

## **Justice for Hedgehogs: Excerpts**

### **Synopsis: Dogg's Justice**

This book defends a large and old philosophical thesis: the unity of value. Its title refers not to jail sentences for greedy fund managers, but to an ancient Greek aphorism that Isaiah Berlin made famous for us. The fox knows many things, but the hedgehog knows one big thing. I argue against several foxy causes: value skepticism, value pluralism, value conflict and, in particular, the supposed opposition between the values of self-interest and those of personal and political morality. In much modern Western philosophy – both Anglophone and Continental – morality is seen as self-abnegation. The moral attitude is an attitude of impartiality: we act out of moral conviction only when we pursue the interests of people generally, counting our own person as only one anonymous figure among many billions. I argue, in contrast, for a morality of self-affirmation. We each have an enduring and special responsibility for living well, for making something of value of our own lives, as a painter makes something valuable of his canvas. Our various responsibilities and obligations to others flow from that personal responsibility for our own lives. Only in some special roles and circumstances – principally in politics – do these responsibilities to others include any requirement of impartiality between them and ourselves.

These are preposterous claims unless we take an expansive view of our self-interest. I defend an expansive view: we must treat the making of our lives as a challenge, one we can perform well or badly, and we must take the ambition to make our lives authentic and worthy rather than mean or degrading as cardinal among our interests. We must, in particular, cherish our dignity. The idea of dignity has become debased by flabby overuse in political rhetoric: every politician pays lip-service to the idea and almost every covenant of human rights begins with its name. But we need the idea, and the cognate idea of self-respect, if we are to make much sense of our situation and our ambitions. Each of us is an infinite and infinitely puny universe, bursting with life and facing death, alone among the animals of this planet conscious of its apparently absurd situation. The only value we can find in that circumstance is adverbial value: we must find the value of living – the meaning of life – in living well just as we find value in painting or writing or singing or diving well. There is no other meaning or value in our life, but that is genuine value and meaning enough. Dignity and self-respect – whatever these turn out to mean – are indispensable conditions of living well. We find evidence for this in how most people want to live: they want to hold their heads high while they struggle for all

the other things they want. We find more evidence in the otherwise mysterious phenomenology of shame and insult.

Philosophers ask: why be moral? Some take this question as strategic: how can we tempt wholly amoral people to mend their ways? The question is more profitably understood in a very different way: as asking how we can account for the appeal of morality that we already feel. That is a profitable question because answering it not only improves self-understanding but helps to refine the content of morality. It helps us to see more clearly what, if we are to be moral, we must do. If we can connect morality to dignity in the way I propose we will have an effective answer to the philosophers' question understood that way. We are drawn to morality in the way we are drawn to other dimensions of dignity and self-respect.

### *A Just-So Story*

My argument is complex: it is an example of what I have elsewhere called an inside-out argument.<sup>1</sup> It begins in the most practical of all questions – how shall we live – and expands outward into progressively more abstract philosophical issues before contracting back toward concern with one aspect – politics – of the original practical issue. Some historical context might therefore be helpful. I cannot ask you to take the following caricature seriously as intellectual history; it is not subtle or detailed or – I'm sure – correct enough for that. But, whatever its defects as history, it might help you to understand the argument by seeing how I conceive its place in a larger unfolding story. For this purpose I adopt a terminological distinction used by some though not all philosophers. I shall use “ethics” to describe the principles that tell human beings how to live well – what they should aim to be and achieve in their own lives – and “morality” to describe the principles that tell them how they must treat other people.

The ancient moral philosophers were philosophers of self-affirmation. Plato and Aristotle saw the human situation in the terms I identified: we have lives to live and we should want to live those lives well. Ethics, they said, commands us to seek “happiness;” they meant not episodic glows of pleasure or enjoyment but the fulfillment of a successful life conceived as a whole. Morality also has its commands: these are captured in a set of virtues that include the virtue of justice. Both the nature of happiness and the content of these virtues are indistinct: if we mean to obey the commands of both ethics and morality we must discover what happiness really is and what the virtues really demand. This requires an interpretive project. We must identify

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<sup>1</sup> See the discussion of inside-out methodology in *Life's Dominion*.

conceptions of happiness and of the familiar virtues that fit well together, so that the best understanding of morality both flows from and helps define the best understanding of ethics.

The god-intoxicated philosophers of the early Christian period and of the Middle Ages had the same goal, but they had been given what they thought an obvious formula for achieving it. Living well means living in God's grace which in turn means following the moral law God laid down as the law of nature. That formula had the happy consequence of fusing two conceptually distinct issues: explaining how people have come to hold the ethical and moral beliefs that they do and also explaining why these ethical and moral beliefs are correct. God's power explains the genesis of conviction: we believe what we do because God has revealed it to us directly or through the powers of reason he created in us. God's goodness also justifies the content of conviction: if God is the author of our moral sense, then of course our moral sense is accurate. The fact of our belief is in itself proof of the truth of our belief: what the Bible and God's priests say must therefore be true. The formula did not make for entirely smooth sailing. The Christian philosophers were troubled, above all, by what they called the problem of evil: if God is all-powerful and the very measure of goodness, why is there so much suffering and injustice in the world? But they found no reason to doubt that such puzzles were to be solved within the template provided by their theology. The morality of self-affirmation was firmly in intellectual control.

The philosophical explosions of the late Enlightenment ended the long reign of that conception of the relation between self-interest and morality. The philosophers who thereafter proved to be the most influential insisted on what came to be seen as a new standard of inquiry. This combined a new epistemological premise – that we are entitled to endorse only those of our beliefs whose existence, as beliefs, can best be explained as either an irresistible deliverance of our reason, like mathematics, or the impact of the truth on our brains, like the empirical discoveries of the nascent but already stunning natural sciences – and a new condition on satisfying that premise; that we must find natural rather than supernatural explanations for all the phenomena of our world, including our own thoughts and behavior. The Christian philosophers could respect the epistemological premise only by violating the naturalistic condition: they held that moral truth does cause moral conviction, but only through the intermediation of a deity. Philosophers who accepted the naturalistic condition found that the epistemological premise called our endorsement of moral convictions into question. If the best explanation of why we think theft or murder wrong is to be found not in God's beneficent will but in some natural disposition of human beings to sympathize with one another's suffering, for instance, or in the convenience to us of conventional arrangements of property and security that we have contrived over our history, then the best explanation of

these beliefs contributes nothing by way of justification of their truth. On the contrary: the disconnection between the cause of our ethical and moral beliefs and any justification of those beliefs is in itself grounds for suspicion that these beliefs are not true, or at least that we have no reason to think them true.

Hume argued with devastating effect that the capacities of reason that deliver our mathematical convictions cannot validate our ethical or moral convictions and, more generally, that no amount of discovery about what has been or is the case – no revelations about the course of history or the ultimate nature of matter or the truth about human nature – can establish any conclusions about what ought to be. Hume's principle (as I shall call that general claim) is often taken to have a stark skeptical consequence because it suggests that we cannot discover, through the only modes of knowledge available to us, whether any of our ethical or moral convictions is true. In fact, I shall argue, his principle has the opposite consequence. It undermines the most prominent contemporary forms of skepticism because the proposition that it is not true that genocide is wrong, for instance, is itself a moral proposition and, if Hume is right, that proposition cannot be established by any discoveries of logic or facts about the basic structure of the universe. Hume's principle, properly understood, supports not skepticism about moral truth but rather the independence of morality as a separate department of knowledge with its own standards of inquiry and justification.<sup>2</sup> It requires us to reject the Enlightenment's epistemological premise.

The ancient and medieval conception of self-interest, which takes self-interest to be an ethical ideal, was another casualty of the new supposed sophistication. Common sense and then psychology disclosed a progressively bleaker picture of self-interest: from Hobbes' materialism to Bentham's pleasure and pain to the economists' *homo economicus*, a being whose interests are exhausted by preference curves. Self-interest on this view can only mean the satisfaction of a mass of contingent desires that people happen to have. This new, supposedly more realistic, picture of what it is to live well produced two Western philosophical traditions. The first, which came to dominate substantive moral philosophy in Britain and America in the nineteenth century, accepted the new, meaner, view of self-interest and therefore declared that morality and self-interest are rivals. Morality, this tradition insisted, means a subordination of self-interest; it requires taking up a distinct objective

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<sup>2</sup> On the most obvious reading, Hume himself often violated what I have named Hume's principle. He apparently did so when he claimed that moral properties are only properties that we project onto reality. He also did so, with much worse consequences for moral philosophy, in confusing the questions of motivation, and of the best explanation of the origin of our convictions, with questions about the truth of those convictions.

perspective which counts the agent's own interests as in no way more important than anyone else's. That is the morality of self-abnegation, a morality that spawned the moral philosophy of impersonal consequentialism of which the theories of Bentham, Mill and Sidgwick are famous examples.

The second tradition, much more popular on the continent of Europe, rebelled against the bleak modern picture of self-interest which it regarded as base. It emphasized the underlying freedom of human beings to struggle against custom and biology in search of a more ennobling picture of what a human life could be, the freedom that we grasp once we understand, as Sartre put it, the distinction between objects in the world of nature, including ourselves so conceived, and the self-conscious creatures that we also are. Our existence precedes our essence because we are responsible for the latter: we are responsible for making our nature and then for living authentically up to what we have made. Nietzsche, who has become the most influential figure in this tradition, accepted that the morality recognized by the conventions of Western community requires the subordination of the self. But he insisted that morality therefore stands exposed as a fake with no claims on us. The only real imperative of life is *living* – the creation and affirmation of a human life as a singular and wonderful creative act. Morality is a subversive idea invented by those who lack the imagination or the will to live creatively.

The first of these two modern traditions, the morality of self-abnegation, lost interest in self-interest, which it treated as the satisfaction of the desires people happened to have. The second, the ethics of self-assertion, lost interest in morality, which it treated as mere convention with no objective value or importance. (Though Sartre developed a limited interest in political morality when he embraced Communism.) The Greek idea of an interpretive unity between the two departments of value – a morality of self-affirmation – has survived only in a very degraded form. In the 17<sup>th</sup> century, Hobbes had argued that conventional morality promotes everyone's self-interest understood in the new, non-normative, desire-satisfaction way, and his contemporary followers have used the techniques of games theory to refine and defend the same claim. His suggestion unites morality with ethics but to the discredit of both. It takes the desire view of ethics as fundamental, and morality's function only to serve desire. The Greek ideal was very different: it assumed that living well is more than having your desires satisfied and that being moral means taking a genuine not just instrumental concern in the lives of others. It seeks an integrity of those genuine values. Modern moral philosophy seems to have deserted that ideal of integrity.

I have so far left Kant out of my Just So Story, but his part is complex and crucial. His moral philosophy seems the paradigm of self-abnegation. The truly moral person, in his view, is moved only by the moral law, only by laws or maxims he could rationally will to apply to everyone equally. No act is morally good that is motivated only by the agent's interests or inclinations, even his altruistic inclinations of sympathy or desire to help others. There seems no space in this account for the idea that an agent's moral impulse can flow from his ambition to make something distinguished of his own life, to do a good job of living. Yet that is the claim that Kant actually makes: it is, as I understand it, the foundation of his entire moral theory. He claims that freedom is an essential condition of dignity – indeed that freedom is dignity – and that only through legislating a moral law and acting out of obedience to the law he has legislated can an agent find genuine freedom. So what seems a morality of self-abnegation becomes, at a deeper level, a morality of self-affirmation. Kant's unification of ethics and morality is obscure because it takes place in the dark: in what he called the noumenal world whose content is inaccessible to us but where ontological freedom can only be achieved. We can rescue Kant's crucial insight from his obscuring metaphysics: we can state it as what I shall call Kant's principle. A person can achieve the dignity and self-respect that are indispensable to a successful life only if he shows respect for humanity itself in all its forms. That is a template for a unification of ethics and morality: I exploit that template in the third part of this book. Just as Hume's principle is the anthem of Part I of the book, Kant's principle is the anthem of that Part III.

#### *Synopsis Part I: Moral Truth*

Skepticism about morality plays a large part in the story I just described, but we cannot account for its place without some important distinctions among types of skepticism.<sup>3</sup> I include, under the general description of skepticism, all forms of doubt about the truth of ethical and moral convictions, including not only the belief that particular claims are false but also the more general philosophical claim that no moral or ethical claims can be true and the different philosophical claim that we can never have good reason to think that such a claim is true. The most important distinction among all such claims is the distinction between internal and external skepticism. Internal skepticism remains within the realm of value. It does not deny the possibility that value judgments can be true; on the contrary it appeals to the truth of some basic value judgments to discredit other, typically widely believed, value judgments.

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<sup>3</sup> This Part restates and then expands on an article published some time ago: Objectivity and Truth, You'd Better Believe It.

Many of us are internally skeptical about conventional sexual morality. We appeal to a general if rough theory about what can make an act morally wrong and we conclude that freely chosen sexual acts of adults are not among the acts that can be morally wrong. Since we therefore deny the truth of a whole group of widely believed moral convictions – that any sexual act involving people of the same sex or unmarried people is wrong, for instance – our claim is internally skeptical. Some internal skepticism is much more embracing. The view popularly associated with Nietzsche – that since God is dead nothing is right or wrong – is near global moral skepticism, because it covers all positive claims about what is right and wrong conduct. It is internal rather than external skepticism because it is grounded in a positive claim about value: that only the will of a supernatural creature can make an act morally right or wrong.

External skepticism has an entirely different provenance and ambition. It purports to stand outside the entire realm of value judgment and, from that external perspective, judge that value judgments are all false, or that they are not even assertions that can be true or false but rather constitute some entirely different form of speech act – expressions or projections of emotion, for instance. External skepticism, that is, is Archimedean because it stands about morality and judges it from the outside. It does not appeal to any deep or general value judgments in its argument for its skeptical conclusions; rather it relies on general theories of metaphysics or epistemology or meaning. One prominent version of external skepticism insists, for example, that all value judgments are false because they assert the existence of entities or properties that are too strange to countenance as part of our universe.

External skepticism paints the idea of objective values – ethical as well as moral – as absurd. I argue, in Part I of *Justice for Hedgehogs*, that external skepticism is not coherent because it seeks to establish substantive moral claims – that it is false that genocide is wrong, for example, or that it is not true that that the invasion of Iraq was wrong – from wholly non-moral premises. It contradicts Hume’s principle that one cannot derive an ought from an is. You may resist this conclusion because you think that these negative claims are not moral claims but just the denial of moral claims, which is something different. But the proposition that it is not true that the war in Iraq is immoral can of course be used to state a substantive moral position: it is the position of President Bush and his many political allies. So the success of your response depends on finding some proposition the external skeptics wish to defend, of the form that it is not true that the war in Iraq was wrong, that differs in meaning from that proposition in its substantive use. I argue that this distinction cannot be found. It will not do, for instance, to restate the external skeptic’s claim as denying that the Iraq invasion was objectively wrong, because the term “objectively” cannot be given any sense

that establishes a pertinent philosophical difference between denying that proposition and denying the simpler proposition that the invasion was wrong. The statement that the invasion was objectively wrong, at least in the mouth of anyone who might be tempted actually to say this, means that it was wrong for reasons that are independent of anyone's beliefs or wishes or desires. That is a substantive moral claim and denying it also makes a substantive claim.

The Enlightenment epistemological premise I described provides an important motive for external skepticism. It generates what I call the causal dependence thesis: that we have no good reason to hold beliefs about moral and other kinds of value unless we can suppose that these values in some way cause us to hold those convictions. We are not entitled to think that the Iraq war is wrong, for instance, unless we can sensibly think that the war's wrongness has caused us to think it wrong. In fact many philosophers who are anxious to oppose external skepticism, and to insist that moral and other value judgments can be objectively true, accept this causal dependence thesis. They therefore defend a causal impact thesis: that moral truth indeed can in some way cause moral conviction. Some of them suppose, for example, that we perceive moral facts just as much, though of course not in the same way, as we perceive the external world. The moral truth causes our belief in its truth just as much as a nightingale causes our belief that a nightingale is in the tree. External skeptics ridicule this causal impact claim: they say that moral truth, if there were such a thing, could not interact with human brains in any perceptual or other causal relationship.

I believe that the external skeptics have the better of the argument about the causal impact thesis. That thesis could be true only if there were some entity or property whose configuration both constitutes the truth of the moral judgment that the war is wrong and can interact with the human nervous system in such a way as to produce a conviction that the war is wrong. The thesis seems to depend, that is, on imagining something like special fundamental particles among the most basic elements of the universe – morons – that both constitute moral rightness or wrongness and cause convictions about rightness and wrongness in particular human beings. But that combination of properties makes little sense. Among its many other problems, it violates Hume's principle. If there are special kinds of particles that we can in some way perceive – morons buzzing around Baghdad – that cause us to have moral convictions, the existence of these particles is a matter of fact and so cannot entail, on its own, any moral conclusion at all.

But the causal dependence thesis is also a mistake and for much the same reason: it also violates Hume's principle, though in a somewhat less obvious way. It supposes that whether my reasons for holding any belief are good reasons depends on the causal history of how I

came by those reasons. In the domain of ordinary fact, that assumption is normally plausible. I have good reason for thinking it is raining now only if the best explanation of why I think it is raining includes my exposure, directly or indirectly, to that rain. But that is because I and others take the causal history of my belief to provide an argument for the truth of that belief: it provides that argument if but only if it does include that exposure. If you challenge my claim that it is raining, I can reply, to very powerful effect, that I looked out the window and saw the rain. Indeed, I cannot give any sound argument for my claim that does not assume that I have been, directly or indirectly, in some causal nexus with the rain. If I said that I believe it to be raining because I flipped a coin, I am confessing that I have no good reason at all for thinking that it is raining.

But when we consider what we count as good arguments for a moral claim, we reach the opposite conclusion. Whether someone has good reasons for such a claim cannot depend on the history of how he came to hold those reasons, because we could not count that history as an argument either in favor of or against the claim without violating Hume's principle. Nothing I can possibly report about how I came to think the war in Iraq immoral provides any argument at all – to myself or anyone else – that it is immoral. Suppose I argue that the war is immoral because all wars of choice are immoral. That may be a good argument or a bad one, but which it is cannot depend on whether I formed that opinion by thinking long and hard or by flipping a coin. If it is a good argument, and I believe that it is a good argument, then I have a good reason for supposing that the war is immoral. If an external skeptic wishes to challenge my reasons, therefore, he must engage them on their own plane: as moral arguments. Of course, if he really does engage them on that plane, then he is no longer an external skeptic but, at most, an internal one.

However, putting the point that starkly shows why the causal dependence thesis has seemed so attractive to moral philosophers, and also why, if we reject it, we must find something to take its place. For though the story of how I came to my opinion about Iraq cannot figure in the case for or against the truth of my opinion, it certainly does figure in deciding whether I have acted responsibly in forming that opinion and in acting on it. It would be irresponsible of me to think that wars of choice are always immoral if I had not thought about the matter reasonably long and hard but only flipped a coin, and therefore irresponsible of me to campaign for ending the war for that reason. So we need a theory of responsibility in moral reasoning – a moral epistemology – as well as a theory of moral truth. A moral epistemology usually has much greater practical importance than an epistemology for other domains, because we act on our moral judgments in ways that affect other people dramatically. A moral epistemology therefore includes a standard for judging whether we have acted properly in

acting on our moral convictions: we have acted properly only if we have formed them in the right way.

At the end of Part I, I offer an account of moral responsibility that begins in a theory of responsible behavior and ends in a theory of responsible moral reasoning. Someone is morally responsible if he accepts that his conduct toward others must be governed by moral principle and if the moral convictions he professes actually do explain his conduct. These convictions need not be – they cannot be – the most basic explanation of his conduct; this lies in some psychological or biological theory of how he formed those convictions. But responsibility nevertheless serves two important purposes: it serves the ethical purpose of authenticity and the moral purpose of even-handedness. It serves those purposes, however, only if people reflect about their moral responsibilities in an appropriate way. They must of course avoid outright hypocrisy and rationalization. They must also avoid gaps and contradictions in their various convictions because convictions defective in these ways allow unacknowledged motives of self-interest, taste, favoritism and other such influences to undermine responsibility. So full moral responsibility requires that we accept this regulative ideal in our moral reflection: our moral judgments must cohere in what I describe, later in the book, as an interpretive integrity. Moral philosophers therefore have an important contribution to make to the responsibility of people in their community: they try to interpret their own convictions, which will very likely enjoy some currency there, to produce the integration that moral responsibility requires. That is why the familiar complaint, that moral philosophy is useless because it changes no one's mind, is so misguided.

### *Synopsis Part 2: Interpretive Truth*

Part 1's discussion of skepticism clears away an influential obstacle to an integration of morality and ethics. It is essential to that integration that both ethics and morality be understood as domains of objective value; otherwise we could not argue, as I shall, that respect for one's own life requires respect for all human beings. Part I also makes a more positive contribution to the overall argument. It identifies three reasons why we should labor to bind ethics and morality together in a morality of self-affirmation.

First, the conception of moral responsibility I describe at the end of Part 1 recommends as wide an integration of our values as we can manage, and this means ethical as well as moral values. It encourages us to construct as wide a network of conviction as we can so that as much of our behavior as possible is directed by value not the motives that responsibility requires us to subordinate. We can have more confidence that we are acting out of conviction

if we have understood our moral and ethical convictions as finally joined. Our sense of the importance of our own lives would inevitably compromise our moral responsibility if it pulled in some opposite direction.

Second, if we accept that we have no external reason to doubt that moral and other value judgments can be objectively true, and also that we must reject the causal impact thesis and the metaphysics that swims in its wake, then we must also accept an account of moral truth that is consistent with these assumptions. It must always make sense, when we suppose some proposition to be true, to ask in what its truth consists. Propositions about physical facts, like the proposition that water exists on some planet outside our own galaxy, may be barely true, that is, just true with no deeper explanation of why. We might be able to imagine two complete states of affairs identical in every respect save one: that there is water in one state of affairs at a space-time point where, in the other, there is none. It could just be a fact with no deeper explanation in any other contemporary fact that there is water on a planet distant from the earth-planet in just one of two otherwise identical universes.

If there were morons, then there could also be bare moral facts. It might just be a bare fact that racial discrimination is wrong in virtue of some configuration of morons somewhere in our universe though there can be no further explanation of why morons are configured in that way. They just are. It might also be a bare fact that we have conflicting moral duties, or that our self-interest, properly conceived, conflicts with our moral responsibilities. The morons might just, as it happens, fall out that way. But once we reject the causal hypothesis and the metaphysics of morons, we must accept that there are no bare facts about morality or the other realms of value. We cannot imagine two complete states of affairs exactly alike except that in one but not the other slavery is permissible or *The Marriage of Figaro* is trash.

In the case of value, we must say, the truth of a proposition consists not in any bare state of affairs but in the case that can be made for that proposition through other propositions that are taken to be true. These other propositions will invariably include propositions of physical and mental fact. But, as Hume's principle insists, the case for a proposition about value must also include other propositions of value, and the more extensive and coherent a case that can be made in that way – the larger the network of other value judgments that support the proposition being supported – the stronger the case. We can have more confidence in a network of judgments that includes our ethical as well as our moral judgments than one that is composed only of moral convictions.

This is not to endorse a coherence theory of truth. A perfectly coherent and very large set of ethical and moral judgments may be false. It would be more accurate to say that coherence is a constraint on truth. We may be confident that at least some part of a set of self-contradictory value judgments is false. In any case, however, these considerations suggest that the case for a particular moral judgment is stronger if ethical judgments as well as other moral judgments can be deployed in its favor. And the other way around as well. It does not follow, of course, that we will not encounter apparent conflicts or dilemmas in our moral experience, or in our account of how self-interest supports what we believe to be moral requirements, or that we will always be able to resolve those conflicts to our satisfaction. But our failure will not mean that we have discovered actual conflicts in value, for these are ruled out by our conception of what truth in value can consist in. It will only mean that we have so far failed to make the case we set out to make.

These first two reasons – our search for moral responsibility and for moral truth – give us strong reason to try to construct as large a mutually supporting network of values and convictions as possible, and they therefore provide important incentives for trying to achieve a morality of self-affirmation. We add a third, at least equally powerful, incentive when we consider how a supporting network of values and convictions might be constructed. We might say, as a first approximation, that we can achieve the integration we need only by constructing principles of various levels of abstraction and concreteness that fit together in the fashion John Rawls described as a reflective equilibrium among our values, but on a broader canvas than he had in mind, since we aim to integrate as wide a domain of principles as we can manage. But we should make explicit that the method we use in achieving this equilibrium must be a distinctly interpretive rather than freshly constructive method. Our convictions come embedded in interpretive concepts. We seek happiness, dignity and self-respect as well as more concrete achievements in our lives, we honor friendship and family, we aim to treat others as ends not just means, we aim to respect their inviolability and to honor our obligations to them, and we want to live in a democratic political community that protects freedom and shows equal concern for all its members. These interpretive concepts collect our instincts and convictions and we cannot abandon them in our search for integration. We rather need to understand them better; to find an attractive conception of each value that allows us to see the point of each in the way we understand the others. We want an interpretive integration of our existing values rather than a set of fresh values that are integrated. We need to follow

the traditional interpretive methods that are familiar to lawyers, for example, in their experience of common law reasoning.<sup>4</sup>

In Part 2 of the book, therefore, I turn away from morality as a distinct topic of study to consider interpretation as a distinct method of inquiry. I take up interpretation in general for two reasons: because the general question of the interpretive truth and method is an important issue not sufficiently studied, in my view, in contemporary Anglophone philosophy, but also because the study of that issue helps us to refine our understanding of good moral reasoning and of the character of moral truth. It is controversial across all the genres of interpretation – legal, historical, literary, artistic and biblical interpretation – whether interpretive propositions can be true and, if so, in what their truth can consist. In that way interpretation in general is like morality and ethics in particular. Internal skepticism about interpretation is often a lively – and in some cases an irresistible – possibility: there is often, for sound internal interpretive reasons, no single right way to read a poem, for example. But though external skepticism is also a familiar feature of academic interpretation, it makes as little sense in the other genres of interpretation as it does in morality. So the question must be faced: when an interpretive proposition (including an internally skeptical interpretive proposition) is true, what makes it true?

I argue against one popular answer: that an interpretation is made true by the intentions of the author of the object under interpretation. That answer is plainly not available for some genres of interpretation – history, for instance – and is palpably implausible in others, including law. It is best understood, when it does seem plausible, not as a general theory of interpretive truth but as the application of a more abstract general theory to highly specific contexts. That more general theory is normative: an interpretation is true (or, many people would prefer to say, successful) when it best realizes the best account of the purpose of the interpretive exercise that produced it. If so, then interpretation in all its diverse genres has a feature that we can cite to distinguish two great departments of explanation: interpretive and literal explanation. Literal explanation includes straightforward explanation of the physical and mental worlds. We undertake literal explanation for a great variety of purposes, but these purposes do not figure among the truth or success conditions of such explanation. We may study the stars because we are enchanted by the mysteries of unimaginable realms but we do not ask, when we consider whether some cosmic theory is true, whether it enchants us. But our purposes in interpreting, no matter in which genre of interpretation, do figure in just that way in testing

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<sup>4</sup> I describe common law reasoning as an exercise in interpretation in *Law's Empire*.

the success of an interpretive claim. Our assumptions about the right reasons to read poetry are crucial in deciding which way to read a particular poem is right.

It is crucial to this understanding of interpretation that we conceive of the purposes of interpretation in any particular genre as an open question. We do not just take the purposes we find we have as the standards of success; we seek the right purposes, the purposes we think provides the best justification of the interpretive exercise in play. So disagreement about interpretation is complex: it might reflect disagreement about how shared standards of success are to be applied in some instance, or disagreement about what standards of success are appropriate. Lawyers, for example, often disagree about how to interpret some constitutional or statutory clause, or the holding in some precedent decision, because they disagree about the right standards of legal interpretation; they may disagree about that because they disagree about the purposes of interpreting a constitution or statute or precedent and they may disagree about *that* because they disagree, more profoundly, about the nature of democracy or the best political theory of government. We should say not that interpreters share standards of interpretation but rather that they share interpretive practices: they share the assumption that success in the practice depends on the right understanding of the point of the practice even though they disagree – to some degree and perhaps radically – about what that right understanding is.

If that is correct – if interpretation in any genre hinges on assuming some overall purpose of the practice of interpreting in that genre – then interpretation in all genres must be connected through what we might call an ethical hub. Ethics, which includes the study of what human purposes should be, figures in the background of every interpretive claim; every interpretive genre must in the end find a place in a full account of what living well means. That fact may lessen the implausibility that many of you found in my initial claim in this synopsis: that all value is integrated. But in this book I pursue mainly the much more limited claim that two conventionally distinguished compartments of value – ethics and morality – are integrated. If we are to treat morality as itself an interpretive genre, as our account of moral responsibility and moral truth suggests that we must, then we must discover our moral convictions through some assumption about the point of morality. Our moral concepts – our concepts of right and wrong action, of the several personal virtues, of the political virtues of freedom, democracy and the rest – are interpretive concepts: we compose theories of these by assigning purposes to the practices in which they figure. As I suggested in the Just So Story with which I began this synopsis, the philosophers of antiquity understood this and we can read great modern philosophers, including Kant, as if they did. So our account of moral responsibility and moral truth signals not only our need for a morality of self-affirmation but also the route we must

follow if we hope to construct one. It is unlikely that we can proceed very far in ascribing point to the interpretive practices of moral reflection without supposing that these interpretive practices have an ethical dimension: without supposing, that is, that these practices are part of a larger project of living well.<sup>5</sup>

### *Synopsis Part 3: Dignity*

In Part 3 of the book I begin upon a morality of self-affirmation by elaborating and then defending what I called Kant's principle. This principle is exceedingly abstract. It commands that we respect humanity in others out of respect for ourselves. I shall argue, in this part of the book, that that command has sufficient content so as to justify the main structural features of an appealing moral scheme. That scheme rejects not just utilitarianism but all forms of impersonal consequentialism, and it provides at least rough standards for judging what we owe strangers by way of aid, why we must not harm them, and when and why we incur obligations to them. But though self-respect is at the core of ethics, which gives Kant's principle its great range, no one's sense of how to live well is exhausted by the demands of self-respect, important though these are. People differ in what, beyond self-respect, they count as necessary to living well and the interaction between their more substantive ethical convictions and their moral beliefs is pervasive.

This introduces an inevitable personal variation into different people's moral views: those who count friendship important to their lives will probably have a more robust sense of the obligations of friendship than do people for whom friendship counts less among their personal goals. It would be a mistake – the mistake I work to identify in Part I – to say that because people differ in this way there is no right answer to the question either of how important friendship is to living well or what the obligations of friendship are, or to the myriad other interwoven questions of ethics and morality that any sustained development of a morality of self-affirmation would reveal. These issues are subjective only in the sense that, particularly since ethical values are often ineffable, the further development of such a morality must be largely a personal matter. Great philosophers like Aristotle and Nietzsche can develop complex moralities of self-affirmation out of their own distinctive sense of what it is to live well – that a contemplative intellectual life or a life driven by the will to power is the only life really worth living, for example. But these developed moralities can have appeal, in detail,

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<sup>5</sup> Footnote on Free Will and Determinism.

only for that minority of people who are drawn to those special visions. I confine my discussion to more abstract structural features that can be more widely shared.

My argument for the importance of dignity in life is a transcendental argument: I call attention to impulses and attitudes of pride, shame and regret that you have and that would make no sense unless you accepted the two principles that I propose as the content of dignity. (I discuss these principles at some length in my most recent book, *Is Democracy Possible Here?*.) First, you think it is a matter of high importance that you live well, that you create a life that is successful as a whole, something you can look back on with pride, rather than living only for some felt satisfaction in the future. Those few hedonists who think pleasure is the only thing that matters regret not having had more pleasure in the past. Second, you accept a personal responsibility to see to it that you do live well. You would think it demeaning to put your life at the disposal of anyone else or to expect anyone else to take material or emotional responsibility for what you do. You take pride in your successes and shame in your failures, and accept that you must in principle bear the costs of your mistakes.

The crucial question is not whether you accept these two principles as conditions of dignity – I assume that the great bulk of people in our culture do – but whether the importance and the responsibility they declare are subjective or objective values for you – whether, that is, they are tastes or convictions. They are subjective for you if you believe that it is important how you live and that you must take personal responsibility for how you live only because that is what you happen to want; that these ambitions would otherwise have no hold on you. Most of us treat our tastes in food that way: we either like Chinese food or we do not. The two principles have objective force for you if, on the contrary, you see them as imperative not optional, if you believe that you would make a mistake not to strive to make something valuable of your life. In spite of the academic popularity of forms of external skepticism that deny this, we almost all treat our moral values as objective. We think we would be at fault, not just have different tastes, if we recognized no moral constraints on how we treat others. So we could not hope to support our moral convictions by appealing to principles of personal dignity and self-respect if these latter values were only tastes.

But we cannot understand them that way; these ethical principles are matters of conviction not taste. We could make no sense of our self-critical reactions if we treated our ambition to make something of our life as optional. We could not excoriate ourselves for a failure if the failure could be erased simply by deciding not to care. True, we do not easily forgive ourselves for failing at some tasks we need not have taken up: sailing, for example. I would not have lived less well if I had never conceived an ambition to sail expertly, but it is nevertheless a matter

of regret that I have failed. But we resent or are shamed by failures of that kind only because we think that succeeding at projects once begun is important to living well. If we come to think that a project is not just optional but misguided or silly – a discarded passion for collecting matchbook covers, for instance – our self-criticism at failure evaporates. If the ambition to live well were itself optional, however, we could have no reason not to abandon it whenever this proved convenient. We could have no reason to regret a wasted life. In fact, we almost all do treat dignity as a matter of conviction. True, some people do seem not to care that their life is draining away pointlessly, in a mindless piling up of wealth they can never use, for instance. But the rest of us regard them as objects of pity.

If we deny the objective importance of our life going well, we deny our own importance as something whose fate anyone, including ourselves, has any reason to care about at all, at least in the way we do care. We can care about animals who are not self-conscious, but only in a different way. We can take care that they not suffer. You believe that you have a different level of importance: that it matters not only that you do not suffer but that you create something of value in your life. That further level of importance wholly depends on the objective value – value for the universe – of your succeeding or failing. You could not bootstrap yourself into any importance at all simply by willing or declaring it. Yes, we can be skeptical about our objective importance. If this skepticism is sensible, however, it must be internal; external skepticism is as incoherent in ethics as it is in any other department of value. If we are really gripped by internal skepticism about our importance, rather than simply tempted by its pose, then we will be immobilized, like Oblomov in his bed. You are not in its grip.

That is why you should instead be gripped by Kant's principle. If you treat your own life as a matter of objective not merely subjective importance then you must treat everyone's life that way. If it is objectively and not just subjectively important what happens in your life, then the question must arise whether it is important what happens in and to any other life. That question arises as part of any objective value judgment, in any genre of value. If I hold that a particular painting by a particular artist is of great objective value, I cannot avoid the question whether another painting by that artist, or by another artist, is also of great objective value. There must be a reason why the particular painting I admire has the objective value I attribute to it, why it would be wrong of me not to value it. So, if I believe that another painting does not have that objective value, I must think there is a reason why it does not, why the reasons for valuing the painting I do value do not apply to it as well. In the case of art, there are of course reasons for distinguishing the objective importance of different examples. Unfortunately, many billions of people think that there are also reasons for distinguishing

among the objective importance of human lives. They think that it is important only that people of their own religious faith or ethnic stock live well – or live at all. But they are wrong: there is no creditable reason for such discrimination. If you accept that, then you must conclude that the reason why it is important how you live is only that you are a self-conscious creature with a life to lead.

You would therefore show contempt for yourself in devaluing others: you would undermine the basis of your own objective importance. Kant's principle, so understood, provides a template for a morality of self-affirmation. We must work toward an interpretation of the two principles of dignity I set out that meets at least two conditions. First, it must reconcile the requirement that flows via Kant's principle from the first principle, which is the requirement that we not show disrespect for the objective importance of anyone's life, with the requirement that flows from the second principle, which is that we respect each person's personal responsibility for the success of his own life. Second, it must reconcile both these Kantian requirements with our own, root, ethical responsibility for our own lives.

#### *Synopsis Part 4: Morality – and Justice – for Hedgehogs*

We can meet these conditions only by rejecting any form of impersonal consequentialism: we must deny any foundational moral principle that tells us that we may not treat our own success, or the success of those we love, as particularly important. The moralists of self-abnegation suppose that when we take up an objective perspective we see no difference between our own interests and those of anyone else. But we have reached a different conclusion: when we take up an objective perspective we discover a special and objective responsibility of each person for his own fate and that discovery leaves untouched our personal and special responsibility for our own lives. We must find an interpretation of respect for humanity that is consistent with that special responsibility, and an impersonal consequentialism is not consistent with it. I should emphasize that I am not merely endorsing the familiar view that an impersonal consequentialism cannot be the whole story in morality, that it must be tempered with some personal privilege or some set of agent-relative responsibilities. I am denying that a principle of impersonal consequentialism has any part to play in morality at all. I argue that impersonal consequentialism is inconsistent with the personal responsibility that is an essential component of self-respect; and it is also, moreover, inconsistent with recognizing a parallel personal responsibility in others.

In Part 4, I try to develop the main structural features of a personal morality that meets the two conditions I just described. I try to answer three questions. What aid do we owe even to

strangers in virtue of the objective importance of their lives? What are the limits on the harm we may deliberately inflict on them, and of the risks of harm we may impose on them inadvertently, in view of their own responsibility for their own lives? What is the basis of the special obligations we owe to some particular people through the familiar institutions of assurance like the institutions of promising, role and association?

The level of aid we owe to strangers is fixed by an interpretive question: when is their situation so perilous, the cost of aid to us so relatively low, and our connection to their situation so immediate that failing to aid them would be inconsistent with accepting the objective importance of their lives? I can with perfect sincerity declare the intrinsic and high value of a great painting even if I refuse to incur great cost or run great risk to protect it. But not if I make no effort to take it with me when I am leaving a burning room. Much stricter standards apply, however, when the question is not whether I must aid someone at some cost to myself but whether I may harm him to benefit myself or other people. Harming someone for the benefit of others invades his own responsibility for the direction and value of his life. That distinction dissolves, I contend, the academic puzzles over the difference between killing and letting die, and also the tangled web of issues about so-called double effect cases.

I next argue that special obligations to particular people arise from conventional practices like those of role, association and promising because these practices of assurance, once they have come for any set of reasons to exist, provide the best available means of meeting the challenge of the second of the two conditions I described. That challenge requires us to maximize the control we can exercise over our own lives consistently with granting the same control to others over their lives. The various assurance practices that we find available to us through history and culture are not necessarily the most efficient we could design. But we cannot design practices for ourselves ad hoc, and we therefore have an ethical as well as a moral responsibility to respect the practices into which we are born or into which events take us. These practices are not, however, as philosophers sometimes suppose them to be, codes of conduct like bylaws. They are rather interpretive practices and joining or respecting such a practice, like promising, requires interpretation that is guided by the maximization aim just described, as that aim has in turn been interpreted and elaborated in the rest of the convictions that we build on that abstract beginning. That assumption of purpose restricts the obligations that practices of assurance can impose on us. We must not think ourselves under an obligation to keep promises to do evil to others, or to sell ourselves into slavery, or to respect the associative obligations of *Cosa Nostra*.

In the next set of chapters I take up the political virtues as these might be seen to flow from the account of self-respect developed up to this point. I have summarized part of the political argument in *Is Democracy Possible Here?*, and I shall incorporate the arguments of that book into this one. I argue there for a theory of human rights based on the two fundamental principles of dignity; for an understanding of the interpretive concept of liberty that demands a tolerant secular rather than a tolerant religious political community; for a special associative obligation of equal concern that citizens of a political community have, in their political role as voters and political agents, toward other citizens of the same community; for a scheme of taxation and redistribution that is based on an insurance model and that provides a better realization of ethical responsibility constrained by Kant's principle than alternative interpretations of what equal concern requires; and finally for political and educational structures and procedures that will better realize the conception of democracy that best fits the demands of self-respect. I plan to elaborate the discussion of these political values in Part 4 in a more abstract way, emphasizing their interconnections and interdependencies. I also plan to add a chapter on law, as a special kind of associative obligation, that will develop ideas about the connection between legal and moral philosophy that I broached in the Introduction to my recent book, *Justice in Robes*. I may add a chapter on international law and international justice, but I have not yet begun seriously to think about that.

I will close with a reminder that the argument of Part 4 has been uni-directional and in that sense a betrayal of the interpretive methodology I advocated earlier in the book. I have emphasized the ways in which moral theory might be built drawing on principles that also have a crucial ethical dimension, and I therefore risk the impression that my argument reduces morality to an elevated form of self-interest. So I will point out the various ways in which, throughout the latter part of the book, the argument of personal and political morality has refined our best sense of what dignity means and therefore what it is to live well even when morality is not in question. The suggestion could therefore be made, with no less justice than the opposite claim, that the argument has reduced self-interest to morality. Both claims miss the point. An interpretive investigation into ethics and morality aims not at motivational inducements, carrots or sticks, but at responsibility and truth.

## **Chapter 10**

### **Aid**

Can we construct an integrated view of value that knits together a person's reflective ambitions for the success of his own life with his studied sense of how he should treat others? We must not hope to reduce morality to self-concern or vice versa but rather to appeal to each of these departments of value to refine our sense of the demands of the other. We concentrate now on one direction of that interaction – from ethics to morals – and on one dimension of ethics: self respect. We begin with Kant's principle, which holds that I affirm my own dignity as a human being only when I respect humanity in others, and that I demean myself when I do not. That seems promising for our project because it fuses self-concern with concern for others through respect for a property – humanity – that we share with everyone else. But we need to redeem the promise by developing an account of what it is to respect humanity, either in oneself or in others.

The two principles of dignity we have identified offer the beginning of an answer. We must treat the success or failure of any human life as objectively important. It is important that any human life succeeds, and a tragedy when a human life is wasted. We must also accept that each person has an inalienable responsibility to identify and secure success in his own life. I insult my own dignity as a human being both when I do not own up to that responsibility for my own life and when I usurp the responsibility of anyone else by identifying ethical value for him and imposing that value upon him. We must find a way to understand these two principles so that we can act on them jointly rather than compromising one to serve the other.

How must I treat other people in order not to contradict the assumption that their lives, like my own, are of objective importance and that they, like me, have a special responsibilities for their own lives? In this chapter I concentrate on what we might call the baseline concern we must show other people if we are to respect ourselves: what we must do for strangers whom we are in a position to help them but with whom we have no special relationship that gives rise to distinct duties or obligations. Such special relationships are very numerous and embracing: politics, in particular, is a fertile source of them. We have distinct obligations of aid, for example, to those who are joined with us under a single collective government. But I ignore these special relationships in this chapter. I discuss here, moreover, only what we must do for strangers, not what we must not do to them. In the next chapter I argue that we have

much stricter responsibilities not to harm strangers than we have to help them.

Wealth and luck are very unevenly distributed among human beings, so we often find ourselves in a position to help strangers who are in worse case than we are, either generally or because they have suffered some accident or are in some special danger. Two kinds of conflict may arise on such occasions. First, we may face a conflict between our own interests and those of the people we might help. How far need we go out of our way to help them? Second, we may face a conflict about whom to help when we can only help some of those who are in trouble. If we can rescue only some victims of an accident and must leave others to die, how shall we decide who to save? Together these puzzles pose the question of aid.

Kant's own answers to that question – he said in different ways that we should treat strangers as we would wish them to treat us – are helpful to us because that formula fuses ethics and morality in the way we now seek: it integrates our hopes for our own lives with our sense of our responsibilities to others. Kant instructs us to find an allocation of the costs of bad luck that seems right from both an ethical and moral point of view. It must seem right, as a matter of ethical responsibility, that we ourselves bear the costs of the bad luck that our theory supposes we have no moral duty to help others bear, and right, also as a matter of ethical responsibility, that we try not bear the costs of the kind of bad luck that our theory supposes we do have a moral duty to help relieve when others suffer it. Integrity and authenticity require that we reach the same answers when we pose the question from these two points of view.

But Kant's formulations only restates our question in that helpful way: they do not answer it. We need to find some way of interpreting each of the two principles so that our attitudes to aiding strangers give effect to both of them. We must act in ways that show respect for the importance of every person's life while not cheating on our responsibility to make something valuable of our own life in the way we live it. We must choose between two general strategies. We might start with a very demanding principle that would require us to set aside our own interests whenever we have the opportunity to aid others, but then try to qualify that principle to give us space for our own lives. Or we might start with the opposite assumption that each individual's responsibility for his own life includes accepting the bad luck that falls upon him, so that we have no duty of aid in principle, but then try to qualify that apparently inhumane assumption to give the needs of others some space in our lives. The first of these approaches seems more attractive, but the way we live suggests that the second offers more promise as an interpretive strategy.

### *Impersonal Consequentialism*

The first strategy seems initially attractive because it seems natural to think that once we accept that human lives are all and equally valuable we must act with impartial concern for all those lives. In Chapter x, I discussed a view held by many distinguished philosophers: that the foundation of morality lies in an impersonal perspective from which we aim to improve the overall state of affairs, counting our own fate as no more important than the fate of any other person. I said there that we have no reason to accept that as a foundational claim, but a version of that claim may now be pressed as the consequence of Kant's principle. We may be tempted to say that we respect the intrinsic and equal value of human lives only when we treat everyone as we treat ourselves. We aim, in our self-regarding moments, to improve our own welfare or well-being and so, according to this account, morality requires us to work to improve well-being in general, either on average or according to some idea of what distribution of well-being over everyone would be just, counting our own well-being as intrinsically no more important than that of anyone else. Call that the welfare consequentialist imperative.

Of course left unqualified that imperative would be much too demanding. Imagine that you can benefit many millions of people, some of them very badly off, each in a very small way by living your life in a way you would despise. You have great talent as a juggler, say, in a nation where hundreds of millions enjoy watching expert juggling on television night after night. Morality so understood would require you to juggle your life away. So philosophers initially drawn to the demanding view have almost all tried to mitigate its incessant demands. Some say that morality is a complex matter requiring an internal balance between the consequentialist imperative, which they accept in principle, and some personal privilege, so that the correct reading of our concrete moral duties depends on how that balance is struck. Others insist that morality does impose an unmitigated consequentialist imperative, but they also insist that just for that reason morality cannot be the ultimate sovereign over our conduct. Under some circumstances, when morality and our personal interests sharply conflict, we are justified in ignoring morality's command.

Both solutions require a judgment – balancing the consequentialist imperative against some personal privilege – for which they can provide no guidance. They have even deeper structural problems. The first solution seems self-contradictory. Once we accept that morality contains a consequentialist imperative requiring us to treat the welfare of everyone with no less priority than we treat our own, we leave no room for any competing principle within morality. It seems a flat contradiction then to add that in some circumstances morality permits

us to count our own interests as more important than those of people generally. The second, competing-sovereigns strategy fails for a different reason. If we distinguish a moral perspective from a personal perspective, and then suppose that living well requires a compromise between these two perspectives rather than the total subordination of one to the other, we presuppose a distinct third perspective from which that compromise can be made and assessed. But there is no such third perspective. Suppose that morality does require you to spend every day practicing your juggling so that you can entertain a world of fans every night. You very much do not want to live your life that way: you think your life would be wasted if you did. Suppose you see this as a conflict between two perspectives, moral and ethical, from which you can view the success of your life. Where can you find a justification for finally allowing one or the other perspective to prevail? It begs the question to say that the sacrifice morality asks is too great. It is too great from your ethical perspective, but not from the moral perspective, and there is no third perspective that can serve as referee between them.

So if we were once to accept that self-respect requires us to pursue the well-being of everyone in general, we would be unable to find a suitable qualification to allow us to live our own lives. Self-respect would be impossible for anyone but short-lived saints to sustain. Luckily, that hyper-demanding interpretation of Kant's principle, however attractive at first sight, is indefensible in any case because respect for the objective importance of human lives simply cannot be understood to carry any obligation to make people's welfare in general. If I really treated all lives as I treat my own, I would intervene in the lives of strangers to the greatest extent possible, not simply to rescue them from accidents or great poverty but to try to make their lives successful in any way I could. I would take up the role of grand puppeteer, trying to replicate in each of their lives the control that I exercise over my own. Of course no one who recommends the impersonal perspective as a response to Kant's challenge would find that hyper-paternalism acceptable. But it is hard to construct an alternative understanding of the goal of improving well-being generally.

We might consider this alternative: we should not intervene directly in people's lives but should instead aim to improve general well-being as much as is possible short of such intervention. Even this modified goal requires some metric of well-being as a commodity that can be maximized, or distributed in some specified way, across the world's population generally. Well-being for each of us, in the first person, is not a commodity. It is a matter of living well, and we cannot add up even in principle the amount of living well that is happening in the world at large. Consequentialists have responded to this difficulty by

inventing conceptions of well-being that do make it a commodity of some kind.<sup>6</sup> Some say that a person's well-being at any moment is the surplus of the pleasure he enjoys over the pain he suffers at that moment, and that we can therefore determine overall well being by measuring total glows of pleasure and intensities of pain around the world. Others that someone's well-being is a matter of how many of his ambitions are realized, so that we measure total well-being by counting up ticks of desire-satisfaction worldwide. Others that well-being can be defined in terms of people's capacities for achieving what they do or might want to achieve.

For reasons I described in my book, *Sovereign Virtue*, none of these familiar philosophical conceptions of well-being can provide a plausible basis for a personal or political morality. Well-being is an interpretive concept; people disagree about the right conception of what it is to live well – about how important it is to enjoy oneself or to satisfy desires or to develop capabilities, for instance – so that a policy of maximizing any of these particular commodities, as a supposed way of benefiting people generally, would be unfair. Of course each of us can try to make it easier for certain other people to live well according to their own lights. To some extent, and in the way that I indicate in this and succeeding chapters, we do have that responsibility. But we cannot suppose that that is the same thing as making their lives in fact better lives to have lived.

#### *A Calculus of Responsibility*

We must draw this important conclusion: respect for human life is not a matter of securing more or less of anything however defined. It is a matter of attitude not consequence, a matter of the meaning of the way we treat ourselves and other people. Of course what we do to or for other people has consequences and these consequences are what gives our actions the meanings they have. But these are consequences for particular people in particular circumstances, not tiles in a grand mosaic of a world state of affairs. So we must take up the second way of proceeding that I described. We must take non-intervention as the default – we do not have any general duty to help others whenever we have the opportunity to do so – and then concentrate instead on those particular situations when we do have such a duty. We can

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<sup>6</sup> Recently impersonal consequentialists have taken to claiming that they can defend that theory without defending or even identifying any particular conception of well-being. See, for example, [Gerald Cohen's chapter in *Dworkin and his Critics*,] and [Talbot's paper for this colloquium discussed at our first session.]

justify that general default by insisting that a failure to help cannot normally be interpreted as showing any lack of respect for the objective importance of human life, and then qualify that default by identifying those discrete situations in which a failure to help could only be interpreted as reflecting a lack of that respect.

That justification of the default is persuasive. I may recognize the enormous objective value of a great collection of paintings and yet accept no personal responsibility for protecting that collection. I might have other priorities. So you may recognize the objective importance of the lives of strangers without supposing that you must subordinate your life and interests to some collective or aggregate interest of them all, or even to any single one of them whose needs are greater than your own. I can agree with perfect sincerity that your children's lives are no less important, objectively, than the lives of my own and yet dedicate my life to helping my children while I ignore yours. They are, after all, my children. I do not show contempt for human life even when I refuse to make more admirable sacrifices. I might be able to save many people from a catastrophe by embracing or at least seriously risking the catastrophe myself. I might volunteer myself a guinea pig for a medical experiment to test a promising drug for a terrible disease even though I would contract the disease myself and might die of it. It might be noble of me to make that sacrifice: the soldiers who volunteered to be bitten by mosquitoes carrying Yellow Fever are rightly treated as heroes. But I would not imply that I regarded the lives of others as intrinsically less important than my own if I refused to volunteer. In other circumstances I could secure a benefit for someone else that would plainly make the outcome better judged impersonally than if I had taken the benefit myself. I have won an Aegean cruise in a telephone-book lottery that I would enjoy and am looking forward to, but then I learn from a mutual friend that a classical scholar whom I don't know has longed for such a cruise for years but is unable to afford it. It would no doubt be an act of generosity for me to let the scholar take the cruise. But I don't imply that his life is objectively less important than mine if I take the cruise myself after all.

But there is a limit to how far I can ignore anything I claim to have objective value: I cannot be indifferent to its fate. If I am in a gallery that is bursting into flames and I can easily take an important painting with me as I leave, I cannot leave it to burn and expect people to take seriously my tributes to the painting's value. In some circumstances – philosophers call these “rescue” cases – failing to help a stranger would show the same indifference toward the importance of human lives. You are on a beach and not far off shore an elderly lady, Hecuba, cries out that she is drowning. You are nothing to her and she nothing to you. But you can easily save her and if you do not you cannot claim to respect human life. How shall we draw the line? The key test is an interpretive one. Which acts, in which circumstances, would show

that any claimed recognition of the objective and equal importance of human life must be insincere? No general formula can identify these acts and circumstances because no formula can fix the correct interpretation of complex human behavior. But we can isolate three scales that are plainly in play in any such judgment.

*Metric of harm.* First, it is obviously pertinent what kind and level of threat the stranger faces. How shall we measure this? Shall we use a threshold standard? Shall we say, for instance, that I have at least a prima facie duty to help a stranger when he is in danger of losing his life or becoming incapable of functioning as a normal human being? Or should we use a comparative standard: I must help if I can whenever a stranger's ability to live a successful life falls very far short of my own? That standard would require me not only to save strangers from a terrible fate, but to help those financially who have a decent life but far fewer opportunities than I do. Or should we adopt a more subjective standard: must I help when a stranger is frustrated in a goal he takes to be at the center of his life, something important beyond compare? Thomas Scanlon gives this example: a stranger might ask our help in the enormously expensive project of building a temple to his god, a project he deems more important than life itself.<sup>7</sup>

It seems clear that the third, subjective, standard is inappropriate. As Scanlon argues, we have no duty to help someone achieve a chosen project even if it is more important to him than any other concern. We have no such duty even if he is right to treat his project as more important; indeed even if his life will be ruined if he cannot achieve it. That follows from the allocation of responsibility that the two principles of dignity we identified presuppose. It falls to each of us to design his life with an eye to the resources that he can expect will be at his disposal, at least if he is treated fairly. We cannot expect others to subsidize our choices; if we did our own responsibility, as I said, would be impoverished. Scanlon's reminder is necessary for those who believe that morality begins in a categorical requirement to treat everyone's interest as equally important in seeking the best overall consequences in everything we do. For it seems natural, from that beginning, to allow people themselves to judge when their position has been improved by what we do; we could reject the victim's judgment only by supposing that we know better than he where his overall interests lie. But once we reject that categorical requirement, and base our morality instead on our judgment of what respect for human dignity requires, then the calculation in play is very different.

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<sup>7</sup> Cite Scanlon, Preference and Agency.

The comparative standard is also inappropriate. Just as I can acknowledge the objective value of a painting with perfect sincerity without helping its owner restore it, so I can acknowledge the objective importance of a stranger's life without supposing that it is illegitimate of me to have more money or opportunity than he does. The comparative standard is indeed of the essence of certain special obligations. I shall argue in Chapter 13 that it is of the essence of political obligation: I must act, in my political capacity as a voter or official, so as to ensure that the state of which I am a member shows equal concern to all under its dominion. That political obligation may in some way extend beyond national boundaries. But I do not owe the same obligation to all human beings simply out of respect for their humanity. It might be objected that I cannot think it objectively as important that a stranger's life succeeds as that my own does unless I concede that he should have as much by way of resources to devote to his life as I do. But it is a mistake to assume that someone's ability to lead a successful life is determined by the resources he has available. If that were true, almost no one could have lived as successfully before this century as we can live in it, which seems preposterous. How successful one is in living does, in my view, depend on the justice of one's situation: people do not live as well when they are cheated as when they are poor because everyone else is poor as well, or because they have chosen a life of poverty to pursue other goals, or when their poverty is for some other reason not unjust.<sup>8</sup> But we cannot assume, without begging the question, that someone's situation is unjust just because he has less wealth at his disposal than others have. We need an intermediate theory of justice to justify that conclusion.

So in fixing our responsibility to aid a stranger we must use a threshold standard of harm. We must ask not whether our aid will make his life more successful, in his own eyes or in ours, or whether he is poorer than we or in some other way relatively disadvantaged, but whether denying him aid will make it impossible for him to pursue value in his life at all.

*Metric of cost.* Second, whatever the character and magnitude of the harm threatening a stranger, my responsibility to prevent that harm is greater when I can do so with less risk to or interference with my own life. Again, the interpretive character of our test makes that point clear. When I can prevent a serious harm with relatively little risk or inconvenience to myself, failing to do so is less easily defended as consistent with my respect for human life. It is more easily defended as consistent when the risk or inconvenience is greater; it is then more plausible to plead the importance of my personal responsibility for my own life. When lawyers are asked to offer examples of the difference between law and morality, they are very

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<sup>8</sup> Cite Sovereign Virtue discussion.

likely to cite our moral duty to push a child's face out of a puddle in which it is drowning with our foot as we stroll by. The example is powerful because the moral duty the law refuses to enforce is so uncontroversial. The threat to the child is at one extreme of harm and the effort required of us at the other extreme of cost.

In contrast with the first scale I just described, however, we need not count, as serious costs arguing against a duty to rescue, only harms or risks that threaten our own ability to live and choose a life. We may also count costs that we take to be serious even if no one else does. I need not help others to build temples to their gods, but I may count, as a reason for not aiding them, that to do so would jeopardize the temple I am building to my god, if that is the sovereign aim of my life. Once again the interpretive character of the test explains the asymmetry. If respect for humanity required me to take up an impersonal perspective – to stand apart from my own even central concerns and treat myself only as one person among everyone else – then I could not justify the distinction. But respect for humanity demands only, in my relations with strangers, that I display a genuine concern for their lives in how I act. I need not – indeed I must not – aim to make their lives more successful overall because it is their responsibility to choose goals that they can manage with an antecedently fair distribution of resources. I must only try to protect them, if I reasonably can, from disasters that would make it impossible for them to acquit that responsibility. But I can make no such distinction in my own life: the principles of dignity do not assign me responsibility for the success of their lives, but they do for the success of my own life. I show indifference to the importance of human life when I refuse aid that I could provide with no dent to the success of my own life, but not when I refuse aid that would seriously threaten my own success as I have identified it.

*Confrontation.* The third scale is more difficult to state and justify, but it is real and distinct, and we cannot make sense of much common moral understanding unless we find place for it. This is the scale of impact. It has itself two dimensions. The first is particularization: the clearer it is who will be harmed without my intervention, the stronger the case that I have a duty to intervene. The second is proximity: the more directly I am confronted with some danger or need, the stronger the case that I have a duty to help. I am on the beach too far from the drowning Hecuba to help. There is a man with a boat on the shore who will row me out but only for \$50 which I can easily afford. Cursing, I promise it to him, as I plainly have a duty to do. He tells me, once the rescue is complete, that he is on the beach every day, and will undertake to rescue the next swimmer in trouble by himself, if no other rescuer is there, if I will pay him another \$50 in advance. Why have I no duty to do that, or to make any other provision for rescue when I myself do not happen to be there?

If my duty to aid were derived from an impersonal moral perspective, it would be hard to justify a duty to pay the boatman to rescue Hecuba without also recognizing a duty to pay him to rescue the next person in danger of drowning. I owe no less to the person who will otherwise drown tomorrow than I owe to Hecuba today. It is tempting to try to distinguish the two cases by appealing to the role of salience. It would be too demanding to expect any person to respond to even grave danger wherever and whenever it arises. A general understanding that only people in the immediate area of present danger have an actual duty to rescue both eliminates that risk and puts the duty on the person who is in most cases best able to help.<sup>9</sup> But that explanation is not fully satisfactory, and it is in any case not available here because salience is guaranteed by the details of the selfish boatman's carefully limited offer. He has made the offer to no one else, and if he does make the offer to another visitor to the beach, well in advance of the rescue he promises, that visitor will be in no more salient position than I am now.

Once we abandon the idea of a distinct impartial moral perspective, however, and ask instead the interpretive question whether refusing aid would show that any professed concern for human life must be sham, we can explain the distinction between the cases by citing the confrontation scale of assessment. If a tragic death of a particular, identifiable person is staring us in the face, or unfolding at our feet, we cannot walk away unless we actually are indifferent to the potential value of human life. Ignoring the impending death of a particular person dying in front of us would require a callousness that mocks any pretended respect for humanity. The point is not that our duties are directly governed by visceral impact: it is rather that, once we see that the morality of rescue is dependent on the right kind of respect for others, we see how confrontation figures in deciding when, as a matter of interpreting human behavior, that respect has been denied. Interpreting human behavior in this way does require us to take human nature into account because we aim to make best sense of that behavior and we therefore cannot ignore the natural responses that a concern for life provokes.

The confrontation scale is also at work in a different kind of example, one that has puzzled economists. Any political community judges, on some cost-accounting basis, how much to spend to prevent accidents of different kinds, whether through public or private spending. It never spends until no more spending would even marginally improve safety: that would be irrational. Yet when an accident does occur – a cave-in traps miners below ground or a space accident traps astronauts in space – and particular, identified people are at risk of death, we

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<sup>9</sup> Reference to Kis Colloquium paper. Published?

expect the community to spend whatever further sums it takes to rescue them – much more, in some cases, than it would have cost to prevent accidents of that kind. Once more the dimension of confrontation explains the difference, though in these cases it is the dimension of particularity alone rather than of physical confrontation that is in play. We cannot ignore the threatened deaths of particular people in the way we can discount even highly probable deaths so long as the people who will die remain statistical and anonymous.

Global poverty may seem to call the pertinence of the confrontation scale into question because recognizing that scale as pertinent might be thought to suggest that rich people in prosperous nations have no duty to help very poor people in very poor nations far away. The situation of the immiserated people of Africa stand very high on the needs scale: even a moderate amount of foreign aid judiciously used could save a great many of their lives. Their plea also stands very high on the cost scale: very large sums could be raised in aid if the people of rich nations each gave an amount small enough so as to would make no difference at all to the success of their lives even as they judge this. But the poor of Africa are very far away, we have no idea who they are, and have even less idea of which of them will die or why if we do not contribute to general relief funds. Why isn't that distance and anonymity just a bad excuse rather than itself a reason counting against a strong duty of rescue? Why should their claims on us depend on how aware we are of their misery?

The example certainly suggests that if the case for a duty scores high and low enough on the first two scales, of need and cost, a duty of rescue cannot be defeated by a low score on the third, confrontation, scale alone. But it does not, in my view, show confrontation to be irrelevant. It is more shaming now for Americans and Europeans to ignore African poverty than it was when that poverty seemed to most of them abstract and distant. Humanitarian journalists, a few politicians and others have struggled to heighten people's consciousness of that poverty. Television, focusing on individual tragedies rather than bare statistics, has been invaluable to such success as they have had. You may think that people should have paid more attention to global poverty much earlier, and that their failure to take an interest in people in remote places is itself a failure of respect for humanity and therefore of self-respect. But the shame is much greater if they fail to respond when ignorance has been made not simply inexcusable but impossible. The devastation of the 2004 tsunami was dramatic and dramatically reported: the huge response of contributions from the first world shows what a difference the impact of immediacy can produce. That catastrophe caused an immense number of deaths, but no more than what third-world poverty causes over a not much longer time. Recognizing a role for impact explains why the latter has been relatively ignored, but it also shows that the actual shame of ignoring it grows greater every day.

*Do Numbers Count?*

We should now turn to the second question I distinguished. Assume a situation in which several people need aid, it would plainly be wrong to ignore them all, but though you are in a position to help some of them you cannot help them all. How should you choose among them? There is a standard case – a variation on the familiar drowning swimmer case. One person is clinging to a life preserver in a storm that has wrecked her boat; sharks circle her. Two other passengers cling to another life preserver a hundred yards away; sharks circle them as well. You have a boat on shore. You can reach one life preserver in time, but then not the other. Assuming all three are strangers, do you have a duty to save the two swimmers and let the lone swimmer die? That is a staggeringly artificial hypothetical, designed to focus attention on a philosophical issue without the distraction of reality. But we are surrounded by issues of terrible reality that pose the same puzzle. I just described one of them: there are continents of people living in miserable poverty and disease. We can no longer ignore their misery without shame, but most of us can help only a small number of them. Suppose there are several charities we can give to; these operate in different African countries. Must we give to the charity that we judge will save the most people?

It is very widely believed that in such situations, if we have a duty to aid at all, we have a duty to aid the most people possible, at least if the harm that threatens them all is of comparable magnitude. So we have a duty to save two swimmers from the sharks rather than one, and to contribute to the charity that we believe will save the most lives with the money we contribute. If we thought about the issue from the moral perspective I rejected, which assumes a consequentialist imperative, this might well seem the right solution. Well-being is overall improved, we might think, when two lives are saved than when one is saved. But if we approach the decision in another way – by concentrating not on consequences but on rights – it is far from plain that we should automatically save the greater number. We might think that each victim has an equal antecedent right to be saved and we might therefore be tempted by a lottery in which each shipwreck victim has a one-third (or, in some versions, a one-half) chance to be saved. (The sharks might agree to circle harmlessly while the lottery is being carried out.) If either of the two victims who are together wins, we would save them both – it would be grotesque to save only one – so on the standard version of this suggestion each actually has a two-thirds chance of being saved. But at least the lone victim has a one-third chance.

Which approach is the right one? In which of these two ways should numbers count: as part of a consequential analysis or in giving effect to an assumed right to equal treatment?

Philosophers have argued strenuously over this issue, But on the approach we are now exploring neither of these approaches is the right one. We have rejected the consequentialist imperative and cannot revive it to justify our intuition, if we have it, that we do better to save a greater over a lesser number of people. We have also rejected any basis for supposing that everyone we can aid has an automatic right to that aid. He has a right only if, under the circumstances, ignoring his need would show disrespect for the objective importance of his life. If you reluctantly allow the lone swimmer to die because you can save two other human beings from death, you have not ignored the importance of anyone's life.

Suppose you make the opposite choice: to save the lone swimmer and let the others die. If you have a good reason for the choice – the lone swimmer is your wife – then you do not imply or assume that the lives of the two you abandon are objectively less important than hers. Bernard Williams said that if you think about whether you are justified in saving your wife rather than several strangers you have “one thought too many.” You must have that one thought too many if you embrace impersonal universalism in either its consequentialist or egalitarian form. Then you will need either some tortured argument that the world goes best if each rescuer always rescues his own wife, even at the cost of letting more people die, or some very strong exception of personal privilege. But if you adopt the different, interpretive test that I suggest you will need no reason beyond the subjective fact of your love. You will also need no reason beyond that subjective reason if the lone swimmer is not your wife but your friend. Or if all the swimmers are perfect strangers, the lone swimmer is much younger than the two swimmers and you think that saving the life of a young person is more important. Or if the swimmers are all strangers but you know that the lone swimmer is a brilliant musician or philosopher or peacemaker and music or philosophy or peace is particularly important to you, or you deem it important to the world. Remember, you would have no duty to rescue the two swimmers even if there were no third swimmer elsewhere but the risk of the rescue to you would be very great. You may put your own safety first without denying the equal objective importance of the two lives you might have saved. Why should you not then be permitted to put the safety of someone else first, whose life you deem to have particular subjective or instrumental value either to yourself or to others?

Now a different danger looms. Are there no limits to the proper grounds of a preference you might show among people whose lives are in danger? Suppose you know nothing about the three swimmers but that one of the two who are together is black and the other Jewish while the one who is alone is white and Christian. Would it be consistent with your embracing the equal objective importance of all human lives for you to save the white Christian swimmer and let the others die just because they are a black and a Jew? No, because there are certain

grounds of preference that respect for humanity rules out: it rules out preferences that we have good reason to think are either expressions of or the residue of the contrary conviction: that some people are intrinsically more worthy or lead intrinsically more important lives than others. Once again we can justify our intuitive rejection of these grounds of distinction as an interpretive assumption. In a world in which prejudice thrives, or in which social structures can best be explained by historical prejudice, attitudes and acts that track that prejudice are best understood, unless there is some strong contrary indication, as reflecting that prejudice. You can offer a reason why it is particularly important that a musician or a peacemaker survives without supposing that it is intrinsically more important that their lives flourish than anyone else's. You can supply a different kind of reason – a reason of fairness – why you should prefer saving the life of a young man rather than of two much older ones. They have already lived a substantial life and he has not. But you can point to nothing about the race or religion of perfect strangers that does not suggest the role, in your decision, of a conviction that people's lives are not, after all, really of equal importance.

Now consider the most abstract version of the three-swimmers-and-many-sharks case. You have no even thin personal reason to save the one who is alone rather than the two who are together and you have not thrown dice to give each an equal chance to live. But you save one rather than two just because that is what you feel like doing. Perhaps you want to show your freedom from conventional expectations. Is that behavior consistent with the conviction that all human life has intrinsic and equal importance? I think not: it denies and insults the gravity of the occasion. There are occasions for whimsy, but someone who thinks this is one cannot honestly claim to recognize the objective importance of human life. The default decision – when nothing else, even a fair lottery, recommends one decision over another – must be to save two lives, not because this makes the world overall better but because the occasion demands taking life seriously and therefore having some reason beyond whimsy to justify how one acts. The principle that it is better to save more rather than fewer human lives can be presented as a plausible even if not inevitable understanding of what the right respect for life's importance requires. The competing principle, that it is better to save fewer than more lives, cannot. That competing principle is only perverse.

I close this chapter with concession and avoidance. I have relied, as moral philosophers often do, on contrived and bizarre examples in making the arguments I have, and I shall rely on more such artificial examples in the chapters to follow. Some philosophers are suspicious of such examples because, they say, since we do not encounter the situations they describe in our ordinary life, we cannot trust the intuitions we have – about whether we should save one drowning person or two, for instance – when we are presented with these examples in

academic seminars and texts. That objection presupposes an account of the nature and point of moral philosophy that I have rejected, however. It supposes that moral reflection is in some special way a matter of perception. Moral truth impinges on us through some distinct moral sensibility so that our moral “intuitions” are guides to truth in some way at least analogous to the way our perceptions of the world of nature are guides to truth. If that were right, then it would make good sense to be suspicious of moral perceptions that are provoked not by any actual exposure to real events but to descriptions of barely possible events invented as supposedly useful fiction. We would rightly be suspicious, in the same way, of the beliefs we formed about the animals we thought we saw in a strange, exotic jungle we have never wandered in before. The interpretive method we are pursuing, however, gives a very different force to bizarre examples. They are like the purely hypothetical cases that lawyers imagine to test a principle they propose should be used to settle an actual case. We must confront imaginary cases not to speculate about what we would perceive if we were actually exposed to them but because the integrity that is a condition of moral truth would be threatened if we could not embrace the result our principles require in the circumstances the examples imagine.

## Chapter 11

### Harm

#### *Competition and Injury*

Here are two sad stories. (1) You are hiking in the Arizona desert with a stranger, you are both bitten by rattlesnakes, and you both see a vial of antidote lying in the scrub. Both race for it, but you are nearer and grab it. He pleads for it, but you open and swallow it yourself. You live and he dies. (2) As before, but this time he is closer to the antidote and he grabs it. You plead for it, but he refuses and is about to open and swallow it. You have a gun; you shoot him dead and take the antidote yourself. You live and he dies.

According to a pure version of impersonal universalism, there is no intrinsic difference in the moral dimensions of these two stories because the result, in itself and judged from a raw impersonal perspective, is the same. If you are young and a popular and accomplished musician, and he is old and useless, you are justified both in taking the antidote yourself in the first story and in shooting him in the second. But if your qualities are the opposite – you are old and untalented and he is the young musician – you are not justified in either action. Your duty is to produce the best result with the resources you have, and the best result is fixed by the properties of the person who remains alive not by the mechanics used to produce that best result. Of course if your act in either story has further consequences, these might make all the difference. If your act of murder in the second case weakens a useful taboo against murder, that might make that act wrong even though your taking the antidote yourself in the first story would not be wrong. But if we suppose that the two acts have exactly the same consequences, then a pure consequentialist must treat them the same.

Stories like these rattlesnake stories are widely regarded as an embarrassment for consequentialism. But many consequentialists are happy to rely on the supposed equivalence between killing and letting die in other contexts. They say that since only consequences count there is no overall moral difference between allowing someone to die when you can save him and killing him outright. They argue that our indifference to starving Africans, whom we could easily help, is morally tantamount to killing them outright.

To most people, however, killing someone seems much worse than simply letting him die. Indeed, to generalize, it seems much worse to injure someone than to decline to help him when

you can. According to this more popular view, you are justified in saving the antidote for yourself in the first story but not in killing the stranger to get the antidote in the second story, and even though it is wrong of you not to contribute more to African relief programs, that is not the moral equivalent of flying to Darfur to kill a few Africans yourself. However we need to explain the difference since the raw consequences seem so similar in the two pairs of situations. We might say, as one attempt to justify what seems the natural position, that the consequences in the two stories are not really the same, because those consequences include murder and theft in the second story but not the first, and murder and theft are bad. But this supposed explanation only helps itself to the conclusion we want to reach. Why is the murder of a stranger a worse consequence of your behavior than simply allowing him to die when you could have saved him? Only if killing someone is, just in its nature, worse than letting him die, and that is just what the explanation purports to demonstrate. Nor does it help to say, as some philosophers do, that it is a particular moral crime to aim at someone's death; that this is worse than just standing by while someone dies even when you could have prevented it. That is how most of us feel, to be sure, but we need to understand why it is worse since the stranger is dead in both cases and our motive – to save ourselves – the same in both cases. Some philosophers say that killing someone is worse than not helping him because killing involves a violation of the inviolability we assume all persons have. But once again the claim of inviolability merely restates the general conviction. It does not offer an argument for it.

The consequentialist I described, who thinks that killing and letting die are morally equivalent, follows a morality of self-abnegation. He sees himself as only one of the billions of people whose interests and fate he must weigh impersonally, with no special attention to his own position. We are now exploring, in these chapters, a very different approach: a morality of self-affirmation not anonymity, a morality drawn from and flowing back into our sovereign ambition to make something valuable out of our own lives. The spine of that morality is what I called Kant's principle: that recognizing the two principles of human dignity – the objective importance of our own lives and our own discrete responsibility for our lives – requires us also to recognize and respect the same objective values in other people as well. In that way ethics merges with morality and helps fix its content.

I appealed to Kant's principle in the last chapter to explain why in some circumstances people have a duty to aid strangers in great need. I relied, in that argument, on the first principle of human dignity. If you recognize the intrinsic and objective value of your own life you must recognize the same objective value in every other life. That first principle will not be helpful in solving the puzzle of this chapter, however, because it is equally in play in both of the two rattlesnake stories. You do not denigrate the objective value of human life when you swallow

the antidote you grabbed rather than saving the stranger's life with it. You only exercise a perfectly consistent preference for your own life. You would not violate the first principle, of course, if you heroically sacrificed you own life so that the stranger might live. But you do not violate it in making the opposite choice either. If so, it cannot be the objective importance of human life that you offend when, in the second story, you shoot the stranger. The same preference for your own life is still at work and is still compatible with Kant's principle. Now it is the second principle of dignity that must bear the burden of integrating our instinctive moral convictions with our developed sense of living well.

I offer this hypothesis. The second principle of dignity insists that you have a personal responsibility for your own life, a responsibility you must not delegate or ignore, and Kant's principle requires you to recognize a parallel responsibility in others. We need to reconcile these parallel responsibilities by distinguishing between two kinds of harm you might suffer because other people, like you, are leading their lives with a special responsibility and a subjective preference for their own fates. The first is bare competition harm and the second is deliberate harm. No one could even begin to lead a life if bare competition harm were forbidden. We live our lives mostly like swimmers in separate demarcated lanes. One swimmer gets the blue ribbon or the job or the lover or the house on the hill that another wants. Sometimes, when one swimmer is drowning and another can save him without losing much ground in the race, the latter does have a duty to cross lanes to help. That is the duty we investigated in the last chapter. But each person may concentrate on swimming his own race without concern for the fact that if he wins another person must therefore lose. That inevitable kind of harm to others is, as the Roman lawyers put it, *damnum sine injuria*. It is part of our personal responsibility – it is what makes our separate responsibilities personal – that we accept the inevitability and permissibility of competition harm.<sup>10</sup>

Deliberate harm – crossing lanes not to help but to harm others – is a different matter. We need the right to compete to lead our own lives, but we do not need the right deliberately to injure others. On the contrary, we all need a moral immunity from deliberate harm. In Chapter x, I distinguished various strands in the overall idea of responsibility. What I called assignment responsibility fixes who must perform specified tasks and who is therefore to be charged with failure if those tasks are not performed adequately. Control responsibility fixes who has the authority to select which acts are to be performed in the exercise of some task. Assignment responsibility and control responsibility must be locked together: no one can

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<sup>10</sup> Footnote on tort law.

suppose himself playing chess who does not have final control over what moves are made with his pieces. The moral prohibition on deliberate bodily injury defines a core of control responsibility that we could not abandon without making a parallel nonsense of our assignment responsibility over our lives. We must be in sole charge of what happens to or in our own bodies. The prohibition on deliberate injury to property is almost as central. We cannot lead a life without a high level of confidence in our ability to direct the use of the resources that have been made available to us by political arrangement as raw materials for our assignment responsibility.<sup>11</sup>

The distinction between competition and deliberate injury is therefore crucial to our sense of dignity, even when the injury is trivial. Touching someone without his permission, however gently, violates a taboo. We do consent to others holding a temporary and revocable power over our bodies – lovers, dentists and rivals in contact sports, for example. In some very limited circumstances paternalism justifies others in seizing temporary control over my body – to stop me harming myself in a moment or hour of madness, for example. But any general transfer of control over the integrity of my body, particularly to those who do not have my interests at heart, would leave my dignity in shreds. Only when we recognize that connection between dignity and bodily control can we understand why killing someone is intuitively horrifying when letting him die, even out of the same motive as we might have for killing him, is not.

The two rattlesnake stories may make the distinction seem artificial, because the blinding horror of death in both stories may swamp our sensibility to any distinction between them. But something makes us recoil from the killing in the second story, and I believe it is the sense, which may be inarticulate, that granting people a personal responsibility for their own lives requires recognizing for each a zone of immunity from deliberate harm though of course not an immunity from competition harm. The image I used, of swimmers keeping to separate lanes, is far from the ideal of the siblinghood of humankind. But it is not Darwin's picture of nature red in tooth and claw either, and the distinction is crucial. In the first rattlesnake case you are swimming in your own lane and ignoring a stranger drowning in his. In the second

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<sup>11</sup> Indeed, you must have much more control responsibility than that. You must have substantial control responsibility over what your body does – where you can take it and what you can use it to do – as well. That further control responsibility must be limited, however, to protect the control responsibility of others over their lives: you must not have control responsibility that would include damaging me or my property, for instance. But the most basic level of control responsibility, over what happens to your body, does not need to be limited and has therefore attracted an intuitive and profound integration with personal independence.

you have invaded his lane, usurping his responsibility to control his own life. The difference is invisible from the impersonal perspective; it emerges only when the idea of dignity, also invisible from that perspective, is brought into the foreground light.

The connection between harm and personal responsibility helps us to understand not only why the distinction between act and omission is genuine and important, but also those special circumstances in which, on the contrary, it has no moral significance at all. It has no significance when the injured person has consented to the injury in the exercise of his own responsibility for his life. It is no violation of dignity for one football player to tackle another or for a doctor to kill a dying patient at his own urgent and reflective request. These are cases of permission or delegation not usurpation. When the Supreme Court considered the constitutionality of laws forbidding doctor-assisted suicide for patients dying in great pain, those who challenged those laws pointed out that the Court had struck down laws forbidding doctors to remove life support from dying patients. Some of the justices replied, rejecting the analogy, that it is morally much worse to kill a patient by administering poison than to let the patient die by removing aid that keeps the patient alive. In the hikers' case, that distinction is crucial; in the assisted suicide case it is preposterous. Focusing on the importance of responsibility to dignity shows why.

#### *Impersonal Altruism and Double Effect*

We have so far focused on occasions when inviolability trumps self-preservation. Moral philosophers have spent more time over a different puzzle: whether and how people's right not to be injured trumps impersonal consequentialism. Recent medical success has supplied those philosophers with outlandish examples. Suppose two patients in a hospital each of whom will die without an immediate liver transplant. A doctor has one liver available for transplant, and it seems plausible that he is morally permitted to choose between the two potential recipients in a variety of ways. He may flip a coin. Or he may choose the patient whose chances of surviving the operation are better. Or he may choose to save the life of the younger patient rather than in the somewhat older even though the latter's prospects for survival with the transplant are just as good. If the doctor chooses any of these procedures for decision, the patient who loses has no right to object even though he will quickly die as a result of that choice.

But now suppose there is only one dying patient who will survive with a new liver but no liver is available. There is, however, an elderly cardiac patient in the hospital who cannot live more than a few weeks and whose liver could be harvested if he were to die immediately. The

doctor may not kill the old man for his liver. Nor may the doctor shut down his respirator in hopes that he will die, or withhold the medication that is keeping him alive for those few more weeks, or not try his best to resuscitate him if he falls into cardiac arrest, assuming that he has asked to be resuscitated in that event.

Each of these various conclusions seems inescapable but taken together they may seem troubling. In the two-patient one-liver case, giving the liver to the younger patient with likely more years to live might be said to show respect for the value of human life. But then why wouldn't killing the old cardiac patient, or letting him die in cardiac arrest, show the same respect for human life? It would trade a few weeks of an old man's bedridden life for what would probably be decades of fully active life for the younger patient. We answer: because the old man has a right not to be killed, even for a great benefit to others, even if he will die soon anyway. His doctor may secretly hope, when he applies the paddles to the old man's chest, that the shock treatment won't work. But he must nevertheless do his best to make it work. And it is not just a doctor, who has special professional duties, who has that responsibility. You are a well-meaning stranger to both patients who is aware of the situation and happens to be in the hospital. You may not kill the old man either and if you happen to walk past his room and see that his breathing has stopped, you have a duty of rescue. The conditions of a duty to rescue that we identified in the last chapter hold in these circumstances: the old man would wish to be saved, you can save him at trivial cost to yourself, and he is dying in front of you. You must press the button that will summon the emergency team. But why? In this case turning your back would not indicate disdain for the importance of other people's lives. On the contrary, you might think, it would indicate a special concern with that importance, because you would be acting to save another person's life. If two strangers are drowning in front of you on a beach, and you can save only one, you have violated no duty of rescue to the one you let die. What is different in this case?

There is an ancient and still fashionable answer; this is called the principle of double effect. It is permissible to let someone die when that is the necessary consequence of rescuing others. So it is permissible for the doctor to save one of two patients who each needs a liver, or for you to save one of two drowning swimmers, even though as a result of that decision the other patient or swimmer dies. But it is not permissible to kill someone or even to let him die when this is a *means* you adopt to rescue others.<sup>12</sup> So it is not permissible to kill the old heart patient

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<sup>12</sup> This is a simplified presentation of a very complex set of theories. Cite Frances Kamm for more than enough of the complexity.

who is anyway dying because the point of killing him – or not saving him – would be that he die so that his liver be available.

Other ingenious examples of the apparently bizarre consequences of the double-effect principle crowd journals of moral philosophy. You are invited to assume, for instance, that it would be permissible to turn a runaway trolley headed toward five people who are for some reason strapped to the tracks ahead onto another track, even though the trolley would then strike one person who is for an equally unknown reason strapped to that other track. But you are expected to think it would that it would not be permissible, if no alternate track were available, to throw a large solitary stranger who happens to be passing by onto the track in order to save the five people who are strapped to the track by having his bulk stop the trolley before it reaches them.

The principle of double effect can seem puzzling in just the way that the difference between the two rattlesnake stories can seem puzzling. Why does it matter whether you save five people by turning the trolley so that it kills only one, though you did not intend that death, or whether you throw one person onto the single track intending that he be struck? In both cases, the outcome seems better if you act in that way than if you do not; in both cases one person dies as a result of what you do and five lives are spared. In neither case is your intention bad or unworthy. Why then should the single difference in the content of the intention – whether you treat the unfortunate death as a by-product or a means – make any moral difference at all? We can inflate the difficulty by switching from the *ex post* mode in which these puzzles are mainly discussed to the *ex ante* mode. In the *ex post* mode we imagine a stranger ambling past a track who is killed when consequentialist enthusiasts throw him onto it. There is nothing in that decision for him. But if we consider the matter *ex ante*, that is no longer true. John Harris, another philosopher, imagines a “spare parts lottery” in which a large group of people agree that each time at least five of them need an organ transplant, and the needed organs can all be harvested from a single body, the healthy members of the group will draw lots to see which of them will be killed for that purpose. Each member of the group would increase his life expectancy by agreeing to this arrangement; as transparent technology improved the gain in life expectancy would probably be considerable. What reason would anyone have not to join? True, the possibility of being swept up for fatal surgery when your number is announced is chilling, and so is the prospect of participating in the murder as one of the surgeons. But dying of cirrhosis or other diseases of organ failure is also a chilling prospect – being murdered is not obviously five times as bad – and American states have had no difficulty finding willing executioners. True, it might be unsettling to know that at any moment one’s

number might be drawn. But is it five times as unsettling as knowing that any casual visit to the doctor might produce a death sentence?

If it would be in everyone's interest to join a spare parts lottery, then why is it wrong for us to treat people as if such a lottery had always been in place? Then old people close to death when several transplant candidates could be saved with their organs, or large people who walked past trolley tracks to which five people happened to be tied, would simply have lost the lottery. Enforcing that hypothetical lottery would indeed mean that someone else would treat them, at that point, as only a means to helping others – would aim at their death for the sake of others, would act with that bad event in view. But if everyone would – or should – agree to the arrangement, why does that matter? Why shouldn't we want people to behave in exactly those ways?

Philosophers have offered various replies. Impersonal consequentialists, horrified that their theory might seem to license spare-parts murders, argue that allowing such a practice would erode the taboo against taking life and cause much greater suffering in the long run than it would prevent. That is the kind of whistling-in-the-dark speculation that is often used to save consequentialism from embarrassing consequences. There is no obvious reason why this practice would erode the taboo against killing any more than, say, capital punishment has. On the contrary, capital punishment seems senseless, and this practice might seem humane. We must do better.

Once again we find a satisfactory answer only if we begin in ethics: in the second principle of dignity that insists that we each take responsibility for decisions about what should be done with his life. As a matter of self-respect, we must claim and protect a zone of immunity from the wishes, demands and needs of others that includes decisions about what to do with or to our own bodies. The force of that claim is evident in a great variety of popular moral opinion. Even people who think that it would be deeply immoral for a doctor to help someone to commit suicide also think that it would be wrong for doctors forcibly to insert life-saving equipment into his body to save his life. Even those who favor "strenuous" interrogation of an accused criminal agree that the police cannot extract evidence from his stomach by forcing tubes down his throat. Even those who believe that pregnant women should have themselves tested to see whether they are carrying a defective fetus that might be saved by medical intervention would be horrified if such tests and intervention were mandatory.

The force of the second principle also depend on the distinction between choice and chance: between what happens to us through someone's choice that it happen, including our own, and

what just happens to us through good or bad luck. That distinction is pervasive in ethical, moral and political theory. It plays a central role in our reflections about free will, determinism and ethical and moral responsibility. It is crucial, as we shall see in a later chapter, to our collective decision about which misfortunes of its individual members a political community must try collectively to repair. It bears, in a different way, on whether and how far government should regulate the deliberate altering of genetic properties.<sup>13</sup> It is pertinent now. The second principle insists that when a choice is to be made about whether a life should be dedicated to, or sacrificed to secure, some value, that choice must be made by the person whose life it is. We must therefore distinguish between occasions on which we happen to be in a position where the efforts of rescuers to help others endanger us, which is a matter of chance, and occasions in which rescuers decide that the best use of our lives would be to aid them in rescuing others, which means that they have usurped choices that it is our responsibility and right to make for ourselves.

In the simplest of the academic examples I described, it is plainly chance not a usurping choice that dooms one victim. If two of us need a liver transplant but there is only one liver available for transplant, or if two of us are drowning and there is only one rescuer, then it is only a matter of chance – that someone else in the neighborhood needs help as well – that the loser will die. No one has determined that, in all the circumstances, it is desirable that he should die, that in these circumstances that is what should be done with his life. Nothing would please the rescuer's purposes more than if the loser were not where he is; if he were in a position of greater safety. But those cases in which a dying person can be saved only by actually killing someone else are different: in those circumstances the rescuer who takes that step has formed and acts on exactly that conviction. He has decided that the heart patient with only weeks to live should die at once in order that someone younger live. The heart patient may make that decision on his own: he may insist that he not be resuscitated the next time this is necessary – or even, if the law permits, that he be killed at once – so that his organs can be used to save another person. Then *he* would be deciding that the best use of the rest of his life would be to save the life of someone else. We might applaud his decision. Or we might not: we might think that a life ends badly if it ends sooner than it might, and that it would be better for the transplant patient to die young naturally than for the old man to take or surrender his own life in that way.<sup>14</sup> But, however we think that decision should be made, the decision falls

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<sup>13</sup> Cite Sovereign Virtue Chapter: Genes and Chance

<sup>14</sup> For a discussion of this important ethical issue, see my book, *Life's Dominion*.

squarely within the patient's own responsibility to make crucial decisions about his own body and life, a responsibility no one else is permitted to usurp even to bring about what he believes an overall better result.

In the initial trolley case I described, an agent may throw a switch that will divert a train about to kill five people onto a different track on which a sole woman is bound. It is permissible for him to throw the switch because her presence on the second track is for him as well as for her only a matter of bad luck. He would prefer that she not be there, that the track be empty. He does not act on the belief that, in these circumstances, the best use that can be made of her life is to save five other people. But an agent who shoves a man walking by on the track to which five people are tied, because there is no other track he can switch the train to, must indeed think that that is the best use of the large man's life. He does not wish the large man somewhere else, because that would thwart his only hope of saving five peoples' lives. The large man, in an act of near incredible heroism, might throw himself on the track. He might think, as Sydney Carton did in making the same sacrifice, that that would be a far better thing than anything else he could do with his life. But no one else is permitted to make that choice for him.

One difference between the drowning case we studied in the last chapter and the initial trolley case might seem pertinent, but is not. In the drowning case, both swimmers will die if the rescuer does nothing, if – as we might be tempted to put it – he lets nature take its course. But in the initial trolley case the sole woman on her track will not be harmed if the agent does nothing: in throwing the switch he places her in grave danger that she was not in before. Why isn't the rescuer's choice to throw the switch, which seals her fate, as impermissible as his choice to throw someone on the track? But a rescuer does not usurp another person's responsibility to decide how her life should be used whenever he imposes a new risk on her without her consent, provided that his choice requires no assumption that her life is best used to save others. It was, as I said, only bad luck for both the rescuer and her that she was where she was. Can we say that the agent acts wrongly whenever he does not let "nature" take its course, that his decision to intervene in itself wrongly abrogates someone's responsibility for his own life, that he should simply have walked away? It is unclear what it means to allow nature to take its course. If it is natural to try to rescue five people rather than one, then throwing the switch is letting nature take its course.

But perhaps "nature" means non-intelligent nature, so that a potential rescuer lets nature take its course by pretending that he is not there. But why should he? Suppose you and I are racing to one bobbing life jacket that will save one of our lives. If I lose, it is the presence of a

rescuer acting to save someone – you trying to save yourself – that leads to my death. Does it matter if the rescuer is a third party? Suppose the second swimmer is not you but a child, and I will certainly reach the lifejacket first. But there is a third swimmer there who already has a jacket; he beats me to the lifejacket and tosses it to the child. It is still only my bad luck, not someone imposing a decision on me what to do with my life, that leads to my death. I have no right to a contest with a child alone rather than a contest with a child and a rescuer whose plans conflict with my own. Perhaps I was not in danger – I might have jumped off a boat to swim to a life jacket I saw in the water as a lark – until the stronger swimmer appeared. It is only my bad luck that a child, unknown to me, happened to be drowning near where I jumped, and that a stronger swimmer was around to save that child.

So the distinction I believe to be at the heart of personal responsibility tracks the distinction on which the old principle of double effect is based. Bad luck is all around you, and that bad luck may mean that you have no right to be rescued, or that you fall further into harm's way, because someone else happens to need help. But the choice by a rescuer to use your life as an opportunity to save someone else is not just bad luck. It imposes a decision on you that by all rights must be left to you, a decision about whether and how your life should be put at the service of others. Criminal punishment, of course, violates personal responsibility. The state that locks me up uses my life as an opportunity to deter others. Corporal punishment is a dramatic violation because, as I said, control over what happens to my body is a particularly important part of personal responsibility. Capital punishment is the most dramatic violation of all. We all think jail sentences are sometimes necessary, some of us think corporal punishment sometimes appropriate, and some even that capital punishment is. But we insist that no one be punished who has not acted badly and so forfeited his rights of inviolability. We insist that it is better that many guilty people go free than that one innocent person be punished and in that judgment, too, we confirm the strength of the principle of personal responsibility and the importance of the distinction between chance – each of us is much more likely to be killed on the road than on an executioner's gurney – and the choice of others about how our lives should be used.

This connection between morality and ethical responsibility fits the best explanations of double effect in the philosophical literature. Kant said we must treat people always as ends and never as means. There is much debate about what this means and whether we can accept it. Do I treat a plumber as only a means when I call him in to stop a leak and bargain with him to lower his charge? But wresting someone's responsibility for his own life from him to put him at the service of others must be a paradigm case of using him only as a means however that sin is defined. Thomas Scanlon believes that we each have a right not to be used as an

opportunity to help others.<sup>15</sup> Ethics helps to explain why we have that right: it is the correlate of our personal ethical responsibility. Thomas Nagel says that we always do wrong to aim at a bad result even as a means to a good outcome.<sup>16</sup> Ethics helps explain why it is wrong to aim at that particular kind of bad result: in so doing we contradict that personal ethical responsibility.

What about the *ex ante* argument I made for a spare parts lottery? How could it violate your personal responsibility or your self-respect for you to agree to a compact that would license being murdered for your organs if your number came up, but would plainly improve your life and health expectancy? In fact, the *ex ante* structure of this question helps us to answer it, but only by bringing ethical as well as moral principles into play. The lottery is a vehicle for selling yourself into slavery for what you anticipate will be your own good. If you join it, you give others authority, when the time comes, to make the most basic decisions about what to do with your life, decisions that self-respect requires that you make for yourself. Imagine your number has come up and others advance on you with needles and scalpels in hand. You might think that as you might have benefited from the scheme it is right that you now be killed in its name. But you might not: you might then think the fate too horrible or that the arrangement unjust after all or simply that your wish not to die trumps everything else. No matter: the decision is no longer yours. That is why we must not sell ourselves into slavery even for our own good. We might have longer lives but we live in indignity. Volunteering for danger – volunteering for the army, for instance – is different. Volunteers have made their own decision that the best use of their lives includes accepting a heightened risk of danger. They may accept that in virtue of their decision someone else – an enemy soldier – has a right deliberately to try to kill them, but they do not accept that they have a duty to let him do so.

#### *Unintended Harm*

The baseline picture I drew, of people swimming in their own lanes and forbidden to cross lanes to injure others, is too crude in many ways. It does not, for a start, recognize unintended harm. I may manufacture and sell a drug that has unanticipated and harmful side-effects and that makes you ill. I may drive my car down a dark alley and inadvertently hit you. My lion may escape from my apartment to yours, in spite of my efforts to detain him, and maul your sofa. In these events, you are injured because of what I have done. I did not harm you

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<sup>15</sup> Cite What Do We Owe

<sup>16</sup> Citation

deliberately, but these are not stories of pure competition either. You do not suffer just because I have succeeded in gaining something you wanted.

These stories direct us to a different strand of responsibility: consequence responsibility. Who should bear the cost of these accidents? In the first instance, the loss I caused falls on you: you have become ill or have a broken leg or a broken sofa. Is it appropriate that I compensate you? Or that you be compensated from the general resources of your political community? Every legal system must answer these questions: in the Anglo-American system they are answered mainly by the law of tort. But they are also moral questions about compensatory and distributive justice. They are also ethical questions because they ask about the appropriate connection between assignment responsibility and consequence responsibility.

I have a responsibility to create value in my own life through my own choices and to carry out that responsibility I need control responsibility over my body and my property and freedom to identify and pursue what I take to be a life well lived. Since I believe my ethical responsibility to be objective, I accept Kant's principle and therefore understand that any control I achieve for myself must be matched by a like control that I acknowledge others to have over their bodies, property and choices. I also understand that control by others will limit my own control. What scheme of consequence responsibility for my choices, and hence for the choices of everyone else, should I therefore endorse?

We can rank schemes of consequence responsibility on a dimension of risk-transfer magnitude. A scheme is lower in risk transfer the more it allows accidental losses to remain on the person on whom they initially fall, and higher in risk-transfer the more it places consequence responsibility for such loss on someone else. In one sense I gain more control from scheme that are higher in risk-transfer, because I will suffer less from my own bad luck, leaving my plans less impaired than they would be if my loss remained on me. But in another sense I gain more control from schemes lower in risk-transfer because such schemes make me less likely to be required to compensate others for accidents to which I contribute, and therefore freer to pursue my plans unchecked by the threat of that requirement.

Since my ethical goal is to maximize my control I should aim to identify a scheme of consequence responsibility that achieves the greatest antecedent control, trading off gains and losses in control from both these directions. As a first approximation, I should insist on a scheme that holds people responsible for losses that could have been prevented by them with greater care and attention. That stipulation would allow me greater control over the consequence responsibility I will bear for damage I cause to others – it is in my power to limit

that consequence responsibility simply by taking care – and greater protection from the carelessness of others. So the familiar moral and also legal principle that we must take care not to harm others carelessly, like the other principles canvassed in this chapter, can be seen as grounded in ethics as well.

But how much care shall we say is due? It would destroy my life, not enhance it, if I were to take as much care as is possible not to harm others. I could not even cultivate my garden, but just sit still in it. So my goal of enlarging my control over my life needs a more sensitive metric of consequence responsibility. In fits and starts Anglo-American common law has moved toward a standard first formulated in quasi-mathematical form by the great judge Learned Hand. He said that the legal standard of due care should require people to spend as much money in guarding against accidents as the discounted cost of the accidents that spending that much would prevent. His test was designed for commercial contexts and is too crudely monetary for other circumstances. But its structure reflects the general strategy that people would adopt who accept an ethical responsibility to maximize control over their own lives but who also accept Kant's principle as a constraint on that goal. This strategy supposes that people achieve the maximum control over their lives when everyone accepts, in principle, that he should bear consequence responsibility for damage he has inadvertently caused to others when those damages could have been prevented had he taken precautions that would not have set back his own plans and prospects as much as the damage he caused set back the plans and projects of others. The common law of torts is better explained by that set of interwoven ethical and moral principles than it is by any assumption that the law aims at some stipulated version of economic efficiency.<sup>17</sup>

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<sup>17</sup> I have made that claim before. See *Law's Empire*.