fetched claim that the *actus reus* of rape occurred, his belief that she did consent was perfectly reasonable, so he would still fail to exhibit the requisite *mens rea*. Unwisely having sex after unwisely drinking alcohol is not necessarily rape. We do a lot of unwise things when drinking, like *continuing* to drink too long and getting a bad hangover, and staying up too late when we have to work the next day. In neither case would we question our consent to our act of continuing to drink or staying up late. Why should a person’s consent to sex after moderate amounts of drinking be any more suspect?

II. PROBLEMATIC INTERMEDIATE CASES: IMPAIRED SEX

Real sexual encounters involving alcohol tend to fall in between these two limiting cases. Imagine, for instance, a college student who gets very drunk at a party. Her blood alcohol level is well above the legal limit for driving. She is slurring her words and is unsteady on her feet, but she knows where she is and with whom she is speaking or dancing. She ends up spending the night with a guy at the party—perhaps someone she has just met, perhaps an acquaintance, but no one with whom she is in an ongoing relationship. She willingly responds to his sexual advances, but, like the woman in case IB, horribly regrets her sexual encounter the next day. Although she remembers going home with the guy from the party, she cannot recall much else from the evening and night. Let us call this intermediate case, in which the woman’s judgment is significantly impaired by alcohol, “impaired sex.” Has she been raped?

In the next two subsections I will examine two competing analyses of impaired sex, each one suggested by one of the limiting cases in section I. First, though, I pause to consider how relevant the degree to which the man has helped to bring about the woman's impaired state is to the question of whether rape has occurred. Suppose that he has deliberately got her drunk, cajoling her to down drink after drink, with the intention of lowering her resistance to his planned sexual advances? The very fact that he uses such a strategy implies that he doubts that she would agree to have sex with him if she were sober. Should she bring rape charges, on the ground that her acquiescence to sex when she was drunk was invalid, his claim that he believed that she voluntarily consented would appear disingenuous. His recklessness in disregarding doubts about the voluntariness of her consent arguably meets the *mens rea* requirement. (Remember that in this section we are discussing women who are very drunk to the point of slurring their words and being unsteady on their feet, not those who are less inhibited after drinking a moderate amount of alcohol.)

For the remainder of this paper, I will focus instead on the more difficult variant of impaired sex in which the man does not use alcohol as a tool for seduction. Instead, he meets the woman when she is already drunk, or else he drinks with her with no designs on getting her drunk. In either case, he spontaneously takes advantage of the situation in which he finds himself. Is he guilty of rape?

A. Women's Responsibility for Their Own Actions

We can isolate a relatively uncontroversial underlying principle, which is surely congenial to liberal and most other types of feminists: namely, that we should respect women's status as agents, and we should not degrade them by treating them as incapable of making autonomous decisions about alcohol and sexuality. We should, instead, hold women at least partly responsible for the consequences of their voluntary decision to drink large amounts of alcohol, made in full knowledge that it may result in choices that they will later regret. This principle would count against regarding impaired sex as rape. A plausible corollary of this principle is that women, as autonomous beings, have a duty to make their

wishes about sex clear to their partners. When a woman drinks heavily and ends up having a sexual encounter that she later regrets, she has failed to exercise this positive duty of autonomous people. Her actions have sent the wrong message to her partner, and to blame him for the sex in which she willingly engages but that she later regrets seems unfair. Even if we allow that her consent is so impaired that the *actus reus* of rape has occurred, on this view he does not fulfill the *mens rea* element of the crime of rape. The onus is on the woman to communicate her lack of consent and, in the absence of such communication, his belief in her consent is quite reasonable. In sum, proponents of this approach hesitate to regard impaired sex as rape, because doing so suggests that women are unable to make autonomous decisions about alcohol and sexuality, and because it ignores women's positive duty to exercise their autonomy by clearly communicating their considered preferences (and not just their momentary passion) about sex.

B. Communicative Sexuality: Men's Duty to Ensure that Women Consent

The "women's responsibility for sex" approach is very plausible in case IB, where a woman later regrets sex in which she willingly engaged after moderate drinking. However, men's accountability for unwanted sex becomes unavoidable in the gang rape described in subsection IA. Granted, the female student may have voluntarily and very unwisely chosen to drink massive amounts of alcohol, but once she had passed out, the four fraternity members who allegedly had intercourse with her had absolutely no reason to believe that she consented to sex. Regardless of whether they deliberately got her drunk or, on the other hand, took advantage of her after finding her in this condition, they are guilty of recklessly ignoring the evident risk that she did not consent, and hence fulfill the *mens rea* requirement for rape.

In cases such as this, Lois Pineau's model of "communicative sexuality" becomes enormously plausible.¹ While Pineau's view does not preclude regarding women as having a duty to clearly communicate their wishes regarding sexual intimacy—indeed, such a duty may be an integral part of communicative sexuality—its central tenet is that men too are responsible for ensuring that effective communication occurs. In particular, the burden is

on men to ensure that their female partners really do consent to sexual intimacy, and they should refrain from sexual activity if they are not sure of this consent. A reasonable belief that a woman consented to sex will still count as a defense against rape, but the reasonableness of this belief will itself be judged on whether it would have been reasonable, from the woman's point of view, to consent to sex. Since virtually no woman would want four men to have sex with her after she has passed into an alcoholic coma, in the absence of some miraculous evidence that the female student actually wanted sex in such unpleasant circumstances, the four fraternity members blatantly violated their duty to be sure of the woman's consent, and are indeed guilty of rape.

More generally, Pineau argues that it is never reasonable to assume that a woman consents to "aggressive noncommunicative sex." Not only does her approach regard the extreme case of sex with an unconscious person as rape, but it would put any man who fails to take reasonable precautions to ensure that a woman consents to sex at risk for a rape conviction should she later declare that she did not consent. When doubt exists about consent, the burden is on the man to *ask*. The much-discussed Antioch University "Sexual Offense Policy," which requires explicit consent to each new level of sexual intimacy every time it occurs, is a quasi-legal enactment of Pineau's model of communicative sexuality.²

Pineau's approach entails a very different analysis of our central case of impaired sex than the "women's responsibility for sex" model discussed in the previous section. At first blush, one might think that all that Pineau would require of a man would be to ask the woman whether she is really sure that she wants to continue with sexual intimacy. If he boldly forges ahead without even asking the woman this question, and if the woman later claims that she was too drunk for her acquiescence to sex to constitute genuine consent, he risks being found guilty of Pineau's proposed category of "nonaggravated sexual assault," which would carry a lighter penalty than "standard" rape when a woman communicates her lack of consent by saying "no" or otherwise resisting.

But even explicitly asking the woman for consent may be insufficient to protect him from blame and liability under the communicative sexuality model. The issue is precisely whether the word "yes," when

spoken by a woman who is very drunk, is sufficient evidence of her consent. Being very drunk means that her judgment is impaired, as is evident from her horror and regret the following morning when she realizes what she has done. Given that we are only too aware of our propensity to do things that we later regret when we are very drunk, the man in this situation has good reason to doubt whether the woman's acquiescence to his advances and her "yes" to his explicit question is a fully autonomous reflection of lasting values and desires. Since he cannot be reasonably sure that the woman consents, he should refrain from sexual intercourse. Even if he is unaware of the danger that she does not consent, he *should* be aware and is, therefore, guilty of negligence. His belief that she consents may be sincere, but it is unreasonable and does not provide a defense to charges of nonaggravated sexual assault. On Pineau's "communicative sexuality" model, then, the man who proceeds with impaired sex meets both the *actus reus* and *mens rea* requirements of nonaggravated sexual assault.

III. SHOULD WE PUNISH MEN FOR IMPAIRED SEX?

Pineau's claim that men have a *moral obligation* to ensure that their partners consent to sex is very plausible. Given alcohol's tendency to cloud people's judgment, men should be especially careful to ensure that a woman consents to sex when she is very drunk. In most circumstances, this requires simply refraining from sexual activity. Imposing this relatively minor restriction on men's sexual freedom seems amply justified by the goal of preventing the enormous harm of rape. However, whether we should find men who fail to meet this duty and proceed to have sex with very drunk women guilty of rape—or even of nonaggravated sexual assault or a similar felony carrying a lighter penalty than "standard" rape—is much more controversial.

A. The Importance of Context

Alan Soble criticizes the Antioch University policy on the ground that it fails to distinguish between different types of sexual encounter.³ Its demand that people obtain explicit verbal consent to each new level of sexual activity during each sexual encounter may be appropriate for one night stands with

strangers. However, it seems unduly intrusive in the context of an ongoing, committed relationship, when the partners may well be sufficiently well attuned to one another's body language to be reasonably sure that both people consent to sex. Under Antioch's policy, "[t]he history of the relationship, let alone the history of the evening, counts for nothing."⁴

A similar criticism applies to the demand that men always refrain from impaired sex. While the existence of a long-term, committed relationship does not provide a man with immunity from charges of sexual misconduct—marital rape, after all, can occur—men may reasonably proceed with sexual intimacy with long-term partners who are very drunk when doing so with a stranger would be wrong. In the case of a stranger, the only clue to her wishes that he has is her current, drunken acquiescence, whereas his history of consenting lovemaking with his partner, presumably often when both are sober, gives him every reason to believe that her current consent is fully voluntary and reflective of her ongoing desires. Another exception that could apply even in the case of one-night stands would be when a woman, while sober, gives her advance consent to consuming large amounts of alcohol followed by sexual activity. So if we do criminalize sex with women whose judgment is impaired by large amounts of alcohol, we need to build in exceptions for ongoing relationships and advance consent.

B. Imprecise Distinctions and Fairness to Men

Because of the risk of the substantial harm of sex without a woman's fully voluntary consent, men should normally not have impaired sex. And, provided that we widely publicize the change in rape law and allow exceptions for established relationships and advance consent, criminalizing impaired sex would not be inherently unfair to men. The strongest reason against doing so is that implementing such a law would be a logistical nightmare that would indeed create the risk of unjustly convicting men.

Distinctions that are morally significant are difficult to translate into law. For instance, whether a man deliberately encourages a woman to drink large amounts of alcohol in order to make her more responsive to his sexual advances or, on the other hand, encounters her when she is already drunk or

else innocently drinks with her with no intention of taking advantage of her, is relevant to our judgment of his actions. However, proving such subtle differences in intention would be extremely difficult, especially when the prosecution's star witness, the woman who was allegedly assaulted, was drunk at the crucial time.

The biggest logistical problem of all concerns drawing boundaries. The only clear cases are of the type discussed in section I: sex with a woman who is unconscious or incoherent due to alcohol (rape), and communicative sex with a lucid, slightly tipsy woman who later regrets it (no rape). In between these limiting cases is a vast array of situations, whose diversity is concealed by my use of the blanket category of impaired sex. Just how impaired does a woman's judgment have to be to fall into this category? At what point does a woman progress from being merely tipsy, and responsible for any poor judgments that she makes as a result of her condition, to being so impaired that a man who proceeds to have sex with her recklessly or negligently runs the risk of sex without her fully voluntary consent? Criminalizing a behavior that was previously considered acceptable is not inherently unfair. But the vagueness of the meaning of "significantly impaired" does indeed create doubts about whether men would have fair warning about how to conform their behavior to this new law. Saying that when in doubt, men should err on the side of caution is fair enough, but the only way to be completely sure of avoiding conviction for this felony would be to completely abstain from sex with women who have drunk any alcohol, and this would be an unreasonable restriction on sexual freedom. A law that gives fair warning requires a certain amount of precision about forbidden behavior, and this is hard to come by in matters of impairment due to alcohol. Setting a certain blood alcohol level as the cutoff point seems arbitrary, and requiring a man to be aware of his partner's reading on this scale seems unreasonable and even absurd.

In defense of criminalizing impaired sex, one might argue that making judgment calls about how a legal rule applies to a particular case is precisely what courts are supposed to do. This approach works well when courts are asked to determine

how a clear-cut rule applies to the often messy details of a case. The problem here, though, is that the distinction on which impaired sex is based is itself fuzzy, making judgments about whether rape has occurred doubly difficult.

Those who would make impaired sex a felony might point out the analogy with drunk driving laws, in which we set a more or less arbitrary blood alcohol level as the legally acceptable limit, in full knowledge that this limit corresponds only approximately with drivers' level of impairment. The overwhelmingly good overall consequences of a law that deters drunk driving help us to accept the occasional minor injustice of convicting a person whose driving ability was, despite his or her illegal blood alcohol level, not significantly affected. In this light, my dismissal of a blood alcohol level as a cutoff point for impaired sex may have been premature. Such a law would give men a strong incentive to refrain from sex when they have any doubts that their potential partner may be too impaired to give fully voluntary consent.

However, criminalizing impaired sex when the woman's blood alcohol level is above a certain limit is unacceptable for several reasons. First, it places an onerous burden on the man to know his partner's blood alcohol level, in contrast to drunk driving laws, which require us to monitor our *own* intake of intoxicants. Even a man who accompanies his partner throughout her drinking may be unaware of her tolerance level, which may be unusually low. Men who meet women who have already been drinking would have even less reason to be sure that their blood alcohol level is within the legal limit. To be sure of escaping conviction for rape, men in these circumstances would have to either administer portable breathalyzer tests to their partners or else simply abstain from sex. Now showing such restraint may be precisely the kind of caring, thoughtful behavior that we, following Pineau's communicative sexuality model, want to encourage. But to require men to do so, on pain of criminal sanctions (typically imprisonment), seems to be an unduly heavy-handed intrusion into the sex lives of two adults.

Second, measuring a woman's blood alcohol level in order to secure convictions for rape will very likely not be feasible in most cases. Courts

need to know her level of impairment at the time of the alleged rape, but in very few cases will a woman be available for a blood test immediately after the sexual encounter. Even an hour afterwards may be too late, in that her blood alcohol level may have dropped below the legal limit for her partner to be at risk for impaired sex. Due to the emotional trauma or the effects of alcohol, many women will not report the incident until several hours afterwards or even the next day, by which time most or all of the alcohol will have worked its way through her system.

In sum, making impaired sex a felony would be unfair to men, in that the concept "significantly impaired" is too vague for (1) courts to be able to make non-arbitrary judgments to distinguish the guilty from the innocent or (2) men to have fair warning to enable them to conform their behavior to the law. If, on the other hand, we make the law more precise and objective by specifying a blood alcohol content above which a woman's sexual partner would be liable for prosecution for impaired sex, we are placing an undue burden on men whose potential sexual partners have been drinking. Moreover, few women who believe that they have been raped will submit to blood alcohol tests early enough to secure convictions for impaired sex.

One way we might soften the blow of concerns with fair warning would be to make impaired sex a misdemeanor rather than a felony. Such a law would protect women, while the occasional injustice done to men who are convicted, though they reasonably believe that their partners consent, would result only in such minimal penalties as suspended sentences, fines, or community service. Granted, these minimal penalties might provide little deterrence to men, but they would at least send the desired message that men should exercise care in sexual intimacy when alcohol is involved. And the fact that the penalties are light would minimize whatever danger might exist of frivolous or vindictive complaints against men. However, even if we reduce it to a misdemeanor, we would be hard pressed to rid impaired sex of the connotations of moral turpitude that currently attach to rape and other sexual offenses, so the issue of fair warning would remain significant. Moreover, even though the penalties for

a misdemeanor would be slight, we should hesitate to involve courts in prosecuting cases that are very difficult to prove and that people may well sometimes justly perceive as unfair to defendants.

IV. CONCLUSION

Existing rape laws probably suffice to convict men for clear cases of sexual misconduct involving alcohol, such as sex with unconscious women or with women who are drunk to the point of incoherence. In jurisdictions where such laws do not exist, we should create a category of rape—on the lines of “sex with a partner who is incapable of consent”—that would criminalize such cases. Granted, complications would arise. We would probably have to allow for exceptions for advance consent and for ongoing relationships. And, as in all rape cases, proving guilt may often be difficult, often reducing to “her word against his.” But the harm done by men who take advantage of women in such circumstances is great enough to justify taking on these problems.

However, we would do better to deal with impaired sex by means of moral disapproval and educational measures rather than legal sanctions. The dangers of unjustly convicting men on the basis of unworkable distinctions, and of simultaneously degrading women (however inadvertently) and being unfair to men by underestimating women’s ability to take responsibility for their alcohol intake and sexuality, are too great. Instead, we should regard impaired sex as a moral wrong on the lines of obtaining sexual gratification by means of trickery, such as concealing the fact that one has a spouse or significant other, or declaring one’s undying love when all one wants is a brief fling. In the case of both impaired sex and trickery, one’s partner is prevented from making a fully autonomous decision

about her sexual activity: either because her judgment is clouded by alcohol, or because she has been denied vital information. Both are wrong, and both are better dealt with by informal sanctions than by inevitably heavy-handed and sometimes unfair legal interventions.

NOTES

1. Lois Pineau, “Date Rape: A Feminist Analysis,” *Law and Philosophy* 8 (1989).
2. See Alan Soble, “Antioch’s ‘Sexual Offense Policy’: A Philosophical Exploration,” *Journal of Social Philosophy*, vol. 28, no. 1 (Spring 1997) for an excellent analysis and critique of Antioch’s policy.
3. *Ibid.*, pp. 30–32.
4. *Ibid.*, p. 30.

Nicholas Dixon: Alcohol and Rape

1. Dixon focuses throughout on the effects of alcohol on the moral and legal status of certain sexual encounters. Do you see any reason to alter analyses for cases in which sexual partners are using other drugs besides alcohol?
2. Some argue that the criterion for consent should be an explicitly verbalized “Yes,” rather than the absence of a “No.” What reasons favor one of these criteria over the other?
3. Dixon worries that the notion of *impairment* is too imprecise to serve as a workable legal basis for rape charges. What are your thoughts about his concern?
4. Dixon identifies a couple of exceptions to his claim that impaired sex is ordinarily immoral. What are those exceptions? Do you find them well grounded? Why or why not?
5. What is the substance of the communicative sexuality model? How plausible do you find this model? Give reasons to support your verdict.

“Whether from Reason or Prejudice”: Taking Money for Bodily Services

Martha C. Nussbaum

In this article, Martha C. Nussbaum makes the case for the legalization of prostitution. Her central argument relies on an analogy between prostitution and other professions in which people take money for bodily services. She argues that if these other unproblematic professions ought to be legal, then so should prostitution.

Nussbaum considers several objections to the legalization of prostitution. One is that prostitution ought to be illegal because it subjects women to health risks and risks of violence. Nussbaum argues that if the fact that a profession subjects its practitioners to health risks and violence were a sufficient reason to outlaw it, then we ought to outlaw boxing. Few prostitutes are subjected to the kind of violence that boxers are, and few suffer from the sort of health problems that boxers endure after a career of being punched in the head. And yet few advocate for the criminalization of boxing.

Others think that prostitution ought to be illegal because working prostitutes have little or no say about the work they do. Their work activities are controlled by others—namely, their clients. Nussbaum argues that this does not distinguish prostitution from many other kinds of bodily services performed by working-class women. For instance, few domestic servants have a say about what their day-to-day work looks like. The same is true of factory workers. And yet no one argues (nor should they) that we ought to outlaw domestic servitude or factory jobs.

Among the other objections that Nussbaum considers is the objection that prostitution involves the invasion of one's intimate bodily space, that it makes it difficult for prostitutes to have intimate relationships with others, and that it turns prostitutes into a commodity. Nussbaum argues that each objection fails, because there are other professions in which people offer their bodies in these ways and yet we do not, and should not, outlaw those activities.

... My aim in this article will be to investigate the question of sexual “commodification” by focusing on the example of “prostitution.” I shall argue that a fruitful debate about the morality and legality of prostitution should begin from a twofold starting point: from a broader analysis of our beliefs and practices with regard to taking pay for the use of the body and from a broader awareness of the options and choices available to poor working women. The former inquiry suggests that at least some of

From Martha C. Nussbaum, “Whether from Reason or Prejudice: Taking Money for Bodily Services,” *Journal of Legal Studies* 27 (1998), pp. 693–724. Notes have been abridged.

our beliefs about prostitution are irrational; it will therefore help us to identify the elements in prostitution that are genuinely problematic. Most, though not all, of the genuinely problematic elements turn out to be common to a wide range of activities engaged in by poor working women, and the second inquiry will suggest that many of women’s employment choices are so heavily constrained by poor options that they are hardly choices at all. I think that this should bother us and that the fact that a woman with plenty of choices becomes a prostitute should not bother us, provided that there are sufficient safeguards against abuse and disease, safeguards of a type that legalization would make possible.

It will therefore be my conclusion that the most urgent issue raised by prostitution is that of employment opportunities for working women and their control over the conditions of their employment. The legalization of prostitution, far from promoting the demise of love, is likely to make things a little better for women who have too few options to begin with. The really helpful thing for feminists to ponder if they deplore the nature of these options will be how to promote expansion in the option set through education, skills training, and job creation. These unsexy topics are insufficiently addressed by feminist philosophers in the United States, but they are inevitable in any practical project dealing with real-life prostitutes and their female children. This suggests that at least some of our feminist theory may be insufficiently grounded in the reality of working-class lives and too focused on sexuality as an issue in its own right, as if it could be extricated from the fabric of poor people's attempts to survive. . . .

Pervasive stigma itself does not appear to provide a good reason for the continued criminalization of prostitution, any more than it does for the illegality of interracial marriage. Nor does the stigma in question even appear to ground a sound *moral* argument against prostitution. This is not, however, the end of the issue: for there are a number of other significant arguments that have been made to support criminalization. Let us now turn to those arguments.

1. Prostitution Involves Health Risks and Risks of Violence. To this we can make two replies. First, insofar as this is true, as it clearly is, the problem is made much worse by the illegality of prostitution, which prevents adequate supervision, encourages the control of pimps, and discourages health checking. As Corbin shows, regimes of legal but regulated prostitution have not always done well by women: the health checkups of the *filles soumises* were ludicrously brief and inadequate. But there is no reason why one cannot focus on the goal of adequate health checks, and some European nations have done reasonably well in this area. The legal brothels in Nevada have had no reported cases of AIDS. Certainly risks of violence can be far better controlled when the police is the prostitute's ally rather than her oppressor.

To the extent to which risks remain an inevitable part of the way of life, we must now ask

what general view of the legality of risky undertakings we wish to defend. Do we ever want to rule out risky bargains simply because they harm the agent? Or do we require a showing of harm to others (as might be possible in the case of gambling, for example)? Whatever position we take on this complicated question, we will almost certainly be led to conclude that prostitution lies well within the domain of the legally acceptable: for it is probably less risky than boxing, another activity in which working-class people try to survive and flourish by subjecting their bodies to some risk of harm. There is a stronger case for paternalistic regulation of boxing than of prostitution, and externalities (the glorification of violence as example to the young) make boxing at least as morally problematic, probably more so. And yet I would not defend the criminalization of boxing, and I doubt that very many Americans would either. Sensible regulation of both prostitution and boxing, by contrast, seems reasonable and compatible with personal liberty.

In the international arena, many problems of this type stem from the use of force and fraud to induce women to enter prostitution, frequently at a very young age and in a strange country where they have no civil rights. An especially common destination, for example, is Thailand, and an especially common source is Burma, where the devastation of the rural economy has left many young women an easy mark for promises of domestic service elsewhere. Driven by customers' fears of HIV, the trade has focused on increasingly young girls from increasingly remote regions. Human rights interviewers have concluded that large numbers of these women were unaware of what they would be doing when they left their country and are kept there through both economic and physical coercion. (In many cases, family members have received payments, which then become a "debt" that the girl has to pay off.) These circumstances, terrible in themselves, set the stage for other forms of risk and violence. Fifty percent to seventy percent of the women and girls interviewed by Human Rights Watch were HIV positive; discriminatory arrests and deportations are frequently accompanied by abuse in police custody. All these problems are magnified

by the punitive attitude of the police and government toward these women as prostitutes or illegal aliens or both, although under both national and international law trafficking victims are exempt from legal penalty and are guaranteed safe repatriation to their country of origin. This situation clearly deserves both moral condemnation and international legal pressure; but, it is made worse by the illegality of prostitution itself.

2. The Prostitute Has No Autonomy; Her Activities Are Controlled by Others. This argument does not serve to distinguish prostitution from very many types of bodily service performed by working-class women. The factory worker does worse on the scale of autonomy, and the domestic servant no better. I think this point expresses a legitimate moral concern: a person's life seems deficient in flourishing if it consists only of a form of work that is totally out of the control and direction of the person herself. Karl Marx rightly associated that kind of labor with a deficient realization of full humanity and (invoking Aristotle) persuasively argued that a flourishing human life probably requires some kind of use of one's own reasoning in the planning and execution of one's own work. But that is a pervasive problem of labor in the modern world, not a problem peculiar to prostitution as such. It certainly does not help the problem to criminalize prostitution—any more than it would be to criminalize factory work or domestic service. A woman will not exactly achieve more control and “truly human functioning” by becoming unemployed. What we should instead think about are ways to promote more control over choice of activities, more variety, and more general humanity in the types of work that are actually available to people with little education and few options. That would be a lot more helpful than removing one of the options they actually have.

3. Prostitution Involves the Invasion of One's Intimate Bodily Space. This argument does not seem to support the legal regulation of prostitution so long as the invasion in question is consensual—that is, that the prostitute is not kidnapped, fraudulently enticed, a child beneath the age of consent, or under duress against leaving if she should choose to leave. In this sense,

prostitution is quite unlike sexual harassment and rape and far more like the activity of the colonoscopy artist*—not to everyone's taste, and involving a surrender of bodily privacy that some will find repellent, but not for that reason necessarily bad, either for self or others. The argument does not even appear to support a moral criticism of prostitution, unless one is prepared to make a moral criticism of all sexual contact that does not involve love or marriage.

4. Prostitution Makes It Harder for People to Form Relationships of Intimacy and Commitment. This argument is prominently made by Elizabeth Anderson in defense of the criminalization of prostitution.¹ The first question we should ask is, Is this true? People still appear to fall in love in the Netherlands and Germany and Sweden; they also fell in love in ancient Athens, where prostitution was not only legal but also, probably, publicly subsidized. One type of relationship does not, in fact, appear to remove the need for the other—any more than a Jackie Collins novel removes the desire to read Proust. Proust has a specific type of value that is by no means found in Jackie Collins, so people who want that value will continue to seek out Proust, and there is no reason to think that the presence of Jackie Collins on the bookstand will confuse Proust lovers into thinking that Proust is really like Jackie Collins. So too, one supposes, with love in the Netherlands: people who want relationships of intimacy and commitment continue to seek them out for the special value they provide, and they do not have much trouble telling the difference between one sort of relationship and another, despite the availability of both.

Second, one should ask which women Anderson has in mind. Is she saying that the criminalization of prostitution would facilitate the formation of love relationships on the part of the women who were (or would have been) prostitutes? Or is she saying that the unavailability of prostitution as an option for working-class women

* [In material omitted here, Nussbaum introduces the colonoscopy artist as one who receives payment in exchange for voluntarily having her colon examined with the latest medical instruments, in order to test out their range and capability. –ed.]

would make it easier for romantic middle-class women to have the relationships they desire? The former claim is implausible, since it is hard to see how reinforcing the stigma against prostitutes or preventing some poor women from taking one of the few employment options they might have would be likely to improve their human relations. The latter claim might possibly be true (though it is hardly obvious), but it seems a repugnant idea, which I am sure Anderson would not endorse, that we should make poor women poorer so that middle-class women can find love. Third, one should ask Anderson whether she is prepared to endorse the large number of arguments of this form that might plausibly be made in the realm of popular culture and, if not, whether she has any way of showing how she could reject those as involving an unacceptable infringement of liberty and yet allowing the argument about prostitution that she endorses. For it seems plausible that making rock music illegal would increase the likelihood that people would listen to Mozart and Beethoven, that making Jackie Collins illegal would make it more likely that people would turn to Joyce Carol Oates, that making commercial advertising illegal would make it more likely that we would appraise products with high-minded ideas of value in our minds, and that making television illegal would improve children's reading skills. What is certain, however, is that we would and do utterly reject those ideas (we do not even seriously entertain them) because we do not want to live in Plato's *Republic*, with our cultural options dictated by a group of wise guardians, however genuinely sound their judgments may be.

5. The Prostitute Alienates Her Sexuality on the Market; She Turns Her Sexual Organs and Acts into Commodities. Is this true? It seems implausible to claim that the prostitute alienates her sexuality just on the grounds that she provides sexual services to a client for a fee. Does the singer alienate her voice, or the professor her mind? The prostitute still has her sexuality; she can use it on her own, apart from the relationship with the client, just as the domestic servant may cook for her family and clean her own house. She can also cease to be a prostitute, and her sexuality

will still be with her, and hers, if she does. So she has not even given anyone a monopoly on those services, far less given them over into someone else's hands. The real issue that separates her from the professor and the singer seems to be the degree of choice she exercises over the acts she performs. But is even this a special issue for the prostitute, any more than it is for the factory worker or the domestic servant or the colonoscopy artist—all of whom choose to enter trades in which they will not have a great deal of say over what they do or (within limits) how they do it? Freedom to choose how one works is a luxury, highly desirable indeed, but a feature of few jobs that nonaffluent people perform.

As for the claim that the prostitute turns her sexuality into a commodity, we must ask what that means. If it means only that she accepts a fee for sexual services, then that is obvious; but nothing further has been said that would show us why this is a bad thing. The professor, the singer, the symphony musician—all accept a fee, and it seems plausible that this is a good state of affairs, creating spheres of freedom. Professors are more free to pursue their own thoughts now, as moneymakers, than they were in the days when they were supported by monastic orders; symphony musicians playing under the contract secured by the musicians union have more free time than nonunionized musicians and more opportunities to engage in experimental and solo work that will enhance their art. In neither case should we conclude that the existence of a contract has converted the abilities into things to be exchanged and traded separately from the body of the producer; they remain human creative abilities, securely housed in their possessor. So if, on the one hand, to "commodify" means merely to accept a fee, we have been given no reason to think that this is bad.

If, on the other hand, we try to interpret the claim of "commodification" using the narrow technical definition of "commodity" used by the Uniform Commercial Code, the claim is plainly false. For that definition stresses the "fungible" nature of the goods in question, and "fungible" goods are, in turn, defined as goods "of which any unit is, by nature or usage of trade, the

equivalent of any other like unit." While we may not think that the soul or inner world of a prostitute is of deep concern to the customer, she is usually not regarded as simply a set of units fully interchangeable with other units. Prostitutes are probably somewhat more fungible than bassoon players, but not totally so. (Corbin reports that all *maisons de tolérance* standardly had a repertory of different types of women, to suit different tastes, and this should not surprise us.) What seems to be the real issue is that the woman is not attended to as an individual, not considered as a special unique being. But that is true of many ways people treat one another in many areas of life, and it seems implausible that we should use that kind of disregard as a basis for criminalization. It may not even be immoral: for surely we cannot deeply know all the people with whom we have dealings in life, and many of those dealings are just fine without deep knowledge. So our moral question boils down to the question, Is sex without deep personal knowledge always immoral? It seems to me officious and presuming to use one's own experience to give an affirmative answer to this question, given that people have such varied experiences of sexuality.

In general, then, there appears to be nothing baneful or value-debasing about taking money for a service, even when that service expresses something intimate about the self. Professors take a salary, artists work on commission under contract—frequently producing works of high intellectual and spiritual value. To take money for a production does not turn either the activity or the product (for example, the article, the painting) into a commodity in the baneful sense in which that implies fungibility. If this is so, there is no reason to think that a prostitute's acceptance of money for her services necessarily involves a baneful conversion of an intimate act into a commodity in that sense. If the prostitute's acts are, as they are, less intimate than many other sexual acts people perform, that does not seem to have a great deal to do with the fact that she receives money, given that people engage in many intimate activities (painting, singing, writing) for money all the time without loss of expressive value. Her activity is less intimate

because that is its whole point; and it is problematic, to the extent that it is, neither because of the money involved nor because of the nonintimacy (which, as I have said, it seems to me officious to declare bad in all cases) but because of features of her working conditions and the way she is treated by others. . . .

6. The Prostitute's Activity Is Shaped by, and in Turn Perpetuates, Male Dominance of Women. The institution of prostitution as it has most often existed is certainly shaped by aspects of male domination of women. As I have argued, it is shaped by the perception that female sexuality is dangerous and needs careful regulation, that male sexuality is rapacious and needs a "safe" outlet, that sex is dirty and degrading, and that only a degraded woman is an appropriate sexual object. Nor have prostitutes standardly been treated with respect or been given the dignity one might think proper to a fellow human being. They share this with working-class people of many types in many ages; but, there is no doubt that there are particular features of the disrespect that derive from male supremacy and the desire to lord it over women—as well as from a tendency to link sex to (female) defilement that is common in the history of Western European culture. The physical abuse of prostitutes, and the control of their earnings by pimps—as well as the pervasive use of force and fraud in international markets—are features of male dominance that are extremely harmful and that do not have direct parallels in other types of low-paid work. Some of these forms of conduct may be largely an outgrowth of the illegality of the industry and closely comparable to the threatening behavior of drug wholesalers to their—usually male—retailers. So there remains a question about how far male dominance as such explains the violence involved. But in the international arena, where regulations against these forms of misconduct are usually treated as a joke, illegality is not a sufficient explanation for them.

Prostitution is hardly alone in being shaped by, and in reinforcing, male dominance. Systems of patrilineal property and exogamous marriage, for example, certainly do more to perpetuate not only male dominance but also female

mistreatment and even death. There probably is a strong case for making the giving of dowry illegal, as has been done since 1961 in India and since 1980 in Bangladesh (though with little success): for it can be convincingly shown that the institution of dowry is directly linked with extortion and threats of bodily harm and ultimately with the deaths of large numbers of women. It is also obvious that the dowry system pervasively conditions the perception of the worth of girl children: they are a big expense, and they will not be around to protect one in one's old age. This structure is directly linked with female malnutrition, neglect, noneducation, even infanticide, harms that have caused the deaths of many millions of women in the world. It is perfectly understandable that the governments of India, Bangladesh, and Pakistan are very concerned about the dowry system, since it seems very difficult to improve the very bad economic and physical condition of women without some structural changes. (Pakistan has recently adopted a somewhat quixotic remedy, making it illegal to serve food at weddings—thus driving many caterers into poverty.) Dowry is an institution affecting millions of women, determining the course of almost all girl children's lives pervasively and from the start. Prostitution as such usually does not have either such dire or such widespread implications. (Indeed, it is frequently the produce of the dowry system, when parents take payment for prostituting a female child for whom they would otherwise have to pay dowry.) The case for making it illegal on grounds of subordination seems weaker than the case for making dowry, or even wedding feasts, illegal; and yet these laws are themselves of dubious merit and would probably be rightly regarded as involving undue infringement of liberty under our constitutional tradition. (It is significant that Human Rights Watch, which has so aggressively pursued the issue of forced prostitution, takes no stand one way or the other on the legality of prostitution itself.)

More generally, one might argue that the institution of marriage as has most frequently been practiced both expresses and reinforces male dominance. It would be right to use law to change

the most iniquitous features of that institution—protecting women from domestic violence and marital rape, giving women equal property and custody rights, and improving their exit options by intelligent shaping of the divorce law. But to rule that marriage as such should be illegal on the grounds that it reinforces male dominance would be an excessive intrusion on liberty, even if one should believe marriage irredeemably unequal. So too, I think, with prostitution: what seems right is to use law to protect the bodily safety of prostitutes from assault, to protect their rights to their incomes against the extortionate behavior of pimps, to protect poor women in developing countries from forced trafficking and fraudulent offers, and to guarantee their full civil rights in the countries where they end up—to make them, in general, equals under the law, both civil and criminal. But the criminalization of prostitution seems to pose a major obstacle to that equality.

Efforts on behalf of the dignity and self-respect of prostitutes have tended to push in exactly the opposite direction. In the United States, prostitutes have long been organized to demand greater respect, though their efforts are hampered by prostitution's continued illegality. In India, the National Federation of Women has adopted various strategies to give prostitutes more dignity in the public eye. For example, on National Women's Day, they selected a prostitute to put a garland on the head of the Prime Minister. In a similar manner, UNICEF in India's Andhra Pradesh has been fighting to get prostitutes officially classified as "working women" so that they can enjoy the child-care benefits local government extends to that class. As with domestic service, so here: giving workers greater dignity and control can gradually change both the perception and the fact of dominance.

7. Prostitution Is a Trade That People Do Not Enter by Choice; Therefore the Bargains People Make within It Should Not Be Regarded as Real Bargains. Here we must distinguish three cases. First is the case where the woman's entry into prostitution is caused by some type of conduct that would otherwise be criminal: kidnapping, assault, drugging, rape, statutory rape,

blackmail, a fraudulent offer. Here we may certainly judge that the woman's choice is not a real choice and that the law should take a hand in punishing her coercer. This is a terrible problem currently in developing countries; international human rights organizations are right to make it a major focus.

Closely related is the case of child prostitution. Child prostitution is frequently accompanied by kidnapping and forcible detention; even when children are not stolen from home, their parents have frequently sold them without their own consent. But even where it is not, we should judge that there is an impermissible infringement of autonomy and liberty. A child (and because of clients' fears of HIV, brothels now often focus on girls as young as ten) cannot give consent to a life in prostitution; not only lack of information and of economic options (if parents collude in the deal) but also absence of adult political rights makes such a “choice” no choice at all.

Different is the case of an adult woman who enters prostitution because of bad economic options: because it seems a better alternative than the chicken factory, because there is no other employment available to her, and so forth. This too, we should insist, is a case where autonomy has been infringed, but in a different way. Consider Joseph Raz's vivid example of “the hounded woman,” a woman on a desert island who is constantly pursued by a man-eating animal.² In one sense, this woman is free to go anywhere on the island and do anything she likes. In another sense, of course, she is quite unfree. If she wants not to be eaten, she has to spend all her time and calculate all her movements in order to avoid the beast. Raz's point is that many poor people's lives are nonautonomous in just this way. They may fulfill internal conditions of autonomy, being capable of making bargains, reflecting about what to do, and so forth. But none of this counts for a great deal if in fact the struggle for survival gives them just one unpleasant option or a small set of (in various ways) unpleasant options.

This seems to me the truly important issue raised by prostitution. Like work in the chicken factory, it is not an option many women choose

with alacrity when many other options are on their plate. This might not be so in some hypothetical culture in which prostitutes have legal protection, dignity, and respect and the status of skilled practitioner, rather like the masseuse. But it is true now in most societies, given the reality of the (albeit irrational) stigma attaching to prostitution. But the important thing to realize is that this is not an issue that permits us to focus on prostitution in isolation from the economic situation of women in a society generally. Certainly it will not be ameliorated by the criminalization of prostitution, which reduces poor women's options still further. We may grant that poor women do not have enough options and that society has been unjust to them in not extending more options, while nonetheless respecting and honoring the choices they actually make in reduced circumstances.

How could it possibly be ameliorated? Here are some things that have actually been done in India, where prostitution is a common last-ditch option for women who lack other employment opportunities. First, both government and private groups have focused on the provision of education to women, to equip them with skills that will enhance their options. One group I recently visited in Bombay focuses in particular on skills training for the children of prostitutes, who are at especially high risk of becoming prostitutes themselves unless some action increases their options. Second, nongovernmental organizations have increasingly focused on the provision of credit to women in order to enhance their employment options and give them a chance to “upgrade” in the domain of their employment. One such project that has justly won international renown is the Self-Employed Women's Association (SEWA), centered in Ahmedabad in Gujarat, which provides loans to women pursuing a variety of informal-sector occupations, from tailoring to hawking and vending to cigarette rolling to agricultural labor. With loans they can get wholesale rather than retail supplies, upgrade their animals or equipment, and so forth. They also get skills training and, frequently, the chance to move into leadership roles in the organization itself. Such

women are far less likely to need to turn to prostitution to supplement their income. Third, they can form labor organizations to protect women employed in low-income jobs and to bargain for better working conditions—once again making this work a better source of income and diminishing the likelihood that prostitution will need to be selected. (This is the other primary objective of SEWA, which is now organizing hawkers and vendors internationally.) Fourth, they can form groups to diminish the isolation and enhance the self-respect of working women in low-paying jobs; this was a ubiquitous feature of both government and nongovernment programs I visited in India, and a crucial element of helping women deliberate about their options if they wish to avoid prostitution for themselves or their daughters.

These four steps are the real issue, I think, in addressing the problem of prostitution. Feminist philosophers do not talk a lot about credit and employment; they should do so far more. Indeed, it seems a dead end to consider prostitution in isolation from the other realities of working life of which it is a part, and one suspects that this has happened because prostitution is a sexy issue and getting a loan for a sewing machine appears not to be. But philosophers had better talk more about getting loans, learning to read, and so forth if they want to be relevant to the choices that are actually faced by working women and to the programs that are actually doing a lot to improve such women's options.

VI

The stigma traditionally attached to prostitution is based on a collage of beliefs, most of which are not rationally defensible and which should be especially vehemently rejected by feminists: beliefs about the evil character of female sexuality, the rapacious character of male sexuality, the essentially marital and reproductive character of “good” women and “good” sex. Worries about subordination more recently raised by feminists are much more serious concerns, but they apply to many types of work poor women do. Concerns about force and fraud should be extremely urgent concerns of the international women's movement. Where these conditions

do not obtain, feminists should view prostitutes as (usually) poor working women with few options, not as threats to the intimacy and commitment that many women and men (including, no doubt, many prostitutes) seek. This does not mean that we should not be concerned about ways in which prostitution as currently practiced, even in the absence of force and fraud, undermines the dignity of women, just as domestic service in the past undermined the dignity of members of a given race or class. But the correct response to this problem seems to be to work to enhance the economic autonomy and the personal dignity of members of that class, not to rule off-limits an option that may be the only livelihood for many poor women and to further stigmatize women who already make their living this way.

In grappling further with these issues, we should begin from the realization that there is nothing per se wrong with taking money for the use of one's body. That is the way most of us live, and formal recognition of that fact through contract is usually a good thing for people, protecting their security and their employment conditions. What seems wrong is that relatively few people in the world have the option to use their body, in their work, in what Marx would call a “truly human” manner of functioning, by which he meant (among other things) having some choices about the work to be performed, some reasonable measure of control over its conditions and outcome, and also the chance to use thought and skill rather than just to function as a cog in a machine. Women in many parts of the world are especially likely to be stuck at a low level of mechanical functioning, whether as agricultural laborers, factory workers, or prostitutes. The real question to be faced is how to expand the options and opportunities such workers face, how to increase the humanity inherent in their work, and how to guarantee that workers of all sorts are treated with dignity. In the further pursuit of these questions, we need, on balance, more studies of women's credit unions and fewer studies of prostitution.

NOTES

1. See Anderson, *Value in Ethics and Economics* (Harvard University Press, 1993), 150–158.
2. Joseph Raz, *The Morality of Freedom* 374 (1986).

Martha C. Nussbaum: “Whether from Reason or Prejudice”: Taking Money for Bodily Services

1. Nussbaum notes that prostitution is a highly stigmatized profession. Why do you think prostitution is so stigmatized? Is the stigma justified? Why or why not?
2. Nussbaum argues that criminalizing prostitution makes it more dangerous for prostitutes than if prostitution were legal. Why does she think this? Do you agree? Why or why not?
3. Which of the arguments for making prostitution illegal that Nussbaum considers did you find most compelling? How does Nussbaum respond? Do you find her response convincing?
4. Nussbaum’s responses to the objections to legalizing prostitution depend on a strong analogy between prostitution and the other perfectly legal professions to which she compares prostitution. Were there any analogies that you thought didn’t stand up to scrutiny? If so, why do you think her analogy wasn’t quite apt?
5. Nussbaum’s strategy for arguing for the legalization of prostitution is to show that prostitution shares much in common with other, already legal, professions. Can you think of any other professions or activities that are currently illegal, but that ought to be legal if Nussbaum’s strategy is sound?

The Truth about Philosophy Majors

Here's the inaccurate, old-school way of thinking:

- Philosophy majors have no marketable skills; they are unemployable.
- They are unprepared for professional careers in anything but teaching philosophy.
- They are useless in an economy built on exploding tech, speed-of-light innovation, and market-wrenching globalization.
- They are destined to earn low salaries.

Here's the new reality: All these assumptions are FALSE.

CAREERS

A wide range of data suggest that philosophy majors are not just highly employable; they are thriving in many careers that used to be considered unsuitable for those holding “impractical” philosophy degrees. The unemployment rate for recent BA philosophy graduates is 4.3 percent, lower than the national average and lower than that for majors in biology, chemical engineering, graphic design, mathematics, and economics.¹

Nowadays most philosophy majors don't get PhDs in philosophy; they instead land jobs in many fields outside academia. They work in business consulting firms, guide investors on Wall Street, lead teams of innovators in Silicon Valley, do humanitarian work for nongovernment organizations, go into politics, and cover the world as journalists. They teach, write, design, publish, create. They go to medical school, law school, and graduate school in everything from art and architecture to education, business, and computer science. (Of course, besides majoring in philosophy, students can also minor in it, combining a philosophy BA with other BA programs, or take philosophy courses to round out other majors or minors.)

Many successful companies—especially those in the tech world—don't see a philosophy degree as impractical at all. To be competitive, they want more than just engineers, scientists, and mathematicians. They also want people with broader, big-picture skills—people who can think critically, question assumptions, formulate and defend ideas, develop unique perspectives, devise and evaluate arguments, write effectively, and analyze and simplify complicated problems. And these competencies are abundant in people with a philosophy background.

Plenty of successful business and tech leaders say so. Speaking of her undergraduate studies, Carly Fiorina, philosophy major and eventual chief executive of Hewlett-Packard, says, “I learned how to separate the wheat from the chaff, essential from just interesting, and I think that’s a particularly critical skill now when there is a ton of interesting but ultimately irrelevant information floating around.”²

Flickr and Slack cofounder Stewart Butterfield, who has both bachelor’s and master’s degrees in philosophy, says, “I think if you have a good background in what it is to be human, an understanding of life, culture and society, it gives you a good perspective on starting a business, instead of an education purely in business. You can always pick up how to read a balance sheet and how to figure out profit and loss, but it’s harder to pick up the other stuff on the fly.”³

Sheila Bair got her philosophy degree from the University of Kansas and went on to become chair of the Federal Deposit Insurance Corporation from 2006 to 2011. She says that philosophy “helps you break things down to their simplest elements. My philosophy training really helps me with that intellectual rigor of simplifying things and finding out what’s important.”⁴

Philosophy: A Natural Segue to Law and Medicine

Law schools will tell you that a major in philosophy provides excellent preparation for law school and a career in law. Philosophy excels as a pre-law major because it teaches you the very proficiencies that law schools require: developing and evaluating arguments, writing carefully and clearly, applying principles and rules to specific cases, sorting out evidence, and understanding ethical and political norms. Philosophy majors do very well on the LSAT (Law School Admission Test), typically scoring higher than the vast majority of other majors.

Philosophy has also proven itself to be good preparation for medical school. Critical reasoning is as important in medicine as it is in law, but the study and practice of medicine requires something else—expertise in grappling with the vast array of moral questions that now confront doctors, nurses, medical scientists, administrators, and government officials. These are, at their core, philosophy questions.

David Silbersweig, a Harvard Medical School professor, makes a good case for philosophy (and all the liberal arts) as an essential part of a well-rounded medical education. As he says,

If you can get through a one-sentence paragraph of Kant, holding all of its ideas and clauses in juxtaposition in your mind, you can think through most anything. . . . I discovered that a philosophical stance and approach could identify and inform core issues associated with everything from scientific advances to healing and biomedical ethics.⁵



Photo 1: Carly Fiorina, businessperson and political figure

Photo 2: Stewart Butterfield, cofounder of Flickr and Slack

Photo 3: Sheila Bair, nineteenth chair of the FDIC

Photo 4: Katy Tur, author and broadcast journalist for NBC News

Photo 5: Damon Horowitz, entrepreneur and in-house philosopher at Google



Photo 6: Larry Sanger, Internet project developer, cofounder of Wikipedia

Photo 7: Stephen Breyer, Supreme Court justice

Photo 8: Stephen Colbert, comedian, TV host

Photo 9: Angela Davis, social activist

Photo 10: Lana Del Rey, singer and songwriter

Photo 11: Chris Hayes, MSNBC host

Philosophy major and NBC journalist Katy Tur says, “I would argue that for the vast majority of people, an education of teaching you to think critically about the world you are in and what you know and what you don’t know is useful for absolutely everything that you could possibly do in the future.”⁶

It’s little wonder, then, that the top ranks of leaders and innovators in business and technology have their share of philosophy majors, a fair number of whom credit their success to their philosophy background. The list is long, and it includes:⁷

Patrick Byrne, entrepreneur, e-commerce pioneer, founder and CEO of Overstock.com

Damon Horowitz, entrepreneur, in-house philosopher at Google
Carl Icahn, businessman, investor, philanthropist. . . .

Larry Sanger, Internet project developer, cofounder of Wikipedia
George Soros, investor, business magnate, philanthropist
Peter Thiel, entrepreneur, venture capitalist, cofounder of PayPal
Jeff Weiner, CEO of LinkedIn

Of course, there are also many with a philosophy background who are famous for their achievements outside the business world. This list is even longer and includes:

Wes Anderson, filmmaker, screenwriter (*The Royal Tenenbaums*, *The Grand Budapest Hotel*)

Stephen Breyer, Supreme Court justice

Mary Higgins Clark, novelist (*All By Myself, Alone*)

Ethan Coen, filmmaker, director

Stephen Colbert, comedian, TV host

Angela Davis, social activist

Lana Del Rey, singer, songwriter

Dessa, rapper, singer, poet

Ken Follett, author (*Eye of the Needle*, *Pillars of the Earth*)

Harrison Ford, actor

Ricky Gervais, comedian, creator of *The Office*

Philip Glass, composer

Rebecca Newberger Goldstein, author (*Plato at the Googleplex*)

Matt Groening, creator of *The Simpsons* and *Futurama*

Chris Hayes, MSNBC host

Kazuo Ishiguro, Nobel Prize-winning author (*The Remains of the Day*)

Phil Jackson, NBA coach

Thomas Jefferson, US president

Charles R. Johnson, novelist (*Middle Passage*)

Rashida Jones, actor

Martin Luther King Jr., civil rights leader

John Lewis, civil rights activist, congressman

Terrence Malick, filmmaker, director (*The Thin Red Line*)
 Yann Martel, author (*Life of Pi*)
 Deepa Mehta, director, screenwriter (*Fire, Water*)
 Iris Murdoch, author (*Under the Net*)
 Robert Parris Moses, educator, civil rights leader
 Stone Phillips, broadcaster
 Susan Sarandon, actor
 Susan Sontag, author, (*Against Interpretation*)
 MacArthur Fellow
 David Souter, Supreme Court justice
 Alex Trebek, host of *Jeopardy!*
 George F. Will, journalist, author (*Men at Work: The Craft of Baseball*)
 Juan Williams, journalist



Philosophy Majors and the GRE

Philosophy majors score higher than *all other majors* on the Verbal Reasoning and Analytical Writing sections of the GRE (Graduate Record Examinations).

	Verbal Reasoning	Quantitative Reasoning	Analytic Writing
Philosophy	160	154	4.3
Average	149.97	152.57	3.48

Educational Testing Service, 2017 GRE Scores, between July 1, 2013 and June 30, 2016.

SALARIES

According to recent surveys by PayScale, a major source of college salary information, philosophy majors can expect to earn a median starting salary of \$44,800 and a median mid-career salary of \$85,100. As you might expect, most of the higher salaries go to STEM graduates (those with degrees in science, technology, engineering, or mathematics). But in a surprising number of cases, salaries for philosophy majors are comparable to those of STEM graduates. For example, while the philosophy graduate earns \$85,100 at mid-career, the mid-career salary for biotechnology is \$82,500; for civil engineering, \$83,700; for chemistry, \$88,000; for industrial technology, \$86,600; and for applied computer science, \$88,800. Median end-of-career salaries for philosophy majors (10–19 years' experience) is \$92,665—not the highest pay among college graduates, but far higher than many philosophy-is-useless critics would expect.⁸

Another factor to consider is the increase in salaries over time. On this score, philosophy majors rank in the top ten of all majors with the highest salary increase from start to mid-career at 101 percent. The major with the

Photo 12: Rashida Jones, actor

Photo 13: Martin Luther King Jr., civil rights leader

Photo 14: John Lewis, civil rights activist, congressman

Photo 15: Terrence Malick, filmmaker, director

Photo 16: Yann Martel, author (*Life of Pi*)

Photo 17: Deepa Mehta, director, screenwriter (*Fire*)

Photo 18: Susan Sontag, author, MacArthur Fellow

Salary Potential for Bachelor's Degrees

Major	Median Early Pay (0–5 yrs. work experience)	Median Mid-Career Pay (10+ yrs. work experience)
Mechanical Engineering	\$58,000	\$90,000
Applied Computer Science	\$53,100	\$88,800
Information Technology	\$52,300	\$86,300
Civil Engineering	\$51,300	\$83,700
Business and Finance	\$48,800	\$91,100
Biotechnology	\$46,100	\$82,500
Business Marketing	\$45,700	\$78,700
Philosophy	\$44,800	\$85,100
History	\$42,200	\$75,700
Advertising	\$41,800	\$84,200
General Science	\$41,600	\$75,200
Telecommunications	\$41,500	\$83,700
English Literature	\$41,400	\$76,300
Marine Biology	\$37,200	\$76,000

PayScale, "Highest Paying Bachelor Degrees by Salary Potential," 2017–2018 College Salary Report, <https://www.payscale.com/college-salary-report/majors-that-pay-you-back/bachelors>.

highest increase: government, at 118 percent. Molecular biology is the fifth highest at 105 percent.⁹

And among liberal arts majors, philosophy salaries are near the top of the list. All liberal arts majors except economics earn lower starting and mid-career pay than philosophy does.

Salary Potential for Liberal Arts Bachelor's Degrees

Major	Median Early Pay (0–5 yrs. work experience)	Median Mid-Career Pay (10+ yrs. work experience)
Economics	\$54,100	\$103,200
Philosophy	\$44,800	\$85,100
Political Science	\$44,600	\$82,000
Modern Languages	\$43,900	\$77,400
Geography	\$43,600	\$72,700
History	\$42,200	\$75,700
English Literature	\$41,400	\$76,300
Anthropology	\$40,500	\$63,200
Creative Writing	\$40,200	\$68,500
Theatre	\$39,700	\$63,500
Psychology	\$38,700	\$65,300
Fine Art	\$38,200	\$62,200

PayScale, "Highest Paying Bachelor Degrees by Salary Potential," 2017–2018 College Salary Report, <https://www.payscale.com/college-salary-report/majors-that-pay-you-back/bachelors>.

MEANING

In all this talk about careers, salaries, and superior test scores, we should not forget that for many students, the most important reason for majoring in philosophy is the meaning it can add to their lives. They know that philosophy, after two-and-one-half millennia, is still alive and relevant and influential. It is not only for studying but also for living—for guiding our lives toward what's true and real and valuable. They would insist that philosophy, even with its ancient lineage and seemingly remote concerns, applies to your life and your times and your world. The world is full of students and teachers who can attest to these claims. Perhaps you will eventually decide to join them.

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Abolitionists those who believe that the death penalty is not morally justified (and so seek to abolish it where it exists); those who seek to abolish laws that criminalize drug use.

Abortion the deliberate termination of a pregnancy.

Absolute moral rules are absolute if and only if it is never permitted to break them.

Absolute moral rule a moral rule that may never permissibly be broken.

Absolutist theories those that endorse the idea that there are absolute moral rules (those that are never permissibly broken).

Act utilitarianism the moral theory that says that an action is morally required just because it does more to improve overall well-being than any other action one could have taken in the circumstances.

Active euthanasia euthanasia that occurs as the intentional termination of a patient's life that involves taking means to hasten her death.

Ad hominem fallacy trying to undermine the truth of a position by attacking the person who is advancing it.

Advanced directive a document detailing a person's wishes about medical treatment in the event that that person can no longer communicate those wishes to a doctor.

Affirmative action a social policy that increases the chances of hiring or admissions on the basis of an applicant's status as a member of a group that has suffered extensive discrimination.

Aggravated murder a murder that is made even more severe by especially violent or harmful circumstances in connection with the murder.

Aggravating conditions features of a crime that increase its severity or harmful consequences.

Altruism the motivation to benefit others for their own sake.

Ambiguous having more than one meaning.

Anarchist someone who rejects the legitimacy of all governments and thinks that government ought to be abolished.

Antecedent the 'if' clause of a conditional; the clause that specifies a sufficient condition of the conditional's consequent.

Anthropogenic originated by human beings.

Appeal to authority an informal fallacy that involves relying on authority figures to substantiate a position outside of their area of expertise.

Appeal to ignorance an informal fallacy, also known as *ignoratio elenchi*, that can take one of two forms. In the first, one believes a claim to be true because it hasn't been proven false. In the second, one believes that a claim is false because it hasn't been proven true.

Appeal to irrelevant emotions an effort to convince you of a claim by playing on your emotions, rather than by offering facts and evidence that bear on the truth of the claim.

Arbitrary capricious, unprincipled, without a discernible rationale.

Argument a chain of thought in which reasons are offered in support of a particular conclusion.

Argument from analogy a type of argument that draws a parallel between two things that share several features, concluding that they are likely to share some further feature as well.

Artificial created or modified by human activity.

Artificial selection the process by which humans develop desirable traits in plants or animals by selecting which males or females will reproduce together. It's sometimes called "selective breeding."

Atheism the view that God does not exist.

Atheists those who believe that God does not exist.

Autonomy the power to guide our life through our own free choices.

Battery cages small wire cages housing chickens that can be lined up and stacked in a barn so that thousands of chickens can be stored in a very small space.

Begging the question assuming the truth of the conclusion that one's argument is meant to support.

Biconditional a claim that supplies a condition that is both necessary and sufficient for something; an 'if and only if' sentence.

Binge drinking consuming an excessive amount of alcohol in a short period of time to become severely intoxicated.

Biocentric focused on all living things and their interests and denying the greater intrinsic importance of human beings vis-à-vis other life forms.

Capital offenses those crimes that carry the death penalty as a possible punishment.

Capital punishment the death penalty.

Carbon sink a large system (e.g., an ocean, a forest) that absorbs and stores carbon dioxide from the atmosphere.

Casual sex sex between people who have expressed no commitment to each other.

Categorical imperative a command of reason that requires us to act in a certain way regardless of whether doing so will get us anything we care about.

Categorical reasons reasons that apply to us regardless of whether acting on them will get us what we want.

Cesarean section an operation that involves a surgical incision through the abdomen and uterus to remove the fetus from the womb, while seeking to preserve its life.

Climate change a change in weather patterns that lasts for a long time (e.g., thousands or millions of years).

Compensation the means of restoring those who have been harmed to the condition they were in prior to the harm having occurred. Compensation does not require a wrongdoer, and it need not be paid by the perpetrator of the harm.

Conception the point at which a sperm fertilizes an egg and a zygote is formed.

Conditional an 'if-then' sentence.

Consequent the 'then' clause of a conditional; it specifies a necessary condition of the conditional's antecedent.

Consequentialism the family of moral theories that say that an action or a policy is morally required just because it produces the best overall results.

Conservative a position that either seeks to preserve the status quo, or claims that we ought to change the traditional ways of doing things only if there is compelling evidence that doing so would be better.

Continence the ability to manage to do the right thing, but with little or no pleasure, and only by suppressing very strong contrary desires.

Contradiction when one and the same claim is said to be both true and false.

Conventional morality the system of widely accepted rules and principles that members of a culture or society use to govern their own lives and to assess the actions and the motivations of others.

Counterfactual question a question that asks what would have occurred if, contrary to fact, something else had not taken place.

CRISPR-cas9 a gene-editing tool that allows scientists to target specific sequences of DNA and either alter or delete them, or insert new genetic material altogether.

Critical morality a set of moral norms that (1) does not have its origin in social agreements; (2) is untainted by mistaken beliefs,

irrationality, or popular prejudices; and (3) can serve as the true standard for determining when conventional morality has got it right and when it has fallen into error.

De facto equality equality in real, lived experience.

De jure equality equality in the content of the law.

Death row the part of a prison with cells for people sentenced to death.

Decision procedure a method for reliably guiding our decisions, so that when we use it well, we make decisions as we ought to.

Deforestation the destruction of the forest to make land available for other uses (e.g., agriculture).

Desire satisfaction theory the view that something is intrinsically good for you *if* it satisfies your desires, *only if* it satisfies your desires, and *because* it satisfies your desires.

Deterrence theory the view that punishment is justified if, only if, and because it is an efficient way of preventing crime.

Difference principle the principle that says that when distributing resources and opportunities, societies are required to give the greatest priority to the interests of the worst-off among us.

Discriminatory marked by unjustified bias for or against a particular group.

Distributive justice justice in the social distribution of resources and opportunities.

Divine command theory the view that an act is morally required just because it is commanded by God, and immoral just because God forbids it.

Doctrine of double effect the principle that says that if your goal is worthwhile, you are sometimes permitted to act in ways that foreseeably cause certain types of harm, though you must never intend to cause such harms.

Drug addiction a chronic disease characterized by drug seeking and use that is compulsive, or difficult to control, despite harmful consequences.

Drugs chemicals that, when introduced into the bloodstream, predictably alter the way we feel.

Economic egalitarianism the view that it is morally important to distribute wealth and income equally.

Economic inequality the difference in economic well-being between different groups or between individuals within a group.

Embryo the growing offspring that was once a zygote; the embryonic period of gestation lasts from roughly two weeks to eight weeks after conception.

Error theory the view that says that (1) there are no moral features in this world; (2) no moral judgments are true; (3) our sincere moral judgments try, and always fail, to describe the moral features of things; and, as a result, (4) there is no moral knowledge.

Estate tax a tax paid by the estate of a person who has died.

Ethical egoism the ethical theory that says that an action is morally right if and only if it maximizes one's self-interest.

Ethical pluralism the view that there is more than one ultimate, fundamental moral principle.

Ethical vegetarians those who refrain from eating animals out of a moral concern for the rights or welfare of animals.

Ethics of care a moral perspective that emphasizes the centrality of care as the model of admirable moral relations.

Eugenics the use of selective breeding to develop desirable traits in human beings, or the use of sterilization to eradicate undesirable traits in human beings.

Euthanasia the practice of assisting in a patient's death, where such assistance is motivated by the hope of benefitting the patient.

Extrapolation problem the difficulty of concluding that outcomes in one context will carry over to a different context.

Factory farm a large industrial complex where large volumes of animals are packed into a small space to make raising and slaughtering them (or collecting their eggs) maximally efficient.

Fallacious the feature of exhibiting or having committed a fallacy.

Fallacy of affirming the consequent any argument of the form if P, then Q; Q is true; therefore, P is true.

Fallacy of denying the antecedent any argument of the form if P, then Q; P is false; therefore, Q is false.

Fallacy a kind of poor reasoning. A formal fallacy is an argument form all of whose instances are invalid. Informal fallacies are other kinds of mistakes in reasoning.

Feminist ethics a family of moral theories committed to four central claims (1) women are the moral equals of men; (2) the experiences of women deserve our respect and are vital to a full and accurate understanding of morality; (3) traits that have traditionally been associated with women are at least as morally important as traditionally masculine traits; (4) traditionally feminine ways of moral reasoning are often superior to traditionally masculine ways of reasoning.

Fetus the growing offspring that was once an embryo; the fetal period begins at about the eighth week and lasts for the duration of the pregnancy.

Fitness a being's success at survival and reproduction.

General deterrence using the threat of punishment to prevent crimes that might be committed by those other than the criminal himself.

Genetic engineering the direct manipulation of an organism's DNA to alter its characteristics.

Genetic enhancement the direct manipulation of an organism's DNA to improve its form or functioning beyond the level necessary for health.

Genetically modified organism (GMO) organisms whose DNA has been directly altered for human purposes.

Germline cells reproductive cells.

Gestation crates strong metal cages, barely larger than a pig, used to house breeding pigs.

Global warming a rise in average atmospheric temperatures across the world.

Golden Rule the moral principle that requires you to treat others as you would like to be treated.

Greenhouse effect warming that results when greenhouse gases in the atmosphere (e.g., carbon dioxide, methane) trap heat radiating from the Earth's surface toward outer space.

Hasty generalization illicitly drawing a general lesson from only a small handful of cases.

Hedonism the view that a life is good to the extent that it is filled with pleasure and is free of pain.

Hypothetical imperative a command of reason that tells us to do whatever is needed in order to get what we care about.

Hypothetical syllogism an argument of the form if P, then Q; if Q, then R; therefore, if P, then R.

Iconoclast a person whose views are deeply opposed to conventional wisdom.

Implicit bias prejudice that we do not realize we have.

Incest a sexual relationship between family members.

Infallible incapable of making a mistake.

Inheritance tax a tax paid by the recipients who have inherited the wealth of the deceased.

Innate traits that we have from birth.

Innocence in general, the absence of guilt. In the context of terrorism, innocence denotes the absence of responsibility for the wrongful harms that terrorists are responding to.

Instrumental goods things that are valuable because of the good things they bring about.

Instrumentally valuable something good because of the other good things it makes possible.

Internment camps barbed-wire-enclosed living quarters where thousands of Japanese and Japanese American people were forced to live for two and half years during World War II.

Intrinsically good valuable in and of itself, and worth having for its own sake.

Intrinsically valuable worth pursuing for its own sake; valuable in its own right.

Involuntary euthanasia euthanasia that occurs when a person makes a voluntary choice to remain alive, but someone else overrides that choice and seeks to end the person's life, for his own good.

Jim Crow laws state and local laws passed in the 1880s, in the southern United States, enforcing segregation between white and black people in public places such as schools, restrooms, and restaurants.

Just deserts what a person deserves.

Legal moralism the doctrine that we can legally prohibit behavior that violates no one's rights, so long as that behavior is immoral.

Legal paternalism the doctrine that we can legally prohibit a person's behavior for her own good, even if that behavior is autonomous and violates no one's rights.

Lethal injection a method of executing a person by introducing deadly poison into his bloodstream.

Level down to decrease the resources or benefits of the better-off.

Lex talionis literally, the law of retaliation, which requires that one treat criminals in just the way they treated their victims.

Liberal position regarding sexual morality the view that sex is morally permissible if and only if it is engaged in by consenting adults.

Logical validity the feature of an argument that guarantees the truth of its conclusion, on the assumption that its premises are true.

Lone wolf attacks terrorist attacks undertaken by single individuals, rather than through the coordinated efforts of members of a terrorist group.

Maxim a principle of action you give yourself when you are about to do something.

Maximin principle a principle of rational choice that tells us to survey all of the options, determine the worst-case scenario in each of them, and pick the option that has the best of the worst-case scenarios.

Mere means to treat another as a mere means to the achievement of one's own goals is to treat her in ways that fail to respect her rationality and autonomy, as if she had no intrinsic importance.

Modus ponens an argument of the form: if P, then Q; P; therefore, Q.

Modus tollens an argument of the form: if P, then Q; Q is false; therefore, P is false.

Monistic theories those that endorse the idea that there is just a single ultimate moral rule.

Moral agent a being capable of understanding right and wrong and then conforming its behavior to that understanding; those who bear responsibility for their actions, and who are fit for praise or blame, because they can control their behavior through reasoning.

Moral community the group of those who possess independent moral importance—those who are valuable in and of themselves, regardless of how useful they are.

Moral exemplar a moral role model; someone who exhibits the moral virtues to a great degree.

Moral rights moral entitlements or liberties that protect our interests and choices.

Natural neither created nor altered by humans.

Natural law theory the view that actions are right just because they are natural, and wrong just because they are unnatural. And people are good or bad to the extent that they fulfill their true nature—the more they fulfill their true nature, the better they are.

Necessary condition a requirement, a prerequisite, a precondition.

Net worth a measure of wealth calculated by subtracting liabilities (i.e., debts or financial obligations) from assets (i.e., holdings regarded as having economic value).

Nonvoluntary euthanasia euthanasia that occurs when patients are incapable of making voluntary choices.

Normative system a set of norms, that is, a set of standards for how we ought to behave, ideals to aim for, rules that we should not break.

Norms standards that we ought to live up to.

Objective moral standards those that apply to everyone, even if people don't believe that they do, even if people are indifferent to them, and even if obeying them fails to satisfy anyone's desires.

Omniscient all-knowing.

Oppression a system of unjust and unequal social forces that systematically limit opportunities and impose other harms on members of a given population.

Optimific producing the best results.

Optimific social rule a social rule which, if nearly everyone accepted it, would yield better results than any competing social rule.

Original position John Rawls's term for the situation in which imaginary negotiators, stripped of all knowledge of the features that distinguish them from one another, come together to decide on social principles that will govern them.

Overdose a dangerously excessive and sometimes lethal amount of a drug.

Pacifism the view that peace is a paramount value and that violence (including war) is immoral.

Partiality showing greater concern for, or assigning greater importance to, some beings rather than others.

Passive euthanasia euthanasia that occurs when we "let nature take its course," allowing someone's terminal condition to worsen with the awareness that she will die as a result, all the while intending to make her as comfortable as possible.

Paternalism the practice of limiting someone's liberty, against his will, for his own good.

Persons beings who are rational; can think, feel emotions, feel pain and pleasure; reflect on the value of their experiences; and communicate in original, sophisticated ways with one another.

Physician-assisted suicide a suicide performed with the help of a medical professional whose role is usually to prescribe and to oversee the administration of (but not to administer) lethal drugs.

Polyamorous relationships sexual, romantic, or marital relationships among more than two people.

Polyandry a social practice in which a woman has more than one husband at the same time.

Polygamy a social practice in which a man has more than one wife at the same time.

Premarital sex sex between two people who have not been married.

Premeditated planned or thought out in advance.

Premises the reasons within an argument that, taken together, are meant to support the argument's conclusion.

Prima facie duty an excellent, nonabsolute, permanent reason to do (or refrain from) something.

Principle of humanity always treat a human being (yourself included) as an end, and never as a mere means.

Principle of merit positions should be awarded on the basis of qualifications.

Principle of universalizability an act is morally acceptable if, and only if, its maxim is universalizable.

Principle of utility the central doctrine of Act Utilitarianism.

Prisoner's dilemma a situation in which the pursuit of self-interest by all parties leads to a worse outcome than if each were to compromise.

Prostitution having sex in exchange for payment.

Psychological egoism the psychological theory that says that the ultimate motivation behind every human action is the pursuit of self-interest.

Racism the belief that members of a given race are inferior by virtue of their racial identity.

Ratchet effect an exponential increase of a population over time, occurring in poor communities confronted with scarce resources.

Redlining the practice of denying services to residents of certain areas based on their racial or ethnic identities.

Reparations repairing a wrong one has done to a victim. This requires acknowledgment that one has done wrong, and requires that the wrongdoer provide the victim with the needed repair.

Retributivism the view that punishment is justified if, only if, and because it gives a criminal his just deserts.

Right to life the right not to be killed.

- Rule consequentialism** the view that an action is morally right just because it is required by an optimific social rule.
- Sentience** the capacity to have sense experiences (e.g., feelings of pleasure or pain).
- Slash and burn agriculture** a process in which a subsistence farmer cuts down the trees on a small parcel of land and then burns their stumps, so as to create an area suitable for agriculture.
- Slippery slope argument** an argument designed to criticize certain social innovations on the grounds that allowing them will lead to terrible results in the long run.
- Somatic cells** nonreproductive cells.
- Sorites** a form of argument that relies on the difficulty of drawing a principled line between two things that exist along a spectrum.
- Soundness** the feature that arguments have when they are logically valid and all of their premises are true.
- Special deterrence** using the threat of punishment to deter the criminal himself.
- Speciesism** the view that humans, just by virtue of their species membership, are morally more important than nonhuman animals.
- Standard of rightness** a principle that tells us the conditions under which actions are morally right.
- State of nature** anarchy; a situation in which there is no government, no central authority, and no group with the exclusive power to enforce its will on others.
- Straw man fallacy** a form of reasoning that depicts a position in a way that makes it easy to refute, thereby diverting attention from the real position being advanced.
- Subjective experience** the sort of experience one has when one is conscious and occupying a perspective on the world.
- Sufficient condition** a guarantee.
- Supererogation** action that is “above and beyond the call of duty.”
- Supererogatory** praiseworthy action that is above and beyond the call of duty.
- Supreme moral rule** a moral rule that is both absolute and fundamental.
- Terrorism** the deliberate use of violence on innocent victims, with the intent to intimidate a population, for the purpose of advancing some political goal.
- Theists** those who believe that God exists.
- Tolerance** the effect that occurs when the brain adjusts to a pattern of drug use, in which the high that users feel, compared to the high they felt when they first started taking a drug, is reduced.
- Trimester** one of three three-month stages of a full-term pregnancy.
- Unconstitutional** not permitted by, or in violation of, a country’s political constitution.
- Universalizable** a maxim is universalizable if and only if the goal that it specifies can be achieved in a world in which everyone is acting on that maxim.
- Vegans** those who refrain from the purchase and consumption of all animals products.
- Vegetarian** a person who refrains from eating meat.
- Veil of ignorance** an imaginary device that erases all knowledge of your distinctive traits in preparation for selecting principles of justice or morality.
- Viability** the point at which a fetus can survive outside of the mother’s womb.
- Vicarious punishment** punishment that targets innocent people as a way to deter the guilty.
- Virtue** an admirable character trait that helps to define a person.
- Voluntary euthanasia** euthanasia that occurs when patients voluntarily consent to end their lives and seek the assistance of others to do so.
- Wealth inequality** a difference in wealth between groups or individuals within a group.
- White privilege** the set of social, political, and economic advantages enjoyed by white people in Western countries that are not enjoyed by other racial or ethnic groups in those countries.
- Wrongs** violations of rights.
- Zygote** the fertilized egg that marks conception and begins pregnancy.

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