

*A Liberal  
Theory of  
Practical  
Morality*

EARL SPURGIN



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Earl Spurgin

ROWMAN & LITTLEFIELD  
Lanham • Boulder • New York • London

Published by Rowman & Littlefield  
An imprint of The Rowman & Littlefield Publishing Group, Inc.  
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706  
<https://rowman.com>

6 Tinworth Street, London SE11 5AL, United Kingdom

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British Library Cataloguing in Publication Information Available

### **Library of Congress Cataloging-in-Publication Data**

Names: Spurgin, Earl, author.

Title: A liberal theory of practical morality / Earl Spurgin.

Description: Lanham : Rowman & Littlefield, [2021] | Includes bibliographical references and index.

Identifiers: LCCN 2021009888 (print) | LCCN 2021009889 (ebook) | ISBN 9781786612243 (cloth) | ISBN 9781786612250 (epub)

Subjects: LCSH: Applied ethics. | Ethics--Social aspects. | Liberalism. | Ethics, Comparative.

Classification: LCC BJ1521 .S68 2021 (print) | LCC BJ1521 (ebook) | DDC 179/.9--dc23

LC record available at <https://lccn.loc.gov/2021009888>

LC ebook record available at <https://lccn.loc.gov/2021009889>



<sup>TM</sup> The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences Permanence of Paper for Printed Library Materials, ANSI/NISO Z39.48-1992.

*For Lily, whose friendship saved my life*





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# Acknowledgments

**[B02.0]** Thanks are due to the peer reviewers who supported the publication of this book and provided thoughtful feedback. Much of the book began as presentations at the annual meetings of the Association for Practical and Professional Ethics. I am grateful to that association for the many opportunities it afforded to share my work with peers and to all those who provided feedback on my work during the association's sessions. I especially am indebted to Andrew Cohen, Sam Bruton, and Dan Wueste. The three were frequent attendees at my presentations, and they challenged my arguments in ways that made my work better. To the extent that my arguments succeed, they deserve considerable credit. To the extent that my arguments are lacking, it is despite their efforts to show me the errors of my ways. Thanks also are due to Andrew for encouraging me to write this book and to his students who provided helpful comments as they considered some of my work during his seminars.

**[B02.1]** John Carroll University's Committee on Research and Service supported my efforts through a Grauel Faculty Fellowship. The fellowship's semester release from teaching and committee responsibilities provided the time necessary to produce parts of this book. I am grateful to the members of the committee for supporting my proposal for the fellowship.

**[B02.2]** I forever will be indebted to Tom Hill for his guidance as my dissertation advisor. His exacting standards and compassionate support are unparalleled. He truly is the kindest, most gentle man I have had the pleasure to know. I am grateful to Tom, Robin Hill, Bernie Boxill, and Jan Boxill for convincing me to stay in graduate school and not make what would have been one of the worst mistakes of my life. I shudder to think of what my work life would entail had they not helped me stay on the path that was right for me.

**[B02.3]** Many thanks are due to Richard Dean and Dave Weber. They made me laugh and enjoy life, including on the basketball court, during the many

## Acknowledgments

hurdles of graduate school. To them I say, “Get the ball inside and good things happen.”

Several chapters of this book are adapted from previously published articles. The chapters and original publications are as follows: [\[B02.4\]](#)

Chapter 6 — Earl Spurgin, “Moral Judgments, Fantasies, and Virtual Worlds,” *International Journal of Applied Philosophy* 23 (2009): 271–84. [\[B02.5\]](#)

Chapter 7 — Earl Spurgin, “An Emotional-Freedom Defense of *Schadenfreude*,” *Ethical Theory and Moral Practice* 18 (2015): 767–84. [\[B02.6\]](#)

Chapter 10 — Earl Spurgin, “Hey, How Did *I* Become a Role Model? Privacy and the Extent of Role-Model Obligations,” *Journal of Applied Philosophy* 29 (2012): 118–32. [\[B02.7\]](#)

Chapter 11 — Earl Spurgin, “Are African American Athletes and Celebrities Obligated Not to Use the N-Word?” *Public Affairs Quarterly* 32 (2018): 21–43. [\[B02.8\]](#)

Chapter 14 — Earl Spurgin, “Why the Duty to Self-Censor Requires Social-Media Users to Maintain Their Own Privacy,” *Res Publica* 25 (2019): 1–19. [\[B02.9\]](#)

Chapter 16 — Earl Spurgin, “Can Businesses Be Too Good? Applying Susan Wolf’s ‘Moral Saints’ to Businesses,” *Business and Society Review* 116 (2011): 355–73. [\[B02.10\]](#)

# Introduction

**[B03.0]** In recent decades, philosophers have produced innumerable works on morality's practical matters. Many of those works are in philosophy's relatively new subdisciplines within applied ethics such as bioethics, business ethics, media ethics, sports ethics, and research ethics. A short time using an Internet search engine produces a plethora of academic books, articles, journals, associations, and conferences that are devoted to those subdisciplines. Many other recent works on morality's practical matters, however, defy such categorization. They include, but are not limited to, books and articles on the practical matters this book examines: fantasies, *Schadenfreude*, harmful sports, role model status and obligations, African American athletes' and celebrities' use of the n-word, punishment by nongovernmental institutions, social media users' revelations of personal matters, and nongovernmental institutions' obligations.

**[B03.1]** Not only do such issues defy categorization into applied ethics' subdisciplines, they are not in the exclusive purview of philosophers who specialize in ethics. They also are topics of interest for those who work in social and political philosophy. Sports, for example, comprise many powerful social institutions that generate a multitude of questions that should, and do, interest social philosophers. Likewise, questions about nongovernmental institutions punishing their members fall under social philosophy's umbrella just as much as they fall under ethics' umbrella. Because determining whether the authority to mete out punishment should belong exclusively to government is a relevant consideration when addressing many of those questions, they also fall under political philosophy's umbrella.

**[B03.2]** The practical matters this book examines also should, and do, interest many outside of philosophy. Political scientists who work in political theory have as much interest in, and as much to contribute to, questions about

punishment as do philosophers. The same is true of psychologists and sociologists. Questions about sports, social media, role model status, and the n-word are just as much within psychologists' and sociologists' purview as they are philosophers'. Because *Schadenfreude* is an emotion, it interests psychologists, and they have much to contribute to the debate over whether the emotion is justified morally.

The upshot is that I do not intend this book only for philosophers who specialize in ethics. I am such a philosopher, so the book's arguments are typical of that discipline. Because I also specialize in social and political philosophy, however, the book's arguments often stem from considerations that are just as at home in those disciplines as they are in ethics. Moreover, as anyone who examines morality's practical matters should, I frequently consider the contributions those in disciplines outside of philosophy make to the examinations I undertake. After all, one cannot make a plausible argument about, say, the moral status of an emotion without a sufficient understanding of that emotion. Philosophers require help from other disciplines in order to develop that understanding.

[B03.3]

Among philosophers who examine practical morality, there is a long-running debate over how best to approach specific moral issues, questions, and cases. Some opt for what I term the "theory-as-framework" approach. This approach requires defending a particular ethical theory, such as utilitarianism or Kantian deontology, and applying that theory to the matter at hand. For a proponent of the theory-as-framework approach, examining a moral matter consists of determining, and demonstrating to others, the outcome that the proponent's favored theory produces.

[B03.4]

Others adopt what I term the "moral elements" approach. A proponent of this approach typically begins by identifying a moral matter's salient elements such as possible harms to affected parties, potential impacts on those parties' autonomy, the parties' competing interests, and various rights and duties that might be in play. The proponent then assesses those elements in order to draw conclusions about the matter.

[B03.5]

Throughout my years of examining morality's practical matters, I have been squarely in the moral elements camp. I hold, as do many others, that the theory-as-framework approach is ineffective, and it does not capture how most philosophers and laypeople actually approach moral issues. I even take the moral elements approach a step further than do most of the approach's proponents by applying, either explicitly or implicitly, David Hume's sentiments-based morality to the practical matters I examine. Elsewhere, I argue that others also should embrace Hume's morality when they examine such matters.<sup>1</sup>

[B03.6]

Despite this book's title, I have not changed camps. The titular "theory" does not signal that this book abandons the moral elements approach, nor does it signal that the book abandons my sentiments-based version of that

[B03.7]

approach. It, instead, signals that this book presents and applies a widely applicable method of adjudicating morality's practical matters. That method is the product of how my thinking about practical morality has evolved over the years during which I have examined various moral matters. During that time, my thinking has coalesced around a set of sentiments that constitute a kind of moral liberalism. I call that liberalism a "moral theory" because I seek to demonstrate that it comprises the criteria by which those in plural societies should evaluate morality's practical matters. If I am successful, this book will convince readers that they also should embrace the moral liberalism I espouse because they possess, or should possess, the sentiments that constitute the theory.<sup>2</sup> If I am unsuccessful, I hope that my arguments at least provide readers with ways to advance their own thinking about practical morality.

**[B03.8]**

Conceiving of liberalism as a moral doctrine that we should apply to morality's practical matters is controversial. Many reject, in almost knee-jerk fashion, both moral and political liberalism. Others who reject liberalism challenge liberals with arguments that are more than worthy of liberals' attention. Still others have a conceptual reason, one that I argue against in chapter 1, for holding that we should not apply liberalism to morality at all. Because they conceive of liberalism solely as a political doctrine, they reject the idea that it is a moral theory that bears directly on moral issues. Liberalism, for them, is relevant to morality only in that it provides a political framework that defines government's role in moral matters.

**[B03.9]**

The fact that moral liberalism is far from a monolithic doctrine complicates defending a particular form of it. The theory likely comes in almost as many forms as there are people who espouse it. This book's purpose includes neither examining moral liberalism's many forms nor arguing that the form I hold is superior to all the others. Pursuing those tasks effectively would require producing a tome that I lack the wherewithal to write and likely no publisher would agree to support. The book's twofold purpose, instead, is to develop my sentiments-based commitments into a coherent liberal theory of practical morality and to apply that theory to several of morality's practical matters.

**[B03.10]**

Developing my theory, however, requires addressing one of moral liberalism's many forms. Jeffrey Reiman provides a theory that he terms "critical moral liberalism," and he applies that theory to several moral issues.<sup>3</sup> This book examines Reiman's theory for two reasons. First, I find Reiman's critical moral liberalism inspirational, and this book is similar in spirit to the book in which Reiman presents and applies his theory. Second, there is an important matter about which Reiman and I potentially disagree. Whether we do depends on what Reiman means when he writes about his critical moral liberalism, "The living of self-governed lives . . . [is] its chief value, holding that self-governance is a necessary condition of a good life for human be-

ings.”<sup>4</sup> Whereas Reiman, in the quoted passage, possibly advocates a particular conception of the good life to support his critical moral liberalism, I seek to develop a form of moral liberalism without abandoning this normative commitment that I hold is essential to liberalism: a plural society should not seek to privilege, through either its moral principles or public policies, one conception of the good life over other conceptions.<sup>5</sup> Chapter 3 presents my arguments for the preceding position. Along the way, it examines the matter about which Reiman and I potentially disagree. That examination explains why our positions might or might not part company.

This book develops and applies the form of moral liberalism that I believe accords best with the normative commitment the preceding paragraph presents. That form comprises three basic commitments that, in the manner Hume’s moral philosophy suggests, I derive from sentiments.

[B03.11]

Contrary to many philosophers before and after him, Hume argues that reason cannot move us to act and that only sentiments have that capacity.<sup>6</sup> He writes, “Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them.”<sup>7</sup> Reason serves the sentiments by providing us with understandings of various matters such as the array of possible acts from which we might choose in given contexts, the character traits those acts reveal, the various people who might be affected by the acts, and the acts’ possible consequences for the affected people. Reason, however, provides such understanding only if we consult it effectively. If we do not engage it to a sufficient extent, then it is likely that we make choices and act in given contexts with erroneous understandings of those contexts.

[B03.12]

The argument described in the preceding paragraph leads many to underestimate the role of reason in Hume’s moral philosophy. Hume believes reason performs an important, albeit secondary, role in morality. Like any moral philosopher, he holds that our moral judgments about given contexts should follow after obtaining accurate understandings of those contexts. Only sufficient use of reason enables us to obtain such understandings. Hume writes of a sentiment that qualifies as a moral judgment,<sup>8</sup> “In order to pave the way for such a sentiment, and give a proper discernment of its object, it is often necessary . . . that much reasoning should precede, that nice distinctions be made, just conclusions drawn, distant comparisons formed, complicated relations examined, and general facts fixed and ascertained.”<sup>9</sup> Understanding is reason’s, not sentiments’, purview. Sentiments, in fact, can impede understanding if they move us not to engage reason. For example, sentiments can move a busy, overextended professor not to seek an understanding of a student’s plight when the student seeks an accommodation regarding a paper assignment. The professor’s sentiments can preclude the desire to devote the time and energy that is necessary to engage the student’s circumstances.

[B03.13]



**[B03.14]** No matter how accurate those understandings are, however, they cannot move us to choose, or approve of, particular acts in given contexts. Only sentiments can function in that way. Reason's role is not to move us to act in particular ways but rather to enable our sentiments to pass judgments on given contexts as those contexts actually are, rather than as we erroneously understand them. Sentiments, not reason, produce preference, approval, disapproval, choice, and other mental states related to acts and character traits. Hume writes,

**[B03.15]** Where a passion is neither founded on false suppositions, nor chuses means insufficient for the end, the understanding can neither justify nor condemn it. 'Tis not contrary to reason to prefer the destruction of the whole world to the scratching of my finger. 'Tis not contrary to reason for me to chuse my total ruin, to prevent the least uneasiness of an *Indian* or person wholly unknown to me. 'Tis as little contrary to reason to prefer even my own acknowledg'd lesser good to my greater, and have a more ardent affection for the former than the latter.<sup>10</sup>

**[B03.16]** If we do not use reason sufficiently, our sentiments might move us to act in ways that we would not had we obtained accurate understandings of the contexts in which we find ourselves. If we improve our use of reason and our understandings of contexts change, so might how our sentiments move us. Hume writes,

**[B03.17]** The moment we perceive the falshood of any supposition, or the insufficiency of any means our passions yield to our reason without any opposition. I may desire any fruit as of an excellent relish; but whenever you convince me of my mistake, my longing ceases. I may will the performance of certain actions as means of obtaining any desir'd good; but as my willing of these actions is only secondary, and founded on the supposition, that they are causes of the propos'd effect; as soon as I discover the falshood of that supposition, they must become indifferent to me.<sup>11</sup>

**[B03.18]** Suppose I learn that a new bicycle manufacturer, Ride Faster Bikes, has hit the market with bicycles that are significantly lighter than those other manufacturers produce. Being a serious, weight-conscious cyclist who seeks to ascend hills faster, I immediately purchase one of Ride Faster's bicycles without taking time to research them further. Had I taken the time to do so, however, I would have learned that Ride Faster's bicycles are lighter because the company manufactures its frames from a lightweight material that it recently developed and patented. I also would have learned that, after what would be for me about two years' worth of riding miles, Ride Faster's recently developed material becomes prone to irreparable cracks that render the manufacturer's bicycles unsafe to ride after that point. Had my sentiments been armed with this more complete and more accurate understanding of

Ride Faster's bicycles, they would have moved me not to expend financial resources on a bicycle that will last such a short time.

For Hume, understanding reason's and sentiments' roles in producing acts is necessary to understand morality. He argues that, because moral judgments can move us to act, morality must come from sentiments rather than reason.<sup>12</sup> He writes, "Since morals . . . have an influence on the actions and affections, it follows, that they cannot be deriv'd from reason; and that because reason alone . . . can never have any such influence. Morals excite passions, and produce or prevent actions. Reason of itself is utterly impotent in this particular. The rules of morality, therefore, are not conclusions of our reason."<sup>13</sup> Moral judgments can move us to choose, or to avoid, particular acts. If I am in a situation where I must act either generously or selfishly, the fact that I judge generosity to be a virtue, and selfishness to be a vice, has the capacity, by itself, to move me to choose the generous act.

[B03.19]

This does not mean, however, that we always choose virtuous acts over vicious acts. It means, rather, that moral judgments move us in particular directions unless those judgments are opposed by, and overridden by, other sentiments. Hume writes, "Nothing can oppose or retard the impulse of passion, but a contrary impulse."<sup>14</sup> I will choose the selfish act over the generous act if I have a sentiment, such as hatred for the person whom my generosity would benefit, that is stronger than the sentiment that is my moral judgment. Absent an opposing, and overriding, sentiment of that sort, my moral judgment will move me to act generously.

[B03.20]

A given person's set of moral judgments comprises the person's sentiments that deem various acts and character traits either virtuous or vicious. The sentiments that produce that set of moral judgments are sentiments of approval and disapproval. Hume writes,

[B03.21]

An action, or sentiment, or character is virtuous or vicious; why? because its view causes a pleasure or uneasiness of a particular kind. . . . To have the sense of virtue, is nothing but to *feel* a satisfaction of a particular kind from the contemplation of a character. The very *feeling* constitutes our praise or admiration. . . . We do not infer a character to be virtuous, because it pleases: But in feeling that it pleases . . . we in effect feel that it is virtuous. The case is the same as in our judgments concerning all kinds of beauty, and tastes, and sensations. Our approbation is imply'd in the immediate pleasure they convey to us.<sup>15</sup>

[B03.22]

If viewing or contemplating a particular act or character trait gives one an easy or pleasing feeling, then one has a sentiment of approval that deems the act or trait virtuous. If, instead, the viewing or contemplation gives one an uneasy or displeasing feeling, then one has a sentiment of disapproval that deems the act or trait vicious.

[B03.23]

**[B03.24]** Hume's sentiments-based morality lies in the background of this book's arguments. Part I presents my arguments for the conclusion that sufficient reasoning about, and, thus, understanding of, plural societies results in sentiments of approval for moral liberalism's basic commitments.<sup>16</sup> Those commitments are to (1) individuals' liberty of internal states, (2) individuals' liberty of external acts, and (3) the view that, despite the liberties in #1 and #2, individuals have many moral obligations to others.

**[B03.25]** Part I also demonstrates why, in plural societies, we should examine morality's practical matters through moral liberalism. Briefly, privileging (a) particular conception(s) of the good life over others is unjustified, and doing so promotes, or, at least, does not help alleviate, social discord. Moral liberalism is influenced by the empirical fact that, in diverse societies, individuals favor differing conceptions of the good life, and it includes the normative position that societies should respect those differing conceptions by not privileging any over the others.

**[B03.26]** With those background matters in hand, Parts II through IV consider moral liberalism's three basic commitments more comprehensively. Each part begins with a chapter that presents my general arguments regarding one of the three commitments. Then, each part contains three chapters that apply those general arguments to some of morality's practical matters.

**[B03.27]**

## NOTES

**[B03n1]**

1. Earl W. Spurgin, "Looking for Answers in All the Wrong Places," *Business Ethics Quarterly* 14 (2004): 293–313.

**[B03n2]**

2. I do not intend the phrase "should possess" to suggest that we simply choose our sentiments like we choose particular produce items from a bin, nor do I intend it to suggest that we can "turn on or off" our sentiments in the manner of light switches. I, instead, intend it to suggest that, if readers place themselves in the right contexts for considering morality's practical matters, they will have the sentiments that constitute my moral liberalism.

**[B03n3]**

3. Jeffrey Reiman, *Critical Moral Liberalism* (Lanham, MD: Rowman & Littlefield, 1996).

**[B03n4]**

4. *Ibid.*, 1.

**[B03n5]**

5. Similarly to the practical matters this book examines, determining whether that normative commitment is justified is not a matter of concern only for philosophers who specialize in ethics. Social philosophers, political philosophers, and many in disciplines outside of philosophy have much to contribute to the matter.

**[B03n6]**

6. David Hume, *A Treatise of Human Nature*, analytical index L. A. Selby-Bigge, rev. and notes P. H. Nidditch, second edition (Oxford: Oxford University Press, 1978 [1739–1740]), 413–18.

**[B03n7]**

7. *Ibid.*, 415.

**[B03n8]**

8. Chapter 3 develops Hume's position on when moral sentiments qualify as moral judgments.

**[B03n9]**

9. David Hume, *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*, intro. and analytical index L. A. Selby-Bigge, rev. and notes P. H. Nidditch, third edition (Oxford: Oxford University Press, 1975 [1748 and 1751]), 173.

**[B03n10]**

10. Hume, *Treatise*, 416.

**[B03n11]**

11. *Ibid.*, 416–17.

**[B03n12]**

12. *Ibid.*, 455–76.

## *Introduction*

13. Ibid., 457.

14. Ibid., 415.

15. Ibid., 471.

16. Throughout the remainder of this book, unless otherwise noted, the term “moral liberalism” refers to the form of moral liberalism this book develops and applies. This is for ease of explanation and reference only. It does not imply that the form of moral liberalism I espouse is the only possible form.

[B03n13]  
[B03n14]  
[B03n15]  
[B03n16]

*Part I*

# **Moral Liberalism**



## *Chapter One*

# **Liberalism as a Moral, Not Just a Political, Doctrine**

**[1.0]** Until he retired a few years ago, I frequently sat down with a colleague after we finished teaching for the day to discuss whatever philosophical or social matter happened to pique our interests at the time. One of those discussions, concerning some moral matter or other, was the first indication that I should begin the book that I hoped to write one day with a chapter such as this one. Part of the conversation proceeded something like this:

**[1.1]** Me: I would like to say Jim is wrong not to help Sara, but I don't know how to justify it.

**[1.2]** Colleague: Why not?

**[1.3]** Me: Because of my commitment to liberalism.

**[1.4]** Colleague: I don't understand.

**[1.5]** Me: Jim's decision not to help her seems the epitome of selfishness, but, although I very much would like to, I don't see how I can conclude that his selfishness is wrong morally in a way that is consistent with liberalism.

**[1.6]** Colleague: What does whether his selfishness is wrong morally have to do with liberalism?

**[1.7]** Me: Well, you know, as a moral doctrine, liberalism lays out various freedoms and obligations. I'm searching for some way, within liberalism, to argue that Jim has a moral obligation to help Sara. Unfortunately, I

can't identify a way to override Jim's moral freedom to be selfish in this case that is consistent with liberalism.

Colleague: What are you talking about? Liberalism is a political doctrine, not a moral doctrine. It's about when government can restrict individuals' liberties. You can't look to it when you're trying to determine what someone's moral obligations are. You need to look at moral considerations to do that. [1.8]

Me: I'm not denying that liberalism is a political doctrine. I'm just saying that it's also a moral doctrine. It's the latter that I'm trying to apply here. [1.9]

Colleague: Where'd you get that crazy idea? [1.10]

Me: What do you mean? It's obvious. Even John Stuart Mill thinks liberalism is both a moral and a political doctrine. [1.11]

Colleague: That's an even crazier idea! [1.12]

When we concluded our conversation that day, we parted equally dumfounded. My colleague was shocked that, on his view, I so badly misread Mill. He was even more shocked that I consider liberalism to be both a moral and a political doctrine.<sup>1</sup> I equally was shocked that my colleague is mistaken about a position I believe Mill obviously holds. I was just as shocked that he considers liberalism to be solely a political doctrine. [1.13]

Much to my surprise, the years following that conversation have taught me that my colleague's view is not idiosyncratic. I encounter, at conferences and other venues, others who hold positions similar to his. On the other hand, I encounter many who are as surprised as I am that not everyone considers liberalism to be both a moral and a political doctrine. Because my conception of liberalism is not universally accepted, I argue for that conception in this chapter. Those who already accept my position likely will find unnecessary the foray into my arguments for that position. I am grateful for whatever patience with this chapter they can muster. Those who reject my position likely will read this chapter with considerable skepticism. I am grateful for their indulgence, and I hope to provide them with persuasive arguments for my position. [1.14]

## MILL'S ANTIPATERNALISM [1.15]

When I attributed moral liberalism to Mill during the discussion with my colleague, I was invoking Mill's opposition to paternalism.<sup>2</sup> Gerald Dworkin defines paternalism as "the interference with a person's liberty of action [1.16]



justified by reasons referring exclusively to the welfare, good, happiness, needs, interests or values of the person being coerced.”<sup>3</sup> More succinctly, it is the “interference with a person’s liberty for his own good.”<sup>4</sup> Such interference with individuals’ liberty is anathema to Mill. Liberals in general either share Mill’s view or, at the very least, are suspicious of paternalism and accept its use only when there is no other effective and justified way to achieve liberally justified goals. I am a liberal in the latter camp.

[1.17]

For Mill, restricting individuals’ liberty is justified only when individuals’ acts harm, or significantly increase the risk of harm to, others.<sup>5</sup> Mill writes, “The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. . . . [T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.”<sup>6</sup> Unless individuals’ acts threaten harm to others, they should be free to act as they please. This acknowledges individuals’ authority over their own bodies and minds. Mill writes of a person’s conduct, “In the part which merely concerns himself his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.”<sup>7</sup>

[1.18]

Individuals’ sovereignty over themselves includes the freedom to choose whether they will take certain risks with their own health and lives. It is up to them, not others, to determine what is good or bad for them, and, even if their judgments are mistaken, the mistakes are theirs to make. Sara’s authority over her own body allows her to attempt to summit Mount Everest even though, because of a chronic medical condition, her doctor advises against it. Keith’s authority over his own beliefs allows him to live as an atheist even though his religious family warns him that he faces eternal damnation if he does not accept the word of god. Unless their choices harm someone besides themselves, others do not have the authority to prevent Sara and Keith from living as they choose even if those others believe that Sara’s and Keith’s choices are bad for them. Mill writes of a person who others believe makes a bad choice, “He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise.”<sup>8</sup> Those who are concerned about Sara and Keith are justified in trying to persuade the pair to act otherwise, but they are not justified in controlling either individual.

[1.19]

Although Mill’s antipaternalism precludes others from controlling individuals for those individuals’ own good, it does not shield individuals from negative outcomes of their own decisions and actions. Sara and Keith are free to make their own choices, but they must “stand the consequences” that

follow from their choices.<sup>9</sup> If it turns out that Sara's and Keith's choices are bad for them, they are responsible for dealing with the harm they cause themselves.<sup>10</sup> Others typically are not obligated to save Sara and Keith from the negative consequences of their own free choices. Others, if they wish, may help Sara and Keith deal with their self-inflicted harm, but the pair are not justified in expecting others to provide such assistance. Individuals' free, but unwise, choices do not impose obligations on others.

Some others might be obligated to provide assistance to a person who has made a free, but unwise, decision that harms, or places in peril, the person. Such obligations, however, are justified by reasons that are external to the unwise person. An emergency medical technician (EMT) is obligated to assist a person with an injury even if that injury resulted from the person's unwise decision. The EMT's obligation, however, does not stem from the injured person having a justified expectation that others provide assistance whenever the person suffers from self-inflicted harm. The obligation stems, instead, from the commitment the EMT made by choosing to enter the EMT profession. Just as professors commit to teaching any students who enroll in their classes, EMTs commit to treating, if they are capable, any injured or ill person they encounter. Except in rare cases, such as the students or the injured acting violently, the only way that professors and EMTs can escape their commitments is by opting to leave their professions.

Mill's opposition to paternalism is not absolute as he does not oppose treating incompetent persons paternalistically. We exercise weak paternalism, as it is commonly known, when we control or restrict the behavior of children, the insane, persons with severe mental disabilities, those suffering from dementia, and other incompetent persons for their own good. Mill makes clear that his opposition to paternalism does not apply to weak paternalism.<sup>11</sup> He writes of his antipaternalism, "It is, perhaps, hardly necessary to say this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children or of young persons below the age which law may fix as that of manhood or womanhood. Those who are still in a state as to require being taken care of by others must be protected against their own actions."<sup>12</sup> He also writes that he is referring to persons "of full age and the ordinary amount of understanding" and claims that "neither one person, nor any number of persons, is warranted in saying to another human creature of *ripe years*, that he shall not do with his life for his own benefit what he chooses to do with it."<sup>13</sup>

Endorsing weak paternalism, as Mill does, is a far cry from accepting strong paternalism, the practice of controlling competent adults for their own good. The main reason why lies in the concept of autonomy. Roughly, autonomy is the capacity to be self-governing. It is one's capacity to determine for oneself, and pursue, the kind of person one wishes to be and the kind of lifestyle one wishes to have. Autonomous persons order their lives according

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to their own reasons and commitments rather than according to the wishes or demands of an external authority or force. Although there is disagreement among autonomy advocates on this point, possible external impediments to autonomy include, but are not limited to, governmental and nongovernmental institutions, other individuals, addictions, and compulsions.

[1.23] For many moral philosophers, the autonomy concept immediately brings to mind Immanuel Kant as the concept permeates his moral theory.<sup>14</sup> Perhaps no other philosopher is more associated with the concept, and contemporary philosophers owe a debt of gratitude to Kant for making the concept a central, and ongoing, feature of moral philosophy.<sup>15</sup> We nevertheless should not overlook the fact that autonomy plays a crucial role in Mill's moral philosophy as well. Although Mill and Kant disagree over what it entails, Mill believes autonomy is just as important as does Kant. The concept explains why Mill accepts weak paternalism and rejects strong paternalism.

[1.24] Mill endorses weak paternalism because the controlled persons lack autonomy. Because the same is not true of competent adults, Mill opposes strong paternalism.<sup>16</sup> Mill's interest in individuals' autonomy is unsurprising. His utilitarianism commits him to the views that happiness is the good and societies should seek to promote that good.<sup>17</sup> As Dworkin points out, however, those views constitute "a concern not just for the happiness or welfare, in some broad sense, of . . . individual[s] but rather a concern for the autonomy and freedom of . . . person[s]."<sup>18</sup> Happiness and autonomy are intertwined because societies best promote happiness when they acknowledge, and support, their citizens' autonomy. Although he is not referring to Mill at the time, Dworkin describes an argument against paternalism that captures how Mill connects happiness and autonomy. Dworkin writes, "Since autonomy, the ability to determine for oneself what to do, is itself a necessary condition of well-being, one cannot be made better off against one's will."<sup>19</sup>

[1.25] Not only does Mill hold that paternalism violates persons' autonomy, he argues that it does so at great costs. He writes of an individual,

[1.26] He is the person most interested in his own well-being: the interest which any other person, except in cases of strong personal attachment, can have in it, is trifling, compared with that which he himself has; the interest which society has in him individually (except as to his conduct to others) is fractional, and altogether indirect; while with respect to his own feelings and circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else. The interference of society to overrule his judgment and purposes in what only regards himself must be grounded on general presumptions; which may be altogether wrong, and even if right, are as likely as not to be misapplied to individual cases. . . . All errors which he is likely to commit against advice and warning are far

## Chapter 1

outweighed by the evil of allowing others to constrain him to what they deem his good.<sup>20</sup>

Paternalism has two distinct costs. First, those who exercise paternalistic control are unlikely to promote the happiness of those they control. They are far less likely to identify correctly what is best for the persons they control than are those persons themselves and, thus, are more likely to impede, rather than promote, those persons' happiness.

[1.27]

Second, in the rare cases where those who exercise paternalistic control identify correctly what is best for the persons they control, they still impede the controlled persons' happiness. The ability to act autonomously, in itself, contributes to happiness. Imagine Daryl who is controlled by a benevolent, omniscient protector who prevents Daryl from acting in ways that might cause him harm. Imagine, also, Maggie who has no such protector and acts as she chooses. Because of his protector, Daryl's acts always are best for him. Because she has no protector, Maggie's acts mostly are best for her, but, sometimes, she judges incorrectly and acts in ways that actually harm her. Daryl is not autonomous, however, while Maggie is. For Mill, *ceteris paribus*, Maggie undoubtedly is happier than is Daryl because autonomy, in itself, contributes to happiness.

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Mill captures his opposition to strong paternalism through his harm principle. For many, including this author, the harm principle is the quintessential statement of liberalism's antipaternalism. Mill intends the principle to prohibit treating competent adults paternalistically and, thus, to leave them as free as possible to live their conceptions of the good life. It does so by laying out the necessary and sufficient conditions for when individuals' acts justifiably are subject to control.<sup>21</sup> Absent those conditions, acts fall under individuals' freedom of choice. Mill writes,

[1.29]

As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion. But there is no room for entertaining any such question when a person's conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding). In all such cases, there should be perfect freedom, legal and social, to do the action and stand the consequences.<sup>22</sup>

[1.30]

Harming others is a necessary condition for controlling or restricting competent adults' acts. Individuals harming themselves is an insufficient reason to control them. Although harming others is a necessary condition for controlling individuals' acts, it is not sufficient. The fact that act X harms others besides the actor merely raises the question whether controlling X is jus-

[1.31]

tified. That question is answered by whether controlling X would produce more good than would not controlling it.

[1.32] Many reject the harm principle for this very simple reason: it is misguided to think that individuals can harm themselves without also harming at least some others. Mill writes, “How (it may be asked) can any part of the conduct of a member of society be a matter of indifference to the other members? No person is an entirely isolated being; it is impossible for a person to do anything seriously or permanently hurtful to himself without mischief reaching at least to his near connections, and often far beyond them.”<sup>23</sup> This objection denies the possibility of what Mill terms “self-regarding acts.” If there are no truly self-regarding acts, the harm principle is meaningless. The harm principle’s purpose is to prevent paternalistic control over competent, adult individuals. If no acts are self-regarding, then paternalistic control never is in play. Any control over individuals will prevent them from harming others. Whether that control also prevents individuals from harming themselves is irrelevant. The control is justified because it prevents harm to others.

[1.33] By way of response, Mill invokes the concept of obligations. He writes, “I fully admit that the mischief which a person does to himself may seriously affect, both through their sympathies and their interests, those nearly connected with him and, in a minor degree, society at large. When, by conduct of this sort, a person is led to violate a distinct and assignable obligation to any other person or persons, the case is taken out of the self-regarding class and becomes amenable to moral disapprobation.”<sup>24</sup> When individuals act in ways that harm themselves, any harm they also cause others to whom they have no special obligations is too indirect and far removed to justify placing the acts in the harm-to-others category. Placing such acts in that category seriously impedes individuals’ autonomy as doing so renders any of their acts potentially subject to control and, in essence, requires individuals to have societal permission for all their pursuits.<sup>25</sup> Moreover, because the individuals at issue have no special obligations to others to whom they cause indirect and distant harm, attempts to justify controlling their acts on the basis that the acts harm others actually are veiled attempts to justify paternalism. Only the harm individuals cause themselves in such cases is direct and close enough to be a real matter of concern to those who seek to control them.

[1.34] Recently, I was bouldering on a rock-climbing wall and managed to fall, seriously spraining my ankle. Not only did my bouldering harm me, it also harmed, to some degree, the members of my cycling group. Provided that the riders in a cycling group are of relatively close abilities, because of drafting advantages and taking turns leading the group, each additional member of a group ride makes the ride easier, increases the group’s average speed, and extends the distance the group can ride comfortably. My self-inflicted injury left my group without my contributions to their rides for several weeks.

During those weeks, the riders had to work harder for the group to achieve its typical speeds and distances than they would have had I been with them.

Even though my self-inflicted injury harmed the other riders, it would be intolerable if the group sought to control my acts away from our rides in an effort to prevent me from harming myself and, thus, prevent me from harming the rest of the group. The harm my self-inflicted injury caused the group is far different from, say, the harm to myself and other riders that could result from me recklessly causing a crash during a ride. I have no special obligation to be present for any particular group ride or, for that matter, even to be a member of the group at all. If the group subjects me to the moral disapprobation to which Mill refers, their disapprobation is unjustified. If I am present for a particular ride, however, I have a special obligation to ride safely, throughout the ride, with the welfare of the group in mind. If my recklessness causes a crash, the group rightfully can subject me to their moral disapprobation.

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Readers likely have noticed how the preceding suggests that Mill's liberalism is both a moral and a political doctrine. The most plausible interpretation of Mill's use of "moral disapprobation" is that, in this context, he is referring to his liberalism as a moral doctrine. This, however, is not the only context in which Mill so refers to his liberalism. Although it is true that state restrictions often are Mill's primary focus, the way he addresses social control indicates that he is concerned with much more. By separating legal and social freedom as he does in a previously quoted passage, Mill demonstrates that he intends his liberalism to set the boundaries both for when states are justified in controlling individuals and for when other persons and nonstate entities are justified in controlling individuals. As I shall argue in the next section, the latter demonstrates that Mill's liberalism is moral, not just political. Even if one rejects my interpretation of Mill, the argument in the next section provides an independent case for recognizing liberalism as a moral doctrine.<sup>26</sup>

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## SOCIAL CONTROL AND MORAL LIBERALISM

[1.37]

When Mill divides freedom into legal and social, I take him to be appealing to the common sense notion that we often are subject to both political and social forms of control.<sup>27</sup> The former are exercised by the state, typically through legal sanctions or requirements. Such controls often are paternalistic. Law mandates, for our own good, that we wear seatbelts while driving cars. The state enforces that mandate through the threat and imposition of penalties on those who violate the mandate. Law requires, for our own good, that we have prescriptions to obtain certain medicinal drugs. The state enforces that requirement through the threat and imposition of penalties on both those

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who dispense the drugs to persons without prescriptions and those who illegally obtain the drugs. Because the state exercises the control in such cases, examining whether the control is justified is a natural subject of political liberalism. Through that doctrine, we can determine whether the state ever is justified in exercising paternalistic control and, if so, under which circumstances.

**[1.39]** Unlike legal or political control, social control is not a natural subject of political liberalism. This simply is because nonstate entities and persons exercise social control. Clubs and professional organizations might not accept, or they might expel, members who act, or do not act, in particular ways. Individuals might demand, as conditions of friendship or other relationships, that others pursue, or not pursue, certain activities.

**[1.40]** Nonstate entities' and persons' control of others often is paternalistic. My cycling group has a rule requiring that those participating in the group's rides wear helmets. This is a rule, imposed by a nonstate entity, that controls the entity's members for their own good.<sup>28</sup> An individual might refuse to join an alcoholic friend for dinner at a pub and insist that they meet at a restaurant where alcohol is not the establishment's central marketing feature. By establishing a condition for their interaction, the individual is attempting to control the friend for the friend's own good. In such cases, we legitimately can ask whether the nonstate entities or persons are justified in seeking to exercise paternalistic control over others in the given contexts. We can use liberalism as a moral doctrine to seek answers to those questions as the doctrine provides us with the limits of paternalistic, social control.

**[1.41]** Social control comes in many types, not all of which involve morality. My cycling group's helmet rule does not stem from a moral judgment. We do not have the rule because we believe riding a bicycle without a helmet is immoral. We have the rule because we care about each other and do not wish to participate in our friends taking what we see as unnecessary risks with their health and lives. In good liberal fashion, we accept that our friends have the moral right to take risks with their own health and lives.<sup>29</sup> We, however, also recognize our right not to be present when they take those risks. The individual who will not join an alcoholic friend at a pub need not think there is anything morally wrong with the friend patronizing an establishment that provides considerable enticements to drink. The individual, instead, might care so much about the friend's well-being that the individual hopes to discourage the friend from engaging in self-destructive behavior.

**[1.42]** Although social control need not involve moral judgments, the social-control concept is far from complete without the context of morality. To have any significant substance, the concept must include moral judgments. Such judgments are the principal form of control we exercise, or at least attempt to exercise, over others. It is difficult to understand the point of saying, as we often do, things like "that's morally wrong" or "that's the right thing to do"



unless such statements are our attempts to influence the behavior of those to whom we are speaking.

Moral judgments' effects also support the claim that moral judgments are one of the most significant ways we attempt to control others. As Hume writes, "Morals excite passions, and produce or prevent actions."<sup>30</sup> Although some do not care about the moral status of the acts they contemplate, most are moved by revelations that the acts they wish to perform are either moral or immoral. Most typically avoid acts they deem immoral in favor of acts they deem moral. This explains why we say things like "that's immoral" or "that's morally wrong." We say them because we seek to influence others' moral evaluations of the particular acts at issue. If we are successful at getting others to evaluate the moral status of the acts in the same ways we do, then often we also are successful at changing the behavior of those others.

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Although doing so is not in my nature, think of professors who try to motivate apathetic students to perform to the best of their abilities. Such professors certainly address practical matters such as the students' future career prospects, but they typically do not limit themselves to such matters. It is common for them to point to moral matters such as the effort the students owe both to their parents who are funding their education and to others who are not fortunate enough to have the same educational opportunities.

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When friends confront a drug addict in an effort to motivate the addict to seek professional help, they do not limit their discussions to the practical effects that drug use has on the addict's life. They also address the effects the drug use has on the addict's family, friends, coworkers, and others. They often point to things like the addict being unable to provide financial stability and other care for children or other dependents, causing considerable stress, anxiety, and depression in family and friends, and causing coworkers to do additional work that the addict should do but, because of the addiction, is unable to do.

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The preceding examples are riddled with moral judgments about what one owes to others. The professor claims that the students, because they use their parents' money and take competitively filled spots in universities that others could have taken, are obligated morally to give schoolwork their best efforts. The confronting friends claim the drug addict, because the addict is unable to satisfy various relational and work roles, is obligated morally to fight the addiction. In both cases, moral claims serve as tools through which individuals seek to exercise social control.

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Hume's sentiments-based theory, which this book's introduction describes, provides a satisfying account of the professors' and the confronting friends' efforts in the two examples. The professors urge the students to consider their circumstances more fully. By using reason, the professors seek to help the students obtain a fuller understanding of the contexts in which they take apathetic approaches to their schoolwork. The professors hope the

[1.47]



students will come to a more complete picture of who their apathy affects and how those parties are affected. The confronting friends use reason similarly, hoping for similar results. They hope the addict will come to understand better who the addict's drug use affects and how those parties are affected.

[1.48] Moving the students and the addict toward a better understanding of the circumstances in which they act, however, is not the professors' and confronting friends' ultimate goal. The ultimate goal is that the students and the addict have different sentiments from those they had prior to their better understandings of the circumstances at issue. Hopefully, they will have sentiments of approval for changing their behavior that they did not have prior to the professors' and friends' efforts. If they understand the circumstances in the same ways the professors and friends do, then their sentiments might produce the very moral obligations that the professors' and friends' sentiments produce. Perhaps it is unnecessary to add, however, that the students' and the addict's understandings of their circumstances might not change and, thus, their sentiments also might not change.

[1.49] The moral judgments individuals and nonstate entities use as social-control tools may or may not be true. In Humean terms, the moral sentiments that are the moral judgments may or may not stem from accurate understandings of the circumstances at issue. Although *ceteris paribus* I accept as true, because I have sentiments of approval for them, the professors' and the friends' moral claims, there are possible instances where my sentiments would change to disapproval. If I discovered that an apathetic student's parents coerced the student to pursue a university education when the student did not want to, my sentiments would deem that the student has no moral obligation to the parents regarding schoolwork. Regarding the obligation to others who are not fortunate enough to have the same educational opportunities, my sentiments would deem that the coercive parents, not the coerced student, violate an obligation to such people. If I discovered that the addict had to do additional work for a coworker, my sentiments would mitigate the addict's obligation to that coworker. If I learned that the addict's parents were abusive and the abuse contributed to the addiction, my sentiments would deem that the addict has no obligation to the parents regarding their stress, anxiety, and depression.

[1.50] Even in cases where the professors' and the friends' moral judgments are false, they still serve as social-control tools. One's claim need not be true in order for one to use it to seek a particular goal. I am writing this shortly after Special Counsel Robert Mueller issued his report on the investigation into Russian interference with the United States' 2016 presidential election.<sup>31</sup> Although the report does not exonerate President Trump or the 2016 Trump campaign, in an effort to sway public opinion about the president, both he and many of his supporters repeatedly say that it does. Producing an out-

come, not stating the truth, is the goal, and the claim being true is not a necessary condition for achieving the goal. Likewise, the professors' and the friends' goals are to change the students' and the addict's behavior. Their moral claims being true is not a necessary condition for achieving those goals.

This book, however, concerns when social control is justified. An instance of social control is justified only if the claims that support it are true. This is the case whether or not the instance of social control is moral in nature. Because the principal form of social control by individuals and non-state entities comprises moral judgments, that form is the focus of the remainder of the book. It will demonstrate how moral liberalism, with a basis in Hume's sentiments-based theory, determines the truth or falsity of moral claims, and it will apply moral liberalism to several practical matters. The next chapter begins that process by laying out moral liberalism's basic commitments.

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## NOTES

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1. This is not meant to suggest that there is a clear boundary that separates moral liberalism and political liberalism. There is more interconnectivity between the doctrines than expositions of them can capture readily. For more on this, see the closing paragraphs of chapter 3.

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2. Among the many works on paternalism are David Archard, "Paternalism Defined," *Analysis* 50 (1990): 36–42 and "Self-Justifying Paternalism," *Journal of Value Inquiry* 27 (1993): 341–52; Richard J. Arneson, "Mill versus Paternalism," *Ethics* 90 (1980): 470–89, "Joel Feinberg and the Justification of Hard Paternalism," *Legal Theory* 11 (2005): 259–84, and "Nudge and Shove," *Social Theory and Practice* 41 (2015): 668–91; Jessica Begon, "Paternalism," *Analysis* 76 (2016): 355–73; Samantha Brennan, "Paternalism and Rights," *Canadian Journal of Philosophy* 24 (1994): 419–39; Emma C. Bullock, "A Normatively Neutral Definition of Paternalism," *Philosophical Quarterly* 65 (2015): 1–21; Rosemary Carter, "Justifying Paternalism," *Canadian Journal of Philosophy* 7 (1977): 133–45; Sarah Conly, *Against Autonomy: Justifying Coercive Paternalism* (New York: Cambridge University Press, 2013); Gerald Dworkin, "Paternalism," *Monist* 56 (1972): 64–84 and "Moral Paternalism," *Law and Philosophy* 24 (2005): 305–19; Joel Feinberg, "Legal Paternalism," *Canadian Journal of Philosophy* 1 (1971): 105–24 and *The Moral Limits of the Criminal Law*, 4 vols. (New York: Oxford University Press, 1984–88), esp. vol. 3; Jason Hanna, "Libertarian Paternalism, Manipulation, and the Shaping of Preferences," *Social Theory and Practice* 41 (2015): 618–43 and *In Our Best Interest: A Defense of Paternalism* (New York: Oxford University Press, 2018); Douglas N. Husak, "Paternalism and Autonomy," *Philosophy & Public Affairs* 10 (1981): 27–46; and Heidi Malm, "Feinberg's Anti-Paternalism and the Balancing Strategy," *Legal Theory* 11 (2005): 193–212.

[1n2]

3. Dworkin, "Paternalism," 65.

4. *Ibid.*, 67.

5. Unless otherwise noted, throughout the remainder of this book phrases such as "harm to others" capture both actually harming others and significantly increasing the risk of harm to others.

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[1n4]

[1n5]

6. John Stuart Mill, *On Liberty*, ed. and intro. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing Company, 1978 [1859]), 9.

[1n6]

7. *Ibid.*

8. *Ibid.*

9. *Ibid.*, 74.

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[1n8]

[1n9]

[1n10]

10. I am not suggesting that Sara's and Keith's choices actually are bad for them. In fact, if I were a friend of each, I likely would support their life choices. My point, instead, is that Mill's antipaternalism acknowledges that individuals have the authority to live as they wish, provided they do not harm others, even if the ways in which they live are bad for them.

[1n11]

11. Regrettably, Mill includes in the incompetent category "those backward states of society in which the race itself may be considered in its nonage" (Mill, *On Liberty*, 10). He argues that, for such societies, "Despotism is a legitimate mode of government . . . provided the end be their improvement and the means justified by actually effecting that end. Liberty . . . has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion" (10). I give this part of Mill's position on paternalism no further attention as it is Mill's failed, and embarrassing, attempt to justify the British colonialism of his time. In that attempt, Mill assumes the truth of offensive and inaccurate stereotypes of colonized cultures.

[1n12]

12. *Ibid.*, 9.

[1n13]

13. *Ibid.*, 74; emphasis added.

[1n14]

14. See Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. and anal. H. J. Paton (New York: Harper and Row, 1964 [1785]) and *The Metaphysical Elements of Justice*, trans. and intro. John Ladd (New York: Macmillan Publishing Company, 1965 [1797]).

[1n15]

15. Works on autonomy permeate philosophy literature. For a sense of autonomy's importance in contemporary moral philosophy, see, in addition to the works in note 2, Richard J. Arneson, "Autonomy and Preference Formation," in *In Harm's Way: Essays in Honor of Joel Feinberg*, ed. Jules L. Coleman and Allen Buchanan (New York: Cambridge University Press, 1994), 42–75; John Christman, "Autonomy and Personal History," *Canadian Journal of Philosophy* 21 (1991): 1–24, "Liberalism, Autonomy, and Self-Transformation," *Social Theory and Practice* 27 (2001): 185–206, and "Relational Autonomy and the Social Dynamics of Paternalism," *Ethical Theory and Moral Practice* 17 (2014): 369–82; Ben Colburn, *Autonomy and Liberalism* (New York: Routledge, 2010); Richard Double, "Two Types of Autonomy Accounts," *Canadian Journal of Philosophy* 22 (1992): 65–80; Gerald Dworkin, *The Theory and Practice of Autonomy* (New York: Cambridge University Press, 1988); Marilyn Friedman, "Women's Autonomy and Feminist Aspirations," *Journal of Philosophical Research* 21 (1996): 331–40, "Feminism, Autonomy, and Emotion," in *Norms and Values: Essays on the Work of Virginia Held*, ed. Joram Graf Haber (Lanham, MD: Rowman & Littlefield, 1998), 37–45, and *Autonomy, Gender, Politics* (Oxford: Oxford University Press, 2003); Hyman Gross, "Privacy and Autonomy," in *Philosophy of Law*, ed. Joel Feinberg and Hyman Gross, second edition (Belmont, CA: Wadsworth Publishing Company, 1980), 246–51; Trudy Grovier, "Self-Trust, Autonomy, and Self-Esteem," *Hypatia* 8 (1993): 99–119; Thomas E. Hill Jr., *Autonomy and Self-Respect* (New York: Cambridge University Press, 1991); Joseph Kupfer, "Privacy, Autonomy, and Self-Concept," *American Philosophical Quarterly* 24 (1987): 81–89; Catriona Mackenzie, "Relational Autonomy, Normative Authority and Perfectionism," *Journal of Social Philosophy* 39 (2008): 512–33; Thomas May, "The Concept of Autonomy," *American Philosophical Quarterly* 31 (1994): 133–44; Diana T. Meyers, "Personal Autonomy and the Paradox of Feminine Socialization," *Journal of Philosophy* 84 (1987): 619–28; Diana Tietjens Meyers, "Feminism and Women's Autonomy: The Challenge of Female Genital Cutting," *Metaphilosophy* 31 (2000): 469–91 and "Feminism and Sex Trafficking: Rethinking Some Aspects of Autonomy and Paternalism," *Ethical Theory and Moral Practice* 17 (2014): 427–41; Marina Oshana, "How Much Should We Value Autonomy?" *Social Philosophy & Policy* 20 (2003): 99–126 and "Autonomy and the Question of Authenticity," *Social Theory and Practice* 33 (2007): 411–29; and Natalie Stoljar, "Informed Consent and Relational Conceptions of Autonomy," *Journal of Medicine and Philosophy* 36 (2011): 375–84 and "Relational Autonomy and Perfectionism," *Moral Philosophy and Politics* 4 (2017): 27–41.

[1n16]

16. Because all, or almost all, accept weak paternalism, unless otherwise noted, throughout the remainder of this book "paternalism" refers to strong paternalism.

[1n17]

17. Because readers likely are familiar with Mill's utilitarianism, and because this paragraph presents the only point I make about Mill's utilitarian commitments, I do not explain his utilitarianism in this book. For those who are unfamiliar with Mill's utilitarianism, see John

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Stuart Mill, *Utilitarianism*, ed. and intro. Ben Eggleston (Indianapolis, IN: Hackett Publishing Company, 2017 [1861]).

18. Dworkin, "Paternalism," 83. [1n18]
19. Dworkin, "Moral Paternalism," 311. [1n19]
20. Mill, *On Liberty*, 74–75. [1n20]
21. *Ibid.*, 9–12, 73–82. [1n21]
22. *Ibid.*, 73–74. [1n22]
23. *Ibid.*, 78. [1n23]
24. *Ibid.*, 79. [1n24]
25. Throughout this book, "societal permission" means the absence of laws or rules that prohibit given pursuits. [1n25]
26. I made this argument in nascent form in Earl Spurgin, "Moral Judgments, Fantasies, and Virtual Worlds," *International Journal of Applied Philosophy* 23 (2009): 272–73. [1n26]
27. In this context, "political" refers to governmental matters. The meaning of the term here is not that through which one might argue that everything is political. [1n27]
28. As do many other paternalistic rules and laws, the group's helmet rule has a nonpaternalistic element. In addition to controlling members for their own good, the rule protects the other members from the pains and sufferings caused by witnessing tragedies that helmets could have prevented. [1n28]
29. I use "moral right" rather than "legal right" because the areas in which the group rides typically have ordinances requiring helmets. Because of that fact, many might object to the point I make by using the helmet rule example. Objectors might argue that it is morally wrong to violate the law, and, thus, it is morally wrong not to wear a helmet. I do not subscribe to this view, but I will not argue against it here because, even if the objectors are correct, the example is a descriptively accurate account of my cycling group's view. The groups' members do not believe that whether or not one wears a helmet while riding is a moral matter. [1n29]
30. David Hume, *A Treatise of Human Nature*, analytical index L. A. Selby-Bigge, rev. and notes P. H. Nidditch, second edition (Oxford: Oxford University Press, 1978 [1739–1740]), 457. [1n30]
31. Robert S. Mueller III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, 2 vols., March 2019, <https://www.justice.gov/storage/report.pdf>. [1n31]

## *Chapter Two*

# **Moral Liberalism's Basic Commitments**

**[2.0]** As the preceding chapter suggests, autonomy considerations have been an important element in moral philosophy at least since Kant accorded it a supreme position in his theory. Many moral philosophers extol autonomy as an indispensable component of a satisfactory moral theory, while others challenge granting autonomy such an important position. Although they often disagree about what autonomy entails, liberals comprise a significant number of the former. Both moral liberalism and political liberalism are characterized by, or at least in large part by, their proponents' efforts both to afford autonomy conceptual space in moral and political theory and to bring it to bear on moral, social, and political matters. Liberals desire that societies acknowledge their members' autonomy and, to the extent possible, allow members to develop and exercise their autonomy.<sup>1</sup>

**[2.1]** Societies cannot afford autonomy the position that liberals wish them to unless their systems of morality prioritize autonomy. Moral liberalism is a system of morality that does just that. Its prioritization of autonomy produces three basic commitments that determine moral freedoms, rights, and duties. Those commitments provide plural societies with the best way to resolve morality's practical matters.<sup>2</sup>

**[2.2]** Autonomy is essential to moral liberalism because the doctrine does not identify and promote a single conception of the good life. It, instead, allows individuals to identify for themselves what living well means and, provided they remain within the boundaries established by moral liberalism's basic commitments presented in this chapter, allows them to pursue the conceptions of the good life they identify. Without autonomy, individuals cannot identify, nor can they pursue, their own conceptions of the good life.

Privacy works with autonomy, or, perhaps, is an essential ingredient of autonomy, because it provides values that are necessary for living well. No matter how individuals happen to define living well, they cannot live that way, or, at least, cannot pursue some aspects of living that way, unless they have the privacy to do so. At least some, and perhaps even all, of the values of privacy are necessary for individuals to pursue any conception of the good life.

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Moral philosophers have argued for a variety of values of privacy. Each one is associated with autonomy in that it is necessary, for at least some people, to live well.<sup>3</sup> The values fall into three broad categories.<sup>4</sup> Because some of the individual accounts in each category have significant differences, a proponent of a given account may object to placing that account in a group with the others in a specific category. My claim, however, is not that the individual accounts in each category are alike in all relevant respects, nor is it that no case can be made for placing a particular account in a category different from the one in which I place it. For example, I place Stanley I. Benn's account in the first broad category, but James Stacey Taylor groups it with Joseph Kupfer's account, which I place in the second category.<sup>5</sup> The guiding principle behind my categorization is to group together accounts that provide relevantly similar explanations of the value of privacy.

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The first category comprises those accounts that hold the value of privacy is that it allows us to separate our various relationships.<sup>6</sup> By sharing with person A information about oneself that one does not share with person B, one produces a more intimate relationship with A than with B. This category appeals to the common sense notion that typically one tells a close friend things one does not tell a mere professional colleague, and one tells a lover things that one does not tell even a close friend. We cannot demarcate such levels of closeness or intimacy without privacy. We use privacy to demonstrate to one another how close or intimate we are. By sharing more with A than with B, one demonstrates to A that A is a close friend, not just a professional colleague like B. Likewise, by sharing more with C than A, one demonstrates to C that C is more than just a close friend like A.

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Autonomy's connection to this value of privacy is straightforward. One cannot pursue one's chosen lifestyle without the ability to choose for oneself both with whom one has relationships and the relative intimacy of those relationships. It is hard to imagine a conception of the good life, though perhaps one is possible that does not require, or at least is not improved by, having certain kinds of relationships and not having other kinds. Julie, who wishes to become the best artist she can be, needs some relationships with others that are close enough for those others to give her honest, constructive feedback on her work. Conversely, Julie's pursuit of her chosen lifestyle likely would suffer from a close relationship with someone who repeatedly demeans art and artists. By giving her control over what she reveals about

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herself and to whom, privacy allows Julie to determine what kinds of relationships, if any, she has with others. She identifies those she believes can give her the kind of feedback she desires, and she makes them close enough to do so by sharing specific things about herself and her work.<sup>7</sup> The same control over what she reveals to others allows her to keep at an appropriate distance, or out of her life altogether, the person who demeans art and artists. A similar story can be told about any conception of the good life.

[2.7] The accounts in the second category connect directly privacy and autonomy.<sup>8</sup> According to those accounts, the value of privacy is that it helps us pursue our lives as we determine and to develop our own identities and conceptions of who we are or ought to be. One who is under the ever-present, watchful eye of another cannot develop one's own conception of how one wishes to live or what kind of person one is or wishes to be. Under such circumstances, one is subject to various forms of force or coercion, often real but sometimes only perceived, that prevent one from developing an autonomous self. Whether the force or coercion is real or only perceived, one develops a self that conforms to that force or coercion.

[2.8] Imagine an employer who, to the extent possible, monitors employees' every move. The employer uses every available surveillance technique, drug-testing procedure, and psychological test, and even enforces rules that prohibit a variety of behaviors away from work. Employees who face such circumstances are not free to pursue their lives as they wish. Even if the employer does not care about a particular behavior, the employees are justified in worrying that the employer might. The employees are likely to conform their lives to the actual or perceived desires of their employer. They have lost at least partial control over how their lives proceed and over how they conceive of themselves and the kinds of persons they wish to be.

[2.9] According to the accounts in the third category, the value of privacy is that it provides a sphere in which we can behave in various ways, share ideas, express our feelings, and comment on others without fear of judgment.<sup>9</sup> Given that so much of our lives is open to judgment from others, privacy provides a welcome respite from fear of others' control. Chapter 1 argues that moral judgments are the principal form of control that we exercise, or attempt to exercise, over each other. Because privacy exempts us from those judgments, as well as from various nonmoral judgments that also are controlling, it frees us to try out new ideas, thoughts, and views. Having the ability to try out such things is necessary for determining, and pursuing, our own conceptions of the good life.

[2.10] Consider the lives of university professors. Much of our lives, both our actions and our ideas are judged by others. Students, peers, and administrators judge our teaching, research, and service. Families and friends judge such things as whether we are too involved in our work, make adequate time for them, and devote appropriate attention to other important aspects of life.



When privacy reigns, however, we can relax. This relaxation is both literal and figurative. We can relax physically and mentally by not expending the energy that we normally expend when we are concerned about how others view us. We can relax also in the sense that we can try out new ideas, thoughts, and views without fear in safe, hospitable contexts. Doing so is necessary for us to determine the kind of persons we wish to be and the kinds of lives we wish to pursue. Without the ability to make those determinations, we live others' conceptions of the good life, not our own.

Elsewhere, I argue that none of the values the three categories identify, by itself, captures the true value of privacy. The true value is multifarious and contextual.<sup>10</sup> In order to identify the value of privacy, we must look for its multiple aspects in the particular context in question. No single value or set of values is sufficient for all cases. The value of privacy for a person *qua* client in psychotherapy may be quite different from the value for a person, perhaps even the same person, *qua* employee or *qua* citizen in a liberal democracy. Moreover, the value in each of those contexts has multiple aspects, many of which may or may not come into play for a particular person. The value of privacy varies according to both the context in which it is considered and the circumstances a particular person brings to that context.

We have very good reasons to accept this multifarious and contextual view of the value of privacy. The values of many things we treasure and promote are multifarious and contextual. Consider the value of education. Although certainly there are overlapping aspects, the value of education for a child from a poor, uneducated, rural family is quite different from the value for a child from a wealthy, educated, Manhattan family. Although education can help both have better lives, it also may be the way the former can escape poverty. The latter needs no such escape. Given that, it would be quite strange for us to promote education as something all people should pursue for exactly the same reasons. Even though many reasons likely apply to everyone, not all do. It would be equally strange to suggest that only the reasons that overlap all cases are part of the real value of education. Doing so would have the potential of recognizing only the reasons that apply to the elite as part of the real value of education. That would be undesirable both on principle and in practice. There are no justified grounds for limiting the reasons we consider for the value of anything to only those reasons that apply to the elite. Doing so also could cause us to downplay, or even ignore, reasons that have a good chance of motivating those who desire to overcome their current situation.

Likewise, many things we secure as rights are multifarious and contextual. Consider the value of religious freedom. The value for an adult who is a member of an oppressed religion in a country controlled by a ruthless dictator is quite different from the value for a teen in a religiously free country who is coming of age in a family that wants to indoctrinate the teen into their

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religion. In the former case, the value primarily involves avoiding the physical, mental, and political harm that is perpetrated by the oppressive regime. In the latter case, the value primarily involves the teen's ability to develop the teen's own interests, priorities, and life goals without coercion from others. In both cases, religious freedom has great value. Aspects of the value overlap, but are not identical, in the two cases.

**[2.14]** The preceding examples demonstrate that privacy is in good company when it comes to providing an account of its value. Like almost everything that is important enough for us to promote or secure as rights, it eludes a simple description of its value. We can determine its value only by considering the context and the many aspects it comprises.

**[2.15]** Moral liberalism's basic commitments capture the multifarious and contextual value of privacy. They allow, to the extent possible, individuals to determine for themselves, and to pursue, their own conceptions of the good life. They do this by respecting individuals' privacy and the value privacy affords them.

**[2.16]**

## LIBERTY OF INTERNAL STATES

**[2.17]** There is perhaps no more important aspect of autonomy than the liberty of internal states. Without control over their own internal states, persons lack the capacity to determine for themselves, and pursue, the kinds of persons they wish to be. That capacity is a necessary condition for autonomy.

### **[2.18]** Mental States

**[2.19]** Mental states on which individuals do not act, and do not fail to act as they should because of, obviously fall under the internal-states umbrella.<sup>11</sup> Nothing is more internal to individuals than are their fantasies, emotions and feelings, beliefs and attitudes, and desires and tastes. They help individuals determine the kinds of persons they are and the kinds of persons they wish to be. Without liberty to have, and to examine, their mental states, individuals lack a necessary condition for being autonomous.

**[2.20]** Suppose that Edwin is a white, heterosexual male and is the manager of a large corporation's accounting department. Edwin has a particular preference regarding the company he keeps during his leisure time. Other than when he is at home, or on a family outing, with his wife and daughters, he prefers to be around other white, heterosexual men. He enjoys how such men interact when they are together and not in the presence of women and others unlike them. The "pissing contests," off-color jokes, and "locker room talk" are real pleasures to him. No one, not even his family, knows that Edwin has this preference as he has never discussed it with anyone. He also takes special care to make sure that his preference does not influence his professional

behavior. He would never interact with his coworkers, those he manages, his superiors, or anyone else with whom he comes into contact professionally in the ways he would if he were with a group of only like men. Perhaps most importantly, his preference does not affect his hiring decisions, his evaluations of those he supervises, or how he assigns projects within his department. Edwin, in fact, makes concerted efforts to recruit diverse pools of candidates for open positions within his department and to hire for diversity when possible. His efforts have garnered praise from the corporation's diversity officer.

As long as the preceding circumstances hold, Edwin's preference falls under the internal-states umbrella. As such, Edwin has complete freedom regarding his preference. Even though that particular mental state appears inconsistent with at least some of his other beliefs, or, if not inconsistent with other beliefs, at least inconsistent with some of his actions, Edwin should not be subjected to social control, in the form of moral judgment, with respect to that mental state. Provided that Edwin does not act on his preference, moral liberalism does not deem it morally wrong.<sup>12</sup> Despite it likely being objectionable to many, the preference falls within Edwin's autonomy. The preference is part of what makes Edwin the kind of person he is, and it is part of Edwin's autonomy to determine for himself whether he is the kind of person he wishes to be. It falls within his autonomy to evaluate whether the preference is the kind of preference he wants to have, and, if it is not, it is up to him to take the necessary steps to change that preference.

Hume's sentiments-based theory explains well, and justifies, this aspect of moral liberalism. Edwin's preference is one of his many sentiments. Should he choose to evaluate the preference, that evaluation would proceed like the evaluation of any other sentiment. He would use reason to understand better various facts associated with his preference. This includes, but is not limited to, determining whether the behavior he enjoys harms others, causes him to interact badly with his family and women in general, affects how he acts professionally, or is inconsistent with any of his deeply held beliefs. If reason shows Edwin that any of those things are true, his sentiment likely would change. Given that Edwin chose to evaluate the preference, which, because only sentiments can move persons to act, itself is the result of a sentiment, after such a discovery, he likely would not find the behavior at issue as pleasurable as he did prior to the discovery.

Edwin need not proceed alone in this evaluation. He can seek out others' views in order to learn more about the relevant facts. Those others might be able to point to matters about which he is unaware. A close female friend might explain that, after Edwin spends an evening with his male friends, he acts around her in ways that make her uncomfortable. Edwin's wife might inform him that their youngest daughter asked, "All Daddy's friends are men so should mine all be girls?" A confidante at work might tell Edwin that the

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women and people of color whom Edwin supervises are suspicious of him because he never speaks of women or nonwhite friends. Learning any of these, or similar, facts likely would spawn a change to Edwin's sentiment. He likely no longer would experience the same pleasure from the behavior in which he takes part with men like him.

[2.24] Evaluation-induced changes to sentiments need not be complete. In the 1990s, there was a movement, often associated with Diana, Princess of Wales, to ban the use of antipersonnel landmines.<sup>13</sup> The movement bore fruit on March 1, 1999, when the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, commonly known as the "Ottawa Convention" or "Mine-Ban Treaty," went into effect.<sup>14</sup> I was thrilled about the treaty as I have strong sentiments of disapproval for the maiming and death of innocent children, farmers, and others who happen to step on mines after or during military conflicts. I was thrilled, that is, until I learned that the United States was not a signatory to the treaty.<sup>15</sup> I had a strong sentiment of disapproval for my country's position, as well as many other strong, negative sentiments about those government officials who made the decision not to join the treaty.

[2.25] My sentiments moderated somewhat, however, when I learned why the United States did not join the convention. I learned that a landmine field constitutes a significant line of defense protecting South Korea from possible military excursions into its territory by North Korea. The landmines are important to the defense of South Korea because North Korea has almost double the number of military personnel stationed near the border between the two Koreas as do South Korea and the United States.<sup>16</sup> After I gained this additional knowledge, my negative sentiments about both the United States' position and the government officials who determined that position softened to some degree. I still have those negative sentiments, but they are not as strong as they once were. A similar thing could happen to Edwin and all others who choose to evaluate their sentiments.

[2.26] Individuals' mental states fall under the internal-states umbrella only if individuals do not act on them. If Edwin acts on his preference, it no longer is insulated from moral judgment. Suppose that Edwin's preference for the company of white, heterosexual men leads him to discriminate in his hiring, how he evaluates those he supervises, and how he assigns projects within his department. He does everything he can to avoid hiring women, people of color, and those who do not share his gender and sexual orientation. If he cannot avoid hiring persons from the preceding groups without breaking the law, he downplays their accomplishments and efforts as they work under him. He also assigns them the projects that are least likely to garner the attention of others in the corporation who might offer them promotions into higher positions. Under those circumstances, Edwin's preference is not an internal state and does not have the blanket immunity from moral judgment

that internal states have. It now falls into the external acts category and is subject to any moral judgment that is justified by the considerations the next section describes.

The reason that, under the preceding circumstances, Edwin's preference loses internal state status is that it is part of causal chains that lead to external acts. Whenever an act is subject to moral judgment, the parts of the causal chain that lead to that act also are subject to moral judgment. Suppose a white police officer shoots and kills an unarmed black man. If an investigation demonstrates that the shooting was unjustified, then the officer's act is immoral. If we find that the officer's racism was part of the causal chain that led to the unjustified shooting, then that racism also is immoral.

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The preceding might suggest to many readers this implication that they reject: according to moral liberalism, the officer's racism is not immoral unless it leads to an immoral act. It is true that internal states, even if objectionable, are not subject to moral judgment. Although many readers likely abhor this position, I ask for their patience regarding my defense of it. Chapter 5 begins that defense and chapter 6 continues it through its treatment of fantasies.

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## **Bodily States**

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Mental states are not the extent of internal states. Although they are unlike mental states in that they are observable, bodily states that do not affect others also are internal states. Bodily states include health and fitness, bodily pleasures, and risks to their own bodies that individuals choose to take or avoid. Significant freedom with respect to those states is necessary for the autonomy to choose, and pursue, conceptions of the good life.

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Whereas individuals' liberty of mental states primarily is associated with the part of autonomy that allows them to determine the kinds of persons they wish to be, individuals' liberty of bodily states primarily is associated with their ability to pursue the kinds of lives they wish to have. A given lifestyle requires and/or produces certain bodily states and, thus, that lifestyle is not open to individuals unless they are free to pursue, and have, the bodily states associated with the lifestyle. Precluding individuals from pursuing a given lifestyle infringes on their autonomy.<sup>17</sup>

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I return to cycling for an obvious example of how individuals must be free with respect to bodily states in order to pursue lifestyles of their choosing. The serious cycling I do requires me to take certain risks with my body. Whenever I am on the road, I risk injury or death from my attention lapses, road conditions such as unseen potholes or cracks, environmental factors such as wildlife darting across the road, and automobile drivers' mistakes, distractions, and hostility to cyclists. I simply cannot pursue cycling unless I

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am free to take those risks with my body. Such freedom is a necessary condition for me to pursue the lifestyle I wish to have.

[2.33] Suppose Crystal loves cigars. She frequents cigar bars and smokes cigars whenever she can practically and legally. Crystal's lifestyle has significant potential to produce undesirable bodily states such as pulmonary disease, lung cancer, and heart disease. Without the freedom to risk having such bodily states, Crystal's chosen lifestyle would not be open to her. If that lifestyle is closed to her, Crystal's autonomy is infringed.

[2.34] Individuals' liberty of bodily states, however, is not as broad as is their liberty of mental states on which they do not act. Unlike such mental states, bodily states necessarily involve the external world. Doing or not doing specific things produces and/or requires certain bodily states. If those bodily states affect directly, or have significant potential to affect directly, others, then they are, or are parts of, external acts. As such, they fall within the next section's subject and, as that section demonstrates, may or may not fall within individuals' liberty.

[2.35] If those bodily states do not affect others directly, then individuals have complete freedom with respect to them unless the bodily states prohibit individuals from fulfilling their moral obligations. As the last section of this chapter demonstrates, moral liberalism does not concern only autonomy. It also prescribes many obligations. Although I leave to the last section a fuller treatment of moral obligations, it is easy to find examples of bodily states preventing individuals from fulfilling their obligations.

[2.36] Chris is a professional athlete who commits contractually to report to his team's preseason training camp at a specified weight and fitness level. Assuming Chris was uncoerced and entered the contract freely, he has a moral obligation to report to camp according to the contract's stipulations.<sup>18</sup> If he reports generally unfit and carrying excessive weight, then those bodily states prevent Chris from fulfilling his moral obligation. As such, Chris's bodily states at issue do not fall into the internal states category.

[2.37] Sally chose freely to become a mother. In so choosing, she committed herself to many moral obligations that involve her child. Some bodily states would prevent her from fulfilling some of those obligations. This would be the case if, say, her body was so deteriorated from drug use that she could not care for her child. That bodily state would not fall into the internal states category, and lifestyles that would produce the bodily state are not open, morally, to her. This does not mean that all lifestyles that include drug use are closed to her. It means only that those lifestyles that include the kind of drug use that produces the bodily state at issue are closed to her.

[2.38] I chose freely to have pets. Since then, I have been the "pet parent" to varying numbers of rescued dogs and cats. By adopting them, I took on the moral obligation to care for them. Certain bodily states would prevent me from fulfilling that obligation. An obvious one would be my death resulting

from suicide. One might argue that I fulfill the obligation if I arrange for someone else to care for them after my suicide. Although that argument has merits, I argue, perhaps controversially, that my obligation requires *me* to care for my pets as long as I am mentally, physically, and financially able to do so. Turning their care over to another person is not relevantly similar to arranging for a caretaker while I am traveling. If, however, my desire to commit suicide stems from, say, my desire to end my pain and suffering caused by an incurable disease or condition, then arranging for my pet's care after my suicide is not relevantly different from arranging for their care should something unexpected happen to me that prevents me from caring for them.<sup>19</sup>

## LIBERTY OF EXTERNAL ACTS

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Individuals having control over their internal states is not the only necessary condition for them to be autonomous. They also must have significant freedom with respect to their external acts. Like bodily states, without that freedom, they cannot determine for themselves, and pursue, the kinds of lives they wish to have. Whereas not all bodily states have potential to affect directly others, all external acts have such potential. This does not mean that all external acts actually affect others, but, rather, it means affecting others always is a possibility. Given that potential, the freedom that moral liberalism affords external acts falls quite short of the freedom it affords internal states, especially to mental states on which persons do not act.

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The potential to affect others comprises many classifications. For given acts, the probability of affecting others could be any percentage, but, for simplicity, I divide the probabilities of acts affecting others into *likely* or *unlikely* and sometimes attach to them modifiers such as “highly” or “extremely.” The acts’ effects on others could be anything from extremely good to extremely bad, but I divide them into *significant* or *insignificant* and, again, sometimes attach to them modifiers. Other than in the following subsection, this chapter considers only bad effects because, although there are exceptions to this, doing good for others typically is not controversial.

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It perhaps is unnecessary to admit that neither determining whether effects are likely or unlikely nor determining whether they are significant or insignificant always are easy tasks to complete. The example of Edwin who enjoys “pissing contests,” off-color jokes, and “locker room talk” with other white, heterosexual men illustrates why. Suppose Edwin is with a group of men in a private place, such as a house or secluded campsite, and only he and the other men are present. In such a case, their behavior clearly is extremely unlikely to affect others. If, however, the group is in a public place, such as a bar or restaurant, how likely their behavior is to affect others is less clear.

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The likelihood depends not only on whether others happen to be within earshot when members of the group say offensive things but also on whether others who happen to be within earshot actually are the sorts of people who would be affected by the group's behavior. Others may or may not enjoy the same kinds of behavior that Edwin enjoys. Even in cases where we know the group's behavior affects others, it is difficult to know just how great or small is the effect. Not all people who are affected by offensive behavior are affected similarly. One person might find the offensive behavior a mild nuisance that is easily shrugged off, while another might find it an intolerable outrage that haunts that person for days or weeks.

**[2.43]** By addressing external acts through the described categories, I do not deny or overlook the preceding difficulties. I, instead, use it as an imperfect method for developing moral liberalism's general positions on external acts. Those general positions set the stage for examining the difficult issues in later chapters' practical matters.

#### **[2.44]** Doing Good for Others

**[2.45]** Although addressing controversial cases of doing good for others is beyond this chapter's goals, at least some of those cases involve corresponding bad effects, not necessarily caused by the original actors, that constitute more significant moral issues than do the good effects. An actual example from the news demonstrates well this point.

**[2.46]** Recently, news agencies made the public aware of US Border Patrol agents emptying water containers that good Samaritans leave for persons who illegally cross the border into the United States in dangerously hot and dry conditions. Clearly, some people believe that the good effect, providing water to such people, is wrong. Generally, they believe the Border Patrol agents are right to dispose of the water because providing water encourages people to cross the border illegally. Others, including this author, believe the good Samaritans are right to provide the water, the agents are wrong to dispose of it, and the agents' superiors are wrong to order, or condone, the agents' actions. People do not deserve to die of thirst simply because they cross a border illegally to escape whatever intolerable circumstances they leave behind.

**[2.47]** The point of describing this example is not to examine the merits of the opposing sides' arguments, though I believe the good Samaritans are in the right and I support their actions. The point, rather, is to highlight the fact that the good effect, leaving the water, does not constitute the real moral issue. The real issue is the bad effect. Disposing of the water clearly harms those who desperately are in need of water. Because that harm is extremely significant and highly likely, the burden of proof is on those who believe that the good Samaritans are wrong and the agents are right to dispose of the water.



Providing water to thirsty people, *ceteris paribus*, is a moral act, so those who think the good Samaritans are wrong must demonstrate that the *ceteris paribus* clause does not hold. Their burden of proof is aggravated by the fact that, *ceteris paribus*, contributing to persons' death due to lack of water is immoral.

### Unlikely, Insignificant Effects

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Moral liberalism affords individuals considerable liberty with respect to acts that are unlikely to affect others, and, if they do affect others, they do so in insignificant ways. This liberty is on par with the freedom moral liberalism affords mental states on which individuals do not act. Similarly to such mental states, the acts at issue constitute essential areas of individuals' autonomy. Without freedom to pursue those acts, individuals have no autonomy at all. Every act has at least an extremely unlikely probability of affecting in insignificant ways others beyond the actor. Given that, individuals cannot pursue the kinds of lives they wish unless they have societal permission to do so. Needing societal permission to pursue lives that include acts that are extremely unlikely to affect others in insignificant ways is too much for liberals and nonliberals alike. It smacks of, or perhaps even is, authoritarianism.

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It is a hot summer day and I am quite chilly due to the air conditioning level in the coffee shop in which I am writing. As I typically do when I am in overly air-conditioned establishments, I slip on the jacket I carry in my backpack. It seems that slipping on the jacket has no possibility of affecting anyone else. Even this act, however, has more than a zero probability of affecting others. One of the baristas might notice me slipping on the jacket, realize the air conditioning is too strong, and adjust the thermostat. In that case, an act that seems to affect only me actually affects the barista. Although the effect is insignificant because monitoring the thermostat's setting is part of the barista's job, it is an effect nevertheless. If even acts like this one have more than a zero probability to affect others in insignificant ways, individuals, if they are to have any autonomy at all, must have freedom with respect to the type of acts at issue in this subsection.

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### Likely, Insignificant Effects

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Many insignificant effects are not at all unlikely. In many cases, individuals know, or should know, that given acts are likely to have insignificant effects on others. Even in such cases, moral liberalism affords individuals considerable freedom with respect to such acts, but not to the same extent as it does the acts the preceding subsection addresses. Whether individuals are free to

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act in given ways depends on whether the goods the actors obtain from those acts outweigh the costs the acts impose on others.

[2.53] Suppose that I ask the barista to adjust the thermostat. I know that I am producing an insignificant effect for the barista. The barista will have to come out from behind the counter at one end of the shop and walk to the other end where the thermostat is located. This is a cost to the tired barista who would rather continue leaning against the counter until a customer orders a drink or pastry. The good I obtain by asking the barista to adjust the thermostat, however, outweighs the cost to the barista. Again, part of the barista's job is to monitor the shop's temperature and adjust the thermostat accordingly. An appropriately comfortable environment is part of what my, and other patrons', purchases in the shop should procure. Moral liberalism grants me the liberty to ask the barista to adjust the thermostat, and it makes my act exempt from moral judgment.

[2.54] A change to the preceding example produces a different conclusion. Suppose I overheard several patrons ask the barista to adjust the thermostat to a more forceful setting. I am comfortable and do not want the setting changed. If I ask the barista not to change the setting, I know my act will affect, insignificantly, the barista. I know the barista will have the discomfort of not being able to please all the customers currently in the shop. Even though such discomfort is insignificant in that it is a part of working in service industries, it outweighs the good I could obtain by asking that the thermostat remain unchanged. If the barista gives me what I want, all I obtain is feeling comfortable in my short-sleeved shirt. I can obtain the same comfort simply by slipping on my jacket. Acting so as to affect the barista, when I could obtain the same comfort without affecting the barista, is something that moral liberalism does not grant me the liberty to do. That act is not exempt from moral judgment. My friend is justified in saying to me, in a morally scornful way, "You're being an asshole. Leave the barista alone and put on your jacket."

### [2.55] **Unlikely, Significant Effects**

[2.56] Moral liberalism finds perhaps its most challenging cases in acts that are unlikely to affect others, but, if they do affect others, they do so in significant ways. On the one hand, moral liberalism seems to afford individuals the autonomy to act in ways that are unlikely to affect others. On the other hand, moral liberalism seems not to allow individuals to cause significant, bad effects, such as harm, from which others must suffer. Whether moral liberalism insulates from moral judgment a specific act of the sort at issue depends on the context in which the individual performs the act. Among the relevant contextual matters are whether it is reasonable for others to be affected significantly by what the actor does, whether the actor has some sort of

obligation to the affected persons, and whether the good for the actor outweighs the bad effects for others.

Like many writers, I frequently gaze into the distance as I formulate my arguments and sentences. One day, I gazed out the coffee shop's windows and saw two of my friends walking side by side. They held hands and looked at each other in romantic ways that confirmed instantly my suspicion that they are having an affair. When they glanced in the shop's windows, their faces turned from displaying happiness to conveying horror. I had suspected for months that they were seeing each other, and, because one of them is married, I assumed they did not want anyone to know.

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My act of gazing out the windows was unlikely to affect anyone, but it affected significantly two of my friends.<sup>20</sup> I suspect all would agree, however, that I was not acting immorally when I gazed out the windows. Moral liberalism captures this conclusion by taking into account various aspects of the context. Doing so reveals that my act did not constitute the entire cause of the bad effect for my friends. My act was only a small part of the cause of my friends' horror. The far greater part was the pair's public display of affection. Presumably they did not want others, especially friends and colleagues, to know of their affair. Given that, they bear the real responsibility for their horror that followed my witnessing their behavior. It, in fact, actually is unreasonable of them to be horrified at all. They should have known that a public display of affection might cause something like this to happen. In reality, I suspect they did know but had a momentarily lapse in discipline. If so, their horror actually might be at realizing their carelessness.

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My witnessing the pair's affection in a different context leads to a different conclusion. Suppose one of them had borrowed my hiking poles, and, after she told me she was ready to return them, I indicated that I would stop by on my way to campus one day and pick them up. Because I had no immediate hiking plans, a couple of weeks had passed before I stopped at her house to retrieve the poles. After knocking, I determined she was not at home. Knowing that she keeps a key hidden on her back patio, I decided she would not mind if I let myself in. When I did, I found my friends desperately trying to clothe themselves. In this case, it was unlikely that I would pick the day and time they happened to be having sex in the middle of the afternoon to let myself into my friend's house. Despite being unlikely, my act significantly affected my friends.

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In this context, my act is subject to moral judgment. Unlike the previous context, my act is the greater part of the cause of their horror. Although my friends' affair is part of the cause, because they were not carrying out their affair in public, my entering the house is the greater part.<sup>21</sup> It is reasonable for them to think their behavior in my friend's house would be known only to them, and, thus, it is reasonable for them to be horrified when someone else witnesses their behavior. I, moreover, am responsible for walking into some-

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one's locked house without that person's knowledge and consent. Even in the case of a friend, barring an emergency situation, I should have some kind of permission, either explicit or tacit, before entering another's locked house.

**[2.61]** The takeaway from the preceding is that moral liberalism provides no simple formula for dealing with the acts at issue in this subsection. Analyses of the contexts in which individuals act determines whether moral liberalism insulates the acts from moral judgments. In good Humean fashion, reason carries out the analysis and provides the appropriate understandings of the contexts. Sentiments pass judgment on those understandings.

## **[2.62]** Likely, Significant Effects

**[2.63]** Compared to the acts that the preceding subsection addresses, moral liberalism has an easy time with acts that are likely to affect others in significant ways. Typically, moral liberalism does not grant individuals the autonomy to act in ways that are likely to produce significant, bad effects for others. This follows closely Mill's harm principle. As chapter 1 explains, society has jurisdiction over individuals' acts when those acts harm others. Although society might not be justified in controlling a given act that harms others beyond the actor, individuals do not have complete autonomy over such acts.

**[2.64]** Mill's harm principle also delineates the cases where society is not justified in controlling individuals' acts that harm others. As chapter 1 explains, society cannot control, justifiably, acts that harm others who consent to the possibility of being harmed. Whereas society can control a student who runs through the hallways tackling random people he encounters, society cannot control the same student who tackles opponents while playing in an American-style football game. In both cases, the students' acts are highly likely to harm significantly at least some other people.<sup>22</sup> The difference between them is that people do not consent to possible harm from tackling by being in a school hallway, while those who choose to play in a football game consent to such possible harm.

**[2.65]** Moral liberalism also takes into account whether harmful acts violate actors' obligations or the harmed parties' rights. This follows Mill who writes of a case of self-harm, "When, by conduct of this sort, a person is led to violate a distinct and assignable obligation to any other person or persons, the case is taken out of the self-regarding class and becomes amenable to moral disapprobation."<sup>23</sup> The student who tackles people in the hallway undoubtedly violates the school's code of conduct that, because the student chose to join the institution, obligates the student to act, or not act, in particular ways. The student also violates others' rights to be treated as the code of conduct dictates. The combination of the student causing significant harm to others and the student violating the student's obligations and others' rights is sufficient for society to be justified in controlling the student's acts.

The same student, however, likely caused harm to others that society is not justified in controlling because the student violated no obligations or rights. By applying for admission and accepting the school's offer, the student harms those whom the school could have admitted instead. This harm is beyond society's justified control because the student had no obligation not to apply, nor did others have a right that the student not participate in the competition for admission to the school.

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The conclusion would be quite different if the student, or others, cheated or committed fraud during the admission process. Recently, an admissions cheating scandal has shaken, though probably not surprised, many in the United States' academic community.<sup>24</sup> Parents paid as much as \$1.2 million to consultants who fabricated applicants' backgrounds, bribed coaches to "recruit" applicants who actually are not athletes, and bribed test monitors. Various parties violated both their obligations to participate in the admissions process honestly and others' rights to compete in a process that is free of fraud. Society is justified in controlling all of the parties involved in the scandal.

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The type of harm at issue shifted as this subsection's examples proceeded. The harm began with the physical harm the tackler caused and ended with the nonphysical harm the admissions cheaters caused. It is a matter of considerable debate among liberals what kind of harm justifies society controlling individuals' acts. Some consider only physical harm to be relevant, while others also include nonphysical harms such as psychological and economic. While many place Mill in the former camp, I am firmly in the latter.<sup>25</sup> This explains why, unless I am addressing Mill's harm principle, I prefer to use the verb "affects" rather than "harms." The latter term immediately conjures in many people's minds physical harm, while the former does not. Later chapters of this book address various kinds of effects that individuals' acts might cause.

[2.68]

## OBLIGATIONS AND UNDUE BURDENS

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Taken together, the liberty of internal states and the liberty of external acts provide individuals with robust freedom. That robust freedom, however, does not grant individuals the absolute autonomy always to act as they please. As previous sections point out, individuals have many moral obligations that frequently restrict, or even prohibit, their acts. The sources of specific obligations are many, but perhaps the most notable is the more general obligation not to create undue burdens for others. Moral liberalism subjects individuals to moral judgment when their acts so burden others.

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Moral liberalism imposes on individuals the obligation not to create undue burdens for others because doing so is necessary to respect, and promote,

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persons' autonomy. If individuals are saddled with burdens they do not deserve, they cannot pursue, or at least cannot pursue as readily, their conceptions of the good life. The time and effort they must devote to undue burdens takes away from their efforts to live as they wish.

[2.72] Determining whether given burdens are undue is a complex matter. There is no simple definition or formula by which we can easily separate undue burdens from those that are not.<sup>26</sup> This is because whether a burden is undue is not a function of how great or small the burden. A small burden might be undue, and a great burden might not. Whether a burden is undue, instead, is a contextual matter. It is a function of the parties' roles and activities in the context in which the burden is imposed.

[2.73] It is easy to classify some burdens. Grading papers is a burden, but, because it is a justifiable part of the profession I chose, it is not undue. Given my discipline, there are good reasons to require my students to write papers and, thus, good reasons to burden me with grading those papers. Requiring that I teach a biology course, however, would impose on me an undue burden. Because I am not trained in biology, there is no good reason to burden me with teaching such a course.

[2.74] Patients' difficulties describing their symptoms is burdensome for physicians but justifiably are a part of physicians' chosen profession. Because patients typically lack medical expertise, it is reasonable to expect they will have such difficulties. This reasonable expectation provides a good reason to burden those who choose to become physicians with enduring those difficulties. Requiring physicians to provide religious counseling, however, would be an undue burden. Because physicians likely are not trained in religion, there is no good reason to burden them with helping patients work through religious matters.

[2.75] The burdens in the preceding cases are easy to classify, but that ease has nothing to do with how great or small the burdens. The ease stems from the fact that the burdens clearly are, or are not, justifiably part of the roles and activities at issue. Yet another example illustrates why burdens' intensity does not determine whether they are undue. On a daily basis, a professor sends a university administrator numerous email messages ranting about various matters. The messages are unhelpful and unnecessary because all of the professor's grievances already have been adjudicated through the university's grievance procedures, and the professor has exhausted all avenues of appeal. The messages burden the administrator, but the burden is rather small because the administrator simply can delete the messages without reading them. Despite the burden being small, it is undue. Tolerating such behavior is not a justified part of the university administrator role.

[2.76] Many far greater burdens, however, justifiably are part of the university administrator role. One such burden involves professors' academic freedom. Students, parents, community leaders, politicians, social commentators, and

many others often complain to university administrators about particular professors' controversial views. Fielding and responding to those complaints is extremely burdensome. Administrators often must deal with irate or irrational people, and they must attempt the arduous task, often a Sisyphean challenge, of explaining, and demonstrating the importance of, professors' academic freedom. Despite how great this burden is, it justifiably is part of the professional role university administrators accept voluntarily.

Unfortunately, cases of individuals creating burdens for others typically pose greater challenges than do the described cases. Their contexts often involve roles and activities the justifiable demands of which are difficult to determine. Later chapters of this book address a variety of roles and the obligations that accompany them.

## NOTES

1. The qualifier, "to the extent possible," acknowledges that there are many cases where moral liberalism does not grant individuals the autonomy to act as they please. As this chapter proceeds, it demonstrates the kinds of acts that moral liberalism precludes individuals from pursuing.

2. Chapter 3 argues for this position.

3. I actually hold the stronger position that each value is necessary for all persons to live well. I do not argue for that position here because my argument succeeds or fails on the truth or falsity of the weaker claim that each value is necessary for at least some persons to live well.

4. I first made this categorization in Earl W. Spurgin, "The End of Romance and the Value of Privacy," *Public Affairs Quarterly* 20 (2006): 250–53.

5. James Stacey Taylor, "Privacy and Autonomy: A Reappraisal," *The Southern Journal of Philosophy* 40 (2002): 591.

6. Among those who hold such accounts are Stanley I. Benn, "Privacy, Freedom, and Respect for Persons," in *Today's Moral Problems*, ed. Richard Wasserstrom (New York: Macmillan Publishing Company, 1975), 1–21; Charles Fried, *An Anatomy of Values: Problems of Personal and Social Choice* (Cambridge, MA: Harvard University Press, 1970), chap. 9; Robert S. Gerstein, "Intimacy and Privacy," *Ethics* 89 (1978): 76–81; Adam D. Moore, "Privacy: Its Meaning and Value," *American Philosophical Quarterly* 40 (2003): 215–27; and, James Rachels, "Why Privacy Is Important," *Philosophy & Public Affairs* 4 (1975): 323–33.

7. This assumes Julie's chosen others reciprocate by choosing to enter the kind of relationship Julie desires. They have the same control over their relationships that Julie has over hers. Privacy allows them to demarcate the kind of relationship, if any, they wish to have with Julie.

8. Advocates of this kind of account include J. Angelo Corlett, "The Nature and Value of the Moral Right to Privacy," *Public Affairs Quarterly* 16 (2002): 329–50; Hyman Gross, "Privacy and Autonomy," in *Philosophy of Law*, ed. Joel Feinberg and Hyman Gross, second edition (Belmont, CA: Wadsworth Publishing Company, 1980), 246–51; Joseph Kupfer, "Privacy, Autonomy, and Self-Concept," *American Philosophical Quarterly* 24 (1987): 81–89; W. A. Parent, "Privacy, Morality, and the Law," *Philosophy & Public Affairs* 12 (1983): 269–88; and Jeffrey H. Reiman, "Privacy, Intimacy, and Personhood," *Philosophy & Public Affairs* 6 (1976): 26–44.

9. The following philosophers' accounts fall in this category: Jeffery L. Johnson, "Privacy and the Judgment of Others," *Journal of Value Inquiry* 23 (1989): 157–68, "Privacy, Liberty and Integrity," *Public Affairs Quarterly* 3 (1989): 15–34, and "A Theory of the Nature and Value of Privacy," *Public Affairs Quarterly* 6 (1992): 271–88; and Thomas Nagel, "Concealment and Exposure," *Philosophy & Public Affairs* 27 (1998): 3–30.

10. Spurgin, "The End of Romance."

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- [2n11] 11. Throughout the remainder of this book, I will use phrases like “mental states on which individuals do not act” to include individuals not failing to act as they should because of the mental states.
- [2n12] 12. Edwin’s preference likely leads him to act in certain ways when he is with the men whose company he enjoys. He likely takes part in the “pissing contests,” off-color jokes, and “locker room talk” in which he finds pleasure. The next section addresses such behavior.
- [2n13] 13. I previously used, in considerably less detail, this example of a partial change to sentiments that was spawned by learning additional facts in Earl W. Spurgin, “Looking for Answers in All the Wrong Places,” *Business Ethics Quarterly* 14 (2004): 301–2.
- [2n14] 14. For information on the treaty, see Arms Control Association, “The Ottawa Convention at a Glance,” *ArmsControl.org*, reviewed January 2018, <https://www.armscontrol.org/factsheets/ottawa>.
- [2n15] 15. During Barack Obama’s presidency, the United States declared an intention, one this author believes is unlikely to be carried out any time soon, to join the treaty at some point and to limit its military’s use of landmines to the Korean peninsula. See Arms Control Association, “The Ottawa Convention: Signatories and States-Parties,” *ArmsControl.org*, reviewed January 2018, par. 3, <https://www.armscontrol.org/factsheets/ottawasigs>.
- [2n16] 16. Council on Foreign Relations, “Global Conflict Tracker: North Korea Crisis,” *CFR.org*, updated January 30, 2020, par. 4, <https://www.cfr.org/interactive/global-conflict-tracker/conflict/north-korea-crisis>. According to the CFR, the United States has 29,000 military personnel stationed near the border, South Korea has 630,000, and North Korea has 1,200,000.
- [2n17] 17. This does not mean that individuals always are free to pursue the lifestyles they wish to have. Despite emphasizing and promoting autonomy, moral liberalism precludes many pursuits. The next two sections demonstrate why.
- [2n18] 18. Chapter 8 addresses coercion in the context of individuals participating in harmful sports.
- [2n19] 19. Incidentally, like many “pet parents,” I have arranged for my pets’ care should something happen to me such as serious injury or death from a cycling accident. That, however, is quite different from arranging for their care because I have chosen to end my life, unless I end it for the kind of reason just described.
- [2n20] 20. Although this does not factor into the present argument, it is interesting that the act also negatively affected me in a significant way. It confirmed something that I had hoped was not true because the married party’s spouse also is my friend.
- [2n21] 21. The friends’ affair is subject to moral judgment. The context in which they embark on the affair would determine whether moral liberalism produces negative, positive, or neutral judgments about them and their affair. Analyzing various possible contexts, however, is beyond the scope of the present argument.
- [2n22] 22. Although tackling others might not be highly likely to cause them severe injury or death, it is highly likely to cause them pain. I consider pain a significant effect.
- [2n23] 23. John Stuart Mill, *On Liberty*, ed. and intro. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing Company, 1978 [1859]), 79.
- [2n24] 24. For an overview of the scandal, see Holly Yan, “What We Know So Far in the College Admissions Cheating Scandal,” *CNN.com*, updated March 19, 2019, <https://www.cnn.com/2019/03/13/us/what-we-know-college-admissions-cheating-scandal/index.html>.
- [2n25] 25. Because this book is not a work of Mill scholarship, it does not engage the debate over whether Mill’s harm principle actually addresses only physical harm. Moreover, whether or not Mill’s harm principle addresses nonphysical harm, the moral liberalism this book presents does.
- [2n26] 26. I first made this argument in Earl Spurgin, “Why the Duty to Self-Censor Requires Social-Media Users to Maintain Their Own Privacy,” *Res Publica* 25 (2019): 10.





## *Chapter Three*

# Practical Morality and Plural Societies

**[3.0]** One takeaway from the preceding chapter is that moral liberalism does not identify and promote a single conception of the good life. The doctrine, instead, allows individuals to identify for themselves what living well means. There are two reasons for this, a descriptive reason and a normative reason.

### **[3.1]** THE DESCRIPTIVE REASON

**[3.2]** Members of plural societies have diverse conceptions of the good life. This should be neither surprising nor troubling. It is an empirical fact that no two people have exactly the same life experiences. If for no other reason, the preceding claim is true because it literally is impossible for any two people to observe and engage the world from exactly the same positions. After all, they cannot occupy exactly the same points in space at exactly the same times. The more diverse the people in a given society, likely the more dissimilar their life experiences. Because life experiences shape how people understand the world and the circumstances they face, and because individuals' life experiences differ markedly in plural societies, plural societies' members have diverse understandings of the matters they engage.<sup>1</sup> Armed with those diverse understandings, individuals desire diverse ways of living.

**[3.3]** Yet again, Hume's sentiments-based theory explains this quite well. Reason takes in, and attempts to make sense of, life experiences. It provides individuals with their understandings of the world and the circumstances they face. Sentiments judge what individuals understand. Sentiments approve or disapprove, desire or reject, like or dislike what reason presents them. Hume believes all individuals would have the same sentiments about a particular

matter if these two conditions hold: (1) reason provided them with the same understanding of the matter at issue and (2) they considered that matter from what Hume scholars term “the general point of view.”<sup>2</sup>

There is considerable debate among Hume scholars about what the general point of view entails. This chapter does not contribute to that debate because a particular aspect of the general point of view, about which I believe most Hume scholars agree, suffices for present purposes. The general point of view provides a universal<sup>3</sup> element in Hume’s sentiments-based theory.<sup>4</sup> A sentiment that qualifies as a moral judgment “depends on some internal sense or feeling, which nature has made universal in the whole species.”<sup>5</sup> By providing a universal element, the general point of view serves as a response to those who object to Hume’s theory by claiming its subjectivism inevitably devolves into moral relativism.<sup>6</sup> Hume writes of the universal element that the general point of view provides, “In order . . . to . . . arrive at a more stable judgment of things, we fix on some steady and general points of view; and always, in our thoughts, place ourselves in them, whatever may be our present situation.”<sup>7</sup>

We need to consider matters from what Hume terms “steady and general points of view” because, and Hume recognizes this, we all have our biases and prejudices. When making moral judgments, however, we are not to consider the facts at issue from our own unique positions in the world. We, instead, are to consider them from a position common with others. Hume writes, “’Tis only when a character is considered in general, without reference to our particular interest, that it causes such a feeling or sentiment, as denominates it morally good or evil.”<sup>8</sup> Frequently, perhaps even almost always, our biases and prejudices help to produce our sentiments. Because biases and prejudices vary across persons, so do the sentiments they produce. Such sentiments are not properly called “moral judgments.” To have sentiments that qualify as moral judgments, we must take up the general point of view so that our sentiments are not colored by our biases and prejudices.

The most important feature of this position common with others is our natural sympathy. Hume writes, “There is no human, and indeed no sensible, creature, whose happiness or misery does not, in some measure, affect us, when brought near to us, and represented in lively colours: . . . this proceeds . . . from sympathy.”<sup>9</sup> By taking up the general point of view, we move the vantage points for viewing or contemplating matters from our own unique stations in the world to one grounded in our shared sympathy. Christine M. Korsgaard describes it this way: “Taking up the general point of view regulates our sentiments. . . . [W]e view . . . not through the eyes of our own interests, but instead through the eyes of our sympathy.”<sup>10</sup>

Given the nature of the general point of view, it is no surprise that Hume believes our sentiments coincide when we take up that perspective. He is imagining us understanding the same facts and viewing or contemplating

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them through our shared sympathy. There also is good reason to think Hume is correct that our sentiments accord under these conditions. It would be quite strange if our species has evolved with greatly diverse sentiments concerning the same facts when we understand them fully and consider them from the general point of view. It is hard to imagine that such a divergence would have been successful and passed along to future generations. It is much easier to believe that a coincidence of sentiments would have been successful and passed along.

**[3.8]** Charles Darwin famously argues that our moral sentiments are the products of natural selection. He writes of intellectual and moral faculties, “If they were formerly of high importance to primeval man and to his ape-like progenitors, they would have been perfected or advanced through natural selection.”<sup>11</sup> Darwin describes this perfection through natural selection by using groups of humans in conflict. He writes, “When two tribes of primeval man . . . came into competition, if . . . one tribe included a great number of courageous, sympathetic and faithful members, who were always ready to warn each other of danger, to aid and defend each other, this tribe would succeed better and conquer the other.”<sup>12</sup> Over time, such groups’ successes determine humans’ moral sentiments broadly. Darwin writes, “A tribe rich in the . . . qualities [those in the preceding quotation] would spread and be victorious over other tribes: but in the course of time it would, judging from all past history, be in its turn overcome by some other tribe still more highly endowed. Thus the social and moral qualities would tend slowly to advance and be diffused throughout the world.”<sup>13</sup>

**[3.9]** With respect to how the moral sentiments first arose in groups, Darwin writes,

As the reasoning powers and foresight of the members became improved, each man would soon learn that if he aided his fellow-men, he would commonly receive aid in return. From this low motive he might acquire the habit of aiding his fellows; and the habit of performing benevolent actions certainly strengthens the feeling of sympathy which gives the first impulse to benevolent actions.<sup>14</sup>

This strengthening of sympathy produces a stronger impetus for moral sentiments’ rise. Darwin writes, “To the instinct of sympathy . . . it is primarily due, that we habitually bestow both praise and blame on others, whilst we love the former and dread the latter when applied to ourselves; and this instinct no doubt was originally acquired, like all the other social instincts, through natural selection.”<sup>15</sup>

**[3.10]** Darwinian reasoning explains many of the sentiments that Hume believes we all share when we understand matters the same way and take up the general point of view.<sup>16</sup> Psychopaths and sociopaths aside, we have many shared sentiments without which our species either could not survive or

could not flourish as it has thus far. Perhaps the most obvious example is that we all have a sentiment of approval for caring properly for children. This is true even though we often disagree about what qualifies as proper care. Some argue that proper care includes sheltering children from discomfort as much as is possible, while others argue that such sheltering prevents children from learning how to navigate the obstacles life places in their way. Some argue that proper care requires a religious upbringing, while others argue that a secular upbringing allows children to come to their own views, and make their own choices, about religion and spirituality. These different views stem from reason providing us with differing information. We have differing understandings of what proper care entails and, thus, have differing sentiments when it comes to various methods of care. If we understood identically what proper care entails, then we would have the same sentiments of approval or disapproval regarding various caring techniques.

Another obvious example is that we all have a sentiment of disapproval for willful murder. Similar to caring properly for children, we often disagree about what qualifies as willful murder. An extreme pacifist might count killing in self-defense and in justified wars, while most would not. A racist who thinks persons of certain ethnicities are not human might not count killing such persons, while most abhor that conclusion. Right-to-life groups and their members count aborting human embryos because they think embryos are persons at the moment of conception, while pro-choice groups and their members do not because they believe personhood comes later.<sup>17</sup> If we understood identically what willful murder entails, then we would have the same sentiments of approval or disapproval regarding various forms of killing humans.

The evolutionary selection for sentiments such as the preceding two is easy to identify. Without them, our species would die out or cease to thrive. One might object, however, that not all people have the two sentiments at issue. After all, I began the examination with the qualifier, "Psychopaths and sociopaths aside . . ." Given that, evolution provides no support for Hume's view that our sentiments will coincide when we understand matters the same way and take up the general point of view.

That objection is unpersuasive. Suppose I claimed that the evolution of dogs selected for four legs, and an objector pointed out that some dogs are born with three or fewer legs. The fact to which the objector points does not defeat my original claim. Genetic abnormalities produce dogs with fewer than four legs. Such abnormalities do not speak against the evolution of dogs selecting for four legs. On the contrary, the fact that only a small percentage of dogs are born with fewer than four legs suggests that evolution selected against three or fewer legs. We can tell a similar story about psychopaths' and sociopaths' sentiments. Their sentiments are abnormalities, and, because

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they are in a small minority, we have reason to believe evolution selected against their sentiments.

**[3.14]** Given that members of a plural society have diverse life experiences, it is impossible, practically if not logically, that they all will have the same understanding of given matters, nor is it possible that they all will consider those matters from the general point of view. As a result, members of a plural society have diverse sentiments about the matters they engage. The diverse sentiments produce differing conceptions of the good life.

**[3.15]** THE NORMATIVE REASON

**[3.16]** Perhaps more important than the descriptive reason for moral liberalism's approach to the good life is the normative reason for that approach. Understanding that reason, and accepting the position it entails, should prevent us from being troubled by, and, in fact, even lead us to welcome, diverse conceptions of the good life.

**[3.17]** The principal way a plural society's diverse conceptions of the good life become problematic is when one conception garners excessive social and political favor.<sup>18</sup> That occurs when various authorities and powers, either governmental or nongovernmental, promote that conception of the good life to the detriment of other conceptions. Such a scenario is problematic both when the majority of a society's members hold the favored conception and when only a minority hold it.

**[3.18]** With their conception of the good life excessively favored, a group can exert its influence to crowd out, or even persuade authorities to suppress directly, other conceptions of the good life. Because it is common for persons and groups to attempt just that even when their conception is not excessively favored, it is even more likely that they would do so, and more likely that they would find success, should their conception garner such favored status. To find examples of this, we need only think of religious groups that attempt to have their favored tenets and dogmas, that is, their conceptions of the good life, adopted as the standards by which all should live. Such groups frequently favor imposing legal sanctions on those whose behavior does not accord with their beliefs and, perhaps more frequently, use various forms of social control, including moral judgments, against those who act contrary to their beliefs.

**[3.19]** Societies pay great costs if they suppress various conceptions of the good life. Suppressing conceptions of the good life essentially is or, at least, is on par with suppressing free expression. As such, the costs of suppressing conceptions of the good life essentially are the same as the costs of suppressing free expression. Mill captures those costs well. He argues that a society that

suppresses the expression of a deviant view pays one of two costs.<sup>19</sup> Which cost it pays depends on the deviant view's truth value.

If the deviant view is true or partially true, society loses access to the truth. Few, if any, would argue that access to the truth is not of value to society. Accessing the truth helps societies advance in many ways, especially scientifically and morally.<sup>20</sup> Scientific advancements often come from deviant views. Society would be far worse off scientifically if the Catholic Church and others had succeeded in suppressing the works of those scientists, most notably Galileo, who advanced our understanding of the world by demonstrating the falsity of many beliefs the Church and others held dear. Society would be far worse off morally if it had succeeded in silencing those who dared to challenge the racist and sexist status quo and called for equal rights for all. Although there still is considerable progress we need to make, we are far better off than we would be had society successfully silenced such courageous persons' voices.

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If the deviant view is false, society loses the value gained by confronting false ideas with the truth. That value lies in maintaining the "living" nature of the truth and preventing it from lapsing into mere dogma. It is one thing to know that something is true, but it is quite another to know why that thing is true. Young people know that entering a number in a phone is called "dialing the number," but I suspect that many do not know why that is. If there are not many now, there likely will be in the future. Encouraging young people to learn the history of such things inspires them to be intellectually curious and discourages them from taking the word of others without evidence. In short, it encourages them to develop their autonomy. This, however, does not apply only to young people, but, rather, applies to all persons. Encouraging us to be intellectually curious, and to know the evidence that supports various claims, pushes all of us to develop our autonomy. That is exactly the outcome when we confront false ideas.

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Because of the described costs to society, suppressing an instance of expression is justified only if there is a reason in favor of doing so that overrides the costs to society of suppressing the expression. The obvious, and frequently used, example is yelling "Fire!" in a crowded theater. The harm that results from the likely stampede to the exits overrides the costs to society of suppressing the expression.

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A similar cost-benefit analysis applies to suppressing a given conception of the good life. There is an overriding reason to suppress a given conception when pursuing that conception violates, without prior consent, others' bodies, goods, or rights. Such violations are contrary to moral liberalism's commitments because they prevent others from pursuing their conceptions of the good life. Serial killers illustrate this well. By pursuing their conceptions of the good life, they clearly violate others' bodies and rights. Serial killers' victims do not live to continue pursuing their conceptions. Their lives do not

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end by successfully grasping the good life because, except, perhaps, in some cases of severe psychoses, the victims' conceptions do not include dying at the hands of serial killers.<sup>21</sup> In cases of such psychoses, the persons in question are not competent and, thus, weak paternalism justifies preventing those persons from pursuing their conceptions of the good life.

**[3.24]** There are far more common examples of the kinds of violations that justify overriding a given conception of the good life. Imagine Scrooge for whom the good life is accumulating, by any means necessary, as much wealth as possible. Not only does he have no qualms about defrauding others in that pursuit, successful fraudulent acts actually add to the pleasure he receives from the wealth he obtains. Moral liberalism prescribes suppressing Scrooge's conception of the good life because pursuing his conception violates others' goods and rights.

**[3.25]** Except when there are overriding reasons such as the preceding, moral liberalism precludes suppressing conceptions of the good life. Considering the matter from the reverse direction, moral liberalism precludes privileging one conception over others. No argument that supports granting privileged status to any particular conception is immune from challenge. It is not possible practically to analyze all possible arguments for privileging given conceptions, but some examples illustrate the point.

**[3.26]** Consider typical arguments for privileging particular religious conceptions. Such arguments, regardless of the broad categories and/or specific denominations they support, typically involve truth claims. Supporters of religion X argue that society should recognize that a life that follows X's tenets is the one and only good life. They argue further that society should encourage, and, in some cases, they argue that society should require through force or coercion, that its members live as X's tenets direct. By doing so, society does what it should for its members. It encourages or requires them to live the best life possible for humans.

**[3.27]** Any such argument is fraught with difficulties concerning the truth claims on which it is based. The claim that living according to X's tenets is the one and only good life entails multiple truth claims. Among them, quite likely, is the metaphysical existence of a particular deity or set of deities. Over the centuries, philosophers have devoted considerable effort to engaging that type of truth claim, most notably in the numerous attempts to produce arguments that purportedly prove the god hypothesis. No such argument, however, rightfully can claim the status of being sound. Although particular arguments for the god hypothesis often have supporters among the community of philosophers, they all have far more detractors. In a study of contemporary philosophers, David Bourget and David J. Chalmers found that 72.8 percent accept or lean toward atheism, while only 14.6 percent accept or lean toward theism.<sup>22</sup>



The fact that more philosophers reject, rather accept, a given argument for the god hypothesis does not demonstrate that the argument is unsound. After all, majorities can be, and often are, wrong. The majority of whites who once supported slavery are a good example. Philosophers who reject arguments for the god hypothesis, however, do so reasonably. They base their objections on plausible claims. Those claims sometimes constitute devastating objections against particular arguments. When they do not, they typically cast serious doubts about the arguments' purported soundness.

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Given the preceding, society should not encourage or require religious conceptions of the good life that involve the truth claim at issue. There are plausible, if not conclusive, reasons for rejecting that truth claim. Individuals who do not wish to live according to the tenets of a religion that is based on a questionable, if not a false, truth claim are not unreasonable. If society promotes living according to the religion's tenet, it encourages or requires those individuals who reject the tenet to adopt lifestyles that they believe, reasonably, necessitate living according to a falsehood.

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The argument thus far has been an objection to one common truth claim among arguments for religious conceptions of the good life. Other religious truth claims are subject to similar objections. Whether the tenet be transubstantiation, the existence of an afterlife, reincarnation, or any of the plethora of religious tenets, it is reasonable to hold that the tenet is false. Like the god hypothesis, society can promote the tenet only by encouraging or requiring some individuals to live according to what they believe, reasonably, is a falsehood.

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It similarly would be problematic for society to privilege an atheist conception of the good life. Although I am an atheist, I grant that no argument for atheism unquestionably defeats all forms of religion.<sup>23</sup> Consider the problem-of-evil argument that contends evil is inconsistent with the existence of an omniscient, omnipotent, and omnibenevolent god. If such a god existed, humans would not perpetrate evils such as murder and rape, nor would natural events cause evils such as death and suffering. This is because such a god would know of evils in advance of their occurring, would have the power to prevent them, and would want to prevent them. Thus, because evil exists, an omniscient, omnipotent, and omnibenevolent god does not exist.

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As persuasive as many, including this author, find the problem-of-evil argument to be, it does not provide justification for society to promote an atheist conception of the good life. I am not alone in believing that the problem-of-evil argument defeats some versions of the god hypothesis, as well as some other religious beliefs, but, like most philosophers, I accept that it does not defeat all versions.<sup>24</sup> Versions of the god hypothesis, and other religious beliefs, that do not rely on all three of the "omni" characteristics to which the argument points avoid the argument's scope, and, thus, the argument does not demonstrate that such beliefs are false or unreasonable. This

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means that using the problem-of-evil argument to encourage or require individuals to abandon all religious beliefs is unwarranted because the argument does not demonstrate all religious beliefs are false or unreasonable.

[3.33] Other arguments for atheism lead to similar conclusions. Like religious conceptions of the good life, an atheist conception relies on truth claims, some of which are not demonstrably true. This means that, again like religious conceptions, society can privilege an atheist conception only by encouraging or requiring some individuals to live according to beliefs that it is not unreasonable for those individuals to reject.

[3.34] Moral liberalism's prohibition against society privileging one conception of the good life does not apply just to religious or atheist conceptions. Arguing that any conception of the good life is the only true conception inevitably is based on at least one truth claim that is not demonstrably true and which individuals can reject reasonably.<sup>25</sup> Typically, the claim is some version of a particular activity's or way of life's exclusive, or necessary, connection to happiness or well-being. Moral liberalism rejects the idea that happiness or well-being is a "one-size-fits-all" matter. Because the doctrine recognizes that no two individuals' happiness or well-being comprise exactly the same things, it rejects the idea that any person or theory has access to a truth about happiness or well-being that applies to all individuals.

[3.35] Among the necessary conditions for my well-being are intellectual curiosity, physical fitness, and world travel. Without any of the three, the good life would elude me. I currently meet those necessary conditions, so, if the good life is beyond my grasp, it is not because of the absence of any of them. Should I lose one or more of them, however, I would not have the best life. I might have a good life, but not *the* good life.

[3.36] Despite how strongly I believe intellectual curiosity, physical fitness, and world travel are necessary conditions for the good life, it is not unreasonable for others to reject any, or all, of the three. There is no reason for me to believe I have access to the truth of what well-being entails for all people. The idea that any person or group has exclusive access to the truth is anathema to liberals. We hold that there always is something to learn from others, hence Mill's position on freedom of expression, and we deny that there is a settled truth about all moral matters to which we have access at the present. As we learn more about humans and the world, our moral sentiments evolve or are reinforced. Reiman describes this eloquently when he writes, "Any honest moral liberalism must be . . . self-critical. It must remain open to the idea that knowledge of what threatens freedom changes in history, and therefore it must be ready to revise the set of basic rights it currently recommends, in light of newly recognized forms of unjust coercion."<sup>26</sup> Like Reiman's vision of basic rights, my beliefs about necessary conditions for the good life are not universal truths about all people, at all times, to which I have access.

They, instead, are reasonable beliefs about the good life for *me* in the time and place I occupy.

To be reasonable, a conception of the good life must take into account the circumstances individuals face. This, in part, is why it is reasonable for others to reject any, or all, of the above necessary conditions for my well-being. It is easy for me to include intellectual curiosity among the necessary conditions because the society in which I live does not punish it. Those who live under oppressive regimes that punish citizens for going where their intellectual curiosity leads them reasonably can believe that quashing their own curiosity best promotes their well-being. It is reasonable to avoid danger of that sort. On the other hand, it also is reasonable for the same people to believe they best promote their well-being by following their curiosity even if their government punishes them for doing so.

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By “physical fitness” I mean the aerobic capacity and strength to bike, hike, travel, and engage in similar activities. It is reasonable for me to view it as a necessary condition for my well-being because, a few postsurgery recovery periods aside, I always have had the capacity to develop it. Even in my teenage years when I was not physically fit, I had the physical capacity to strive for it when I chose to do so. Stephen Hawking did not have that physical capacity. In 1963, he was diagnosed with the progressive motor neuron disease amyotrophic lateral sclerosis (ALS).<sup>27</sup> Over the remaining decades of his life, Hawking did not have the capacity for what I mean by “physical fitness.” Yet it would be absurd to suggest that he did not live according to many reasonable conceptions of the good life. If he did not, then I do not know who does or did. He simply was not able to pursue *my* conception of the good life.

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I easily can include world travel among the necessary conditions for my well-being because I have no fears about travel to other countries, I enjoy planning trips, I have no children for whom I have responsibilities, and, provided that I obtain affordable accommodations, my income allows me to travel to other countries periodically. Those things are not true of everyone, however, so it is reasonable for many to reject world travel as a necessary condition of the good life. Parents with modest incomes act reasonably by eschewing world travel in order to fund their children’s educations. There is no justification for asserting that parents who choose to do so cannot live according to many reasonable conceptions of the good life. There is more justification, though perhaps not sufficient, for asserting that those who voluntarily become parents, in order to pursue reasonable conceptions of the good life, must abstain from world travel if doing so is necessary to provide good educations for their children.

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This leads to my potential disagreement with Reiman to which this book’s introduction refers. To jog readers’ memories, the matter at issue concerns this passage Reiman writes about his critical moral liberalism: “The

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living of self-governed lives . . . [is] its chief value, holding that self-governance is a necessary condition of a good life for human beings.”<sup>28</sup> Whether Reiman and I disagree hinges on what he means by “self-governance is a necessary condition of a good life for human beings.”

[3.41] Another plausible interpretation of that passage is that Reiman believes moral liberalism requires that individuals have the autonomy to determine for themselves how best to live. If that is what he means, then we are in perfect agreement. In essence, that is a considerable part of what I have been arguing in this chapter. There are some reasons to think that this actually is Reiman’s view and that we, in fact, hold the same view. For example, Reiman writes, “[Liberalism] holds that individuals’ lives *should be* the outcome of their free choices” and “liberals believe that people’s lives should reflect individual choice, rather than the will of the group.”<sup>29</sup>

[3.42] Another plausible interpretation of the passage, however, is that Reiman believes an autonomous life is the true conception of the good life for all persons. An autonomous life allows individuals to pursue a multitude of lifestyles, but none of those lifestyles is the good life. It is an autonomous life itself that is the good life. It even is plausible to interpret the last quoted passage in a way that supports this interpretation. It depends on what Reiman means by “people’s lives should reflect individual choice.” That could be Reiman’s way of saying that the good life is an autonomous life.

[3.43] If that interpretation is correct, then I part company with Reiman. As earlier paragraphs demonstrate, I reject the idea that there is a single, true conception of the good life for all persons. I maintain that rejecting that idea is an essential feature of moral liberalism even if it means rejecting the position that the good life requires that individuals live autonomously. It is one thing to claim, as I do, that individuals should have the autonomy to determine for themselves what the good life entails, and it is quite another to claim, as this interpretation of Reiman does, that individuals do not choose the good life if they choose nonautonomous lifestyles. The difference is that my moral liberalism respects, as part of their authority to determine how best to live, individuals’ autonomy to choose nonautonomous lives, while this interpretation of Reiman’s critical moral liberalism does not.

[3.44] The problem with the preceding interpretation of Reiman is that it precludes, in that it rejects them as part of the good life, many lifestyles that moral liberalism ought to respect or, at least, ought to tolerate. Individuals’ choices often produce lifestyles that are, or partially are, nonautonomous. People often are forced or coerced into lifestyles that adhere to the directives of another person, group, or institution. Moral liberalism condemns those who perpetrate such force and coercion because it prevents those on whom it is exerted from choosing their own conceptions of the good life. Many, however, choose for themselves such lifestyles. They typically do so because they believe the lifestyles offer some reward, either in the present or in the

future. Although it troubles me when persons make such choices, moral liberalism provides them with the moral freedom to do so.

Providing that freedom is necessary in order to accept, as legitimate conceptions of the good life, certain interpersonal and religious lifestyles. Many such lifestyles include following the directives of other persons, groups, or institutions. Consider a patriarchal culture in which the norm is for husbands to control wives' incomes, possessions, and activities. Although I oppose that culture and norm, a given woman might not. Suppose she does not live in the culture but believes, without coercion or force, that it offers particular benefits, such as clarity of roles and responsibilities, that she strongly desires. If so, then she might choose to join the society because the good life for her lies in being a part of that culture despite the fact that joining it requires her to relinquish, either wholly or to a considerable degree, her autonomy. Moral liberalism respects her choice and her conception of the good life even if others, including most other women, reject it. She should have the autonomy to decide for herself whether the benefits of life in that culture outweigh her loss of autonomy after joining it. Denying her that autonomy because others believe joining such a culture is bad for her would be asserting access to a truth about happiness or well-being that applies to all individuals. That, however, is something I already have argued moral liberalism rejects.

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Consider a religion that holds an individual, such as the pope, or a book, such as the Bible, as an authority that all of its members must follow. Joining that religion requires individuals to give up, either wholly or to a considerable degree, their autonomy. This is why many, including this author, believe memberships in such religions should be the result of voluntary choices, not the result of childhood inculcation or coercion. Similarly to the woman in the preceding example, a given individual might believe that joining the religion offers benefits, such as the possibility of an afterlife and a sense of community, that the individual strongly desires. If so, the individual might choose to join the religion, even at the cost of autonomy, because its lifestyle is the good life for that individual. Moral liberalism does not stand in opposition to that choice for the same reason it does not stand in opposition to the woman's choice in the preceding example.

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This position raises the specter of slavery contracts that parties enter voluntarily. Mill rejects such contracts.<sup>30</sup> He writes,

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By selling himself for a slave, he abdicates his liberty; he foregoes any future use of it, beyond that single act. He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself. He is no longer free, but is thenceforth in a position which has no longer the presumption in its favour that would be afforded by his voluntarily remaining in it. The principle of freedom cannot require that he should be free not to be free. It is not freedom to be allowed to alienate his freedom.<sup>31</sup>

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**[3.49]** Mill and I disagree on this matter. His “he should not be free not to be free ” is in direct opposition to my “autonomy to choose nonautonomous lives.” As much as I abhor the thought of slavery contracts, I hold that moral liberalism cannot, in principle, reject them.<sup>32</sup> The doctrine respects individuals’ determinations about what is best for themselves. It cannot drop that respect on the grounds that individuals’ determinations are mistaken. That, again, would be asserting access to a truth about happiness or well-being that applies to all individuals, something moral liberalism cannot do.

**[3.50]** There are two important caveats to the preceding conclusion. First, the conclusion is based on the assumption that the parties who contract themselves into slavery are not forced, coerced, or defrauded into doing so. Moral liberalism prohibits individuals from using force, coercion, and fraud to obtain their ends, including those they wish to obtain through contracts. Such methods violate others’ autonomy to determine for themselves how they will live. For all practical purposes, this means moral liberalism would very rarely, if ever, provide justification for slavery contracts. Although such circumstances are possible, it is hard to imagine the circumstances under which individuals who have not been subjected to force, coercion, or fraud would voluntarily choose to enter slavery contracts. This explains much of the repugnance most of us feel for such contracts. Moral liberalism, however, must allow for the possibility that some individuals might determine, autonomously, that slavery contracts are the best way to reach their conceptions of the good life.

**[3.51]** Second, it does not follow from the preceding conclusion that states are not justified in prohibiting, or refusing to enforce, slavery contracts.<sup>33</sup> Quite likely, there are many practical reasons why they should do so. Examining such possible reasons, however, is beyond the purposes of this chapter. Such an examination is more a matter for political liberalism than it is for moral liberalism. My goal here is only to argue that moral liberalism does not, in principle, preclude slavery contracts, not to determine whether states should prohibit or refuse to enforce them.

## **[3.52]** MORAL LIBERALISM AND PLURAL SOCIETIES

**[3.53]** Many societies are marked by social discord, and most must contend with it frequently. Western democracies, including my own country, are no exception. As I write this chapter, Donald Trump is well into the third year of his presidency. I do not “go too far out on a limb” by writing that his presidency has been marked by social discord. I frequently hear or read laments about how civil political discourse is gone and that we have adopted tribal politics for which truth no longer matters in debates, both among politicians and among society’s members. Such social discord is exacerbated by, and often

even caused by, disputes over what the good life entails. Regardless of the country and the matter at issue, and even though the parties to disputes rarely are aware of this, the positions they stake out, and the arguments they provide for them, stem from their conceptions of the good life. Because typically they are quite committed to, and hold dear, their conceptions, the disputants often are bitterly at odds. For an example, we need only consider Trump's supporters who believe that diversity and immigration stand in the way of them living well, and Trump's opponents who believe that diversity and immigration help us live better.

Clearly, there is no "silver bullet" to produce social harmony. Moral liberalism, however, is the best tool we have to confront discord and, if all goes well, reduce it. Because it is an empirical fact that plural societies comprise individuals with diverse conceptions of the good life, confronting discord requires dealing effectively with those diverse conceptions. Moral liberalism places societies in the right position with respect to the diverse conceptions because it prohibits privileging one conception over the others. As was explained earlier in this chapter, such privileging contributes to, or at least does not help us contend with, discord.

Admittedly, moral liberalism, itself, breeds some ground for disharmony. Because it respects differing conceptions of the good life and freedom of expression, it is inevitable that individuals will clash over their opposing views. Societies that eschew moral liberalism's normative position about the good life, however, fare no better. When they privilege particular conceptions of the good life, they generate inequality and feelings of superiority, inferiority, envy, and resentment among their members. The result is even more fertile ground for disharmony.

Even if the preceding is incorrect and societies actually could eradicate, or significantly reduce, social discord by requiring their members to live according to particular conceptions of the good life, they would do so at too great a cost. They would generate social harmony at the cost of their members' autonomy to determine for themselves how they wish to live. A frequently addressed, fascinating, and perhaps infamous passage by Jean-Jacques Rousseau, who believes societies should enforce a particular conception of the good life and certainly would reject my arguments, captures well this trade-off. He writes, "Whoever refuses to obey the general will will be forced to do so by the entire body. This means merely that he will be forced to be free."<sup>34</sup>

Rousseau, of course, does not consider being forced to obey the general will as a loss of autonomy. Roughly, the general will is the will of a society's citizens acting as a whole in pursuit of the common good.<sup>35</sup> Individuals' true will is the general will, not their private wills that seek to promote their self-interests. Rousseau writes, "Each individual can, as a man, have a private will contrary to or different from the general will that he has as a citizen. His

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private interest can speak to him in an entirely different manner than the common interest.”<sup>36</sup> Rousseau holds that obeying the general will is the only way to achieve both autonomy and the single, true conception of the good life. When describing the social contract, he writes of the general will,

**[3.58]** *Each of us places his person and all his power in common under the supreme direction of the general will; and as one we receive each member as an indivisible part of the whole. At once, in place of the individual person of each contracting party, this act of association produces a moral and collective body composed of as many members as there are voices in the assembly, which receives from this same act its unity, its common self, its life and its will.*<sup>37</sup>

**[3.59]** He also writes, “The general will is always in the right and always tends toward the public utility.”<sup>38</sup> Individuals enter the social contract precisely because it is the only way for them to achieve autonomy and the good life. When individuals do not follow the general will voluntarily, forcing them to do so merely directs them toward the good life that they actually want but do not recognize at the time.

**[3.60]** Liberals, including this author, reject Rousseau’s vision of autonomy, as well as any other that is based on the idea that there is a single, true conception of the good life.<sup>39</sup> For us, societies constructed on Rousseau’s, or similar, principles sacrifice their members’ autonomy. We conclude that the best way societies can confront the inevitable disharmony that results from interactions among diverse individuals is to avoid privileging particular conceptions of the good life over others.

**[3.61]** Precluding societies from such privileging and, thereby, producing the necessary grounds for confronting social discord is not a tenet that is unique to moral liberalism. It informs, if not by itself, then in concert with others ideas, political liberalism’s core commitments. Many of the most noted philosophers who wear the “political liberal” label adopt that position.<sup>40</sup> There are two lessons to draw from this. First, the conclusions in this chapter, and the arguments for them, find a home in both moral liberalism and political liberalism. Second, there is not a clear boundary that separates moral liberalism from political liberalism.

## **[3.62]** NOTES

**[3n1]** 1. This is not at all to suggest that the members of what many call “homogeneous societies” actually have homogeneous life experiences, nor does it suggest that those members actually have homogeneous understandings of the matters they engage. I, in fact, believe that academicians, social commentators, and others frequently overstate the degree of homogeneity in the societies that they call “homogeneous.” This suggests, instead, that individuals’ life experiences and understandings of the world around them are even more diverse in plural societies than they are in so-called homogeneous societies.



### Chapter 3

2. For some of the contemporary works on the general point of view, see Charlotte Brown, "Is the General Point of View the Moral Point of View?" *Philosophy and Phenomenological Research* 62 (2001): 197–203; William Davie, "Hume's General Point of View," *Hume Studies* 24 (1998): 275–94; Julia Driver, "Pleasure As the Standard of Virtue in Hume's Moral Philosophy," *Pacific Philosophical Quarterly* 85 (2004): 173–94; Christine M. Korsgaard, "The General Point of View: Love and Moral Approval in Hume's Ethics," *Hume Studies* 25 (1999): 3–41; Elizabeth S. Radcliffe, "Hume on Motivating Sentiments, the General Point of View, and the Inculcation of 'Morality,'" *Hume Studies* 20 (1994): 37–58; Geoffrey Sayre-McCord, "On Why Hume's 'General Point of View' Isn't Ideal—and Shouldn't Be," *Social Philosophy and Policy* 11 (1994): 202–28; Carole Stewart, "The Moral Point of View," *Philosophy* 51 (1976): 177–87; and, Kathleen Wallace, "Hume on Regulating Belief and Moral Sentiment," *Hume Studies* 28 (2002): 83–111.

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3. Some might quibble with my use of this term. By using "universal," I refer only to the commonality of sentiments across persons. I am not referring to objective, metaphysical facts.

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4. I made this point in Earl W. Spurgin, "Looking for Answers in All the Wrong Places," *Business Ethics Quarterly* 14 (2004): 304–5.

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5. David Hume, *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*, intro. and analytical index L. A. Selby-Bigge, rev. and notes P. H. Nidditch, third edition (Oxford: Oxford University Press, 1975 [1748 and 1751]), 173.

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6. Concerns that Hume's theory devolves into relativism date back at least as far as Kant. It is common among moral philosophers, in fact, to understand Kant's motivations to include providing, in response to Hume, an objective, universal morality. The objective, universal nature of morality permeates Kant's *Groundwork of the Metaphysics of Morals*, trans. and anal. H. J. Paton (New York: Harper and Row, 1964 [1785]) and his *The Metaphysical Elements of Justice*, trans. and intro. John Ladd (New York: Macmillan Publishing Company, 1965 [1797]).

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7. David Hume, *A Treatise of Human Nature*, analytical index L. A. Selby-Bigge, rev. and notes P. H. Nidditch, second edition (Oxford: Oxford University Press, 1978 [1739–1740]), 581–82.

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8. *Ibid.*, 472.

9. *Ibid.*, 481.

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10. Korsgaard, "The General Point of View," 3.

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11. Charles Darwin, *The Descent of Man and Selection in Relation to Sex* (Project Gutenberg, 1871), chap. 5, par. 4, <http://www.gutenberg.org/files/2300/2300-h/2300-h.htm>.

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12. *Ibid.*, chap. 5, par. 7.

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13. *Ibid.*

14. *Ibid.*, chap. 5, par. 9.

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15. *Ibid.*, chap. 5, par. 10.

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16. I do not mean to suggest that Darwin's account of how morality arose among humans is entirely accurate. I mean only to suggest that natural selection gives us good reason to believe Hume is correct that our sentiments coincide when we understand matters the same way and take up the general point of view. For some of the contemporary works that address Darwin's account of how morality arose, and evolutionary accounts of morality more broadly, see Fritz Allhoff, "Evolutionary Ethics from Darwin to Moore," *History and Philosophy of the Life Sciences* 25 (2003): 51–79; Stephen W. Ball, "Gibbard's Evolutionary Theory of Rationality and Its Ethical Implications," *Biology and Philosophy* 10 (1995): 129–80; Christine M. Korsgaard, "Reflections on the Evolution of Morality," *The Amherst Lecture in Philosophy* 5 (2010): 1–29, <http://www.amherstlecture.org/korsgaard2010/>; Hallvard Lillehammer, "Methods of Ethics and the Descent of Man: Darwin and Sidgwick on Ethics and Evolution," *Biology and Philosophy* 25 (2010): 361–78; Robert T. Pennock, "Moral Darwinism: Ethical Evidence for the Descent of Man," *Biology and Philosophy* 10 (1995): 287–307; Alejandro Rosas, "Beyond the Sociobiological Dilemma: Social Emotions and the Evolution of Morality," *Zygon* 42 (2007): 685–99; William A. Rottschaefer and David Martinsen, "Really Taking Darwin Seriously: An Alternative to Michael Ruse's Darwinian Metaethics," *Biology and Philosophy* 5 (1990): 149–73; Michael Ruse, *Taking Darwin Seriously: A Naturalistic Approach to Philosophy* (New York: Blackwell, 1986) and "Evolutionary Ethics and the Search for Predecessors: Kant, Hume, and All the Way Back to Aristotle?" *Social Philosophy and Policy* 8 (1990):



59–85; Bruce N. Waller, “Moral Commitment without Objectivity or Illusion: Comments on Ruse and Woolcock,” *Biology and Philosophy* 11 (1996): 245–54; and Peter Woolcock, “Ruse’s Darwinian Meta-Ethics: A Critique,” *Biology and Philosophy* 8 (1993): 423–39.

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17. I recognize that this vastly oversimplifies the abortion debate. I use this example merely as one way the parties on the two sides of the debate come to have different sentiments about abortion.

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18. For ease of explanation, I refer to one conception garnering excessive social and political favor in a society. It is equally worrisome if multiple conceptions garner such favor.

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19. John Stuart Mill, *On Liberty*, ed. and intro. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing Company, 1978 [1859]), 16–17, 33–38.

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20. There might be exceptions to this claim such as when a government deems that concealing the truth from the public is necessary for national security. In such a case, access to the truth might harm society. I, however, seriously doubt that concealing the truth for national security reasons actually benefits society in the long run, and I also have some doubts that it does so even in the short run. Nevertheless, I allow for the possibility that there are exceptions to the general rule that access to the truth benefits a society.

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21. I suppose it is possible for some individuals who are psychologically stable to wish to die at the hands of serial killers. Perhaps they are suffering from painful, incurable ailments, wish to be free of their pain, are unable to end their own lives, and would prefer to die at the hands of those for whom, unlike most people, the killings will not produce feelings of guilt or regret. Even if this is so, moral liberalism does not allow serial killers to pursue their conceptions of the good life because their victims would not be limited to psychologically stable individuals who wish to die at serial killers’ hands. There simply would not be enough of such individuals, if any exist at all, to satisfy the desires of all serial killers.

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22. David Bourget and David J. Chalmers, “What Do Philosophers Believe?” *Philosophical Studies* 170 (2014): 475–76.

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## *Chapter Four*

# **Moral Liberalism's Broad Applicability**

**[4.0]** Not only does moral liberalism, as the preceding chapter argues, best position plural societies to confront the inevitable discord that results from humans' interactions with each other and the world around them, but also it applies to the broad range of moral issues that arise from those interactions. No matter the issue, at least one aspect of moral liberalism speaks to it and, more likely, multiple aspects speak to it. This chapter demonstrates the wide variety of practical morality's issues to which moral liberalism applies. The present goal is not to resolve the issues the chapter raises but, rather, merely is to connect those issues to aspects of moral liberalism. The remaining parts of this book turn to providing resolutions as they are devoted to examining moral liberalism's conclusions regarding several of practical morality's issues. This chapter raises many, but not all, of the issues those parts examine.

**[4.1]** Moral liberalism easily delineates moral matters from nonmoral matters. Moral matters involve liberties and obligations, while nonmoral matters do not. My preferences for pepperoni pizza over sausage pizza and for chocolate chip ice cream over cookie dough ice cream are not moral matters. They violate neither others' liberty nor my obligations to others. My choosing pepperoni pizza or chocolate chip ice cream does not preclude others from choosing as they wish. Even in the rare case where my choice takes the last of the restaurant's pepperoni, or the last of the parlor's chocolate chip ice cream, typically my choice is not a moral matter. Under most circumstances, I have no obligation to others that requires me not to take the last of either.

**[4.2]** If I am with others to whom I have obligations, choosing the last of either might become a moral matter. Suppose I encourage Kayla, one of my nieces, to join me on a challenging, technical hike, and she accepts enthusiastically. Unfortunately, she falls and breaks her collar bone during the hike. Upon her



release from the emergency room, I take her for ice cream to cheer her up. If Kayla's favorite flavor of ice cream is chocolate chip, then my taking the last of it is a moral matter. My choice violates my obligations to Kayla, for at least two reasons. First, by encouraging anyone, family or not, to engage in an activity, I take on some kind of obligation to react fittingly to how the activity turns out for that person. This does not mean that I am responsible for any harm that befalls the person during the activity, but it does mean that, at the very least, I am obligated to be supportive as the person deals with that harm.

Recently, I went skydiving for the first time with Bill, a retired friend and colleague. He asked me to go with him so that he could scratch skydiving off his "bucket list," and I readily agreed to do so. Suppose that, instead of readily agreeing, Bill had to persuade me to join him. Prior to his request, the thought of jumping out of an airplane that is not on fire, or otherwise severely damaged, always seemed to me terrifying and insane. So, he had to convince me to overcome those feelings and sign up for the jump. Suppose also, again contrary to the actual facts, my primary chute did not open during the jump, and my instructor had to jettison that chute and use the backup. That resulted in our landing in a farmer's yard instead of in the landing zone.<sup>1</sup> I returned to the skydiving center quite shaken and upset. If all that had happened, Bill would not be responsible for my distress as, ultimately, I made a voluntary choice to join him.<sup>2</sup> He, however, would be obligated to help me cope with my distress in the immediate aftermath of the incident. Bill's actions created his obligation. Because he persuaded me to join him, he is obligated to be supportive if things do not go well for me. He fails to satisfy that obligation if he merely said to me something like, "Stop your whining. You're being irrational. Everything's okay. Get over it."<sup>3</sup> It is perfectly reasonable for anyone to be distressed after a first skydiving jump if the primary chute did not open, and Bill, through his actions, took on the obligation to respond supportively to my reasonable distress.

The second reason my choice of chocolate chip ice cream violates my obligations to Kayla is that, as an uncle of whom she is fond and treats well, things that I reciprocate, I have a special relationship with her. That relationship obligates me to take into account her desires, feelings, and pain more readily than I am obligated to take into account the desires, feelings, and pain of others with whom I do not have special relationships. Because I have a reciprocal, caring relationship with her, I know that she is in pain and that having chocolate chip ice cream would cheer her up. My own choice to maintain a close relationship with my niece obligates me to help ease her pain by making the minor sacrifice of letting her have the last of the chocolate chip ice cream.

This does not mean that individuals' preferences become moral matters only when they involve others with whom individuals have special relation-

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ships. Consider, again, my preference for pepperoni pizza over sausage pizza. Although that preference is not a moral matter, my preference for pizza with meat ingredients over pizza with only vegetable ingredients is a moral matter. That matter is whether the liberty of external acts allows humans to eat meat. Resolving the matter involves determining many things, such as, but not limited to, whether eating meat contributes to unjustified harm to animals, whether it contributes to environmental degradation that harms humans and other living organisms, and whether it helps perpetuate a meat production industry that is unsustainable, actually makes food less available to many hungry people around the world, and harms local communities' economies. Moral liberalism's basic commitments provide the right criteria for making those determinations. Both the liberty of external acts and the obligation not to create undue burdens for others inform the determinations. The liberty of internal states speaks to whether I know, or should know, the relevant consequences of eating meat.

**[4.6]** Suppose Kenzi, my other niece, buys a particular brand of shoes. Her choice of the brand may be a moral matter. If that brand uses low-wage child labor in its factories, then it is a moral matter. Resolving the matter involves many determinations to which moral liberalism speaks. Among them are whether there are other brands that do not use such labor, whether using such labor is exploitative, and whether Kenzi knew, or should have known, that such labor produces the brand she chose. The liberty of internal states speaks to the knowledge matters, while both the liberty of external acts and the obligation not to create undue burdens for others speak to the exploitation matter.

**[4.7]** It would be a mistake to conclude from the preceding paragraphs that it always is clear which of moral liberalism's basic commitments applies to a given determination. It is not always clear, nor should it be. A particular determination that we must make in order to resolve a moral issue may involve unsettled or controversial positions or considerations. Eating meat is an obvious example. If nonhuman animals are moral patients, things to which humans have moral responsibilities, on par with humans, then the obligation not to create undue burdens for others obviously applies to nonhuman animals. The result may be that eating meat violates that obligation. If nonhuman animals are not moral patients on par with humans, then the matter of creating undue burdens does not apply. The obligation not to create such burdens will not help us resolve the issue. In either case, however, the liberty of external acts applies. Whether or not nonhuman animals are on par with humans, that liberty may not allow us to cause harm to nonhuman animals by raising them in particular ways and killing them for food.

**[4.8]** The preceding demonstrates that making a given determination may, or, perhaps, is likely to, involve applying more than one of moral liberalism's basic commitments. Consider determining whether using low-wage child

labor is exploitative. The very term “using” indicates an external act and renders the liberty of such acts applicable. Whether such labor creates an undue burden for the children who are employed, however, is an equally obvious, relevant consideration. Thus, making the determination at issue involves at least two of moral liberalism’s basic commitments.

At this point, it likely is clear to readers that moral liberalism applies to the issues examined in environmental ethics and business ethics. It applies equally well to applied ethics’ other subdisciplines such as bioethics, media ethics, sports ethics, and research ethics. Each of those subdisciplines, as well as others, examine decisions and practices that affect, either positively or negatively, countless other individuals beyond those who make the decisions or act according to the practices. A doctor who, on religious grounds, refuses to perform a legal medical procedure affects negatively those patients who desire and need the procedure, but do not have the means to obtain it elsewhere. The doctor’s decision involves all of moral liberalism’s basic commitments. The liberty of internal states applies to the doctor’s religious belief. The liberty of external acts applies to the doctor refusing to perform the procedure. The obligation not to create undue burdens for others applies to how the doctor’s decision affects patients.

Consider, for illustrative purposes, how the obligation not to create undue burdens for others applies to the doctor’s refusal to perform the procedure. If a given patient easily, with no appreciable effort and at no greater cost financially or psychologically, can obtain the procedure elsewhere, then the doctor clearly does not violate the obligation. If, however, a given patient does not have the financial means or physical ability to obtain the procedure elsewhere, then we must examine how the obligation speaks to the doctor’s refusal. The obligation also is “in play” if a given patient, because of a deep fear of medical treatments and a long-cultivated comfort level with the doctor, would be traumatized by seeking treatment from another doctor.

Some of the matters of practical morality that the remainder of this book examines fall under identifiable subdisciplines of applied ethics. Sports that harm participants, such as American-style football and boxing, clearly fall under sports ethics’ purview.<sup>4</sup> Such harmful sports raise several issues to which moral liberalism applies. Whether societies should ban those sports is a matter that involves the liberty of internal states, as I have defined “internal states.” That liberty applies to competent individuals who take risks with their own bodies when doing so does not prevent them from fulfilling their moral obligations. In large part, the obligation not to create undue burdens for others determines those individuals’ obligations. If risking their bodies through participation in harmful sports prevents individuals from fulfilling their obligations, then the liberty of external acts applies to their participation.<sup>5</sup>

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**[4.12]** A related issue is whether parents and guardians are free morally to allow their children to participate in harmful sports. Resolving that issue involves determining whether parents' and guardians' beliefs about childrearing are internal states about which they have liberty and whether their parental actions properly are part of their liberty of external acts. The obligation not to create undue burdens for others informs both determinations.

**[4.13]** Moral liberalism also applies to less obvious issues that harmful sports raise. Among them are whether individuals act morally by being fans of, spending money on, and providing the audience for harmful sports. It is one thing to conclude whether or not individuals are free morally to participate in harmful sports, but it is quite another to conclude whether nonparticipants are free morally to support harmful sports. By extension, it is one thing to conclude whether or not governments should allow participation in harmful sports, but it is quite another to conclude whether governments should support such sports by funding stadia construction for teams and providing tax incentives for leagues to establish teams in their jurisdictions. At both the individual level and the governmental level, the issues are similar to the issues concerning suicide. It is one thing to conclude whether individuals are free morally to commit suicide and whether governments should permit suicides. It is quite another to conclude whether others are free morally to assist individuals in their suicides and whether governments should permit such assistance.

**[4.14]** Moral liberalism does not apply only to issues that fall neatly into one of applied ethics' subdisciplines. My interests, in fact, in large part lie with issues of practical morality that do not. Hence, many of the remaining chapters of this book are devoted to issues that defy neat classification into one of applied ethics' subdisciplines. In some cases, it is because aspects of the issues are relevant to more than one of the subdisciplines. In other cases, it is because the issues typically are not relevant to the institutions, practices, decisions, and actions that any of the subdisciplines examine. Such issues involve behavior that is more personal in nature and, as such, falls primarily outside the purview of any subdiscipline.

**[4.15]** Issues concerning role model status and obligations are good examples of the former, as those issues fall within the purview of more than one of applied ethics' subdisciplines. Business ethicists, bioethicists, media ethicists, sports ethicists, and research ethicists all readily and willingly consider role model issues. Moral liberalism provides the criteria that would serve them best as they examine those issues. Individuals' beliefs about whether they have, or should have, role model status, and their beliefs about what being a good role model entails, are internal states to which moral liberalism speaks. If individuals, in fact, are role models, then the liberty of external acts bears on their behavior. The undue-burden concept bears on determining the obligations that others justifiably can ascribe to role models.

Earlier, I included the qualifiers “typically” and “primarily” when referring to issues of practical morality that are not within the purview of any of applied ethics’ subdisciplines. I did so in order to acknowledge the fact that it is inaccurate to claim any issue of practical morality never falls within the purview of any of applied ethics’ subdisciplines. After all, individuals’ behavior that seems personal in nature often creeps into individuals’ nonpersonal roles, decisions, and activities. Practitioners in the subdisciplines, if they search long enough, can find relevance for their research in any practical issue. The point, however, is that some practical issues do not garner enough attention within subdisciplines to constitute an appreciable part of the subdisciplines’ literature. *Schadenfreude*, for instance, makes appearances in several subdisciplines’ literature. Because it is taking pleasure in others’ misfortune, it is reasonable to examine whether the emotion has a place in the roles and activities that various subdisciplines address. Some of various subdisciplines’ practitioners have provided such examinations. Those examinations, however, are not all that common in subdisciplines’ literature. Examinations of *Schadenfreude*, instead, typically are in publications outside the subdivisions’ literature.

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Issues concerning *Schadenfreude* also illustrate well how moral liberalism applies to issues of practical morality that typically concern individuals as they navigate their way through life in general, rather than as they navigate their way through their professional, educational, or work lives. One such issue is whether *Schadenfreude* is a morally permissible emotion for any person to have in any context. If individuals do not act on the emotion, then the most relevant of moral liberalism’s commitments for making that determination is the liberty of internal states. If individuals act on the emotion by, say, treating badly the unfortunate others, the liberty of external acts and the obligation not to create undue burdens for others come to bear on the determination.

[4.17]

The issues that this brief chapter raises constitute only a small subset of practical morality’s concerns. If I have achieved my modest goal for the chapter, readers recognize that moral liberalism applies broadly to morality’s many, and diverse, practical issues. It applies equally well to issues that fall neatly within applied ethics’ subdisciplines and to issues that defy such classification. This book now turns to applying moral liberalism to some of the many issues of both sorts.

[4.18]

## NOTES

[4.19]

1. In actuality, all the described misfortune was Bill’s, not mine.

2. This is assuming that Bill’s persuasion does not take the form of coercion. Persuasion can be, but need not be, coercive. To hold that all persuasion is coercive is to deny the possibility of reasonable discourse about social matters. In such discourse, parties often attempt

[4n1]  
[4n2]

### *Moral Liberalism's Broad Applicability*

to persuade others to adopt their views. Chapter 8 addresses coercion in the context of individuals participating in harmful sports.

[4n3] 3. It is possible, though unlikely, that such words actually are supportive in a given context. If Bill knows that I am the kind of person who prefers, and reacts best to, “tough love,” then such words might satisfy Bill’s obligation to be supportive about my distress.

[4n4] 4. American-style football and boxing are obvious examples of sports that harm participants. Participants striking each other is an essential feature of both sports. Many other sports also harm participants even though participants striking each other is not an essential feature of those sports. Throughout this book, I refer to the former, but not the latter, by the shorthand “harmful sports.”

[4n5] 5. For ease of explanation, I demonstrate how only one of moral liberalism’s basic commitments applies to each of the described considerations. Like all relevant considerations regarding any context, more than one of moral liberalism’s commitments may apply to each of the described considerations.



*Part II*

**Liberty of Internal States**



## *Chapter Five*

# General Arguments Regarding the Liberty of Internal States

**[5.0]** The liberty of internal states is the aspect of moral liberalism that most clearly and directly applies to the issues of practical morality that this part of the book examines. Readers, however, should not be surprised if they find moral liberalism's other aspects equally as relevant, nor should they be surprised when the chapters' arguments make use of points relevant to those other aspects. The part's title stems not from the liberty of internal states having exclusive purview over the issues it examines but, rather, from how those issues highlight the liberty of internal states. This chapter provides a brief refresher of chapter 2's explanation of internal states, as well as that chapter's demonstration of how moral liberalism applies to those states. It also identifies some considerations that chapter 2 does not address and draws some further connections beyond those drawn in that chapter.

### **[5.1]** REFRESHER ON INTERNAL STATES<sup>1</sup>

**[5.2]** I use "internal states" to refer both to individuals' mental states and to individuals' bodily states that do not affect others. Mental states clearly are internal to the agents that have them because others cannot observe them through the five senses. Although bodily states are observable, they are internal in the sense that they are a part of the agent as an embodied entity.

**[5.3]** Moral liberalism excludes from moral scrutiny those mental states on which individuals do not act. Such states are part of individuals' autonomy to determine for themselves, and to pursue, how best to live.<sup>2</sup> Mental states that are parts of causal chains that produce acts, however, are subject to moral scrutiny just as are the acts they produce, or help to produce.<sup>3</sup> In a sense,

when mental states produce acts, they no longer are internal. They constitute a significant part of individuals' interaction with the external world, most notably for this book, the interaction that affects, either positively or negatively, parts of the external world. In many cases, moral scrutiny of such mental states bears heavily on the moral scrutiny of the acts themselves. When moral scrutiny of such mental states deems immoral the mental states, then moral scrutiny likely also deems immoral the acts that those mental states produce.

Consider a case where ignorance, a mental state, is part of a causal chain that produces an act. Suppose I am unaware that Todd, my brother to whom I am very close, is suffering from deep depression. Absent overriding considerations, our close relationship requires me to check on him periodically and to support him through his difficult time.<sup>4</sup> Because I am ignorant of his distress, however, I neglect to do so. My ignorance, a mental state, is part of the causal chain that produces my failure to act as my close relationship with Todd requires. Its part in that causal chain renders my mental state a proper subject of moral scrutiny.

[5.4]

Even though my mental state produces an act that affects Todd adversely, whether moral scrutiny should judge immoral my mental state likely is not a simple matter. Determining the moral status of any mental state or act that affects others requires examining many of the circumstances surrounding the mental state or act. This case is no exception.

[5.5]

Among the many considerations that bear on this case is whether my ignorance is culpable.<sup>5</sup> If Todd sends me clear, recognizable warning signals of his distress, then my ignorance is culpable and, unless there are other overriding considerations, the mental state is immoral. This does not mean that I am responsible for any dreadful consequences that might result from Todd's depression, but, rather, it means that I have a mental state that I ought, morally, not to have. The mental state prevented me from doing something that my close relationship with Todd requires of me. If, on the other hand, Todd sends no warning signals, or sends only unclear signals, then my ignorance is not culpable, and, unless there are other overriding considerations, the mental state is not immoral.

[5.6]

If my ignorance of Todd's distress does not cause me to act in any particular way, then whether my ignorance is culpable does not bear on the moral judgment about the mental state. If, despite my ignorance, I check on Todd and treat him in ways that constitute appropriate support for a person in his level of distress, then there is no reason to scrutinize morally the mental state. There is no immoral act for which we should ask whether it is caused by an immoral mental state.

[5.7]

The preceding merely is an example of the kinds of considerations that go into determining the moral status of mental states that affect others. Whether my ignorance is culpable does not, by itself, determine my ignorance's moral

[5.8]



status. It, instead, is one among many considerations that are necessary to make that determination. All of the following possible circumstances, and countless others, bear on my mental state's moral status and *might* excuse my ignorance: I am suffering from my own deep depression; because of a series of surgeries and health issues, I am single-mindedly focused on my rehabilitation and future health; after losing my job, I am desperately trying to find another so that I do not lose my house and car; learning how to perform well in a new position I have taken at work is overwhelming me; and I am quite worried about my child who is seriously ill.

**[5.9]** Like mental states on which individuals do not act, moral liberalism excludes from moral scrutiny individuals' bodily states that do not affect others. Because such bodily states produce no acts that are subject to moral scrutiny, the states themselves are not subject to moral scrutiny. They are part of individuals' autonomy to determine for themselves, and to pursue, how best to live. The argument for this runs similarly to that for mental states.<sup>6</sup>

## **[5.10]** A TERMINOLOGY CLARIFICATION

**[5.11]** Readers may have noticed that I do not refer to internal states as "acts." This is not because I have any real objection to the label. My arguments about internal states are sound or unsound independent of whether they properly are called "acts." I readily grant, in fact, that many, if not all, of the states I call "internal" are, at least loosely speaking, kinds of acts. The most obvious are many bodily states that do not affect others. Assuming that I have no uncontrollable ailments, my physical condition comprises, in a sense, various acts. Suppose I am in poor physical condition. One could think of that condition comprising many acts such as my "couch potato" approach to my free time, my eschewing any physical exertion, and my gluttony. Although I think of my supposed poor physical condition as a state that results from such acts, my arguments stand or fall independently of whether bodily states are acts themselves or the result of acts.

**[5.12]** It is even more obvious that many mental "goings on" are acts. Judging, fantasizing, desiring, and many others clearly are acts of the mind.<sup>7</sup> Like bodily states, I have no real objection to referring to such mental "goings on" as kinds of acts.<sup>8</sup> I, in fact, frequently use that language in discussions and debates with others.

**[5.13]** The reason why, in this book, I avoid referring to internal states as "acts" is not a philosophical commitment. It simply is a matter of clarity. By not referring to internal states as "acts," I hope to help readers keep them separate from what I call "external acts." Moral liberalism treats quite differently

the liberty of internal states and the liberty of external acts. This is true whether or not internal states properly are called “acts.”

## MORAL LIBERALISM’S MOST OBVIOUS OPPONENTS

[5.14]

Many virtue ethicists are among moral liberalism’s most obvious opponents.<sup>9</sup> In this context, the “virtue ethics” label is narrow in scope. Many philosophers use the label when referring to David Hume<sup>10</sup> and others, such as Francis Hutcheson,<sup>11</sup> who hold moral theories similar to his. I do not refer to Hume and those others in that way. Whether or not it is correct use the “virtue ethics” label for Hume and Hutcheson, neither is the kind of virtue ethicist I have in mind here. Because I appealed to Hume’s moral theory to defend aspects of the theory I hold, I certainly would not label him a likely opponent of my theory.

[5.15]

When I identify many virtue ethicists as moral liberalism’s most obvious opponents, I do not mean to suggest that virtue ethicists oppose unanimously liberalism in all its forms. In separate works, Martha Nussbaum<sup>12</sup> and Mark LeBar<sup>13</sup> argue that we can derive a political liberalism, or something akin to one, from virtue ethics of the Aristotelian sort. I suppose it also is possible for the virtue ethicists I consider here to accept moral liberalism in some fashion, such as a guide for individuals’ actions and societies’ norms and rules. Perhaps they could argue that, by following moral liberalism’s directives, individuals act virtuously and develop virtuous characters. Societies, by following moral liberalism’s directives, adopt norms and rules that provide individuals with the space to act virtuously and develop virtuous characters.

[5.16]

If there are virtue ethicists who argue in that fashion, however, they certainly are the exceptions when it comes to the virtue ethicists to which I am referring here. In general, the virtue ethicists I have in mind reject moral liberalism. Accordingly, I mostly, but not exclusively, consider those virtue ethicists as likely detractors when I make the arguments regarding the issues I examine in this part of the book.

[5.17]

Perhaps the most notable of moral liberalism’s aspects to which virtue ethicists object is its treatment of internal states. Whereas moral liberalism often insulates internal states from moral judgment, virtue ethics does not. The difference pertains both to mental states on which individuals do not act and to individuals’ bodily states that do not affect others.

[5.18]

Unlike moral liberalism, virtue ethics places mental states, whether or not individuals act on them, under moral scrutiny. Suppose that Joe believes LGBTQ+ persons are not worthy of his respect. He believes they are unworthy of any consideration from him because he believes their lifestyles are contemptible. He secretly wishes that pharmaceutical scientists would devel-

[5.19]

op a pill that could turn straight all LGBTQ+ persons and that government would require such persons to take the pill. Joe, nevertheless, treats LGBTQ+ persons just as he does straight people. Those with whom he works have no idea what he actually believes about them. They, in fact, erroneously believe that he is an ally. Joe treats LGBTQ+ persons this way because of his commitment to social order. He believes that social order can be maintained only if individuals treat all others with respect, including others who have contemptible lifestyles.

**[5.20]** I paint a bleak picture of Joe's mental states in order to demonstrate a key difference between moral liberalism and virtue ethics. Because he does not act on them, moral liberalism passes no judgment on Joe's mental states, while virtue ethics does. For virtue ethicists, Joe's mental states speak to the morality of his character. His despicable beliefs signal moral flaws in his character. He is flawed morally even if he does not act on the beliefs. We should judge morally not just what people do but also what they think.

**[5.21]** Disturbing beliefs such as Joe's constitute "a bitter pill" that moral liberalism requires us to "swallow."<sup>14</sup> Moral liberalism prohibits us from condemning morally such beliefs. Even for this author who is arguing for moral liberalism, the prohibition often is difficult to accept. Joe's beliefs trouble me just as much as they do virtue ethicists. If Joe were my friend or relative, I would expend just as much effort trying to persuade him to give up the deplorable beliefs as would a virtue ethicist. The difference between me and virtue ethicists lies only in how we judge morally, or, in my case, not judge morally, disturbing beliefs on which individuals do not act.

**[5.22]** As hard as it often is to accept, moral liberalism's treatment of disturbing beliefs such as Joe's is necessary to avoid an untenable position in which virtue ethicists find themselves. That untenable position is a more significant problem than is insulating from moral judgment disturbing beliefs on which individuals do not act. The dilemma arises from the competing conceptions of the good life that are inevitable in plural societies.<sup>15</sup>

**[5.23]** Judging as immoral a given disturbing mental state, such as Joe's belief, places virtue ethicists in the untenable position of either holding that the given mental state is indicative of a morally corrupt character while other disturbing mental states are not or holding that a great many of our seemingly benign mental states are indicative of morally corrupt characters. This is because so many of our mental states are disturbing to at least some other people.

**[5.24]** Consider how disturbing many religious people find the beliefs, common among atheists, that the human species would be far better off if it no longer suffered from what Richard Dawkins terms the "God delusion."<sup>16</sup> Likewise, imagine how disturbing atheists often find various religious beliefs and their accompanying rituals. For atheists, these beliefs and rituals are mere fantasies, and, often, atheists find them disturbing in that they corrupt our charac-

ters and prevent us from progressing in ways we should as a species. In both cases, those who find the fantasies disturbing may well believe they are connected causally to morally corrupt characters.

To take a side on which of the atheists' or religious persons' beliefs corrupt characters, virtue ethicists must privilege one group's conception of the good life over the other group's conception.<sup>17</sup> If they do not privilege one group's conception, then they must accept that both groups' beliefs corrupt our characters. Neither option is tenable. Chapter 3 demonstrates why it is problematic to privilege one conception, the first option, in plural societies. It even is easier to demonstrate why it is problematic to accept that both groups' beliefs corrupt our characters, the second option. Adopting that position would require a similar stance on a great many beliefs about which people disagree. When people reject others' beliefs, they often hold that the beliefs they reject corrupt our characters. This is so common that there would be very few beliefs, or, at least, very few of any significance, remaining that no one finds corruptive. The result is that very few of our beliefs would escape moral condemnation.

[5.25]

Moral liberalism and virtue ethics disagree similarly when it comes to individuals' bodily states that do not affect others. Suppose that, instead of having bigoted beliefs about LGBTQ+ persons, Joe leads a lazy, inactive life that produces dreadful bodily states. He lets his muscular and skeletal structures atrophy from inactivity, he smokes prolifically, and his gluttonous, unhealthy diet surely will lead to his early death unless his smoking takes him first. Suppose, also, that Joe's bodily states do not affect others. He has no extant family who might depend on him, because he keeps to himself, he has no friends whom his ill health or death would affect, and, because he lives on a trust fund that his deceased parents left him, he has no job that his poor bodily states would prevent him from performing. Moral liberalism insulates from moral judgment Joe's bodily states, while virtue ethics does not. Virtue ethicists condemn Joe's bodily states, as well as Joe's acts that produce them. A virtuous person would not live that way. Laziness and gluttony are vices, and Joe enthusiastically embraces those vices.

[5.26]

Like mental states, virtue ethicists run into difficulty when they condemn morally Joe's bodily states. There is no way to distinguish Joe's troubling bodily states from many others that at least some people find troubling. I am an active person who finds troubling bodily states such as Joe's when those states are caused by lifestyle choices like Joe's. On the other hand, some others, including some of my friends, find troubling many of my lifestyle choices. Many of my activities have risks that they believe a person my age should not take. They condemned my choice to boulder on a rock climbing wall when I fell and injured my ankle. After I went skydiving, they gave me disapproving looks and asked me the common question, "Why the hell would you jump out of a perfectly good airplane at your age?" Because of those,

[5.27]

and other, risky activities, I could have a life-altering injury or an early death. Like Joe, such problems would result from my lifestyles choices. If virtue ethicists condemn morally Joe's bodily states, they must also condemn mine because some find disturbing how I reach those states. This is an odd conclusion, however, because I frequently am praised for the physical condition I have at my age.

**[5.28]** For both kinds of internal states, the problem for virtue ethicists lies in competing conceptions of the good life. Unless they are willing to condemn morally all mental and bodily states that some people find disturbing, they must find some way to separate from other states a given state that they condemn. They can do so only by privileging a particular conception of the good life. That, of course, exactly is what virtue ethicists typically wish to do. I, however, already demonstrated in chapter 3 why doing so is problematic in plural societies. Those problems show why insulating from moral judgment both disturbing mental states on which individuals do not act and individuals' disturbing bodily states that do not affect others is a less "bitter pill" than that which virtue ethicists must "swallow."

**[5.29]** The kind of reasoning described in this chapter is indicative of the arguments readers will encounter in the remaining chapters of this part of the book. Such reasoning also will play a role in the arguments in later parts. The next chapter turns to a family of mental states: fantasies. It demonstrates why our fantasies, even those that others find quite disturbing, are not subject to moral judgment unless we act on them.

**[5.30]**

## NOTES

**[5n1]** 1. Chapter 2 explains internal states more fully, addresses nuances that this brief refresher does not capture, and develops more fully how moral liberalism applies to internal states.

**[5n2]** 2. Chapter 2 demonstrates why moral liberalism emphasizes such autonomy. Chapter 3 demonstrates why moral liberalism's approach to autonomy is essential for plural societies.

**[5n3]** 3. For ease of explanation, from this point forward, phrases like "acts that mental states produce" include acts that mental states only help to produce.

**[5n4]** 4. A few paragraphs later, I identify some possible overriding considerations.

**[5n5]** 5. Aristotle provides perhaps the most well-known examination of ignorance's role in determining acts' moral status. See Aristotle, *Nicomachean Ethics*, trans., intro., notes, and glossary Terence Irwin, second edition (Indianapolis, IN: Hackett Publishing Company, 2000 [ca. 350 BCE]), 53–59. Contemporary works on the subject include William J. FitzPatrick, "Moral Responsibility and Normative Ignorance: Answering a New Skeptical Challenge," *Ethics* 118 (July 2008): 589–613; Katherine Furman, "Moral Responsibility, Culpable Ignorance and Suppressed Disagreement," *Social Epistemology* 32 (2018): 287–99; Pierre Le Morvan, "When Ignorance Excuses," *Ratio* 32 (2019): 22–31; Neil Levy, "Culpable Ignorance and Moral Responsibility: A Reply to FitzPatrick," *Ethics* 119 (2009): 729–41 and "Culpable Ignorance: A Reply to Robichaud," *Journal of Philosophical Research* 41 (2016): 263–71; Daniel J. Miller, "Circumstantial Ignorance and Mitigated Blameworthiness," *Philosophical Explorations* 22 (2019): 33–43; James Montmarquet, "Zimmerman on Culpable Ignorance," *Ethics* 109 (1999): 842–45; James A. Montmarquet, "Culpable Ignorance and Excuses," *Philosophical Studies* 80 (1995): 41–49; Rik Peels, "Tracing Culpable Ignorance," *Logos & Episteme* 2 (2011): 575–82; Philip Robichaud, "On Culpable Ignorance and Akrasia," *Ethics* 125

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(2014): 137–51; Holly Smith, “Culpable Ignorance,” *Philosophical Review* 92 (1983): 543–71; Holly M. Smith, “Non-Tracing Cases of Culpable Ignorance,” *Criminal Law and Philosophy* 5 (2011): 115–46; René van Woudenberg, “Ignorance and Force: Two Excusing Conditions for False Beliefs,” *American Philosophical Quarterly* 46 (2009): 373–86; and Michael J. Zimmerman, “Moral Responsibility and Ignorance,” *Ethics* 107 (1997): 410–26.

6. Chapter 2 develops more fully the argument.

7. I am using “mind” in the loose sense of everyday language. I am not assuming mind-body dualism. Although it is not relevant to this book, or, at least, not directly relevant, I actually reject mind-body dualism.

8. Philosophers, both historical and contemporary, have examined many questions about mental acts. Some of the contemporary works that provide a sense of those questions are Susan V. Castagnetto, “Reid’s Answer to Abstract Ideas,” *Journal of Philosophical Research* 17 (1992): 39–60; Brandon Cooke, “Ethics and Fictive Imagining,” *Journal of Aesthetics and Art Criticism* 72 (2014): 317–27; Leon de Bruin, Fleur Jongepier, and Derek Strijbos, “Mental Agency as Self-Regulation,” *Review of Philosophy and Psychology* 6 (2015): 815–25; A. C. Ewing, “Mental Acts,” *Mind* 57 (1948): 201–20; Peter Geach, *Mental Acts: Their Content and Their Objects* (New York: Humanities Press, 1957); Keith Hossack, “Consciousness in Act and Action,” *Phenomenology and the Cognitive Sciences* 2 (2003): 187–203; Joëlle Proust, “A Plea for Mental Acts,” *Synthese* 129 (2001): 105–28; Gilbert Ryle, “Courses of Action or the Uncatchableness of Mental Acts,” *Philosophy* 75 (2000): 331–44; Wilfrid Sellars, “Notes on Intentionality,” *Journal of Philosophy* 21 (1964): 655–65; Benjamin Sheredos, “Act Psychology and Phenomenology: Husserl on Egoic Acts,” *Husserl Studies* 33 (2017): 191–209; and Hamid Taieb, “Intentionality and Reference: A Brentanian Distinction,” *Monist* 100 (2017): 120–32.

9. Philosophers commonly associate virtue ethics with Aristotle. See Aristotle, *Nicomachean Ethics*. Among the contemporary works that present some version or other of virtue ethics are Robert Merrihew Adams, *A Theory of Virtue: Excellence in Being for the Good* (Oxford: Oxford University Press, 2006); Julia Annas, *Intelligent Virtue* (Oxford: Oxford University Press, 2011) and “Applying Virtue to Ethics,” *Journal of Applied Philosophy* 32 (2015): 1–14; G. E. M. Anscombe, “Modern Moral Philosophy,” *Philosophy* 33 (1958): 1–19; Neera Badhwar, “The Limited Unity of Virtue,” *Notis* 30 (1996): 306–29 and *Well-Being: Happiness in a Worthwhile Life* (New York: Oxford University Press, 2014); Heather Battaly, “A Pluralist Theory of Virtue,” in *Current Controversies in Virtue Theory*, ed. Mark Alfano (New York: Routledge, 2015), 7–21; Paul Bloomfield, *The Virtues of Happiness: A Theory of the Good Life* (New York: Oxford University Press, 2014); Philippa Foot, *Virtues and Vices* (Oxford: Blackwell, 1978); Marilyn Friedman, “Feminist Virtue Ethics, Happiness and Moral Luck,” *Hypatia* 24 (2009): 29–40; Rosalind Hursthouse, *On Virtue Ethics* (Oxford: Oxford University Press, 1999); Alasdair MacIntyre, *After Virtue*, second edition (Notre Dame, IN: University of Notre Dame Press, 1984); Sean McAleer, “An Aristotelian Account of Virtue Ethics: An Essay in Moral Taxonomy,” *Pacific Philosophical Quarterly* 88 (2007): 308–25 and “Four Solutions to the Alleged Incompleteness of Virtue Ethics,” *Journal of Ethics and Social Philosophy* 4 (2010): 1–20; Martha C. Nussbaum, “Non-Relative Virtues: An Aristotelian Approach,” in *The Quality of Life*, ed. Martha C. Nussbaum and Amartya Sen (Oxford: Oxford University Press, 1993), 242–70; Robert C. Roberts, *Emotions: An Essay in Aid of Moral Psychology* (Cambridge: Cambridge University Press, 2003); Michael Slote, “Virtue Ethics and Democratic Values,” *Journal of Social Philosophy* 14 (1993): 5–37; Nancy Snow, *Cultivating Virtue* (Oxford: Oxford University Press, 2015); and Christine Swanton, *Virtue Ethics: A Pluralistic View* (Oxford: Oxford University Press, 2003).

10. David Hume, *A Treatise of Human Nature*, analytical index L. A. Selby-Bigge, rev. and notes P. H. Nidditch, second edition (Oxford: Oxford University Press, 1978 [1739–1740]) and *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*, intro. and analytical index L. A. Selby-Bigge, rev. and notes P. H. Nidditch, third edition (Oxford: Oxford University Press, 1975 [1748 and 1751]).

11. Francis Hutcheson, *A System of Moral Philosophy, in Three Books*, 2 vols., intro. Daniel Carey (New York: Continuum, 2005 [1755]).

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[5n11]

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[5n12]

12. Martha Nussbaum, "Aristotelian Social Democracy," in *Liberalism and the Good*, ed. R. Bruce Douglass, Gerald M. Mara, and Henry S. Richardson (New York: Routledge, 1990), 203–52.

[5n13]

13. Mark LeBar, "Virtue and Politics," in *The Cambridge Companion to Virtue Ethics*, ed. Daniel C. Russell (Cambridge: Cambridge University Press, 2013), 265–89.

[5n14]

14. Chapter 6 takes up additional disturbing mental states such as pedophiles' sexual fantasies about children.

[5n15]

15. Chapter 3 examines the notion of inevitable, competing conceptions of the good life.

[5n16]

16. Richard Dawkins, *The God Delusion* (Boston: Houghton Mifflin, 2006).

[5n17]

17. For ease of explanation, I write rather loosely when I refer to a group's conception of the good life. I seriously doubt that the members of any particular group have identical conceptions of the good life. My point merely is that members of a group tend to have conceptions that are more similar to other members' conceptions than they are to the conceptions of those outside the group.





## Chapter Six

# The Moral Liberty of Fantasies

**[6.0]** The gift of fantasy has meant more to me than any talent for abstract, positive thinking.

**[6.1]** —Albert Einstein

**[6.2]** Fantasies constitute the family of mental states that perhaps are the most obvious candidates for internal states status and possible insulation from moral judgment. Some philosophers argue against such insulation because fantasies can lead to action. Others argue that we should not assume that fantasies will lead to action and that we should not judge them morally unless they do. Still others argue that evaluating fantasies through their possible connections to action is misguided because fantasies contribute to, or reveal aspects of, our characters.

**[6.3]** In this chapter, I will argue for the second position. Fantasies that do not contribute causally to immoral acts are not subject to moral judgments because they properly fall within the liberty of internal states. More precisely, they are part of the freedom of thought that the liberty of internal states affords. I will begin the argument by distinguishing several categories of clear fantasies and applying moral liberalism to them. Then, I will examine a development of the so-called information age that blurs the fantasy/reality distinction: virtual worlds such as Second Life, an online interactive environment in which millions of users worldwide create virtual identities and lives. Users engage in a wide variety of activities including social networking, education, political activism, and commerce. The nature of virtual worlds and the activities of users create an interesting challenge for moral liberalism.

FANTASIES THAT CONTRIBUTE CAUSALLY  
TO IMMORAL ACTS

[6.4]

Some fantasies are parts of causal chains that produce clearly immoral acts. The terms “clearly immoral” include only those acts over which there is no moral debate, such as rape and willful murder. Only those fantasies that actually contribute to such causal chains are included in this category. Thus, a fantasy about a clearly immoral act, such as the rape of a young child, is excluded if it does not contribute to an actual rape. Fantasies in this category are less controversial than are those in other categories.<sup>1</sup> Few, if any, would deny that anything that is part of a causal chain that produces an immoral act is a proper subject of moral scrutiny. If Jack’s sexual fantasies about children lead him actually to rape children, most, if not all, would agree that we are justified in condemning both the rapes and the fantasies.<sup>2</sup>

[6.5]

Condemning morally fantasies that contribute causally to immoral acts is consistent with moral liberalism. To see why, compare the case of Jack’s sexual fantasies about children contributing causally to him raping children to a case of a bomber. Moral liberalism allows us to prohibit the detonation of a bomb in a crowded area because it is an act that harms others. Moral liberalism, however, does not limit our control over the bomber’s acts to just that. We also are justified in prohibiting the bomber’s acquisition of bomb-making materials because it causally contributes to the act of detonating the bomb.<sup>3</sup> Likewise, Jack’s fantasies fall under moral liberalism’s control “umbrella” because those fantasies contribute causally to rapes which clearly are immoral acts.

[6.6]

FANTASIES MANIFESTED ONLY IN OUR THOUGHTS

[6.7]

After a particularly bad day at the office, one might fantasize about the death of one’s boss. One in a committed relationship might fantasize about a third party while having sex with one’s partner. A common occurrence for this author, one might fantasize about interacting with students, colleagues, and administrators in the acerbic, say-what’s-on-your-mind manner of Dr. Gregory House, a character portrayed by Hugh Laurie in the television series *House* that aired from 2004 to 2012. Such fantasies that we neither act on nor share with others constitute a more controversial category of fantasies.

[6.8]

The fact that we do not share them with others suggests that privacy is a central consideration for this category. Although not wanting others to know some fact about oneself does not guarantee that the fact is rightfully private,<sup>4</sup> chapter 2 demonstrates that philosophers have argued for various values of privacy to capture its worth.<sup>5</sup> Examples of this category of fantasies illustrate the importance of those values. Likewise, the values of privacy that the

[6.9]

examples involve provide us with good reasons to conclude, on the basis of the liberty of internal states, that moral judgments do not apply to this category of fantasies.

**[6.10]** Consider the examples of fantasizing about the death of one's boss and of acting like Dr. House. There is a clear value to the ability to maintain privacy in these cases. One need not fear the possible ensuing reprimands or dismissal should one's boss, colleagues, students, or dean learn of the fantasies. The fantasies themselves also have utility we cannot ignore when we consider their moral status.<sup>6</sup> Such fantasies likely are signs of significant issues about one's work environment or duties that one must confront. With the fantasies leading the way, privacy allows one to work through one's feelings about those issues without fear of judgment from others.<sup>7</sup>

**[6.11]** If this is correct, fantasies actually can contribute to one's mental health. In some cases, such as my Dr. House fantasies, the fantasies themselves might serve as the needed coping mechanisms that prevent one from acting out in frustration. In other cases, such as fantasizing about the death of one's boss, fantasies are signs that one must look for new directions in one's life or, at least, new avenues for coping with troubling issues. Few really want such fantasies to come true, so they can serve as motivations to search for effective ways to respond to the issues that produce them. We should not condemn morally fantasies that perform such roles in promoting mental health.

**[6.12]** Jeffrey Hershfield argues effectively for the claim that few really want the fantasies at issue to come true. He argues that one's fantasies are not indicative of one's desires, intentions, and beliefs. He writes,

**[6.13]** Fantasies, as states of imagination, don't represent either how things are or how they should be. Because the contents of fantasies lack what is a key ingredient in the contents of most other intentional states, fantasies function autonomously from these latter sorts of states. They do not engage the central store of intentional states involved in the control of action, such as beliefs, desires, and intentions.<sup>8</sup>

**[6.14]** Hershfield provides an informative survey of empirical studies to support his argument.<sup>9</sup> He writes of those studies,

**[6.15]** It turns out that people enjoy fantasies of sexual activities that they find unappealing. Group sex as well as sex with a stranger are examples of activities exemplifying this pattern, but the most glaring illustration . . . is forced sex. . . . [O]nly one-tenth of one percent of . . . female respondents found the idea of being forced by someone to have sex "very appealing," and yet anywhere from 20–50 percent of the women polled in various studies admit to having fantasies of forced sex.<sup>10</sup>

Some philosophers reject the conclusion that the fantasies at issue are not subject to moral judgment. Christopher Cherry writes, “Fantasising is the making of images for self-gratification, and this is sufficient to make it, *always*, a bad thing.”<sup>11</sup> He adds that fantasies reveal “a divide between what is thought and what is sought. It is this divide which entitles us to describe such fantasizing as at once idle and corrupt.”<sup>12</sup> Fantasies are corruptive influences on our characters because they lead us to contemplate matters that we do not want to bring about. Presumably, one does not actually want one’s boss to die. This author does not really want to act like Dr. House. The very contemplation of such matters, however, speaks to the characters we develop. We are not merely what we do. We also are what we think.

[6.16]

There are three problems with this view. First, it is not clear why Cherry thinks all fantasies are about self-gratification. A better explanation for the fantasy of the boss’s death, for instance, is that it is a coping mechanism for dealing with pain or stress. If he uses the term “self-gratification” so loosely that it includes anything that relieves pain or stress, then he must accept that all human actions are for self-gratification because everything we do is motivated by various desires to obtain, or avoid, things we care about in some way or other. This, however, renders irrelevant the claim that fantasies are about self-gratification. Hershfield makes this point when he writes, “Taking a sauna, reading a novel, getting a pedicure, going for a long walk, are similarly focused on the self, but they are morally innocuous for all that.”<sup>13</sup>

[6.17]

Second, because it can provide one with information that is conducive to mental health, it is not clear why the divide between what one thinks and what one seeks is corruptive. When one recognizes that one’s thoughts are about matters one does not wish to bring about, one has reason to search for other ways to overcome the problems one faces. Far from a corruptive influence on one’s character, this is one of the most positive influences imaginable.

[6.18]

Third, the fantasies at issue often can separate what we think we want at difficult or stressful moments from what we actually want after cool, calm reflection. Kendall L. Walton writes,

[6.19]

It is chiefly by fictionally facing certain situations, engaging in certain activities, and having or expressing certain feelings, I think, that a dreamer, fantasizer, or game player comes to terms with his actual feelings—that he discovers them, learns to accept them, purges himself of them, or whatever exactly it is that he does.<sup>14</sup>

[6.20]

At first, one might think one actually wants the boss to die. As the fantasy plays out, and one imagines oneself attacking the boss or envisions the boss’s family at the funeral, however, one might become disgusted or saddened. That disgust or sadness can help one see what one really wants.

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**[6.22]** Virtue ethicists of the sort I identified in the preceding chapter, those who likely reject moral liberalism, might well accept Cherry's position. Hershfield, however, doubts the applicability of virtue ethics to fantasies. He writes,

**[6.23]** If we consider moral virtues as they are understood in traditional virtue ethics, then there doesn't appear to be any incompatibility between the having of sexual fantasies of immoral behavior and the possession of moral virtues. So understood, the virtues are closely linked to behavior; they are character traits in terms of which actions can be explained. Since our sexual fantasies are not indicative of what we are inclined to do, sexually or otherwise, they fall outside the traditional focus of virtue ethics.<sup>15</sup>

**[6.24]** Walton shares the doubt but expresses it more strongly. He writes, "We often become 'emotionally involved' when we read novels or watch plays or films. But to construe this involvement as consisting of our having psychological attitudes toward fictional entities is, I think, to tolerate mystery and court confusion."<sup>16</sup> This suggests that he believes fantasies do not affect our characters and, thus, are not matters for virtue ethics to condemn.

**[6.25]** Although I share Hershfield's and Walton's doubts about the applicability of virtue ethics to fantasies, I approach the virtue ethics position in a different way. I do so because virtue ethicists could follow Cherry part way but stop short of condemning all fantasies as corruptive forms of self-gratification. They could allow that some fantasies possess therapeutic value that immunizes those fantasies from the charge that they corrupt our characters but argue that some fantasies possess no such value and, thus, either corrupt our characters, or reveal corruption that already is present.

**[6.26]** Consider the example of one in a committed relationship fantasizing about a third party while having sex with one's partner. One might argue that, in addition to being clearly concerned with one's own pleasure, such a fantasy is indicative of a character that shows little respect for one's sexual partner. While involved in such an intimate act, one should focus on the needs and desires of one's partner, not on the attributes of some third party, whether real or imagined. Pedophilia examples also provide possible support for this position. Imagine a man who fantasizes about children for sexual pleasure, never acts on those fantasies with either actual children or real child pornography, but is not motivated to seek any therapeutic help for his sexual attraction to children. We should condemn morally the fantasies because they are connected causally, in one direction or the other, to a corrupted character.

**[6.27]** Such fantasies are among the most challenging for moral liberalism. Undoubtedly, many find the thought of pedophilia fantasies disturbing, especially when they do not motivate one to seek therapeutic help. Nevertheless, unless they are connected causally to behavior, we have no basis for condemning them morally. To do so would place us in the untenable position the

preceding chapter describes. We must hold either that these disturbing fantasies are indicative of morally corrupt characters while other disturbing fantasies are not or that a great many of our fantasies are indicative of morally corrupt characters because so many are disturbing to at least some other people.

Consider, again, the example of religious persons and atheists.<sup>17</sup> Undoubtedly, many religious people find disturbing some atheists' fantasies about a world without religion. On the other hand, many atheists find disturbing various religious beliefs and their accompanying rituals that atheists consider mere fantasies. In both cases, those who find the fantasies disturbing may well believe they are connected causally to morally corrupt characters. This is just what virtue ethicists try to argue about pedophilia fantasies.

[6.28]

To take a side on which of the atheists' or religious persons' fantasies corrupt characters, virtue ethicists must privilege one group's conception of the good life over the other group's conception.<sup>18</sup> Chapter 3, however, demonstrates why such privileging is unacceptable in plural societies. If virtue ethicists do not privilege one group's conception, then they must accept that both groups' beliefs corrupt characters. Neither option is tenable.

[6.29]

The fantasy about a third party while having sex with one's partner is more complicated in that it takes place while one is engaged in acts that affect another person. This seems to suggest that, even following moral liberalism's tenets, the fantasy is subject to moral judgment. Piers Benn states the matter in virtue ethics terms: "If we accept that there is such a thing as sexual fulfilment, and if this cannot be seen as a mere extension of other sorts of fulfilment, then we may expect there to be virtues and vices specific to sex."<sup>19</sup>

[6.30]

Despite rejecting virtue ethics as a moral theory, I welcome examinations of virtues and vices associated with various activities. Benn, in fact, is correct to suggest that there are virtues and vices that apply to sex. The question, however, is whether the fantasy at issue is a vice. We have no good reason to think that it is. Although it is correct that one should be concerned about the needs and desires of one's partner, we cannot go so far as to say that should be one's sole focus. One also should be concerned about one's own needs and desires. The fantasy about a third party may well help one satisfy those needs and desires. Hershfield provides a blunt description of the matter. He writes, "Insisting on being the exclusive focus of one's sexual partner's attention seems . . . less about protecting one's dignity as a person and more about pandering to one's own insecurities, as happens when persons demand that their partners find no one else sexually attractive besides themselves."<sup>20</sup>

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If virtue ethicists argue that such a fantasy prevents one from fulfilling the virtue of providing the necessary focus on the needs and desires of one's partner, then the virtue ethicist removes it from the category of fantasies at issue. If the fantasy plays a role in one not being concerned at all about the

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needs and desires of one's partner, then the fantasy contributes causally to action or, perhaps, inaction. If that is so, then the liberal position can condemn morally the fantasy as part of a causal chain that leads to an immoral act. Thus, virtue ethicists are left with another type of fantasy that they can condemn morally only on the grounds that they find such fantasies disturbing. Again, this is an untenable position.

[6.33]

## ROLE-PLAY FANTASIES

[6.34]

Sexual fantasies are not always matters that sexual partners keep to themselves. Many partners engage in active role-playing fantasies. Role-playing fantasies are not limited to sex. In paintball games, participants act out fantasies of hunting down and killing the other participants. Such fantasies constitute a category of their own because we act them out rather than manifest them only in our thoughts. They often concern activities that, if real, would be immoral.

[6.35]

Patrick D. Hopkins makes an important point regarding such fantasies in the context of sadomasochistic role play. He argues that they are staged simulations to which the parties consent.<sup>21</sup> He adds that the consent in sadomasochistic role play often takes the form of a contract. He writes that the “‘victim’ has negotiated with her ‘rapist’ ahead of time to establish the design, production, duration, and performance of the ‘rape.’ She might establish ‘safe words’ she can use . . . to slow down or stop the action.”<sup>22</sup> The consensual nature of role-play fantasies is crucial because, to the extent one is forced or coerced to participate, the acts lose their fantasy status. They become actual rapes, slavery, kidnappings, and the like. Even paintball would become an actual assault of some level or other. Moral liberalism has no trouble condemning morally such acts. When the parties truly consent, however, there is no basis for condemning morally role-play fantasies.

[6.36]

Role-play fantasies also have potential utility we should take seriously. Jerome Neu writes, “Sexually explicit and even violent images may be a safety valve, giving a harmless outlet to fantasies that might otherwise insist on manifesting themselves in reality.”<sup>23</sup> Although Neu is not addressing role-play fantasies, his point applies to them. Role play can serve as harmless outlets for desires to be the “‘rapist,’” “‘victim,’” “‘hunter,’” or “‘hunted.’” Without harmless outlets, such desires might lead one to an array of dangerous, reckless, or unhealthy behavior.

[6.37]

Perhaps the most promising line of objection to moral liberalism's position on role-play fantasies is to argue that, by promoting immoral attitudes more broadly, such fantasies harm indirectly persons who are not parties to the consensual acts. Many hold this view with respect to sadomasochistic role play. They argue that it harms all women by supporting male dominance

and female submission through replicating and eroticizing patriarchal roles. Some make similar arguments for other role-play fantasies such as paintball games by arguing that they romanticize, and desensitize us to, violence by turning it into a game.

There are two lines of response to this objection. The first is the now familiar refrain that to condemn morally role-play fantasies on this basis places us in an untenable position. Again, the atheist can argue that religious practices are roleplay fantasies that promote broad attitudes that harm us as a species, while the religious person can argue similarly about the atheist's practices. Because we have no nonarbitrary grounds for condemning morally one group's fantasies but not the other group's, we either must condemn both groups' fantasies or condemn neither. Moral liberalism directs us to do the latter because doing so prevents us from privileging one group's conception of the good life over the other group's conception.

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The second line of response is to use Hopkins's argument that role-play fantasies do not replicate patriarchal roles or violence. He argues that role play is simulation, not replication, because it lacks the context and conditions that are necessary for replication. He writes, "What makes events like rape, kidnapping, slavery, and bondage evil . . . is the fact that they cause harm, limit freedom, terrify, scar, destroy, and coerce. But in SM there is attraction, negotiation, the power to halt the activity, the power to switch roles, and attention to safety."<sup>24</sup> Role play's goal is to produce the context and conditions of simulation, not those of actual violence, slavery, kidnapping, and the like. Hopkins compares it to riding a rollercoaster. He writes, "*The simulation itself* is thrilling and satisfying. There is no actual desire to die, fall, or crash. The simulation itself is the goal, not a lesser copy of the goal."<sup>25</sup>

[6.39]

If Hopkins is correct, it is difficult to see how role-play fantasies promote broadly immoral attitudes that harm others. The context and conditions of the actual immoral practices are absent. Without that context and those conditions, role-play fantasies fail to replicate immoral practices and, thus, fail to reinforce them.

[6.40]

Melinda Vadas denies the significance of Hopkins's simulation/replication distinction in an interesting way that challenges moral liberalism's position. She writes of sadomasochistic role play,

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The kick they give is a direct function of the actual, historical occurrence or existence of death camps, rapes, and racist enslavements they simulate. . . . The existence or occurrence of the SM simulation both conceptually and empirically requires the existence or occurrence of actual injustice. . . . To take pleasure in the simulation is to make one's pleasure contingent on the actual occurrences and meaning of rape, racist enslavement, and so on.<sup>26</sup>

[6.42]

If Vadas is correct, role-play fantasies garner their force, in terms of the pleasure they provide, from real, often immoral, acts. We should condemn

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morally the fantasies that, for their force, depend on the existence of immoral acts. Moral liberalism, however, cannot condemn such fantasies because the role play itself does not harm other nonconsenting parties. It appears, then, that moral liberalism must condone role-play fantasies that depend on immoral acts for their force.

[6.44] There are three possible lines of response to Vadas's argument. First, we could grant Vadas's claim that role-play fantasies garner their force from real, often immoral, acts, but argue that it is a cost we must pay to promote freedom of thought and action because similar claims apply to all sorts of fiction. Countless novels, films, and television programs depict stories that, following Vadas's reasoning, depend on the existence of immoral acts for their force. Murder mysteries, political thrillers, heist stories, and many others depend on the existence of such acts in reality to provide us with the force of fictional storytelling. Thus, Vadas's reasoning would require us to condemn morally all of those forms of fiction. For moral liberalism, that is too high a price to pay.

[6.45] Second, still granting Vadas's claim, we can question whether the fantasies that lead to the kinds of role play at issue are voluntary. David N. James writes, "Some fantasising is involuntary. Since assessment of an activity as right or wrong presupposes that the activity assessed is intentional and voluntary, it is senseless to speak of involuntary fantasising as ethically . . . forbidden."<sup>27</sup> It may be that one cannot help but fantasize about rape, kidnapping, bondage, and the like. If so, such fantasies and their ensuing role play actually may be necessary for some persons to achieve sexual gratification. If that is the case, we should not condemn morally the fantasies and the role play. It is too simple to reply by dismissing such persons as having serious psychological problems.

[6.46] Consider the evolutionary history of our species. It is likely that acts that we now condemn as rapes, kidnappings, and the like were commonplace in our early history and contributed to the propagation of our species. If that is true, the fantasies in question may be part of the biological "hardwiring" of some people. That "hardwiring" often disturbs us, and we think that, in our interactions with others, we all should rise above that hardwiring, but we have no grounds for condemning it morally.

[6.47] Third, there is good reason to deny Vadas's claim that roleplay fantasies depend on the existence of immoral acts for their force. Suppose all actual rapes, kidnappings, and the like were eradicated from the globe. There is no reason to believe that people who presently enjoy the simulation of such acts would stop enjoying them, just as there is no reason to believe people would stop enjoying rollercoaster rides if no one ever was killed or injured from traveling at high speeds or dropping from great heights. Nor is there any reason to believe such people would not enjoy the role play at issue had the immoral acts they simulate never existed in the first place. After all, we

frequently enjoy fictions of dangers that have no counterparts in reality, such as science-fiction stories of encountering menacing creatures in space travel. The enjoyment comes from the simulation of danger, not the fact that there are real creatures out there just waiting for our arrival. Likewise, people enjoy role-play fantasies for the simulations they provide, not because they have counterparts in the real world.

## FANTASIES IN VIRTUAL WORLDS

[6.48]

If the defense of moral liberalism's position I have provided thus far is correct, moral judgments do not apply to fantasies unless they are parts of causal chains that produce immoral acts. Virtual worlds, such as that offered by Second Life, provide an interesting challenge for this position. Second Life differs from traditional role play in that users create identities for themselves, avatars, through which they lead virtual lives. Although users do not perform the acts of avatars in the real world, they direct the acts of their avatars in Second Life. This blurs the fantasy/reality distinction. Ashley John Craft describes the blurring this way: "The paradox of virtual reality [is that u]sers are simultaneously participating in representational and actual worlds."<sup>28</sup>

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Two aspects of the blurring that Craft describes contribute to moral liberalism's challenge. First, the avatars interact with each other in ways that are more akin to the real world than do participants in traditional role play. The interactions are not staged scenes, and, often, users find their avatars on the receiving end of troubling behavior to which they did not consent. Second, users are real people with real lives, many of which involve partners who disapprove of the users' activities in Second Life or would disapprove if they were aware of the activities. In some cases, one might argue reasonably that the activities are violations of the intimacies of the partnerships.

[6.50]

Because users' activities in Second Life are multifarious and innumerable, this chapter cannot begin to address their wide variety, nor can it begin to address all the moral issues those activities raise.<sup>29</sup> For example, this chapter does not address the moral questions that arise from how users' avatars treat one another within Second Life.<sup>30</sup> It focuses, instead, on issues that arise from users' activities in relation to their real-world partners. Todd Melby describes a form of interaction that is particularly relevant for the purposes here. He writes,

[6.51]

Tenaj Jackalope and Dutch Hoorenbeek are trim, beautiful people who live in a house overlooking the ocean. At their wedding, the pair favored traditional attire. . . . Tenaj and Dutch are avatars living in Second Life. . . . The humans controlling these . . . characters are . . . Janet Spielman . . . and Ric Hoogestraat. Spielman is single, but Hoogestraat is married. They've never met.<sup>31</sup>

[6.52]

**[6.53]** The question is whether moral liberalism should condemn morally such virtual affairs.

**[6.54]** Similarly to other categories of fantasies, virtual affairs have potential utility that we must take seriously. Kristin Kaining describes a virtual affair that illustrates potential, and perhaps surprising, utility. She writes,

**[6.55]** Sam and Kat met in the virtual world Second Life. And although they shared all kinds of intimacies in Second Life, the real people have never laid eyes on each other. . . . [Sam] fell hard for his avatar sweetie. They bonded intellectually, emotionally, and yes, thanks to Second Life animations, even physically. Here's where it gets complicated. Unlike his avatar, which is female, Sam is a man. A married man. And the person behind the blonde, curvaceous Kat? Married. And, quite possibly, a man, too.<sup>32</sup>

**[6.56]** This virtual affair has the potential to produce several real-world benefits.<sup>33</sup> First, as is the case with many matters pertaining to privacy, the virtual nature of the affair allows both Sam and Kat to experiment with ideas and behavior without fear of judgment, at least in the real world, from the other party. Second, because Sam is male but has a female avatar, the affair could help him understand better how it feels to be a woman in a relationship. Such an understanding could help him both in his real-world marriage and in his real-world relationships with women more generally. Third, because this virtual affair is lesbian, it has the potential to help both parties understand better the discrimination same-sex partners face in the real world. Sam's and Kat's avatars likely interact with many others in Second Life, and, quite likely, at least some of those others exhibit homophobic behavior akin to that in the real world. Finally, regardless of Sam's actual motivations, we can imagine one choosing an opposite-sex avatar because one needs to work through gender identity issues. Second Life offers a safe, anonymous environment in which one can begin such a self-evaluation process.

**[6.57]** This potential utility, however, is not a definitive consideration. Although there may be many others, three distinct scenarios help us consider the significant issues virtual affairs raise. First, suppose the real-world partner knows about the virtual affair and is untroubled by it. If so, there is no basis for condemning morally the virtual affair because it affects no nonconsenting parties.

**[6.58]** Should one try to argue that, even if the real-world partner does not object, carrying out a virtual affair is indicative of a corrupt character, one once again finds oneself in the now-familiar untenable position. If one tries to argue that the real-world partner should be troubled by the virtual affair, one adopts a similar untenable position. One must establish nonarbitrary grounds for controlling how one should feel in particular cases. Suppose, for instance, that many of us think a colleague should feel angry about how she was treated by an administrator, but she does not. We have no grounds for

trying to control how she feels except to claim that she should feel as we would. This is not a compelling basis on which to argue for how one should feel, and it is the only basis that would apply to the scenario in question.

Second, suppose the real-world partner is aware of the virtual affair and feels betrayed by it. It is tempting, on the basis of the feeling of betrayal, to conclude that we should condemn morally the affair. That, however, is too hasty. We first must examine whether the real-world partner is justified in feeling betrayed. Moreover, we must assume that the feeling of betrayal has nothing to do with real-world, immoral acts such as those found in the cases Melby and Kaining describe. Melby writes, "Hoogestraat's real-life partner, Sue Hoogestraat, isn't crazy about her husband's online activities. When he's at home, Ric Hoogestraat spends hours huddled over his computer, ignoring his real wife."<sup>34</sup> Kaining writes, "Sam's [Second Life] relationship with Kat began to intrude on his real life. A recent family vacation was punctuated by furtive Second Life meetings with his avatar girlfriend."<sup>35</sup>

[6.59]

Moral liberalism has no difficulty condemning morally the virtual affairs Melby and Kaining describe. Those affairs are parts of causal chains that produce the immoral acts of ignoring real-world partners. Such cases are not different from one ignoring one's partner because one spends too much time working or engaged in a hobby. To be a challenge for moral liberalism, we must assume that the virtual affair at issue does not lead one to such real-world immoral behavior. We must determine whether, if that were the case, one's real-world partner would be justified in feeling betrayed by the virtual affair itself.

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The answer to that question also will provide us with the correct view of a third scenario in which the real-world partner is unaware of the virtual affair. If we determine that a real-world partner is unjustified in feeling betrayed, then there is no basis for condemning morally a virtual affair about which the real-world partner is unaware. If, however, we determine that a real-world partner is justified in feeling betrayed, we have grounds for claiming that one is obligated both to inform one's real-world partner of one's desire to engage in such activities and to seek the partner's consent. If one secretly carries out a virtual affair without such consent, we have grounds, following moral liberalism's tenets, for condemning morally the virtual affair.

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Whether a real-world partner is justified in feeling betrayed by a virtual affair depends on whether virtual worlds' blurring of the fantasy/reality distinction produces morally relevant differences between virtual affairs and affairs in other kinds of fantasies. If there are no morally relevant differences, then, assuming virtual affairs are not parts of causal chains that produce real-world immoral acts, real-world partners have no justification for feeling betrayed by them. They would not be significantly different, in a morally relevant sense, from many activities we take for granted and never question morally. Many imagine themselves as being characters in novels they read

[6.62]

and films they watch. They often are characters who engage in morally questionable behavior such as adultery. Daydreams often produce similar results. Many involve harmless crushes on celebrities, athletes, musicians, colleagues, and random strangers. Unless one is willing to claim that partners are justified in feeling betrayed by these sorts of scenarios, one cannot claim that they are justified in feeling betrayed by virtual affairs.

[6.63] Despite the ways in which Second Life is more like the real world than is role play, it produces no morally relevant differences between, on the one hand, virtual affairs as envisioned here and, on the other hand, affairs in the fantasies about characters in novels and films and those about people in daydreams. In neither case is anyone in the real world affected. Because Second Life users choose to create avatars, enter the virtual world, and have or not have virtual affairs, no nonconsenting party is affected emotionally by the activities of the avatars in the affairs. To use a virtual world, one must enter a voluntary, contractual arrangement. Craft writes, "This usually takes the form of the EULA [End User License Agreement], a standard legal contract between the program administrators and individual users. . . . [T]he EULA acts as a universally binding contract governing user behavior. In describing what behaviors are acceptable and unacceptable, it also gives users an idea of what kinds of behaviors they should expect within a given virtual world."<sup>36</sup>

[6.64] Certainly, one can be affected emotionally by what happens to one's avatar in a virtual affair. The significant point, however, is that one is a consenting party to the virtual affair, and the emotional pain one experiences is the result of a risk one chooses to take. Moreover, one's real-world partner is not harmed by one's feelings unless one allows them to affect how one treats one's real-world partner. If that were the case, moral liberalism condemns the virtual affair because it is part of a causal chain that produces a real-world immoral act. If this is correct, then virtual affairs have the same moral status as do the other categories of fantasies examined in this chapter. They are not subject to moral judgments unless they are parts of causal chains that produce real-world, immoral acts.

[6.65] NOTES

[6n1] 1. Although they describe them differently, some other philosophers adopt similar positions regarding this category of fantasies. See Christopher Cherry, "When Is Fantasising Morally Bad?" *Philosophical Investigations* 11 (1988): 113; John Corvino, "Naughty Fantasies," *Southwest Philosophy Review* 18 (2002): 214; and David N. James, "The Ethics of Fantasising," *International Journal of Applied Philosophy* 8 (1993): 53. Those philosophers do not focus on fantasies that are connected causally to acts.

[6n2] 2. This example does not assume that any particular fantasies actually have the capacity to contribute causally to actual behavior nor, if so, under what conditions. Here, and elsewhere, any claims should be viewed as conditionals with forms such as, "If fantasies have the capacity to contribute causally to acts, then . . ."

## Chapter 6

3. “Bomb-making materials” refers only to those materials that have no other purposes besides their use in making bombs. Presumably, many materials that can be used to make bombs also have other legitimate purposes. The justification of our control over such materials is more complicated because moral liberalism generally requires societies to keep them available for the other legitimate purposes.

4. For a nice illustration of why not wanting others to know something about oneself does not guarantee that the matter is rightfully private, see George G. Brenkert, “Privacy, Polygraphs, and Work,” *Business & Professional Ethics Journal* 1 (1981): 21. He writes, “A person may not want his neighbors to know about the toxic chemicals he is burying on his land. It does not follow, however, that . . . neighbors violate a person’s right to privacy in acquiring such information.”

5. Chapter 2 includes my own account of the value of privacy.

6. This is not an endorsement of utilitarianism, nor is it meant to suggest that considerations of utility alone provide definitive answers to the questions at hand. The claim, rather, is that we should take seriously utility of the sort described when we determine the moral status of fantasies.

7. James adopts such a view. See James, “The Ethics of Fantasising,” 52. For support, he directs readers to Jerome L. Singer, *The Inner World of Daydreaming* (New York: Harper & Row, 1975), 118–19.

8. Jeffrey Hershfield, “The Ethics of Sexual Fantasy,” *International Journal of Applied Philosophy* 23 (2009): 30.

9. *Ibid.*, 40–42.

10. *Ibid.*, 33.

11. Cherry, “When Is Fantasising Morally Bad?” 113.

12. *Ibid.*, 121–22.

13. Hershfield, “The Ethics of Sexual Fantasy,” 35.

14. Kendall L. Walton, “Fearing Fictions,” *Journal of Philosophy* 75 (1978): 24.

15. Hershfield, “The Ethics of Sexual Fantasy,” 38.

16. Walton, “Fearing Fictions,” 6.

17. Chapter 5 presents the example and develops in greater detail the ensuing argument.

18. As I explain in a note in chapter 5, I write loosely when I refer to a group’s conception of the good life. I do not believe that the members of a particular group have identical conceptions of the good life, and I write loosely on this point for ease of explanation. My point here is that members of a group tend to have conceptions that are more similar to other members’ conceptions than they are to the conceptions of those outside the group.

19. Piers Benn, “Is Sex Morally Special?” *Journal of Applied Philosophy* 16 (1999): 240.

20. Hershfield, “The Ethics of Sexual Fantasy,” 37–38.

21. Patrick D. Hopkins, “Rethinking Sadomasochism: Feminism, Interpretation, and Simulation,” *Hypatia* 9 (1994): 123.

22. *Ibid.*, 123–24.

23. Jerome Neu, “An Ethics of Fantasy?” *Journal of Theoretical and Philosophical Psychology* 22 (2002): 151.

24. Hopkins, “Rethinking Sadomasochism,” 124.

25. *Ibid.*, 126.

26. Melinda Vadas, “Reply to Hopkins,” *Hypatia* 10 (1995): 160.

27. James, “The Ethics of Fantasising,” 51.

28. Ashley John Craft, “Sin in Cyber-eden: Understanding the Metaphysics and Morals of Virtual Worlds,” *Ethics and Information Technology* 9 (2007): 211.

29. For an excellent description of virtual worlds and the sorts of activities people can pursue in them, see *ibid.*, 205–11.

30. For examinations of such questions, see Phillip Brey, “The Ethics of Representation and Action in Virtual Reality,” *Ethics and Information Technology* 1 (1999): 5–14; Craft, “Sin in Cybereden,” 205–17; and Paul J. Ford, “A Further Analysis of the Ethics of Representation in Virtual Reality: Multi-User Environments,” *Ethics and Information Technology* 3 (2001): 113–21.

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*The Moral Liberty of Fantasies*

- [6n31] 31. Todd Melby, "How Second Life Seeps into Real Life," *Contemporary Sexuality* 42 (2008): 1.
- [6n32] 32. Kristin Kaining, "Is a Virtual Affair Real-World Infidelity?" *NBCNews.com*, April 16, 2007, [http://www.nbcnews.com/id/18139090/ns/technology\\_and\\_science-games/t/virtual-affair-real-world-infidelity/#.XETpUi2ZMWo](http://www.nbcnews.com/id/18139090/ns/technology_and_science-games/t/virtual-affair-real-world-infidelity/#.XETpUi2ZMWo).
- [6n33] 33. This is not meant to claim that any of the possible benefits actually are present in the specific case Kaining describes, but, rather, that such benefits are possible in cases like it.
- [6n34] 34. Melby, "How Second Life Seeps into Real Life," 1.
- [6n35] 35. Kaining, "Is a Virtual Affair Real-world Infidelity?"
- [6n36] 36. Craft, "Sin in Cyber-Eden," 209.





## Chapter Seven

# Why *Schadenfreude* Is Morally Permissible

[7.0] When the Dallas Mavericks defeated the Miami Heat to win the 2011 championship of the National Basketball Association (NBA), the United States' major professional basketball league, many rejoiced. It is not surprising that Mavericks fans were elated, but it is noteworthy that, Heat fans aside, it seems that almost everyone who took interest in the championship series reveled in the outcome. The pleasure many felt did not arise from the Mavericks' victory, but, rather, from the Heat's loss. Their pleasure resulted from the bitterness, distaste, or disapproval they felt over the circumstances of LeBron James's departure from the Cleveland Cavaliers to join forces with two other star players, Dwyane Wade and Chris Bosh, in Miami. For those people, it was a clear case of *Schadenfreude*: pleasure obtained from others' misfortunes.

[7.1] Because *Schadenfreude* is an emotion, like fantasies, instances of *Schadenfreude* are mental states. As such they are candidates for both internal states status and possible insulation from moral judgment. Moral liberalism's position on experiencing *Schadenfreude* is similar to its position on having fantasies that chapter 6 presents.

[7.2] Typically, when we experience *Schadenfreude*, we are not proud of it. We often do not admit it, and, when we do, we typically do so sheepishly or apologetically. We say things like, "I must confess that I got a kick out of seeing her lose the match," or "I'm embarrassed to admit it, but I'm glad they didn't publish his paper." Similarly, philosophers typically view *Schadenfreude* as a moral failing.<sup>1</sup> They often consider instances of the emotion, and the disposition to experience it, as vices. They believe that, in order to develop or maintain virtuous characters, we should work to avoid such vices. Aaron Ben-Ze'ev<sup>2</sup> and John Portmann,<sup>3</sup> however, argue that *Schadenfreude*

is a morally permissible emotion. Although their accounts differ in some ways, both essentially argue that *Schadenfreude* is morally permissible because it arises from judgments about the just deserts of those who suffer misfortunes.

Moral liberalism also holds that *Schadenfreude* is morally permissible, but for reasons quite different from Ben-Ze'ev's and Portmann's. In opposition to their defenses of *Schadenfreude*, I argue that the emotion is morally permissible even when it stems from feelings and judgments that are less noble and admirable than judgments regarding just deserts. I seek to provide a defense of *Schadenfreude* that accounts adequately for both the wide range of circumstances in which we experience the emotion and the fact that we typically feel sheepish or apologetic when we experience it.

In opposition to those who view *Schadenfreude* as a moral failing, I argue that it is morally permissible unless it is part of a causal chain that produces immoral acts. The moral permissibility of the emotion is necessary in order for individuals to have the emotional freedom that is necessary for their well-being. *Schadenfreude*'s moral status is similar to a sexual fetish's. Like a fetish, experiencing *Schadenfreude* is not immoral in itself, but sharing and discussing it with others is immoral in many contexts. Any immorality associated with the emotion stems from the acts we allow the emotion to cause, not in experiencing the emotion itself.

#### A CAVEAT

Because English speakers have adopted the German term *Schadenfreude* to denote pleasure from others' misfortunes, some might expect an examination of the concept to begin with an analysis of German speakers' usage of the term. Those expecting, or hoping for, such an analysis will be disappointed by this chapter. It does not provide an account of what German speakers have meant by the term over the years, nor does it examine whether, over the years, English writers who addressed the concept have understood it to denote the same emotion that German speakers have understood it to denote.<sup>4</sup> Because I am neither a German speaker nor an expert on German culture and history, I am unqualified to provide those things.

Even if I were qualified to do so, however, this chapter would not provide an analysis of the term's usage over the years because such an analysis is unnecessary for my purpose. That purpose is to examine the common emotion that contemporary English speakers often identify as *Schadenfreude*. Whether or not we mean by the term the same thing(s) that German speakers mean by it, many of us employ the term to convey or analyze the emotion we experience when we feel pleasure from others' misfortunes. Whether it is from learning an athletic opponent lost a race, a business competitor sus-

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pended operations, or an academic nemesis was denied promotion or had a manuscript rejected for publication, the vast majority of us have felt, at some time or other, the emotion we call *Schadenfreude*.

## SCHADENFREUDE AND JUST DESERTS

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Ben-Ze'ev's and Portmann's attempts to argue that *Schadenfreude* is morally permissible tie the emotion to judgments about just deserts. Ben-Ze'ev writes, "A central feature of pleasure-in-others'-misfortune is the belief that the *other person deserves her misfortune*. . . . The belief that the other person deserves her misfortune expresses our assumption that justice has been done."<sup>5</sup> Likewise, Portmann writes, "The pleasure of *Schadenfreude* springs from a person's beliefs about the appropriateness of suffering."<sup>6</sup> He adds, "*Schadenfreude* amounts to happiness at the ill fortune of others who *do* deserve it."<sup>7</sup>

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Ben-Ze'ev and Portmann also see *Schadenfreude* as passive. Ben-Ze'ev writes, "Pleasure-in-others'-misfortune is associated with the *passivity* of the agent enjoying the situation. . . . An active personal involvement . . . may . . . be considered an offense; although the other person might deserve misfortune, . . . we lack the authority to impose it."<sup>8</sup> Likewise, Portmann writes, "Unlike cruelty, which can be active or passive, *Schadenfreude* is passive, because it evolves in situations we do not create."<sup>9</sup>

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Suppose that Nancy is a competitive cyclist and feels pleasure when her nemesis, Jane, finally loses a race. According to Ben-Ze'ev's and Portmann's accounts, Nancy's emotion is an instance of *Schadenfreude* only if the pleasure she feels stems from her judgment of what Jane deserves. This condition is met if, say, Nancy believes that Jane is arrogant and thinks too highly of her abilities. She sees Jane's loss as deserved because she should be "brought down a peg." Hopefully, the loss will help Jane develop a more modest, and accurate, picture of her own abilities.

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Both Ben-Ze'ev and Portmann emphasize that Nancy's pleasure stems from what Jane deserves and how the misfortune can help Jane rather than stemming from tangible gains Nancy receives from Jane's misfortune. Ben-Ze'ev writes, "We typically do not receive any substantial practical benefit from the circumstances causing our pleasure."<sup>10</sup> Nancy's pleasure, as Portmann writes, "is not properly in seeing [Jane] suffer, but in the hope that [Jane] will learn a valuable lesson from having suffered."<sup>11</sup> In this way, *Schadenfreude* differs from cruelty or sadism because the pleasure is "not in the suffering of another."<sup>12</sup>

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Nancy's pleasure meets Ben-Ze'ev's and Portmann's passivity condition for *Schadenfreude* if Nancy played no active role in causing Jane's loss. If Jane lost the race because Nancy tampered with her bicycle's gearshift mech-

anisms so that they would fail her at a crucial moment in the race, or because Nancy arranged for Jane's tires to puncture, then the pleasure Nancy feels from Jane's loss would not be *Schadenfreude*. It would be cruelty or sadism.

According to Ben-Ze'ev's and Portmann's accounts, there is no reason for us to be sheepish or apologetic about experiencing *Schadenfreude*. When we experience it, we take no pleasure from others' suffering, but, rather, we take pleasure from others receiving their just deserts. No one should be sheepish or apologetic about feeling pleasure from justice being served.

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#### WHAT DO *SCHADENFREUDE*'S OPPONENTS HAVE CORRECT?

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Although Ben-Ze'ev's and Portmann's defenses of *Schadenfreude* are correct that it is a morally permissible emotion, their defenses do not explain adequately the feelings that typically accompany our experiences of the emotion. It is quite common that we feel sheepish or apologetic about experiencing *Schadenfreude*, but, if Ben-Ze'ev's and Portmann's defenses of the emotion are correct, there is no rational basis for those feelings. Those who argue that *Schadenfreude* stems from judgments about just deserts must hold that we are mistaken or misguided when we feel sheepish or apologetic about the emotion. They might claim that those feelings are similar to misplaced guilt. We often feel guilty about situations for which we are not responsible, such as in cases of survivor's guilt, but, when we do, those feelings are unwarranted and we would be better off if we did not have them. An alternative approach might be to claim that the feelings that typically accompany *Schadenfreude* result from misguided socialization that causes us to have unwarranted feelings about the emotion. The misguided socialization results from our culture's failure to recognize that the emotion is firmly grounded in justice.

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Neither of these explanations, nor their working in concert, explains satisfactorily the feelings that typically accompany *Schadenfreude*. Feeling sheepish or apologetic about the emotion is so common that the claim we are mistaken or misguided when we have those feelings is unlikely to be the best explanation for them. Their commonness suggests that there is a reason for those feelings' presence for which Ben-Ze'ev's and Portmann's defenses of *Schadenfreude* do not account. This suggests that their defenses have not provided the correct account of the origins of all instances of *Schadenfreude*.

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In response, Ben-Ze'ev and Portmann might argue that, because they adopt a narrow conception of *Schadenfreude*, they have no intention of making sense of the sheepish and apologetic feelings that typically accompany the emotion. I need to account for those feelings only because I adopt a broad conception of *Schadenfreude* that captures the full range of cases in which we take pleasure from others' misfortunes. Ben-Ze'ev and Portmann are not

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interested in that full range of cases. They, instead, are interested only in a narrow conception of the emotion, the scope of which is limited to cases in which we take pleasure from others' misfortunes because we judge that those others deserve their misfortunes. When Ben-Ze'ev and Portmann defend *Schadenfreude* as a morally permissible emotion, they are doing so only in the context of the narrow conception. They have no intention of defending the full range of cases in which we take pleasure from others' misfortunes.

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Ben-Ze'ev and Portmann should not be content with such a defense of *Schadenfreude*. Arguing only that such a narrow conception of the emotion is morally permissible is unsatisfying in that it does not defend many of our experiences that we commonly identify as instances of *Schadenfreude*. Their narrow conception leaves us unable to describe, discuss, and evaluate, under the auspices of *Schadenfreude*, many experiences that we commonly place under that umbrella. I am not alone in drawing this conclusion. Two contemporary opponents of *Schadenfreude* have argued well for that conclusion. Kristján Kristjánsson writes that Ben-Ze'ev's and Portmann's defenses "[Pay] the conceptual cost of having no commonly used term left to refer to the non-morally inspired pleasure at others' *undeserved* bad fortune."<sup>13</sup> Michael John McNamee claims Portmann develops a "sanitized redefinition [of] *Schadenfreude*."<sup>14</sup> Similarly to Kristjánsson and McNamee, I hold that Ben-Ze'ev's and Portmann's accounts describe the origins of the emotion in too noble and admirable terms. Their accounts describe the circumstances that give rise to the emotion in ways that do not capture many of the instances of *Schadenfreude* with which I am familiar. Their view that *Schadenfreude* stems from judgments about just deserts simply does not capture many of the scenarios where I experience the emotion, nor does it describe many of the scenarios others describe to me when they recount their experiences of *Schadenfreude*.

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Although anecdotes of my and others' range of experiences of *Schadenfreude* are rather compelling, we need not be content with rejecting Ben-Ze'ev's and Portmann's accounts of *Schadenfreude* on the basis of those anecdotes alone. Because their accounts link *Schadenfreude*'s pleasure to justice, there is a compelling conceptual basis for concluding that their accounts of *Schadenfreude* are flawed. McNamee provides that conceptual basis by arguing that pleasure is not the morally appropriate, emotional response to instances of justice. He writes, "The proper emotional response to justice being served, and subsequent harm befalling the wrongdoer is . . . 'satisfaction.' . . . This concept denotes emotional neutrality and . . . passivity that is entirely absent in . . . *Schadenfreude*."<sup>15</sup> Pleasure simply is not the proper response when we are aware of justice being served.

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Suppose that the murderer of several members of Scott's family is executed. If Scott feels pleasure from the execution, that pleasure does not stem from justice considerations. It stems, instead, from a satisfied desire for

revenge, or from a satisfied desire that the murderer suffer too. If Scott's considerations about justice drive his feelings, those feelings will be more neutral along the lines of satisfaction to which McNamee points.

Hume adopts a position on justice and feelings that goes further than does McNamee's. He argues that we might not even feel satisfaction from justice being served as we often respond to it with displeasure or disapproval. He writes of individual acts of justice, "The result of the individual acts . . . may be extremely hurtful."<sup>16</sup> He also writes, "A single act of justice . . . may often be contrary to the public good."<sup>17</sup> Far from providing us with pleasure, particular acts of justice, because of the harm they cause to us or to others, often leave us displeased, or even angry. Hume points to instances where "judges take from a poor man to give to a rich" as cases in point.<sup>18</sup> To see a poor person forced to repay a small debt to a rich person may displease us because we know the poor person needs the money and the rich person does not. The repayment of the debt does not improve the rich person's life, while the repayment makes the poor person's life even worse. Likewise, Scott in the earlier example may feel extremely displeased and angry if the judge determines there are mitigating circumstances that make the death penalty an unwarranted punishment for the murderer of his family.

These considerations suggest that Ben-Ze'ev's and Portmann's accounts of *Schadenfreude* fail in two ways. First, they do not account for the full range of our experiences of *Schadenfreude* as revealed by our and others' anecdotal recountings of instances of the emotion. Second, they fail in a fundamental, conceptual way by holding mistakenly that pleasure is a morally acceptable response to instances of justice being served. Due to these failures, we can conclude that contemporary opponents of *Schadenfreude*, such as Kristjánsson and McNamee, are correct about this very important matter: Ben-Ze'ev's and Portmann's defenses of *Schadenfreude* operate with an understanding of the concept that is inconsistent with how we often experience the emotion.

## A NEW DEFENSE OF SCHADENFREUDE

Despite agreeing with Kristjánsson and McNamee that Ben-Ze'ev's and Portmann's defenses of *Schadenfreude* fail, and despite agreeing with an important aspect of their arguments about why those defenses fail, moral liberalism parts company with them at this point. In opposition to Kristjánsson's and McNamee's view that *Schadenfreude* is a moral failing, I argue in this section that the emotion is morally permissible. Because I seek to provide a defense of *Schadenfreude* that overcomes the deficiencies of Ben-Ze'ev's and Portmann's defenses, I begin with an account of the concept that captures the full range of our experiences of the emotion.

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[7.26] **The Range of Experiences of *Schadenfreude***

[7.27] In order to demonstrate that Ben-Ze'ev's and Portmann's defenses of *Schadenfreude* do not capture the full range of our experiences of the emotion, thus far I have relied on two pieces of evidence. First, I appealed to, and accept, McNamee's conceptual position that pleasure is not the morally appropriate emotional response to justice being served. Second, I suggested, anecdotally, that my and others' experiences of *Schadenfreude* often do not involve the just deserts that Ben-Ze'ev and Portmann identify as the hallmark of the emotion.

[7.28] One might object, however, to my reliance on those pieces of evidence. One might argue that McNamee's conceptual claim is debatable at best. If it turns out that one can demonstrate that pleasure is a morally appropriate response to at least some instances of justice being served, then Ben-Ze'ev's and Portmann's defenses survive McNamee's conceptual claim. One also might argue that anecdotes do little to demonstrate the causes of emotions. A few stories recounted by a few people lack the statistical sampling and controls that are necessary to draw any reliable conclusions about the circumstances from which *Schadenfreude* might spring.

[7.29] Although the objector raises legitimate concerns, if empirical research with proper sampling and controls demonstrates that considerations other than just deserts give rise to *Schadenfreude*, then the concerns are allayed. Such research obviously would support the anecdotes at issue, but it also would overcome the objector's worry about McNamee's conceptual position. In essence, the research would render the truth value of McNamee's claim irrelevant to my overall argument. It would demonstrate that, whether or not McNamee is correct about the morally appropriate emotional response to justice being served, our experiences of *Schadenfreude* often stem from considerations other than just deserts. I still would be justified in concluding that Ben-Ze'ev's and Portmann's defenses of *Schadenfreude* do not capture the full range of our experiences of the emotion.

[7.30] Such empirical research exists. Several studies indicate that the circumstances that give rise to *Schadenfreude* are more wide-ranging than Ben-Ze'ev's and Portmann's defenses suggest. Although some studies demonstrate that *Schadenfreude* can arise from the considerations of just deserts on which Ben-Ze'ev and Portmann rely, many other studies demonstrate that the emotion can arise from far less noble or admirable causes. This research particularly is telling against Ben-Ze'ev's and Portmann's defenses because many of the studies this section presents tested specifically for possible causes, beyond judgments of just desert, of the pleasure we feel from others' misfortunes. Richard H. Smith et al. tested whether *Schadenfreude* "will result when an envied person experiences a misfortune."<sup>19</sup> Nancy L. Brigham et al. "tested whether invidious comparisons affect *schadenfreude* when



the misfortune is *undeserved*.”<sup>20</sup> Jill M. Sundie et al. tested “Emotional antecedents of *schadenfreude* . . . in a status consumption context.”<sup>21</sup> Wilco W. van Dijk et al. tested whether “a self-evaluation threat intensifies *schadenfreude*.”<sup>22</sup> Colin Wayne Leach and Russell Spears tested whether “the emotional pain individuals feel about their in-group’s inferiority leads them to feel . . . *schadenfreude* when a successful out-group fails.”<sup>23</sup>

To give Ben-Ze’ev and Portmann due credit, we cannot ignore the fact that the research suggests that we sometimes feel *Schadenfreude* because we judge that others deserve the misfortunes that befall them. N. T. Feather and Rebecca Sherman write that their study demonstrates *Schadenfreude* “is linked to resentment. . . . The presence or absence of resentment was . . . associated with the manipulated variation in . . . perceived deservingness.”<sup>24</sup> Feather and Katherine Nairn write that their later results “again demonstrate the key roles that perceived deservingness and feelings of resentment play in regard to *schadenfreude*.”<sup>25</sup> Feather writes that still later results “are consistent with a theoretical analysis that assigns deservingness a key role in the occurrence of *schadenfreude*.”<sup>26</sup> Van Dijk, Jaap W. Ouwkerk, and Sjoerd Goslinga write that their research findings “indicate that people’s emotional reactions toward the downfalls of high achievers are more benign when they perceive those initial achievements as being deserved. Moreover, these findings provide further evidence for the effect of perceived deservingness on *schadenfreude*.”<sup>27</sup>

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Although the described research links *Schadenfreude* to the perceived deservingness of the misfortune, there is good reason to doubt how much the research cited demonstrates that *Schadenfreude* results from judgments of just deserts. Those studies use subjects’ resentment of others as indicative of the subjects perceiving the others to deserve the misfortunes that befall them. Although it is likely that resenting another can cause one to perceive that other as deserving of misfortune, such causes do not necessarily produce perceptions of deserved misfortune that are associated with just desert. I might resent you for all sorts of reasons that have nothing to do with justice considerations. If so, I might think you deserve misfortune even though I have no basis for placing that desert in the category of justice.

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Even if the judgments that result from resentment always are about just deserts, however, such judgments constitute only one of numerous kinds of circumstances that can give rise to *Schadenfreude*. Competitive desires, envy, blows to our egos, and dislike or hatred for others all appear to be common sources of *Schadenfreude*. It, in fact, seems likely that we frequently employ claims about just deserts in order to conceal the real sources of the emotion because those real sources are not noble or admirable.

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Empirical research provides us with evidence that the sources of *Schadenfreude* often are not judgments of just deserts. Some research has linked *Schadenfreude* to envy.<sup>28</sup> Smith et al. write about their research,

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[7.35] Our hypothesis that *Schadenfreude* will result when a misfortune befalls an envied person was well supported. The manipulation of envy had a significant effect on *Schadenfreude*. Subjects who watched the interview of the superior student were more pleased on learning that this person was charged with stealing than subjects who watched the interview of the average student who suffered the same fate.<sup>29</sup>

[7.36] This finding, by itself, does not give us reason to believe that judgments of just desert are not the cause of *Schadenfreude* even when it is linked to envy. After all, it could be that envy causes us to make judgments about just deserts more readily. Brigham et al., however, tested for links between envy and just deserts. They write of their findings,

[7.37] These results suggest that *schadenfreude* will result when a misfortune befalls an envied person regardless of the deservingness of the misfortune. The manipulation of invidious superiority produced a significant effect on *schadenfreude* when the misfortune was deserved and also when it was undeserved. Unexpectedly, the manipulation of deservingness had no effect on *schadenfreude*. Participants were no more likely to report feeling greater pleasure over a deserved misfortune compared with an undeserved misfortune.<sup>30</sup>

[7.38] Sundie et al. tested envy and *Schadenfreude* from a different direction that they describe in this way: “This research focuses on *schadenfreude* in a status consumption context, in which envy of the status afforded by others’ prestige products is likely to be pervasive.”<sup>31</sup> They conclude that their results demonstrate “that people may feel pleasure at the misfortune of similar others, merely because their status symbol possessions induce envy. In a society preoccupied with luxury consumption, and beset with social inequality, luxury products are likely to provoke envy quite routinely.”<sup>32</sup>

[7.39] Together, these studies give us good reason to believe that *Schadenfreude* often results when we feel envy, circumstances that are less noble and admirable than judgments of just deserts. The term “often” is justified given the link between envy and status possessions that Sundie et al. found. Because status possessions are extremely common in many, if not most or all, cultures, envy-driven *Schadenfreude* likely is quite frequent.

[7.40] Studies also have linked *Schadenfreude* to issues of self-esteem or self-worth. Van Dijk et al. write that their findings from two studies “showed that a self-evaluation threat intensified *schadenfreude* when we controlled for envy and dislike towards the target and deservingness of the misfortune, thereby demonstrating that self-evaluation threat is an important additional predictor of *schadenfreude*.”<sup>33</sup> Leach and Spears studied self-esteem and *Schadenfreude* through in-group inferiority and out-group success. They write of their studies, “When the in-group’s inferiority in a domain was established before an opportunity for *schadenfreude*, the pain of this inferior-

ity was a potent cause of *schadenfreude* toward a successful third-party out-group. As this out-group played no role in establishing the in-group's inferiority, *schadenfreude* at their failure seems especially malicious and prejudiced."<sup>34</sup> They add, "Even though *schadenfreude* is a feeling about another party's failure, it is best explained by the self-focused feeling of pain about the self's inferiority."<sup>35</sup>

These studies demonstrate yet another possible cause of *Schadenfreude*: low self-esteem or perceived threats to self-worth. Like the earlier possible causes, this cause is not nearly as noble and admirable as are judgments of just deserts. As Leach and Spears suggest, perceived threats to self-worth can result in malicious or prejudiced responses. Thus, these studies provide us with further reason to search for a defense of *Schadenfreude* that accounts better than do Ben-Ze'ev's and Portmann's defenses for the full range of our experiences of the emotion. [7.41]

To be fair to Portmann's defense of *Schadenfreude*, he recognizes that low self-esteem can give rise to *Schadenfreude*. He sees the moral status of such experiences of the emotion, however, as less clean than those experiences that arise from judgments of just deserts. He writes, "Although ethically excusable, the *Schadenfreude* born of low self-esteem manifests weakness of character."<sup>36</sup> Portmann's account is less kind to such instances of *Schadenfreude* than is the one I provide in the next subsection. My account renders those instances, along with other instances that do not derive from judgments of just deserts, morally permissible in a more robust fashion. [7.42]

### ***Schadenfreude* and Emotional Freedom**

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Despite often resulting from circumstances that are less noble and admirable than judgments of just deserts, *Schadenfreude* is a morally permissible emotion unless it is part of a causal chain that produces an immoral act. I call this the "emotional freedom position." [7.44]

The emotional freedom position is controversial, especially among virtue ethicists.<sup>37</sup> Robert C. Roberts's account of emotions and virtues helps to demonstrate why.<sup>38</sup> His account rejects the fundamental tenet of the emotional freedom position. That tenet justifies moral condemnation of *Schadenfreude* only when the latter is causally connected to an immoral act. Roberts's account demonstrates the common virtue ethics position that the moral status of our characters is not a function only of what we do but also of what we feel and think. He writes, "In feeling an emotion I construe it as belonging with the set of attributes that make up *me*."<sup>39</sup> Because feelings and thoughts are parts of our characters, we are subject to moral condemnation not just for the things we do, how we do them, and when we do them but also for what we feel and think as we do them or contemplate doing them. Roberts writes, "Emotions are not just 'causes' of actions; they may also determine [7.45]

the identity of our actions.”<sup>40</sup> Our feelings and thoughts are not separable from, for the purposes of moral judgments, our acts. The natures of acts alone do not determine whether they are virtuous or vicious. Our feelings and thoughts associated with acts also are a part of that determination. Nor do our acts alone determine whether we are living desirable lives. Roberts writes, “Certain regular patterns of emotional response are characteristic of the flourishing, mature, and ‘happy’ human life, while alternative patterns constitute ill-function and immaturity and tend to misery.”<sup>41</sup>

[7.46] McNamee rejects the emotional freedom position on virtue ethics grounds that are consistent with Roberts’s account. McNamee writes, “*Schadenfreude* is a morally objectionable emotion . . . that can be curbed.”<sup>42</sup> He finds it objectionable because, like Roberts, he holds that our emotions speak to the virtuousness or viciousness of our characters. We cannot assess, morally, our own or others’ characters on the basis of acts alone. McNamee writes, “To act well is not merely to do so for the right reasons, to the right extent, at the right time, and so on, but also to feel these reasons and responses while so construing and responding.”<sup>43</sup> Like Roberts, McNamee holds that our feelings and thoughts are not separable from, for the purposes of moral judgments, our acts. He writes, “Our dispositions towards others are antecedent to our emotional responses. . . . For us to feel [*Schadenfreude*] we will have been active in the construal of character-evaluation of the sufferer.”<sup>44</sup>

[7.47] Kristjánsson also provides a virtue ethics rejection, consistent with Roberts’s, of the emotional freedom position. He adopts, or, at least, is sympathetic to, an Aristotelian rejection of *Schadenfreude*. He writes of that view, “There exists a general disposition to be pleased or pained—on the right occasions, for the right time, and in the right measure—at other people’s good or bad, deserved or undeserved, fortune, . . . while *Schadenfreude* constitute[s] [an excess] of the mean.”<sup>45</sup> *Schadenfreude* is an excess of an emotion that prevents one from experiencing, at the appropriate time and to the appropriate degree, another emotion, compassion, that is part of a virtuous character.

[7.48] McNamee and Kristjánsson, as well as virtue ethicists in general, stress the development of virtuous characters because they are concerned with what is necessary for individuals to live well. They are correct to have that concern. They are incorrect, however, to hold that *Schadenfreude* impedes individuals from living well. The emotional freedom to experience *Schadenfreude*, instead, is necessary for individual well-being. The freedom to conduct our lives as we choose is necessary in order for individuals to live well. The emotional freedom to experience *Schadenfreude* falls under the freedom to conduct our lives as we choose.

[7.49] The emotional freedom position’s opposition to the virtue ethics view of *Schadenfreude* is similar to Martha Nussbaum’s opposition to the Aristotelian view of emotions more generally.<sup>46</sup> Although it would be a mistake to

assume that Nussbaum supports the emotional freedom position in its entirety, she advocates a role for emotions more generally that differs from the role that virtue ethicists tend to advocate. Moreover, like the emotional freedom position does for *Schadenfreude* specifically, Nussbaum argues that emotions generally play a role in individual well-being.

Nussbaum describes the emotions' role in individual well-being in this way: "This view holds that emotions are appraisals or value judgments, which ascribe to things and persons outside the person's own control great importance for that person's own flourishing."<sup>47</sup> The Aristotelian view, Nussbaum holds, does not account for this fact of human nature. That view prescribes an ideal for human character that not only is unrealistic, but, also, is potentially harmful psychologically. She writes,

[7.50]

My view . . . urges us to reject as both too simple and too cruel any picture of character that tells us to bring every emotion into line with reason's dictates, or the dictates of the person's ideal. . . . Given human ambivalence and neediness, and the emotions that have grown out of that, this is simply not a sensible goal to prescribe; and prescribing an unachievable norm of perfection is the very thing that can wreak emotional havoc. . . . If Aristotle's view entails that the good person can and should demand emotional perfection of herself, so that she always gets angry at the right person, in the right way, at the right time, and so forth, then Aristotle's view is tyrannical and exacts of us more than humanity can deliver.<sup>48</sup>

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The emotional freedom position finds a kindred spirit in Nussbaum's position. Given what Nussbaum writes about emotions generally, it is reasonable to assume that she allows a role for *Schadenfreude* specifically that is consistent with that prescribed by the emotional freedom position rather than that prescribed by the Aristotle-inspired virtue ethics position. If that is true, then, like the emotional freedom position, it is likely that Nussbaum supports individuals having the emotional freedom to experience *Schadenfreude*.

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At this point, one might find puzzling the understanding of freedom in this argument. After all, we still can experience *Schadenfreude* even if others condemn it morally, or, for that matter, even if we condemn it morally ourselves. Thus, one might object that freedom really is not at issue in this context. Whether or not *Schadenfreude* is morally permissible, we still are free to experience it.

[7.53]

Our freedom to act in, or feel, particular ways is, in part, a function of the costs we must bear to act in, or feel, those ways. Those costs can be imposed by society as a whole or by one or more of the institutions or individuals society comprises. Suppose Nancy, the cyclist, prefers to ride without a helmet. The communities in which she rides have ordinances requiring cyclists to wear helmets, so she risks paying a fine whenever she rides without one. The cycling group of which she is member requires those who partici-

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pate in its group rides to wear helmets, so she sacrifices riding with them if she chooses not to wear a helmet. Her close friends are deeply troubled whenever they see her riding without a helmet, so she risks their chastisement if she rides sans one. Nevertheless, in the sense the objector describes, she is free to ride without a helmet because she can do so regardless of the costs she might bear by doing so.

[7.55] It is a mistake, however, to think this describes adequately Nancy's level of freedom. For an adequate description of her freedom to ride without a helmet, we must consider the costs she bears by doing so. The described costs curtail, at least to some degree, her freedom to ride without a helmet because those costs constitute some of the ways in which society, its institutions, and its individual members seek to control the acts and feelings of individuals.

[7.56] Still, one might hold that the costs in Nancy's case are quite different from anything one might bear because of moral condemnation. Although moral condemnation is one of the many forms our moral judgments take, what one bears from it differs in a significant way from the costs that Nancy bears if she chooses to forgo wearing a helmet. In a sense, with the possible exception of her friends' chastisement, the described costs literally prevent or punish her act. Either she will wear a helmet, which means her preferred act is prevented, or she will pay one or more of the described costs, which means her preferred act is punished. To say that experiencing *Schadenfreude* is a moral failing does not literally prevent one from, or punish one for, experiencing it. After all, few would consider the fact that many philosophers view *Schadenfreude* as a moral failing to be much of a punishment. Presumably, most spend very little time contemplating what philosophers think about morality and, thus, would not see philosophers' condemnation of *Schadenfreude* as any kind of punishment for those instances when they experience the emotion.

[7.57] This view, however, understates the role of moral judgments, such as moral condemnation, in persons' lives, as well as their role in society's system of control over individuals. As chapter 1 argues, the various forms of control include moral judgments. Unless we categorize moral judgments as a form of control, and, thus, restrictions on our freedom, we do not capture one of the most significant ways we attempt to control others. By recognizing that moral judgments are a form of control, we capture the purposes of saying things like "that's morally wrong" or "that's the right thing to do." We say such things in efforts to change others' behavior.

[7.58] If the argument thus far is sound, then moral condemnation of *Schadenfreude* is a form of control that restricts our freedom. This, however, does not demonstrate that we should view *Schadenfreude* as morally permissible. Perhaps it is not desirable morally for individuals to feel free to experience it, and, thus, we are justified in seeking to restrict individuals' freedom to do so.

We are justified in restricting individual freedom in many ways. Murder, rape, and domestic abuse are obvious examples. Perhaps *Schadenfreude* is a less obvious example of one of those things we are justified in attempting to control. This might be the case if virtue ethics rejections of the emotional freedom position are sound.

There is a good reason, however, to view *Schadenfreude* as a morally permissible emotion that we should not seek to restrict through moral condemnation. Having the emotional freedom to experience the emotion provides values that we should not preclude individuals from garnering.<sup>49</sup> Moral condemnation of *Schadenfreude* unduly restricts our emotional freedom to experience the emotion and, thereby, restricts our ability to garner those values.

The preceding chapter's treatment of fantasies illustrates those values. In that chapter, I argue that fantasies are not subject to moral condemnation unless they are parts of causal chains that produce immoral acts. This is true even when the fantasies are among those that many find troubling, such as an employee's fantasy about the death of a difficult boss or a pedophile's sexual fantasies about children. Even such troubling fantasies have the potential to garner for the fantasizer values that we should not preclude individuals from garnering. Similarly, we should not subject instances of *Schadenfreude* to moral condemnation unless they are parts of causal chains that lead to immoral acts.

Fantasies and *Schadenfreude* have important similarities. In both cases, we are concerned with mental states on which individuals do not act. They have the kind of passivity that Ben-Ze'ev and Portmann require in their defenses of *Schadenfreude*. The employee does not seek to bring about the death of the boss, and the pedophile does not act on his fantasies with actual children or real child pornography. Likewise, the person experiencing *Schadenfreude* does not help bring about the other's misfortune, nor does the person mistreat the other after, and because of, the misfortune. Nancy, the cyclist, did not cause, through nefarious means, her nemesis, Jane, to lose the race, nor did she mistreat Jane after the loss by taunting her or ridiculing her publicly. Thus, in both the cases of fantasies and *Schadenfreude* at issue, they are not parts of causal chains that lead to immoral acts. They are mental states that do not bear on one's actual behavior.

Fantasies and *Schadenfreude* have another relevant similarity. Both are mental states about which we often feel sheepish or apologetic. Most employees would be hesitant to admit to others that they have fantasies about the death of their bosses. Most parties to committed relationships would feel horrible if their partners knew of their fleeting sexual fantasies about other people. Likewise, few would admit readily to others that they experienced *Schadenfreude* from the misfortune of a professional colleague. Many would

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feel horrible if the *Schadenfreude* somehow became evident to others, especially to the person who suffered the misfortune.

[7.63] As the preceding chapter demonstrates, despite the fact that we often feel sheepish or apologetic about our fantasies, there is good reason to exempt them from moral judgments. Insulating fantasies from possible moral condemnation helps us garner values similar to those philosophers argue that privacy allows us to garner.<sup>50</sup> It grants us the emotional freedom that is necessary for us to work through various issues we face in life. If we know that our fantasies are subject to moral condemnation, we are less likely to explore the fantasies' meanings and the ideas to which the fantasies speak.

[7.64] If we add the stigma of moral condemnation to them, we are more likely to attempt to repress the fantasies rather than evaluate the messages they contain. Consider the employee, in the preceding chapter, who fantasizes about the death of the employee's boss. The emotional freedom to have that fantasy, without feeling the stigma that it is a sign of moral corruption, allows the employee to consider a variety of messages that the fantasy might contain. The fantasy might be a sign that the employee needs to reconsider whether the employee's job offers the kind of rewarding work environment that the employee needs, that the employee should take steps to improve the employee/employer relationship of which the employee is a part, or that the employee is taking too seriously the boss's words or actions. Regardless of the correct interpretation of the fantasy's message, the employee needs the emotional freedom to explore the fantasy in order to arrive at that interpretation. Emotional freedom is precluded, or, at least, is far more difficult to achieve, if our fantasies are subject to moral condemnation.

[7.65] There is another reason why we should insulate fantasies from moral condemnation that is revealed by the even more troubling pedophilia fantasies. Consider a pedophile who fantasizes about children, does not act on those fantasies, but does not seek therapeutic help for his sexual attraction to children. Because the pedophile in question is not seeking therapeutic help, he clearly is not working through the issue that his fantasies identify. Thus, it seems that insulating his fantasies from moral condemnation does not garner any significant value for him.

[7.66] Despite that, there is good reason to exempt his fantasies from moral judgments. Doing so allows us to avoid an untenable position that arises from condemning morally disturbing fantasies that do not garner any significant values. Subjecting only disturbing fantasies that garner no significant values to moral condemnation requires, first, distinguishing those fantasies that are disturbing from those that are not. Second, it requires distinguishing those fantasies that, like the pedophile's, do not help fantasizers garner any significant values from those that have the potential to allow fantasizers to garner significant values. Unfortunately, making those distinctions is practically



impossible and is subject to seemingly endless debate. Those difficulties produce the untenable position we should avoid.

Insulating *Schadenfreude* from moral condemnation similarly contributes to a beneficial emotional freedom. When Nancy experiences *Schadenfreude* over Jane's loss, it speaks to her about the circumstances of her life. Perhaps it is a sign that Nancy should reconsider her priorities and the structure of her life. Pleasure from someone else's suffering may indicate to Nancy that she does not have enough other sources of pleasure or self-worth. It might indicate that she places too much emphasis on her cycling results in comparison to others' results and not enough emphasis on whether she obtains all she can out of her own abilities and training. It might be a harmless indicator that she sees Jane as a true competitor she must best if she hopes to reach the status in her sport that she seeks to attain. Regardless of what *Schadenfreude* actually indicates in this case, Nancy needs the emotional freedom to explore its meaning. If *Schadenfreude* has the stigma of moral corruption, Nancy might seek to suppress it rather than explore what it can indicate to her.

This aspect of my argument has good company in both philosophy and moral psychology. In philosophy, it has the good company of Nussbaum's position on the role of emotions in individual well-being. The beneficial nature I ascribe to the emotional freedom to experience *Schadenfreude*, without fear of moral condemnation, is consistent with Nussbaum's position. Although I do not intend to suggest that Nussbaum accepts my positions on fantasies and *Schadenfreude* in their entirety, she very likely is sympathetic to the reasons I describe in the previous paragraph for why the freedom to experience *Schadenfreude* is beneficial.

Regarding moral psychology, this aspect of my argument has the company of Michael E. McCullough et al.<sup>51</sup> and Alex M. Wood, Jeffrey J. Froh, and Adam W. A. Geraghty.<sup>52</sup> Those works defend another emotion, gratitude, based on its instrumental value, which lies in the emotion's role in our well-being.

McCullough et al. find gratitude's instrumental value in how it functions in morality. They write, "Gratitude has three specific moral functions: a moral barometer function, a moral motive function, and . . . a moral reinforcer function."<sup>53</sup> They also write, "We are not proposing that emotions and expressions of gratitude themselves are moral, but rather, that gratitude typically results from and stimulates moral behavior."<sup>54</sup> By providing the instrumental value of helping us live moral lives, gratitude promotes our well-being.

Wood, Froh, and Geraghty find gratitude's instrumental value in its role in individual well-being more broadly. They write, "Gratitude is part of a wider life orientation towards noticing and appreciating the positive in the world."<sup>55</sup> They add, "Gratitude draw[s] attention to the perception of *anything* to appreciate in the world, and this appreciation mak[es] the person

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more likely to behave in personally and socially productive manner.”<sup>56</sup> By providing the instrumental value of helping us appreciate the world in which we find ourselves, gratitude promotes our well-being.

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Although McCullough et al. and Wood, Froh, and Geraghty provide defenses of an emotion that, generally, is both praised and viewed as positive, there is no reason to think we cannot provide a similar defense of an often-criticized emotion like *Schadenfreude*. It, too, has instrumental value. That instrumental value lies in the previously described potential benefits of the freedom to experience the emotion. The benefits of that freedom are not unlike those McCullough et al. and Wood, Froh, and Geraghty find in gratitude. Nancy’s emotional freedom to explore the meaning of her *Schadenfreude* over Jane’s loss helps her to evaluate the circumstances of her life. Such an evaluation is an important step for her if she wishes to make her life better. The potential beneficial consequences of the freedom to experience *Schadenfreude* constitute a utility that speaks to the moral permissibility of the emotion. Although this is not meant to suggest that considerations of utility alone provide definitive answers to the questions at issue, we should take seriously the utility described when we evaluate the moral status of *Schadenfreude*.

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There is another important aspect of my argument that is not captured by considering only the instrumental value, or utility, of the emotional freedom to experience *Schadenfreude*. We must also consider the demands of consistency regarding our moral judgments of troubling emotions. Similarly to fantasies, consistency demands that we insulate *Schadenfreude* from moral condemnation. Doing so helps to keep us out of an untenable position similar to that described with respect to fantasies. It is true that many people find *Schadenfreude* troubling. Unless we are willing to subject all troubling emotions to moral condemnation, however, we should not subject *Schadenfreude* to moral condemnation. We should not be willing to do so because many troubling emotions often play important roles in our emotional growth and mental health. Anger and hatred, for instance, are troubling emotions. Considered simply in themselves, we feel persons are better off if they do not experience, or, at least, if they control the frequency and duration of experiencing, those emotions. We should not infer from that, however, that we should condemn morally persons’ experiences of those emotions. Anger and hatred often indicate to us important things about our lives or circumstances of the world.

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I have a friend who frequently, seemingly continually, feels anger over animal abuse. Michael Vick, formerly a quarterback in the National Football League (NFL), the United States’ major professional league of American-style football, who spent time in prison for his involvement in dogfighting, is a frequent target of her anger. I often have listened to her express disgust over the facts that many have forgiven Vick and that he was allowed to return

to football and make considerable money after prison. Although I share her desire to eradicate from the planet animal abuse, I often feel she would be better off if she controlled the level and frequency of her anger over it. We, nevertheless, should not condemn her anger morally because it is an emotion that communicates a clear message to her: take steps to help animals that are abused. She frequently acts on that message by working with a local animal shelter, organizing fundraisers to help abused animals, and fostering abused animals in her home.

I also know a woman who hates her father because of the abuse he inflicted on her and her mother when she was a child. She refers to him as “old disgusting” because her hatred is so deep that she cannot refer to him as “my father” or even by his actual name. Although I probably would be unable to do so myself if I were in her situation, I often feel she would be better off if she could let go of the hatred or, at least, moderate it to some degree. We, nevertheless, should not condemn her hatred morally because it sends a valuable message to her: do not put yourself in a position where another man can abuse you. She acts on this message by being watchful for signs that the men with whom she has relationships have the capacity to be similarly abusive.

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The two preceding examples demonstrate that troubling emotions, such as anger and hatred, often have instrumental values, or utility, that we cannot ignore when determining whether they should be subject to moral condemnation. Because of their instrumental values, we should not condemn them morally. Consistency demands that, because *Schadenfreude* has similar instrumental values, we should not condemn it morally simply because it often is troubling.

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### ***Schadenfreude* and Causal Chains That Produce Immoral Acts**

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The defense of *Schadenfreude* provided here applies only to experiences of the emotion on which we do not act. In setting up my arguments, I ruled out cases where persons who experience *Schadenfreude* help to bring about, by nefarious means, other persons’ misfortunes. Our actions regarding *Schadenfreude*, however, need not be prior to experiencing the emotion. Once a person experiences it, the emotion could be part of a causal chain that leads to an immoral act. If so, then that experience of *Schadenfreude* is subject to moral condemnation.

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Some instances of *Schadenfreude* could lead people to be cruel or sadistic. Nancy’s *Schadenfreude* could cause her to be cruel or sadistic to Jill. The pleasure she feels from Jill’s loss could make her feel so superior or “on top of the world” that she begins to taunt Jill or ridicule her publicly. She even could carry that cruelty or sadism into her treatment of other competitors, or her treatment of other people more generally. If so, moral condemnation of

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her *Schadenfreude* is appropriate. Any mental state, whether it is an emotion, fantasy, belief, attitude, or any other type, is subject to moral condemnation if it is part of a causal chain that produces an immoral act. If a person commits a racist act, it is appropriate to condemn morally not only the act, but also the person's racist beliefs that helped produce the act. The same is true of an instance of *Schadenfreude* that helps produce an immoral act.

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There is a more subtle type of possible causal chain that could justify moral condemnation of particular instances of *Schadenfreude*. Some instances of *Schadenfreude* could cause a kind of impoliteness or callousness toward others that is morally culpable. Such impoliteness or callousness can be the immoral acts at the ends of causal chains started by instances of *Schadenfreude*.

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To see why, consider a different kind of mental state: sexual fetishes. In themselves, such fetishes are not subject to moral judgment. Sharing them with others, however, is morally culpable in many contexts. Suppose Joe has a sexual fetish that involves ingesting things during sex that most find disgusting. We have no reason to condemn the fetish simply because Joe has it, but, if Joe were to discuss the fetish at a party while others are eating, over others' protests, and to the point where others no longer can enjoy the party and the food it has to offer, then we would have reason to condemn morally the fetish. Because discussing such a matter, in such a manner, ruins others' party experiences, the fetish is part of a causal chain that leads to an immoral act.

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Suppose, instead, that Joe discusses the fetish in the presence of children, or in the presence of other adults whom he knows easily are offended by discussions of deviant sexual behavior. In at least some contexts, such as those resulting from an invitation to a "family-friendly" party, Joe would be impolite or callous in a way that we should deem morally culpable. Joe's impoliteness or callousness is the immoral act that is the culmination of a causal chain that begins with his fetish. Thus, in this case, it is appropriate to condemn morally Joe's fetish.

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Likewise, suppose that Joe experiences *Schadenfreude* from the death of the man who married his ex-wife. The fact that he experiences that emotion gives us no reason to condemn it morally. If Joe were to attend the man's funeral or memorial service and share his pleasure with the man's friends and family, however, then we have reason to condemn morally his emotion. Such impoliteness and callousness is immoral because it is the source of discomfort or pain for others who already are saddened by their loss. In such an instance, the experience of *Schadenfreude* is part of a causal chain that leads to an immoral act and, thus, is an emotion that is subject to moral condemnation.

## CONCLUSION

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If the proffered arguments are sound, *Schadenfreude* is a morally permissible emotion in many contexts. Despite the fact that we often feel sheepish or apologetic when we experience the emotion, we should not condemn morally the mere experience of it. Insulating *Schadenfreude* from moral condemnation provides the freedom we need to explore the messages the emotion contains. Those messages have the potential to promote our emotional growth and mental health. Only when we allow *Schadenfreude* to cause us to perform immoral acts should we see it as a morally corrupt emotion subject to condemnation.

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## NOTES

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1. For two contemporary examples, see Kristján Kristjánsson, “Fortunes-of-Others Emotions and Justice,” *Journal of Philosophical Research* 28 (2003): 105–28; Mike McNamee, “*Schadenfreude* in Sport: Envy, Justice, and Self-esteem,” *Journal of the Philosophy of Sport* 30 (2003): 1–16; and Michael John McNamee, “Nursing *Schadenfreude*: The Culpability of Emotional Construction,” *Medicine, Health Care and Philosophy* 10 (2007): 289–99.

[7n1]

2. Aaron Ben-Ze’ev, *The Subtlety of Emotions* (Cambridge, MA: MIT Press, 2000).

[7n2]

3. John Portmann, *When Bad Things Happen to Other People* (New York: Routledge, 2000).

[7n3]

4. This section’s references to German culture are not meant to imply that it is the only culture that has a concept of the emotion at issue. According to *WordSense.eu Dictionary* (<http://www.wordsense.eu>), the Danish and Norwegian term *skadefryd*, the Dutch term *leed-vermaak*, the Finnish term *vahingonilo*, and the Swedish term *skadeglädje* all denote the same emotion that *Schadenfreude* denotes. Undoubtedly, there are many other cultures, including many in continents other than Europe, that have concepts of the emotion and terms to denote it.

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5. Ben-Ze’ev, *The Subtlety of Emotions*, 356.

[7n5]

6. Portmann, *When Bad Things Happen*, 9.

[7n6]

7. *Ibid.*, 11.

[7n7]

8. Ben-Ze’ev, *The Subtlety of Emotions*, 359.

[7n8]

9. Portmann, *When Bad Things Happen*, 15.

[7n9]

10. Ben-Ze’ev, *The Subtlety of Emotions*, 358.

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11. Portmann, *When Bad Things Happen*, 37.

[7n11]

12. *Ibid.*

[7n12]

13. Kristjánsson, “Fortunes-of-Others Emotions,” 114.

[7n13]

14. McNamee, “Nursing *Schadenfreude*,” 290. Although McNamee addresses only Portmann’s account, his claim against it also applies to Ben-Ze’ev’s account.

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15. McNamee, “*Schadenfreude* in Sport,” 13.

[7n15]

16. David Hume, *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*, intro. and analytical index L.A. Selby-Bigge, rev. and notes P.H. Nidditch, 3rd ed. (Oxford: Oxford University Press, 1975 [1748 and 1751]), 304.

[7n16]

17. David Hume, *A Treatise of Human Nature*, analytical index L. A. Selby-Bigge, rev. and notes P. H. Nidditch, second edition (Oxford: Oxford University Press, 1978 [1739–1740]), 579.

[7n17]

18. *Ibid.*

[7n18]

19. Richard H. Smith et al., “Envy and *Schadenfreude*,” *Personality and Social Psychology Bulletin* 22 (1996): 158.

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20. Nancy L. Brigham et al., “The Roles of Invidious Comparisons and Deservingness in Sympathy and *Schadenfreude*,” *Basic Applied and Social Psychology* 19 (1997): 363.

[7n20]

- [7n21] 21. Jill M. Sundie et al., “Schadenfreude as a Consumption-Related Emotion: Feeling Happiness about the Downfall of Another’s Product,” *Journal of Consumer Psychology* 19 (2009): 356.
- [7n22] 22. Wilco W. van Dijk et al., “Towards Understanding Pleasure at the Misfortunes of Others: The Impact of Self-Evaluation Threat on Schadenfreude,” *Cognition and Emotion* 25 (2011): 360.
- [7n23] 23. Colin Wayne Leach and Russell Spears, “‘A Vengefulness of the Impotent’: The Pain of In-Group Inferiority and Schadenfreude Toward Successful Out-Groups,” *Journal of Personality and Social Psychology* 95 (2008): 1383.
- [7n24] 24. N. T. Feather and Rebecca Sherman, “Envy, Resentment, Schadenfreude, and Sympathy: Reactions to Deserved and Undeserved Achievement and Subsequent Failure,” *Personality and Social Psychology Bulletin* 28 (2002): 960.
- [7n25] 25. N. T. Feather and Katherine Nairn, “Resentment, Envy, Schadenfreude, and Sympathy: Effects of Own and Other’s Deserved or Undeserved Status,” *Australian Journal of Psychology* 57 (2005): 99.
- [7n26] 26. N. T. Feather, “Effects of Observer’s Own Status on Reactions to a High Achiever’s Failure: Deservingness, Resentment, Schadenfreude, and Sympathy,” *Australian Journal of Psychology* 60 (2008): 39–40.
- [7n27] 27. Wilco W. van Dijk, Jaap W. Ouwerkerk, and Sjoerd Goslinga, “The Impact of Deservingness on Schadenfreude and Sympathy: Further Evidence,” *Journal of Social Psychology* 209 (2009): 291.
- [7n28] 28. The studies cited earlier found resentment more closely related to Schadenfreude than envy.
- [7n29] 29. Smith et al., “Envy and Schadenfreude,” 165.
- [7n30] 30. Brigham et al., “The Roles of Invidious Comparisons,” 374.
- [7n31] 31. Sundie et al., “Schadenfreude as a Consumption-Related Emotion,” 371.
- [7n32] 32. Ibid., 372.
- [7n33] 33. van Dijk et al., “Towards Understanding,” 366.
- [7n34] 34. Leach and Spears, “‘A Vengefulness,’” 1388.
- [7n35] 35. Ibid., 1395.
- [7n36] 36. Portmann, *When Bad Things Happen*, 34.
- [7n37] 37. Chapter 5 explains why many virtue ethicists constitute moral liberalism’s most likely opponents.
- [7n38] 38. Robert C. Roberts, *Emotions: An Essay in Aid of Moral Psychology* (Cambridge: Cambridge University Press, 2003).
- [7n39] 39. Ibid., 350.
- [7n40] 40. Ibid., 2.
- [7n41] 41. Ibid.
- [7n42] 42. McNamee, “Schadenfreude in Sport,” 1.
- [7n43] 43. Ibid., 12.
- [7n44] 44. McNamee, “Nursing Schadenfreude,” 297.
- [7n45] 45. Kristjánsson, “Fortunes-of-Others Emotions,” 120.
- [7n46] 46. Martha C. Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001).
- [7n47] 47. Ibid., 4.
- [7n48] 48. Ibid., 234.
- [7n49] 49. It is possible that the emotional freedom to experience other often-criticized emotions, such as envy and spite, also provides individuals who experience those emotions with significant values. A demonstration to that effect is necessary for any emotion about which one wishes to make that claim. Providing such a demonstration, however, does not demonstrate the further claim that we should allow, morally, individuals the emotional freedom to experience that emotion. In order to make the further claim, one also needs to provide either an argument regarding the specific emotion that demonstrates why individuals should be allowed, morally, to garner the values the emotion provides or a general argument of that sort that applies to all often-criticized emotions. This subsection provides the former kind of argument for Schadenfreude specifically.

## Chapter 7

50. Chapter 2 describe those values.
51. Michael E. McCullough et al., “Is Gratitude a Moral Affect?” *Psychological Bulletin* 127 (2001): 249–66.
52. Alex M. Wood, Jeffrey J. Froh, and Adam W. A. Geraghty, “Gratitude and Well-Being: A Review and Theoretical Integration,” *Clinical Psychology Review* 30 (2010): 890–905.
53. McCullough et al., “Is Gratitude a Moral Affect?” 252.
54. *Ibid.*, 251.
55. Wood, Froh, and Geraghty, “Gratitude and Well-Being,” 891.
56. *Ibid.*, 892.

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## *Chapter Eight*

# Harmful Sports

**[8.0]** Mental states, the subject of the two preceding chapters, constitute only one aspect of internal states. The other aspect comprises individuals' bodily states that do not affect others. This chapter turns to bodily states by applying moral liberalism to harmful sports, those sports the essential elements of which have significant probabilities of causing grave injury to, or the death of, participants.<sup>1</sup>

**[8.1]** I choose harmful sports through which to examine bodily states because such sports pose challenges for moral liberalism that some might not recognize. One might think that it is obvious that moral liberalism requires this conclusion: as long as individuals participate voluntarily in harmful sports, there is nothing to say morally about their participation. Although there is some truth in that purported conclusion, it is too hasty, too broad, and too glib about what counts as voluntary participation. Moral liberalism recognizes that voluntary participation is not a simple matter. The doctrine requires us to look beyond merely whether participants are subject to overt coercion and consider also whether participants are subject to subtle forms of coercion that might render involuntary their participation.<sup>2</sup> The purported conclusion also ignores the complexity of determining whether particular individuals, when they participate in harmful sports, affect others. Whether participation affects others is not merely a matter of participation causing, or not causing, physical harm to nonparticipants. It more significantly is a matter of the possibility of participants' significant injury or death preventing, or not preventing, participants from fulfilling their moral obligations to others.

**[8.2]** The most basic principle this chapter adopts is that moral liberalism grants competent adults the moral freedom to take risks with their own bodies by participating in harmful sports. That principle, however, is only a starting point as the freedom it allows is not unlimited. Individuals' various

moral obligations restrict their freedom to participate. If participation poses significant probabilities that particular individuals will not be able to fulfill their obligations, there are *prima facie* cases against those individuals having the moral freedom to participate. Determining whether those *prima facie* cases are all-things-considered cases against the freedom is a matter of examining the circumstances of the particular individuals' lives and obligations.

Child participants raise additional issues. Whereas participants' autonomy drives moral liberalism's conclusions about competent adults, the autonomy concept does not apply, or, at least, does not apply in as robust a fashion, to children. After all, treating children paternalistically qualifies as weak paternalism, a form of paternalism that moral liberalism permits, precisely because children are not yet sufficiently autonomous to make their own decisions about many matters.<sup>3</sup> For that reason, the issue is not whether children are free morally to participate in harmful sports, but, rather, the issue is whether parents and guardians are free to permit their children to participate.<sup>4</sup>

The upshot of the preceding paragraphs is that moral liberalism draws nuanced conclusions about individuals participating in harmful sports. This chapter's goal is to argue for some of those nuanced conclusions.<sup>5</sup>

### SCOPE OF "HARMFUL SPORTS"

One of my most vivid memories is from a Saturday afternoon less than a month after my twenty-first birthday. I was watching what became, because of its horrific outcome, one of the most talked about boxing matches in history. It was the world lightweight championship between Ray "Boom Boom" Mancini, the American titleholder, and Kim Duk-Koo, the South Korean challenger, at Caesar's Palace in Las Vegas, Nevada, on November 13, 1982.<sup>6</sup> Mancini retained his title when the referee stopped the match in the fourteenth round. Mancini had knocked down Kim with a powerful punch to the head, and Kim clearly was in no position to defend himself once he struggled to his feet. When Kim collapsed in the ring shortly thereafter, officials took him to Desert Springs Hospital where doctors performed emergency surgery for a subdural hematoma in Kim's brain. Kim never regained consciousness. He died four days later.

Mancini did nothing wrong, in the context of boxing, to cause Kim's ultimately fatal injury. Inflicting blows to the heads and bodies of opponents constitutes an essential element of the sport. Mancini merely was doing what boxers are supposed to do. Unfortunately, the essential element of boxing has the significant probability of causing grave injury to, or the death of, participants.

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**[8.8]** Kim's tragic death and Mancini's actions during the match illustrate the scope of "harmful sports" in this chapter.<sup>7</sup> The scope captures sports that include, as essential elements, actions that have significant probabilities of causing grave injury to, or the death of, participants. Boxing and American-style football are perhaps the most obvious examples.

**[8.9]** The scope does not capture sports such as basketball, baseball, or softball even though participants in those sports might suffer grave injury or death. The reason is that, assuming participants are not acting in malicious manners, such outcomes in those three sports stem from accidental or unintentional events during games. For example, in the history of Major League Baseball, the United States' highest level of professional baseball, some players have been seriously injured, and one even was killed, by being struck in the head by pitches.<sup>8</sup> Striking batters in the head with pitched balls, however, is not an essential element of the game. Such events almost always occur accidentally, and, when they are intentional, they are instances of pitchers acting contrary to baseball's rules.

**[8.10]** The scope also does not capture participants who cause their own injury or death by using performance-enhancing drugs.<sup>9</sup> Although the sports that the scope of "harmful sports" does not capture, as well as athlete's performance-enhancing drug use, raise interesting questions for moral liberalism, examining those questions is beyond this chapter's goals.

**[8.11]** **COMPETENT ADULT PARTICIPANTS**

**[8.12]** When it comes to competent adults, moral liberalism's default position is that they have the moral freedom to participate in harmful sports. Because moral liberalism denies the view that there is one correct conception of the good life, it respects individuals' autonomy to determine for themselves, and to pursue, how best to live. Part of that autonomy is individuals determining for themselves what kinds of risks they take with their own health and lives. Although to one person it might seem irrational to run the risks of harmful sports, to another it might seem irrational to live free of such risks. Provided that competent adults' participation is voluntary, moral liberalism's starting point is that their participation should not be blocked unless there are reasons that override their moral freedom.

**[8.13]** The "provided that" clause in the preceding sentence, however, is not a simple matter. Philosophers long have struggled to determine the conditions that render individuals' acts voluntary. The difficulties of that struggle manifest in competent adults' decisions to participate in harmful sports.

## Voluntary Acts

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Moral liberalism deems an individual's act voluntary when the individual chooses the act free from coercion. That definition parts company with two notable figures in the history of philosophy, Aristotle and Thomas Hobbes, by deeming involuntary many acts that those figures' definitions deem voluntary.<sup>10</sup>

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Aristotle describes one class of involuntary acts in this way: "What comes about by force . . . seems to be involuntary. What is forced has an external origin, the sort of origin in which the agent or victim contributes nothing—if, e.g., a wind or human beings who control him were to carry him off."<sup>11</sup> This sets a high standard for labeling acts "forced" and, thus, deeming them involuntary on those grounds.<sup>12</sup> That standard excludes acts caused by the kinds of duress many, including this author, consider coercive.

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So-called gun-to-the-head scenarios are one such kind. For the purposes here, "gun-to-the-head" scenarios comprise all cases in which one party attempts to use a threat of violence, or a threat to inflict another type of harm, in order to extract from another party an act or concession to which, absent the threat, the other party would not acquiesce.<sup>13</sup> Aristotle constructs such a scenario when he asks us to imagine that "a tyrant tells you to do something shameful, when he has control over your parents and children, and if you do it, they will live, but if not, they will die."<sup>14</sup> He concludes that acts stemming from such scenarios "seem to be more like voluntary actions. For at the time they are done they are choiceworthy."<sup>15</sup> This is a striking conclusion, one that moral liberalism rejects, because "gun-to-the-head" scenarios are exactly the kinds of situations to which many point when constructing examples of involuntary acts.

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To be fair to Aristotle, although he holds that acts caused by duress are voluntary, he does not hold that those who act under duress always are blameworthy for their acts' consequences. He, instead, holds that "For such . . . actions people are sometimes actually praised, whenever they endure something shameful or painful as the price of great and fine results. . . . In some cases there is no praise, but there is pardon, whenever someone does a wrong action because of conditions of a sort that overstrain human nature, and that no one would endure."<sup>16</sup> In cases where Aristotle believes acts performed under duress are worthy of praise or pardon, his position likely comes to the same conclusions about actors' culpability as does moral liberalism. By holding that such acts are voluntary, however, his position likely leads to conclusions about many cases of coercion that differ from moral liberalism's conclusions.

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Hobbes also labels "voluntary" acts performed under the kinds of duress many consider coercive, most notably "gun-to-the head" scenarios. He writes, "Covenants entered into by fear . . . are obligatory. For example, if I

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covenant to pay a ransom, or service, for my life, to an enemy, I am bound by it. For it is a contract wherein one receive the benefit of life; the other is to receive money, or service, for it; and consequently, where no other law . . . forbiddeth the performance, the covenant is valid.”<sup>17</sup> Although, presumably, Hobbes believes a sovereign government would deem illegal coercing people into making such contracts, his conclusion still is striking. There is nothing about coercion, in itself, that makes the contracts it produces null and void. Only laws prohibiting such coercion, if they exist, render invalid coerced contracts.

**[8.20]** Moral liberalism rejects the Aristotelian and Hobbesian views because its account of coercion captures, and, thus, renders involuntary, acts that their views do not capture. This is easy to demonstrate in “gun-to-the-head” scenarios. Autonomy is essential to moral liberalism because, without it, individuals cannot identify, nor can they pursue, their own conceptions of the good life.<sup>18</sup> Granting individuals the moral authority to choose for themselves how best to live is one of moral liberalism’s goals. There are few threats to that moral authority as great as those posed by perpetrators in “gun-to-the-head” scenarios. The perpetrators’ goals precisely are to take away from others the ability, or, at least, make it unbearable, to act as those others otherwise would choose for themselves.

**[8.21]** The ease with which moral liberalism treats “gun-to-the-head” scenarios, however, merely is a comforting illusion. Such scenarios very rarely explain the origins of individuals’ acts. Moral liberalism also must apply to the many, far more common, origins of acts about which the presence or absence of coercion is controversial. The difficulty lies in construing coercion in a way that captures “gun-to-the-head” scenarios, but is not so broad as to capture acts that, in order for moral liberalism to be a practical theory, it must deem voluntary. The coercion concept should not, for example, deem all my purchases involuntary because I make them within the context of a capitalist system that many argue is, in itself, coercive.<sup>19</sup> Although I am sympathetic to, and often make, many criticisms of capitalism, moral liberalism is a theory of practical morality that must function within the basic social contexts in which we live. The fact is that, like it or not, most live in societies with some degree or other of capitalist elements. Deeming involuntary *all* purchases within such societies would defeat my attempt to provide a theory of moral liberalism that applies to morality’s practical matters.<sup>20</sup>

**[8.22]** This does not mean, however, that the coercion concept must deem voluntary all acts within extant institutions, nor does it mean that moral liberalism must accept as legitimate all extant institutions and the practices they comprise. Deeming involuntary *some* of my purchases, for example, would not defeat my attempt to provide a practical theory. An acceptable construal of coercion could acknowledge that some marketing practices are coercive and, thus, produce involuntary purchases.<sup>21</sup> Through such a construal, moral

liberalism would reject particular practices within capitalism and, thereby, point to practical changes we should pursue through either governmental regulation or promoting self-regulation within the marketing industry.<sup>22</sup>

In order to identify when one party's coercion is significant enough to render involuntary another party's act, moral liberalism must include these principles:<sup>23</sup>

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1. When party A uses successfully<sup>24</sup> a threat of<sup>25</sup> violence, or a threat to inflict another type of harm, in order to extract from party B an act or concession to which, absent the threat, B would not acquiesce, B's act or concession is involuntary.
2. When A uses successfully the aspects of an institution, in which B must participate, in order to manipulate B into an act or concession to which, absent the manipulation, B would not acquiesce, B's act or concession is involuntary.

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Principle 1 captures "gun-to-the-head" scenarios and renders involuntary the acts they produce. Principle 2 captures many cases that are more common and, often, are much more controversial than are "gun-to-the-head" scenarios. Through that principle, moral liberalism deems involuntary many acts that manipulation, short of that in "gun-to-the-head" scenarios, produces. By doing so, moral liberalism likely parts company with many liberal thinkers who resist expanding the account of coercion so that it encompasses the kind of manipulation the principle captures.<sup>26</sup>

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### **Coercive Threats and Voluntary Participation in Harmful Sports**

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The two principles refer respectively to coercive threats and coercive offers.<sup>27</sup> Essentially, principle 1 describes a coercive threat and renders involuntary the act or concession the threat produces. Such a threat typically is immoral because it violates the threatened person's autonomy.

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Not all coercive threats, however, are immoral. The most obvious moral, coercive threats are those that parents, when acting in genuinely parental fashions, issue to their children. A significant part of the parental role is to augment children's insufficient autonomy. Such augmentation often requires paternalistic treatment that restricts children's behavior.<sup>28</sup> To enforce those restrictions, parents often use, reasonably and justifiably, coercive threats.

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Perhaps the moral, coercive threats most relevant to this chapter's goals are those legitimate governments issue when acting within their justified purviews.<sup>29</sup> Hume's theory of society and government demonstrates this well. Hume writes, "Of all the animals, with which this globe is peopled, there is none towards whom nature seems, at first sight, to have exercised more cruelty than towards man, in the numberless wants and necessities,

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with which she has loaded him, and in the slender means, which she affords to the relieving these necessities.”<sup>30</sup> Satisfying needs is an obvious human interest. Unfortunately, our natural traits and abilities, when brought to bear by individuals, sans cooperation with others, are not well suited to meet our needs.

**[8.30]** Although we are not well suited to meet our needs alone, through cooperation we can overcome our inabilities. Hume writes,

**[8.31]** ’Tis by society alone he [humankind] is able to supply his defects, and raise himself up to an equality with his fellow-creatures, and even acquire a superiority above them. By society all his infirmities are compensated; and tho’ in that situation his wants multiply every moment upon him, yet his abilities are still more augmented, and leave him in every respect more satisfied and happy, than ’tis possible for him, in his savage and solitary condition, ever to become.<sup>31</sup>

**[8.32]** Combining into societies facilitates cooperation among humans. Through cooperation, we are able to accomplish things that no individual can by working alone. Our joined forces overcome our individual weaknesses and help us to meet our needs. Food production, for instance, is considerably more efficient and bountiful when we work together than it is when we work alone.

**[8.33]** Because we need society, we also need government. Without government, and a general obedience to government, society cannot last. Hume writes, “Societies cannot subsist without government, so government is entirely useless without an exact obedience. . . . The common rule requires submission; and ’tis only in cases of grievous tyranny and oppression, that the exception can take place.”<sup>32</sup> Given that we need government, a legitimate government’s coercive threats are moral provided that, through the threats, government requires acts or concessions that are within government’s justified purview. Governmental threats that meet that criterion include, but are not limited to, those that threaten punishment for murder, theft, and fraud, as well as those that threaten punishment for not paying taxes and driving without a license.<sup>33</sup>

**[8.34]** Such moral, coercive threats, however, rarely, if ever, come into play with respect to competent adults’ participation in harmful sports. A legitimate government does not threaten to punish those who do not participate in such sports, and, if one did, the threats would be immoral because requiring participation is not within government’s justified purview. The threats would be violations of individuals’ autonomy for which there are no overriding reasons that justify the violations.

**[8.35]** Persons or groups might use coercive threats to persuade particular individuals to participate in harmful sports, such as when a crime boss threatens to harm a boxer’s family if the boxer refuses to participate in, and intention-

ally lose, a match with a designated opponent. Such threats obviously violate the autonomy of the threatened individuals and, thus, are immoral.

### **Coercive Offers and Voluntary Participation in Harmful Sports**

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Coercive offers to which principle 2 refers, however, may well come into play with respect to competent adults' participation in harmful sports. Whether offers can be coercive is a controversial matter. Offers do not threaten violence, or other harms, should offerees not acquiesce to offerors' wishes. Offers, instead, promise rewards if offerees acquiesce. Because offers promise rewards, rather than levy threats, some philosophers argue that they cannot be coercive.<sup>34</sup> Typically, those philosophers' position is based on the belief that, while those who do not acquiesce to threats are worse off than they were prior to the threats, offerees who do not accept offers are no worse off than they were prior to the offers.

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I follow several philosophers in holding that offers can be coercive.<sup>35</sup> A simple example illustrates why. Suppose Oliver is a hard-working, sole provider for his family. Despite Oliver's efforts, the family struggles to make ends meet, and Oliver worries about how he will support his children's desires to obtain university educations. Fagin, who purchases and sells human organs, a legal practice in Oliver's and Fagin's society, is aware of Oliver's financial struggles.<sup>36</sup> Because Fagin knows that Oliver is healthy, and that most healthy people are unwilling to part with one of their kidneys unless it will be transplanted into someone they care about, he offers Oliver a considerable sum of money for one of his. If Oliver accepts the offer, he no longer need worry about how his children will have access to university educations.

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Although Oliver is free to reject Fagin's offer, it does not mean that, should he do so, he necessarily is no worse off than he was prior to the offer. Although there is nothing unreasonable about Oliver wanting to keep both of his kidneys, it also is understandable if Oliver would feel guilty about refusing the offer. There is nothing unreasonable about parents feeling guilty over not taking steps that they know would benefit their children. It is coercive for Fagin to utilize Oliver's financial condition and Oliver's concern for his family in the way that he did. Thus, the context in which Fagin makes the offer renders the offer coercive.<sup>37</sup>

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The question for this chapter's purposes is whether there is a similar coercion happening when others offer, to competent adults, rewards for participating in harmful sports. Like Fagin's offer, I contend that the answer to the question is a function of the contexts in which persons or institutions make such offers. Similarly to the earlier point about purchases, in order for moral liberalism to be a practical theory, I take as a given that individuals and institutions involved with harmful sports operate within economic systems

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comprising some degree or other of capitalist elements. As such, I accept, for the purposes of developing a practical theory, that wealth will be earned and distributed through harmful sports.<sup>38</sup> Thus, moral liberalism does not deem coercive all financial offers to those who participate in harmful sports.

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Whether such an offer is coercive is an empirical matter because only the offeree's specific circumstances demonstrate whether the offer is coercive. Although we cannot generalize about those circumstances, we can adopt this important guideline: A financial offer enticing person A to participate in a harmful sport is coercive if A lacks what William James, in the context of beliefs, terms a "living option" to accept or refuse the offer. James writes, "Let us give the name of *hypothesis* to anything that may be proposed to our belief; and just as the electricians speak of live and dead wires, let us speak of any hypothesis as either *live* or *dead*. A live hypothesis is one which appeals as a real possibility to him to whom it is proposed. . . . [L]et us call the decision between two hypotheses an *option*. . . . A living option is one in which both hypotheses are live ones."<sup>39</sup> Similarly to James's reasoning about beliefs, the guideline tells us that the offer proposes a living option to the offeree only if refusing the offer is, for the offeree, a live possibility. If refusing the offer is a dead possibility for the offeree, then the offer does not propose to the offeree a living option. In such a case, the offer is coercive because the only live possibility for the offeree is to accept the offer.

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It is clear that offers to participate in harmful sports provide living options for many. For them, both accepting and refusing offers to participate are live possibilities. Consider Ignatius, a young man who comes from a comfortable background. His parents are wealthy, and, although they did not spoil him, they provided Ignatius with significant opportunities throughout his life. They sent him to high-quality, expensive elementary and secondary schools, and they are able and willing to fund his college education no matter how expensive the university he attends. Because Ignatius performed so well in school, it is clear that he has the opportunity to attend an elite university. If Ignatius were to receive an offer to participate in a harmful sport, the offer would not be coercive as it would produce a living option for Ignatius. Because he has access to a university education that will provide him with ample other career and life possibilities, refusing the offer is not a dead possibility for Ignatius.

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It strikes me that the preceding conclusion is uncontroversial because I described Ignatius's background as extremely comfortable. I, however, also believe we should draw the same conclusion about many persons whose backgrounds are not as comfortable as Ignatius's. On the other hand, although there is not some obvious point where their backgrounds are uncomfortable enough to indicate this, there are many persons about whom the same conclusion is unwarranted or, at least, far more controversial.



Imagine Dominic who comes from a much less comfortable background than Ignatius's. His parents are hard-working farmers, and Dominic always has been a great help to them. Dominic's schoolwork was satisfactory but not stellar because his work on the farm left him little time to devote to his studies. Because of the economic and environmental vagaries of farming, Dominic's parents struggle to make ends meet and simply do not have the wealth to help Dominic with his future, whether or not that future is pursuing a university education.

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An offer to participate in a harmful sport is considerably more controversial in this case than in Ignatius's. Empirical facts about Dominic determine whether or not the offer is coercive. Because there are innumerable possible empirical facts that might bear on determining whether an offer to participate is coercive, I do not pretend to present an exhaustive account of those facts. There, however, are some possible facts that clearly would bear on the determination.

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Dominic's attitude about the sport is one such fact. If he loves the sport and has aspirations of making a career in it, then there is no reason to think an offer to participate is coercive. Assuming that Dominic developed his love for the sport free from manipulation and pressure, we should conclude that participating in the harmful sport is part of his conception of the good life. Given that, not only would an offer to participate not be coercive, it actually would provide Dominic with an opportunity to live as he chooses. The offer would respect, rather than violate, Dominic's autonomy because it respects his independent choice regarding how best to live. The offer, in fact, goes even further than merely respecting Dominic's autonomy. Not only does it respect Dominic's lifestyle choice, it provides him with the means to pursue that lifestyle.

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Suppose that, although Dominic is incredibly talented at the harmful sport, he does not enjoy participating in it and does not wish to make a career of it. He, in fact, would rather become an elementary school teacher even though doing so would be far less lucrative than would be participating in the harmful sport. In such circumstances, it is possible that an offer to participate is coercive. The matter, again, depends on further empirical facts about Dominic.

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Perhaps the most obvious, relevant empirical facts are those that would or would not produce feelings of guilt in Dominic should he refuse the offer. It is quite possible, given the described circumstances, that Dominic feels tremendous gratitude toward his parents for all they have done for him and, thus, very much would like to see them live more comfortably than they currently do. If so, then, similarly to Oliver in the earlier case, an offer to participate quite possibly would produce feelings of guilt that coerce Dominic into participating in the sport. This possibility is most acute in cases where the offeror refers to Dominic's parents when trying to persuade him to accept

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the offer. I have in mind situations such as recruiter saying to Dominic something like, “Think about how much you can do for your parents if you accept the offer.” Although the offer’s coercive nature is most apparent when the offeror acts in such ways, the offer could be coercive even if the offeror does not know of Dominic’s background and has no intent to persuade Dominic to take the offer. The very fact that the offer produces understandable guilt in Dominic should he refuse it renders the offer coercive. The point is that the offeror’s intent does not determine whether the offer is coercive.

**[8.49]** On the other hand, the fact that Dominic is tremendously grateful to his parents and would like to see them live more comfortably does not, in itself, render the offer coercive. It is possible that, despite his feelings toward his parents, Dominic would not feel guilty should he refuse the offer. If so, then the offer is not coercive.

**[8.50]** All this demonstrates that it is misguided to believe offers to participate in harmful sports cannot be coercive. It overlooks the fact that offers are made in a social context. That context is one that does not provide all people with equal opportunities to have living options about harmful sports. While for some refusing an offer to participate is a live possibility, for others it is not. Only the empirical facts about the offeree and the offeree’s circumstances can inform us as to whether refusing the offer is a live possibility and, thus, whether the offer is coercive.

## **[8.51]** Moral Obligations to Others

**[8.52]** Setting aside the complication of coercive offers, competent adults generally are free morally to participate in harmful sports. For particular individuals, however, their moral obligations may override that moral freedom. The most notable cases are those where adults have moral obligations to care for others.

**[8.53]** Consider competent adults who voluntarily become parents. Their voluntary choices place on them certain moral obligations. Those obligations frequently limit parents’ moral freedom. Obligations as simple as those of getting their children to and from school, making dental and medical appointments for their children, and attending school functions often restrict parents’ freedom to do what they wish, when they wish.

**[8.54]** More complex obligations, such as that to care for children’s welfare, also limit parents’ freedom, and often do so to a greater extent. Such obligations are more likely to restrict parents’ freedom to pursue lifestyles of their own choosing. Moral liberalism does not permit parents to pursue lifestyles that prevent them from caring for their children. An obvious example of a precluded lifestyle is a drug-addicted life that prevents parents from recognizing their children’s needs, such as nutritional and medical needs, and taking the necessary steps to satisfy those needs.<sup>40</sup>

To the extent that participating in harmful sports is a lifestyle that prevents parents from fulfilling their obligations to their children, the obligations override parents' moral freedom to pursue that lifestyle. Whether such is the case for particular parents are contextual matters. It depends on what would happen to the children's welfare should death or incapacitating harm come to the parents. If parents have the resources, perhaps, though not necessarily, through participation in harmful sports, to arrange in advance care for their children should such outcomes occur, then parental obligations do not override the parents' moral freedom. In essence, the parents would fulfill their obligations indirectly through such arrangements. If, on the other hand, parents are unable to arrange for the care of their children should participation kill or incapacitate them, then parental obligations override the parents' freedom to participate in harmful sports.

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Parental obligations merely are one example of the kinds of moral obligations that might override competent adults' moral freedom to participate in harmful sports. It is possible that obligations to spouses and other life partners, contractual obligations, and other kinds of obligations could override the freedom to participate. Like parental obligations, whether they do are contextual matters.

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## CHILD PARTICIPANTS

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Although examining competent adults' participation in harmful sports is the purpose of this chapter, some attention to children's participation is warranted. Moral liberalism speaks to children's participation differently from how it speaks to competent adults' participation.

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Perhaps the most notable difference lies in the fact that restricting competent adults' liberty for their own good is strong paternalism, a practice that moral liberalism rejects, while similarly restricting children's freedom is weak paternalism, a practice that moral liberalism accepts. Thus, while moral liberalism's default position is that competent adults have the moral freedom to participate in harmful sports, the theory has no such default position regarding children. The default position, instead, is that parents are free morally, and, in fact are obligated morally, to decide whether their children participate in harmful sports. This follows from parents' moral obligation to promote their children's welfare.

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### Children's Capacity for Autonomy

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Two matters about this default position are relevant to this chapter's purposes. First, it is obvious that as children mature, their capacity for autonomy increases. As that capacity grows, many restrictions that parents place on their children become less like weak paternalism and more like strong pater-

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nalism. This suggests that parents gradually, and in varying ways, begin to lose the moral right to treat their children paternalistically. At a multitude of points in children's lives, parents no longer are justified in treating their children paternalistically in particular ways. A required bedtime, for example, is far more appropriate for an eight-year-old than it is for a seventeen-year-old.

**[8.62]** This raises the following question: At what point do parents lose the moral right to decide whether their children participate in harmful sports? This seemingly simple question lacks a simple answer. There is no single answer for all parents. The answer depends on empirical facts about particular situations such as the actual capacity for autonomy given children have, how cognizant they are of the long-term consequences of participation, and how susceptible they are to peer pressure to participate.

**[8.63]** I suspect that, at the point such facts support particular children having the moral right to decide for themselves whether they participate, I no longer would be comfortable referring to them as "children." Although I hear many use "children" as a general term of reference denoting young people through their late teens and into their college years, I find such referrals offensive and problematic.<sup>41</sup> It suggests, and promotes, an immaturity that is not true of, or, at least, should not be true of, young adults in that age bracket. This suggests that I believe the point at which parents no longer are justified in deciding whether their children participate in harmful sports likely is somewhere in children's late teens.<sup>42</sup>

### **[8.64]** **Overriding the Default Position**

**[8.65]** The second, and more significant for my purposes, matter about the default position is that empirical facts about parents often override the default position. Parents' moral freedom to decide matters involving their children is far from absolute. Moral liberalism does not support that freedom for those parents who do not, or lack the capacity to, care for their children's interests. The theory, for instance, does not require that society respect drug-addicted parents' right to decide matters for their children in cases where the addictions impede the parents' capacity to understand, and promote, their children's interests.

**[8.66]** There are innumerable circumstances that might bear on whether society should respect parents' right to decide whether their children participate in harmful sports. Although I am inclined to think that those circumstances typically apply to particular parents, at least one circumstance calls into question whether moral liberalism grants the right to any parent. That circumstance is the possibility of parents coercing their children into participating in harmful sports. This very real possibility casts doubt on whether parents should ever be allowed to consent to their children participating.

Parents frequently coerce their children into pursuing careers and lifestyles that are not what the children would choose for themselves. With disturbing frequency, students tell me that they are pursuing majors their parents want them to pursue, not majors the students want to pursue. When I ask them why, a common reply is that their parents will not pay for the students' education if they pursue the majors they wish to pursue. Tying financial support to students' choice of majors is a form of coercion. Moral liberalism does not grant parents the right to coerce their children into career and life pursuits. Parents should respect their college-age children's autonomy to choose their own career and lifestyle pursuits. This is true even if parents think they are looking out for their children's interests. When parents use coercion to direct their children toward what they believe are the best careers and lifestyles, they substitute their own conceptions of the good life for their children's own conceptions. Given their children's stage of life at issue, doing so is strong paternalism.

[8.67]

The question is whether a similar kind of coercion takes place when parents decide whether their children can participate in harmful sports. Although I recognize that many parents withhold, or are reluctant to grant, such permission, I worry that too many parents actually coerce, either intentionally or unintentionally, their children into participating. Adults often recount how their parents pushed them into participating when they were kids. They ascribe to their parents motivations such as the possibility of lucrative careers down the road, developing social and leadership skills, and parents living vicariously their own sports dreams through their children's participation. Moral liberalism does not grant parents the right to pursue such goals by coercing their children into participating in harmful sports.

[8.68]

This suggests that whether moral liberalism grants parents the right to decide whether their children participate in harmful sports is a complex matter. It certainly is true that society should not let children participate without their parents' consent until the children are in their late teens. Such children simply do not have sufficient capacity for autonomy to assess for themselves participation's risks and long-term effects. I am inclined to think, however, that society should do more than merely require parental consent. It should take steps to guard against the kind of coercive consent described previously. This might take the form of in-person interviews with parents and children that are designed to reveal parents' motivations for consenting and children's actual interests in participating. Such interviews should be arranged so that children can speak freely and openly.

[8.69]

I grant readily that such a suggestion is anathema to many, including many liberals. The thought of society playing such a role in parental matters offends many. I, too, am hesitant to suggest such a role for society. Unfortunately, the possibility of such coercion is too great, and the possible consequences for children who participate in harmful sports are too dire, for soci-

[8.70]

ety simply to treat children’s participation as typical parental matters. Just as we do not allow parents to decide for themselves whether to place babies and very young children in car seats, we should not grant them unrestricted freedom to decide for themselves whether their children participate in harmful sports.

[8.71]

## NOTES

[8n1]

1. Throughout this chapter and chapter 15, when locutions such as “participants” and “participation” do not identify explicitly their referents, the referent is harmful sports.

[8n2]

2. I must express sincere gratitude to Scott A. Anderson for, and enthusiastically recommend to others, his “Coercion,” *Stanford Encyclopedia of Philosophy*, February 10, 2006, revised October 27, 2011, <https://plato.stanford.edu/entries/coercion/#ThrBas>. That excellent work helped frame my understanding of the evolving themes in philosophy literature on coercion. Please note, however, that any errors in this chapter that concern the literature on coercion are mine, not Anderson’s.

[8n3]

3. Chapter 1 demonstrates this position through its examination of weak and strong paternalism.

[8n4]

4. Throughout the remainder of this chapter, the term “parents” includes guardians as well.

[8n5]

5. Chapter 15 returns to harmful sports. It applies moral liberalism to these nonparticipants: sports leagues, team owners, state and local governments, media organizations, and sports fans. The chapter examines whether moral liberalism places on nonparticipants moral obligations regarding their involvement with harmful sports.

[8n6]

6. For retrospectives of the match, see Steve Han, “November Issue: The 30th Anniversary of the Death of Boxer Duk-koo Kim,” *CharacterMedia.com*, November 21, 2012, <https://charactermedia.com/november-issue-the-30th-anniversary-of-the-death-of-boxer-duk-koo-kim/>; and Mark Kriegel, “A Step Back: Families Continue to Heal 30 Years After Title Fight Between Ray Mancini and Duk-koo Kim,” *New York Times*, September 16, 2012, <https://www.nytimes.com/2012/09/17/sports/families-continue-to-heal-30-years-after-title-bout-between-ray-mancini-and-duk-koo-kim.html>.

[8n7]

7. Chapter 15 also adopts this scope of “harmful sports.”

[8n8]

8. Major League Baseball is over 150 years old. To date, the only player who died from being hit by a pitched ball was Ray Chapman. He died on August 17, 1920. See Jordan Cohn, “#Shortstops: Chapman Tragedy Documented with Museum Artifact,” *National Baseball Hall of Fame*, <https://baseballhall.org/discover/short-stops/chapman-tragedy-documented-with-museum-artifact>.

[8n9]

9. For examinations of athletes’ performance-enhancing drug use, see Michael W. Austin, “Magnanimity, Athletic Excellence, and Performance-Enhancing Drugs,” *Journal of Applied Philosophy* 26 (2009): 46–53; Larry D. Bowers and Raymond Paternoster, “Inhibiting Doping in Sports: Deterrence Is Necessary, but Not Sufficient,” *Sport, Ethics and Philosophy* 11 (2017): 132–51; W. M. Brown, “Paternalism, Drugs, and the Nature of Sports,” *Journal of the Philosophy of Sport* 11 (1984): 14–22; Michael Burke and Christopher Hallinan, “Drugs, Sport, Anxiety and Foucauldian Governmentality,” *Sports Ethics and Philosophy* 2 (2008): 39–55; Nicholas Dixon, “Rorty, Performance-Enhancing Drugs, and Change in Sport,” *Journal of the Philosophy of Sport* 28 (2001): 78–88 and “Performance-Enhancing Drugs, Paternalism, Meritocracy, and Harm to Sport,” *Journal of Social Philosophy* 39 (2008): 246–68; Warren P. Fraleigh, “Performance-Enhancing Drugs in Sport: The Ethical Issue,” *Journal of the Philosophy of Sport* 11 (1984): 23–29; John Gleaves, “No Harm, No Foul? Justifying Bans on Safe Performance-Enhancing Drugs,” *Sport, Ethics and Philosophy* 4 (2010): 269–83 and “A New Conceptual Gloss that Still Lacks Luster: Critiquing Morgan’s Treatment-Enhancement Distinction,” *Journal of the Philosophy of Sport* 38 (2011): 103–12; Sigmund Loland, “Performance-Enhancing Drugs, Sport, and the Ideal of Natural Athletic Performance,” *American Journal of Bioethics* 18 (2018): 8–15 and “Sport, Performance-Enhancing Drugs, and the Art of

## Chapter 8

Self-imposed Constraints,” *International Journal of Applied Philosophy* 32 (2018): 87–100; William J. Morgan, “Athletic Perfection, Performance-Enhancing Drugs, and the Treatment-Enhancement Distinction,” *Journal of the Philosophy of Sport* 36 (2009): 162–81; Thomas H. Murray, “The Coercive Power of Drugs in Sports,” *Hastings Center Report* 13 (1983): 24–30; Thomas Søbirk Petersen, “Good Athlete—Bad Athlete? on the ‘Role-Model Argument’ for Banning Performance-Enhancing Drugs,” *Sport, Ethics and Philosophy* 4 (2010): 332–40; and Robert L. Simon, “Good Competition and Drug-Enhanced Performance,” *Journal of the Philosophy of Sport* 11 (1984): 6–13.

10. Moral liberalism’s definition parts company with many other historical figures’ definitions, but these two deserve special attention as they represent the view that moral liberalism opposes most starkly. [8n10]

11. Aristotle, *Nicomachean Ethics*, trans., intro., notes, and glossary Terence Irwin, second edition (Indianapolis, IN: Hackett Publishing Company, 2000 [ca. 350 BCE]), 53. [8n11]

12. Although an examination of acts caused by ignorance is not pertinent to my purposes here, I would be remiss if I did not point out that Aristotle holds that such acts also are involuntary. See *ibid.*, 56–58. [8n12]

13. Here, and throughout this examination of coercion, a party at issue could be either an individual, group of individuals, an institution, or group of institutions. [8n13]

14. Aristotle, *Nicomachean Ethics*, 54. [8n14]

15. *Ibid.* [8n15]

16. *Ibid.*, 54–55. [8n16]

17. Thomas Hobbes, *Leviathan*, ed. and intro. Edwin Curley (Indianapolis, IN: Hackett Publishing Company, 1994 [1651]), 86. [8n17]

18. Chapters 1 and 2 develop and defend this idea. [8n18]

19. For those unfamiliar with Karl Marx and Friedrich Engels, the view that capitalism is coercive in various ways drives much of their work. A good starting point from which to examine their views is Karl Marx and Friedrich Engels, *The Marx-Engels Reader*, ed. Robert C. Tucker, second edition (New York: W. W. Norton & Company, 1978 [original dates vary]). Many contemporary works in philosophy literature examine whether capitalist economies are coercive. Among them are Richard J. Arneson, “What’s Wrong with Exploitation?” *Ethics* 91 (1981): 202–27; G. A. Cohen, “The Labor Theory of Value and the Concept of Exploitation,” *Philosophy & Public Affairs* 8 (1979): 338–60, “Are Workers Forced to Sell Their Labor Power?” *Philosophy & Public Affairs* 14 (1985): 99–105, and “The Structure of Proletarian Unfreedom,” in *Analytical Marxism*, ed. John Roemer (Cambridge: Cambridge University Press, 1986), 237–59; James Daly, “Marx and Justice,” *International Journal of Philosophical Studies* 8 (2000): 351–70; Douglas Ehring, “Are Workers Forced to Work?” *Canadian Journal of Philosophy* 19 (1989): 589–602; Nancy Holmstrom, “Exploitation,” *Canadian Journal of Philosophy* 7 (1977): 353–69; Jan Narveson, “Reiman on Labor, Value, and the Difference Principle,” *Journal of Ethics* 18 (2014): 47–74; B. C. Postow, “Coercion and the Moral Bindingness of Contracts,” *Social Theory and Practice* 4 (1976): 75–92; Jeffrey Reiman, “Exploitation, Force, and the Moral Assessment of Capitalism: Thoughts on Roemer and Cohen,” *Philosophy & Public Affairs* 16 (1987): 3–41 and *As Free and as Just as Possible: The Theory of Marxian Liberalism* (Malden, MA: Wiley-Blackwell, 2012); and John E. Roemer, “Property Relations vs. Surplus Value in Marxian Exploitation,” *Philosophy & Public Affairs* 11 (1982): 281–313, and “Should Marxists Be Interested in Exploitation?” *Philosophy & Public Affairs* 14 (1985): 30–65. [8n19]

20. My position on this matter likely would be different were I attempting to provide an ideal or utopian theory. [8n20]

21. Although this book does not devote a chapter to examining the morality of specific business practices, chapter 16 applies, in a broad sense, moral liberalism to business. Elsewhere, I examine some moral questions business produces, both generally and via specific practices. See Rob Macklin and Earl W. Spurgin, “Free Speech in the Workplace,” *Australian Journal of Professional and Applied Ethics* 9 (2007): 101–13; Earl Spurgin, “Can Businesses Be Too Good? Applying Susan Wolf’s ‘Moral Saints’ to Businesses,” *Business and Society Review* 116 (2011): 355–73 and “Do Business Leaders Have Role-Model Obligations to Be Good Political Actors?” *Business and Society Review* 120 (2015): 277–301; and Earl W. [8n21]



Spurgin, "What's So *Special* About a Special Ethics for Business?" *Journal of Business Ethics* 24 (2000): 273–81, "Do Shareholders Have Obligations to Stakeholders?" *Journal of Business Ethics* 33 (2001): 287–97, "The Problem with 'Dead Peasants' Insurance," *Business & Professional Ethics Journal* 22 (2003): 19–36, "What's Wrong with Computer-Generated Images of Perfection in Advertising?" *Journal of Business Ethics* 45 (2003): 257–68, "Looking for Answers in All the Wrong Places," *Business Ethics Quarterly* 14 (2004): 293–313, "Occupational Safety and Paternalism: Machan Revisited," *Journal of Business Ethics* 63 (2006): 155–73, "What Was Wrong with Abercrombie & Fitch's 'Magalog'?" *Business and Society Review* 111 (2006): 387–408, and "Unfettered or Tempered Capitalism? How Best to Promote Virtuous Characters," *Business Ethics Quarterly* 17 (2007): 573–84.

[8n22]

22. I refer to self-regulation because I believe that, ideally, it would be preferable to government-imposed regulations. I confess, however, that I am pessimistic about the efficacy of most attempts to promote self-regulation by business and many other institutions.

[8n23]

23. I do not contend that this is an exhaustive list of the principles concerning coercion that moral liberalism must include. There may be others. I present these principles because they are relevant to examining whether competent adults' participation in harmful sports is voluntary.

[8n24]

24. Stipulating that A is successful does not mean that success is a necessary condition for A to be a coercer. The stipulation's purpose is to provide the principle's scope, which comprises cases where coercers' threats produce the coercers' desired outcomes. The point of the principle is to claim that those who acquiesce to coercion do so involuntarily, not to reflect a full account of coercion. Although whether I am correct about this point does not speak to the soundness or unsoundness of my arguments in this chapter, if I were to present a full account of coercion, that account would not include, as a necessary condition for coercion, that threats be successful. A would be a coercer even if A's threat does not bring about A's desired outcome. To that extent, I follow Craig L. Carr's account of coercion in his "Coercion and Freedom," *American Philosophical Quarterly* 25 (1988): 59–67. Among the many philosophers who reject Carr's position and hold that success is a necessary condition for coercion are Mitchell N. Berman, "The Normative Functions of Coercion Claims," *Legal Theory* 8 (2002): 45–89; Michael Gorr, "Toward a Theory of Coercion," *Canadian Journal of Philosophy* 16 (1986): 383–406; H. J. McCloskey, "Coercion: Its Nature and Significance," *Southern Journal of Philosophy* 18 (1980): 335–52; Michael J. Murray and David F. Dudrick, "Are Coerced Acts Free?" *American Philosophical Quarterly* 32 (1995): 109–23; and Robert Nozick, "Coercion," in *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, ed. Sidney Morgenbesser, Patrick Suppes, and Morton White (New York: St. Martin's Press, 1969), 440–72.

[8n25]

25. I use "threat of" only for ease of explanation. I intend the principle also to include actual uses of violence, actual inflictions of other harms, and the imposition of constraints. Although they may or may not accept my arguments here, I follow several philosophers in parting company with Nozick ("Coercion") who includes only threats in his account of coercion. Among those philosophers are Scott A. Anderson, "Of Theories of Coercion, Two Axes, and the Importance of the Coercer," *Journal of Moral Philosophy* 5 (2008): 394–422 and "The Enforcement Approach to Coercion," *Journal of Ethics and Social Philosophy* 5 (2010): 1–31; Martin Gunderson, "Threats and Coercion," *Canadian Journal of Philosophy* 9 (1979): 247–59; and Grant Lamond, "The Coerciveness of Law," *Oxford Journal of Legal Studies* 20 (2000): 39–62.

[8n26]

26. The liberals with whom moral liberalism parts company on this point include those who believe offers cannot be coercive. See the "Coercive Offers and Voluntary Participation in Harmful Sports" subsection in this chapter.

[8n27]

27. I do not mean to suggest that there is a clean distinction between coercive threats and offers. In a given instance, what appears to be merely an offer may also contain a veiled threat. John C. Hughes and Larry May make this point in the context of sexual threats and sexual offers. They write, "Sexual offers may be made in environments where retaliation is a likely, although unspoken, consequence of rejecting the proposal. Such sexual offers really are mixed cases of threats and offers." John C. Hughes and Larry May, "Sexual Harassment," *Social Theory and Practice* 6 (1980): 253.

[8n28]

28. Chapter 1 examines paternalism and autonomy, including paternalism exercised on children.

## Chapter 8

29. I use the word “legitimate” to exclude totalitarian governments whose coercive threats, because of such governments’ natures, typically, if not always, are immoral.

[8n29]

30. David Hume, *A Treatise of Human Nature*, analytical index L. A. Selby-Bigge, rev. and notes P. H. Nidditch, second edition (Oxford: Oxford University Press, 1978 [1739–1740]), 484.

[8n30]

31. *Ibid.*, 485.

[8n31]

32. *Ibid.*, 553–54. Hume is prone to overstatements, and “an exact obedience” surely is one of them. He must have meant something like “general obedience,” as the most cursory of empirical observations discover governments that continue to exist despite their citizens not *always* obeying the laws. The United States government under which I live is an obvious example.

[8n32]

33. It is popular today among many extreme liberals, especially libertarians, to view with moral contempt mandatory taxation. It is worth noting, however, that even John Locke, whose ideas inspire contemporary libertarianism, believes taxation is justified. He writes, “Governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it.” John Locke, *Second Treatise of Government*, ed. and intro. C. B. Macpherson (Indianapolis, IN: Hackett Publishing Company, 1980 [1690]), 74. Adam Smith, to whom many point when extolling the values of capitalism, also supports taxation. He writes, “The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.” Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (The Library of Economics and Liberty, 1776), bk. V, chap. II, pt. II.1, <https://www.econlib.org/library/Smith/smWN.html>.

[8n33]

34. Among those philosophers are Berman, “The Normative Functions”; Gorr, “Toward a Theory”; Gunderson, “Threats and Coercion”; and Alan Wertheimer, *Coercion* (Princeton, NJ: Princeton University Press, 1987).

[8n34]

35. Those philosophers include Harry G. Frankfurt, “Coercion and Moral Responsibility,” in *Essays on Freedom of Action*, ed. Ted Honderich (London: Routledge and Kegan Paul, 1973), 65–86; Daniel Lyons, “Welcome Threats and Coercive Offers,” *Philosophy* 50 (1975): 425–36; Robert Stevens, “Coercive Offers,” *Australasian Journal of Philosophy* 66 (1988): 83–95; and David Zimmerman, “Coercive Wage Offers,” *Philosophy & Public Affairs* 10 (1981): 121–45.

[8n35]

36. I assume that organ markets are legal in the society at issue merely to avoid any possible complications stemming from Fagin’s offer being illegal. I actually believe that my point would stand even if Fagin’s enterprise were illegal.

[8n36]

37. This does not mean Fagin’s offer would be coercive in all contexts. In a given context, there might be nothing coercive about it.

[8n37]

38. I, nevertheless, challenge this idea in chapter 15.

[8n38]

39. William James, “The Will to Believe,” in *William James: The Essential Writings*, ed. Bruce W. Wilshire (Albany, NY: State University of New York Press, 1984 [1896]), 309.

[8n39]

40. This does not mean that all are obligated morally not to pursue the described drug-addicted lifestyle. It means, instead, that the voluntary choices to become parents obligates the parents not to live in that way.

[8n40]

41. In this context, “children” does not mean merely that the young people in question are the offspring of, or are raised by, particular parents. I have no objection, no matter how old I become, to people referring to me as “Virginia’s child.” I, rather, am objecting only to using “children” as a general term of reference for young people in their late teens to early twenties.

[8n41]

42. I use “children’s” in this sentence, as well as in the remainder of this chapter, in the unobjectionable sense the previous note describes.

[8n42]



*Part III*

**Liberty of External Acts**



## *Chapter Nine*

# **General Arguments Regarding the Liberty of External Acts**

**[9.0]** This part of the book addresses issues that concern primarily moral liberalism's basic commitment to the liberty of external acts. As was the case in part II, however, moral liberalism's other basic commitments also are relevant, and this part's arguments sometimes make use of those commitments. Just as the chapter that closed part II argues that individuals' moral obligations limit their liberty of internal states, limitations that are at issue in this part's subjects, this part's chapters include arguments that utilize matters that are at issue in part II and part IV. To set up those arguments, this chapter provides a brief refresher on chapter 2's treatment of external acts.<sup>1</sup>

**[9.1]** Essentially, "external acts" refers to all acts that do not fall under the internal-states umbrella. Whereas internal states do not necessarily affect others, all external acts have the potential to do so even though a given external act, in a particular context, may turn out not to affect anyone other than the actor. Because of that potential, the liberty that moral liberalism affords external acts falls quite short of the liberty it affords internal states. It is limited by the moral impermissibility of affecting others in certain ways.

**[9.2]** The impermissible way of affecting others to which liberals commonly point is causing those others unwarranted harm. I, however, broaden the impermissible ways of affecting others to include all instances of violating obligations to others. Although the book saves development of this idea for part IV, I hold that many of our moral obligations stem from the general obligation not to create undue burdens for others. When individuals, through their external acts, create undue burdens for others, absent overriding considerations, they exceed their liberty.

REFRESHER ON THE CLASSIFICATION  
OF EXTERNAL ACTS

[9.3]

External acts' potential to affect others varies both in the acts' probabilities of affecting others and in the severity of the effects the acts produce. Because the combinations of given acts' probabilities and severity of effects are innumerable, I use these four broad, and, admittedly, oversimplified, categories in order to demonstrate moral liberalism's general position on external acts:<sup>2</sup>

[9.4]

- 1) unlikely and insignificant;
- 2) likely and insignificant;
- 3) unlikely and significant; and,
- 4) likely and significant.

[9.5]

[9.6]

[9.7]

[9.8]

Regarding acts that have the potential for unlikely, insignificant effects on others, moral liberalism grants individuals moral freedom that is as extensive as is the freedom it grants mental states on which individuals do not act. The freedom to pursue such acts is necessary in order for individuals to have anything approaching the kind of autonomy that all deserve. Because all acts have, at the very least, a miniscule probability of affecting others in insignificant ways, individuals cannot pursue their conceptions of the good life unless they are free morally to act in ways that are unlikely to affect others, and, if they do, they do so in insignificant ways.

[9.9]

I am sitting on the front porch on a pleasant day in June with my dog, Alani, lying in a chair next to mine. Even though this idyllic setting seems to involve only me, it has a slight probability of affecting others in insignificant ways. Alani is a small dog who thinks it is her role in life to protect her territory. She typically does not demonstrate that protective behavior when we are on the porch, but, occasionally, she barks at passersby. Because the porch is situated such that people on the sidewalk do not easily see us, Alani's barking sometimes startles those who are ensconced in their thoughts. In such cases, my act of sitting on the porch with Alani affects insignificantly those others.<sup>3</sup> If, however, I were not free morally to do things like sit on the porch with Alani, I simply would not be autonomous. The ability to pursue a lifestyle of one's choosing is an essential aspect of autonomy, and any lifestyle one might choose involves acts that have remote possibilities of affecting others in insignificant ways.

[9.10]

Moral liberalism also grants to individuals considerable freedom regarding acts that are likely to affect others in insignificant ways. That freedom, however, is limited by one complication. Because acts' insignificant effects frequently are likely, individuals often know, or should know, that given acts are likely to have insignificant effects on others. Whether individuals are free to act as they wish in such cases depends on whether the goods the actors obtain from those acts outweigh the costs the acts impose on others.

[9.11]

**[9.12]** Suppose that I must move my car to the street because my landlord is having some work done on the garage and driveway. It is trash day, so my garbage bag is on the tree lawn awaiting collection. When I park my car, I situate it directly in front of the bag, an act that I know will require the refuse collector to walk around the car to retrieve the bag. My act, then, has a likely negative effect on the collector, albeit one that is insignificant.

**[9.13]** Despite the effect being insignificant, I may or may not be free morally to cause it. It depends on whether the reason for parking my car in front of the bag outweighs the insignificant effect on the collector. If all other spots on the street were already taken and I have no choice but to park in front of the bag, then my act is moral because that reason outweighs the insignificant effect on the refuse collector. If, on the other hand, I park in front of the bag simply because I do not wish to walk an additional twenty meters from the next available spot that is not in front of others' refuse bags, then my act is immoral because that reason does not outweigh the effect on the collector.<sup>4</sup> Granted, the moral wrong is rather minor, but the refuse collector and my neighbors would be within their moral rights to chastise me for it.

**[9.14]** Acts that are unlikely to affect others but, if they do, they do so in significant ways, are moral liberalism's greatest challenge when it comes to the liberty of external acts. The doctrine is caught between two equally important commitments. While it generally respects individuals' autonomy to act in ways that are unlikely to affect others, it does not allow individuals to cause significant bad effects, such as harm, from which others must suffer. Examining the contexts in which individuals perform acts with unlikely significant effects is necessary in order to determine whether moral liberalism allows or condemns such acts. Although the relevant contextual matters are innumerable, they include how reasonable it is for others to be affected significantly by the acts, whether actors have obligations to affected parties that somehow capture the acts in question, and whether the goods the actors obtain outweigh the bad effects the acts produce.

**[9.15]** Perhaps the contextual matter most notable for this part's chapters is whether it is reasonable for others to be affected significantly by the acts. When I ride with my cycling group, many of my acts during the ride have unlikely, significant effects on others. Suppose I safely move to the left in order to avoid a hole in the road, and, while doing so, I point out the danger to other riders. Because that kind of act is customary among riders in cycling groups, it is unlikely to affect others in any negative way. It, in fact, generally would be an act that other riders welcome. It is possible, however, that my act causes, or is part of a chain of events that causes, another rider to crash. This could happen if, at the time I swerve around the hole, another rider's front wheel is overlapped with my back wheel because the rider behind me lost concentration.<sup>5</sup> Although it is possible that the other rider would be angry about my act, that anger would be unreasonable. Although a crash is a

serious matter, my act is common among, and even expected by, riders in cycling groups.

Moral liberalism has little difficulty with acts that are likely to affect others in significant ways. The default position is that individuals are not free to act in ways that are likely to produce significant bad effects for others. As chapter 1 explains, this very much is in line with Mill's harm principle, which informs us that individuals do not have complete autonomy over such acts. Their autonomy concerning such acts is restricted unless there are reasons that override the bad effects for others.

[9.16]

An example of an overriding reason is an affected party consenting to the possibility of the bad effect, such as voluntarily participating in a dangerous activity. Consider individuals who, during sex acts, cause pain through restraints and other instruments. Although one generally is not free morally to cause such pain to others, one typically does no wrong if the others consent to it.<sup>6</sup> Thus, individuals who cause pain to others during sex only when those others consent to it typically do no wrong. Such situations are similar to cases where doctors, through medical procedures such as surgeries, inflict pain on patients who consent to the procedures.

[9.17]

#### A NOTE ON OPPONENTS' MOTIVATIONS

[9.18]

Chapter 5, the introductory chapter of part II, identifies virtue ethicists as moral liberalism's most likely opponents. That sets the stage for many of part II's arguments. The same is true of this part's arguments. Many of the arguments respond, either explicitly or implicitly, to the virtue ethics positions that chapter 5 presents. There, however, is another motivation I find among many of moral liberalism's opponents that is distinct from, though related to, virtue ethics positions. People often have firmly established beliefs about proper behavior. This is no surprise because it is hard to imagine how people could live in social groups without the individuals who constitute those groups having views about how persons should act within those groups. Moral liberalism's opponents often base their moral judgments about others' behavior on their beliefs about what is proper. In essence, they are motivated to make moral judgments about others' behavior because they seek to control those others' behavior.<sup>7</sup> Such efforts, however, often are unwarranted. Frequently, the efforts to control others are driven by how opponents wish others would act rather than by how others are obligated to act.

[9.19]

Some responses to the COVID-19 pandemic illustrate well the distinction. The governor of the state in which I live only very recently mandated that we wear masks in public places such as shops and grocery stores. Even before his mandate, I wished that all individuals would wear masks when they are in such places. My desire alone, however, does not obligate others to

[9.20]

wear masks. Beyond my mere desire, I need a sound argument that supports such a moral obligation. Although it is not my purpose to present it here, I believe there is such an argument in this case that is based on the undue burdens that those who do not wear masks place on others.<sup>8</sup> The point here is that opponents often do not provide sound arguments for the obligations they attribute to others. At times, this is because they provide no real argument at all, while, at other times, it is because the arguments they provide are unsound. Either way, opponents are left only with their desires to support their moral judgments.

**[9.21]** Moral liberalism does not countenance desires about behavior as a source of moral obligations. If individuals must conform their behavior to others' desires, sans reasons that justify them being required to do so, they have no real autonomy to pursue lifestyles of their own choosing. Moral liberalism requires good reasons, not mere desires, for limiting that autonomy. Otherwise, individuals would be required to pursue lifestyles that others choose for them.

**[9.22]** The preceding point lies at the heart of this part's remaining chapters. Chapters 10 and 11 examine two types of external acts that many deem immoral. I, however, argue that actors do not violate their moral obligations through such acts. The arguments that opponents give for their moral judgments about the acts at issue are unsound. Chapter 12 examines a kind of act in which various institutions frequently engage. While many support institutions in such efforts, I argue that the acts are immoral. The acts are based on an erroneous and disturbing view about which institutions have the right to punish wrongful acts.

**[9.23]**

## NOTES

**[9n1]** 1. Chapter 2 examines nuances of external acts that this brief refresher does not capture, and it develops more fully how moral liberalism applies to those nuances.

**[9n2]** 2. Chapter 2 develops further these categories and moral liberalism's positions on them.

**[9n3]** 3. It is remotely possible that the effect on a particular passerby is significant, such as the start causing the passerby to have a heart attack. I do not address that possibility here because I address unlikely significant effects later in this section.

**[9n4]** 4. This conclusion is based on the fact that I am of sound health and am not disabled. If a health issue or disability rendered the twenty meters a challenge for me, that would outweigh the insignificant effect on the refuse collector and I would be free morally to park in front of the refuse bag.

**[9n5]** 5. Clearly, my act in this case is not the sole cause of the crash. It merely is part of the causal chain that produces the crash. With respect to responsibility for the crash, the other rider's lapse in concentration, not my act, is the salient consideration.

**[9n6]** 6. I qualify this claim with "typically" because it sometimes is immoral to participate in activities in which others are willing participants. Chapter 15 demonstrates one such instance where I argue that is the case.

**[9n7]** 7. Chapter 1 argues that moral judgments constitute one of the most significant ways that individuals and groups attempt to control others.

**[9n8]** 8. Chapter 13 provides more attention to that argument.





## Chapter Ten

# Role Model Status and Obligations

**[10.0]** We blacks look for leadership in men and women of such youth and inexperience, as well as poverty of education and character, that it is no wonder that we sometimes seem rudderless. . . . We see basketball players and pop singers as possible role models, when nothing could be further, in most cases, from their capacities.

**[10.1]** —Arthur Ashe

**[10.2]** Not long after winning eight gold medals at the 2008 Olympic Games in Beijing, swimmer Michael Phelps was the subject of considerable public criticism because photos of him smoking a marijuana pipe were posted on the Internet. Much of the public criticism charged that he failed to be a good role model for young people who might be influenced by his behavior. Similar charges have been levied against many other public figures such as golfer Tiger Woods, actress Lindsay Lohan, and former president of the United States Bill Clinton.

**[10.3]** When others criticize public figures in this way, the liberty of external acts comes into play. The critics' position is that the public figures they condemn, because of their role model status, are obligated morally not to act as they do. This raises two issues relevant to the liberty of external acts. The first is whether critics are correct to attribute role model status to the public figures at issue. The second is whether, assuming the public figures have role model status, the figures' role model obligations encompass the behavior the critics condemn.

**[10.4]** When critics charge public figures with role model failures, the purported failures often concern aspects of life beyond the fields of activity for which the public figures are known. Thus, critics often claim public figures should

be good role models in a general sense that includes their behavior in aspects of life beyond their fields. This is true despite the fact that research suggests young people are less likely to see public figures as role models than most assume.<sup>1</sup>

This chapter's position is that we are unjustified in ascribing broadly to public figures role model status in the general sense. Unless public figures hold themselves out to be role models regarding other aspects of life, we are justified in demanding only that they be good role models with respect to their behavior in their fields. To support that position, the chapter demonstrates that (1) we are justified in ascribing role model status to individuals far less often than most believe, (2) legitimate role model obligations typically do not extend as far into role models' lives as most believe, and (3) those who try to convince public figures, such as athletes, celebrities, and politicians, to be better role models should redirect their efforts toward educating young people about who are proper role models and what aspects of role models' lives young people should imitate. Such efforts have the potential to be more beneficial to young people than are the current efforts to change purported role models' behavior.

[10.5]

#### BROAD VIEWS REGARDING ROLE MODEL STATUS AND OBLIGATIONS

[10.6]

Those who invoke the role model concept generally hold one of two broad views that I term "particularism" and "generalism."<sup>2</sup> Particularism holds that one has role model status only if one becomes a role model voluntarily, and that one's role model status applies only to one's particular field. Such status entails that one's role model obligations extend only to the virtues associated with one's field. Typically, those virtues concern the talents, skills, abilities, efforts, and motivations that are necessary to succeed in the field. An athlete's role model obligations extend only to virtues such as sportsmanship, teamwork, and commitment to practice. A professor's role model obligations extend only to virtues such as academic integrity, treating interlocutors with respect, and commitment to excellence in research and pedagogy.

[10.7]

Generalism holds that we are justified in ascribing role model status to individuals who do not become role models voluntarily, and it extends role model obligations further into role models' lives. Proponents of this view are concerned that one's behavior more generally may influence others, especially young people, even if one does not desire to be a role model. Athletes and professors are obligated to conduct their off-the-court and away-from-the-classroom lives in ways that set proper examples for others.

[10.8]

Christopher Wellman illustrates the debate between the proponents of the two broad views in an imagined dialogue between former professional bas-

[10.9]

ketball players Charles Barkley and Karl Malone. He writes on behalf of Barkley, who represents particularism, "I contend that one cannot incur a *special* duty without one's consent."<sup>3</sup> By "special" duties, Barkley means duties "some of us incur to specific others," as opposed to the duties "each of us owes to all others" such as "duties forbidding lying, cheating, and harming others."<sup>4</sup> Role model obligations fall into the category of special duties because they are owed to those specific people over whom one has influence.

[10.10]

Wellman writes on behalf of Malone, who represents generalism, "your special responsibility to be a good role model is like a samaritan duty."<sup>5</sup> Your duty to save "a child drowning in a shallow pond . . . does not depend on your consent; it arises involuntarily as a result of the child's peril and your ability to help at no unreasonable cost to yourself."<sup>6</sup> Just as one can promote the well-being of another without bearing an unreasonable burden by saving the child, one can promote the well-being of others without bearing an unreasonable burden by being a good role model. Thus, just as one is obligated to save the child, one is obligated to be a good role model.

[10.11]

## THE PROBLEM WITH GENERALISM

[10.12]

Although proponents of generalism are correct that circumstances other than an individual's consent or voluntary actions can place obligations on the individual, the notion of "no unreasonable cost" that they use against particularism actually reveals generalism's problem. To explain why one is not obligated to marry another simply because one can promote that other's well-being by doing so, Wellman writes on behalf of Malone, "Marriage requires consent only because it is so much more demanding than being a good role model."<sup>7</sup> Presumably, the view is that marriage requires a significantly greater commitment than does being a role model. Marriage intrudes further into one's life and involves a far greater percentage of one's daily decisions and actions.

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This view, however, downplays the demands of being a role model. The costs of role model obligations often are unreasonable. The values of privacy, described in chapter 2, demonstrate why.<sup>8</sup> No matter which view is correct, privacy is necessary for individuals to have the autonomy to pursue lifestyles of their choosing. Without the ability to demarcate relationships, individuals are unable to control with whom they are or are not intimate. If individuals are unable to develop their own identities or conceptions of who they are or ought to be, their ability to determine the interests they wish to develop and pursue is impeded. If individuals do not have spheres of life in which they can try out new ideas, thoughts, and views without fear of judgment, their ability to determine their own conceptions of the good life and conduct their affairs according to those conceptions is hampered. In any purported case of

involuntary role model obligations, the purported obligations preclude some or all of privacy's values. Because those values are necessary for one to live well, involuntary role model obligations harm one's well-being.

Consider an extreme case of involuntary circumstances. Suppose my lover and I influence the children next door because they sneak into our fenced-in backyard and, while we are having raucous sex, peek into our windows without our knowledge or consent. They witness behavior that is inappropriate for children and proceed to mimic that behavior in the coming days. It would be an unreasonable burden for us to be obligated to change our sexual behavior on the grounds that we are bad role models. Role model obligations in this case would restrict our behavior in our own home and, thus, violate our privacy. The children witnessed our actions only because they were trespassing. We are not obligated to change our sexual behavior on role model grounds because of the unknown, unauthorized actions of others. At most, we are obligated to secure better our backyard or cover our windows.

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Randolph Feezell describes a less extreme case of involuntary circumstances that does not involve a wrong such as trespassing. He writes,

[10.15]

Suppose I live next door to an impressionable teenager who . . . has been much influenced by my life and conduct. . . . [H]e has decided not to study science in college as a prelude to applying to medical school. . . . [A]ll he wants to do is read philosophy, smoke cigarettes, hang out at the local coffee house, and argue about the existence of God with his friends. . . . [H]e has become rather cynical and he now thinks that life is meaningless.<sup>9</sup>

[10.16]

Feezell makes two important points regarding this case that are consistent with my arguments against generalism. First, he questions whether he is obligated to alter his lifestyle just because his behavior influences the teenager. He writes, "Should I change my life because of his imitation of me? . . . [B]ecause he imitates my life does not entail that I should change it or act as if he is right in choosing me to be his exemplar."<sup>10</sup> It would be an unreasonable burden to obligate Feezell to change his behavior because of such involuntary circumstances. Second, he argues that the fact that another takes one to be a role model does not entail that one is worthy of that status. He writes, "I might be living a kind of life that I would not recommend. . . . Because he takes me to be an exemplar does not mean that I am worthy of being imitated."<sup>11</sup> In this case, the teenager is wrong to view Feezell as a role model because not even Feezell believes his life is worthy of imitation.

[10.17]

### MODIFIED PARTICULARISM

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Particularism is the correct view, but only if it is modified to include this account of how one voluntarily becomes a role model: one adopts role model

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status either by taking on roles that make one a role model or by holding oneself out to be a role model. Cases of the former are relatively straightforward. Individuals take on role model status by freely accepting roles that carry with them an understood role model status such as being a parent, professor, judge, police officer, priest, or doctor.

[10.20]

Holding oneself out to be a role model is more complex. Prior to the 2011 Super Bowl, the NFL's championship game, Ben Roethlisberger, quarterback of the Pittsburgh Steelers, responded to questions about his off-the-field troubles by stating that he wanted to be a role model.<sup>12</sup> Such statements are the exceptions. More commonly, one holds oneself out to be a role model by using a position of fame, authority, or power to claim or imply that one knows what is best. By prosecuting and speaking out against those accused of crimes while he was attorney general of New York, Eliot Spitzer held himself out to know how others should behave with respect to the law.<sup>13</sup> Danny Hakim and William K. Rashbaum write this about Spitzer's public comments on a 2004 prostitution case he prosecuted: "Mr. Spitzer spoke with revulsion and anger after announcing the arrest of 16 people for operating a high-end prostitution ring out of Staten Island. 'This was a sophisticated and lucrative operation with a multitiered management structure,' Mr. Spitzer said at the time. 'It was, however, nothing more than a prostitution ring.'"<sup>14</sup> Because of such public stances, when it became public that Spitzer hired prostitutes, his critics rightly claimed that he failed as a role model.<sup>15</sup>

[10.21]

When addressing medical students' obligations that arise from how they portray themselves during the school admission process, Jack Coulehan et al. raise detrimental reliance, an equity law doctrine, that helps make sense of cases such as the Spitzer situation. They write that the doctrine "holds that when one party notoriously advertises himself as possessing certain characteristics, or being able to provide certain services, and others reasonably rely on those representations, the party becomes obligated to perform as tacitly promised."<sup>16</sup> Something akin to this doctrine applies when one uses one's role to claim or imply that one knows what is best. When one does so, one advertises oneself as possessing the traits that exemplify what is best or, at the very least, as attempting to develop those traits. Because others reasonably relied on Spitzer's self-advertisement, they were justified in criticizing him on role model grounds because he did not possess, nor was he truly attempting to develop, the traits that he implied.

[10.22]

This shows that the result of the impressionable teenager case is different if Feezell intentionally befriends the teenager and courts his attention. If this were the case, then Feezell has role model obligations because he voluntarily becomes an adult friend of a teenager. That is a role that carries with it an understood role model status. Whenever one voluntarily adopts role model status, one is subject to the obligations that accompany that status.

THE EXTENT OF ROLE MODEL OBLIGATIONS

[10.23]

Perhaps the most obvious example of voluntarily adopting role model status is choosing to become a parent. This is not meant to imply, however, that all cases of parenthood come from circumstances that are freely chosen. A woman who is pregnant due to rape did not choose the egregious act that led to her pregnancy. She, nevertheless, voluntarily adopts the parent role and its accompanying role model status if she chooses to carry to term the fetus and not place the baby up for adoption after it is born.

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Even parents' role model obligations, however, extend only so far into their lives. Assuming parents are not abusing their children or anyone else, their role model obligations do not extend to their sex lives. If a child barges into the parents' bedroom during fetishistic sex the child cannot understand, the parents violate no role model obligations. Perhaps they are obligated to secure better their bedroom door, but obligating them to alter their sexual behavior on role model grounds violates their privacy and freedom to conduct their lives as they choose. Moreover, not only are parents free to have the kind of sex life they choose, they are free to have the kind of relationship they choose, whether it be homosexual or heterosexual, monogamous or polyamorous, married or not, religious or not, or any of countless other lifestyle options. Obligating parents to model some particular type of relationship for their children also violates their privacy and freedom to conduct their lives as they choose.

[10.25]

Parents, however, have perhaps the most general and extensive set of role model obligations of any class of role models. Parents are obligated to model common-sense virtues. These concern the behavior that we desire from, or require of, all individuals. Although parents are not obligated to adopt and model any particular lifestyle, their role model obligations require them to model for their children lives that accord with virtues such as treating others with respect, being generally honest, adopting worthwhile interests, pursuing those interests with integrity, developing a reasonable work ethic, and seeking to settle disputes productively.

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Some other roles carry role model obligations that are almost as general and extensive as parents'. Clergy roles are the most obvious. We reasonably expect the clergy to conduct their away-from-the-pulpit lives in ways that model appropriate behavior for their congregations. Modified particularism supports this because the clergy have adopted their role model status by accepting their positions. Moreover, they hold themselves out to be role models by preaching to their congregations and counseling individuals about morality and sin. Like Spitzer's situation, something akin to detrimental reliance applies. It is reasonable for others to believe that the clergy possess, or are attempting to develop, the traits they proclaim to be right. When clergy

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act contrary to what they preach or counsel, their behavior violates their role model obligations.

**[10.28]** The limit on the extent of role model obligations surfaces more quickly for most other roles. Typically, one's role model obligations are limited to the virtues associated with success in one's field and do not involve one's life beyond one's field. This means that, typically, one has no role model obligations to conform to common-sense virtues.

**[10.29]** The preceding might seem like an odd claim because common-sense virtues apply to all. Because those virtues concern behavior we desire from, or require of, all individuals, one might argue, everyone is obligated to model such behavior. It seems that common-sense virtues speak to everyone's role model obligations in all aspects of life.

**[10.30]** This objection, however, misses a crucial point. The fact that X is desired from, or required of, everyone does not entail that one has a role model obligation to do X. It entails that either it would be nice if one did X or one is obligated to do X. If the former, then those in the roles at issue have no obligations to do X at all, much less role model obligations to do X. If the latter, then they have obligations to do X, but those obligations are not necessarily role model obligations. They might fall in some other class of obligations. Role model obligations are a class of obligations that arise because one should *model* proper behavior for some set of others. The fact that a common-sense virtue produces an obligation entails only that one must follow that prescription, not that one must model it.

**[10.31]** Following a prescription and modeling it for others are quite different. One can follow the prescription to X merely by doing X. This makes one what Edmund L. Erde terms a "silent role model" who does not articulate the "reasons for deciding how to act and might not even think about serving as a model."<sup>17</sup> This, however, is not being a role model in any meaningful sense. To be a role model in a meaningful sense, one must take additional steps to be more like what Erde terms an "articulating role model" who explains "what or how she thinks about her choices and actions."<sup>18</sup> This requires steps such as making sure others are aware of one doing X, understand the results of one doing X, recognize what would have resulted if one had not done X, and understand why X is desired or required.

**[10.32]** Parents are, or should be, in a special position to take the steps necessary to model effectively behavior for their children. Because this special position arises from parents' choices, it is not merely desirable or required that their behavior conform to common-sense virtues. They, instead, are obligated to conduct their lives in manners that model those virtues. This is true even when the behavior common-sense virtues specify merely is desired rather than required. Others are not even obligated to conform to such common-sense virtues, much less model them.

The difference lies in the fact that obligations to model common-sense virtues are not unreasonable burdens for parents but are for most others. Such obligations do not violate parents', but do others', privacy and freedom to conduct their lives as they choose. Two of parents' choices illustrate why. First, parents choose to raise children. The very notion of raising children includes demonstrating to them how to live well. This does not mean forcing or coercing children into particular lifestyles, but it does mean showing them the desired and required ways to behave regardless of lifestyle. Choosing to raise children is not necessarily a part of becoming a public figure.

[10.33]

Second, parents choose to share their lives with their children. Whenever one chooses to share one's life with another, one curtails, to some degree or other, one's privacy and freedom to conduct one's life as one chooses. Although the specifics vary across relationships, some formerly private matters lose that status once one enters an intimate relationship. If not, it is unclear how the relationship qualifies as intimate. Likewise, parents accept that less of their lives are private matters when they choose to share their lives with their children. Their choice to raise children subjects them to obligations they owe their children. Those obligations restrict their ability to conduct their lives as they choose. Public figures do not automatically make an analogous choice by adopting the roles they occupy. They do not automatically choose to share their lives with fans, students, or whomever their roles touch. They automatically choose, instead, to share things such as their talents, skills, and knowledge with those others. By becoming an Olympian, Phelps chose to share his swimming talents with others. He did not choose to share his life away from swimming.

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This does not mean, however, that public figures never invite others into their lives. In fact, public figures are doing so with increasing frequency because television, blogs, Facebook, Twitter, and countless other media outlets make it easy for them to do so. Public figures frequently use those outlets to comment on personal or social matters beyond their fields. When they do, they invite others into their lives beyond what necessarily is required by their roles, and, by doing so, they incur more extensive role model obligations. If, prior to the photos surfacing, Phelps had used the media to speak out against illicit drug use, then Phelps would have incurred a role model obligation not to use illicit drugs, and the public criticism of him would have been justified. The additional role model obligation would not have violated Phelps's privacy and freedom to conduct his life as he chooses. Like parents, inviting others into their lives means public figures accept the access to, and restrictions and requirements regarding, their behavior that role model obligations prescribe.

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## TWO POSSIBLE OBJECTIONS TO MODIFIED PARTICULARISM

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Critics might lodge objections to the arguments proffered thus far from two different perspectives. One is the view that modified particularism is too lax in ascribing role model status, while the other is the view that it is too strict in ascribing such status. Applying modified particularism to Professor P helps illustrate the first objection.

[10.38]

### **Too Lax**

[10.39]

Being a professor is a role that carries with it an understood role model status. By becoming a professor, P accepts the role model obligations that accompany the role. Typically, those obligations extend only to the aforementioned virtues associated with being a professor. According to modified particularism, however, a professor extends the scope of those role model obligations by voluntarily extending the professor role. A professor might do this in countless ways, but typically it involves claiming or implying to those over whom the professor has authority or power that the professor knows what is best.

[10.40]

Suppose P mentors a student about the student's nonacademic life. Doing so expands P's role model status and obligations beyond what the professor role necessarily requires. This does not mean that P is obligated to make any personal disclosures to the student, nor does it mean that P acts rightly by mentoring the student in this way. This kind of mentoring, in fact, often is inappropriate, such as when a professor lacks the necessary training and skills to counsel people effectively about personal matters. It means, rather, that P, either appropriately or inappropriately, subjects additional aspects of P's behavior to scrutiny on role model grounds. P's failures to behave as P mentors are role model failures. Although, for practical purposes, such failures are relevant only when the student is aware of them, P incurs the role model obligations independent of the student's awareness of P's behavior regarding those obligations.

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If one holds the view that modified particularism is too lax in ascribing role model status, one might object to the conclusions about P by pointing to David Carr's influential position in philosophy of education. Carr writes, "It cannot be a matter of total indifference . . . what a teacher is like as a private person . . . because educational goals cannot be disentangled from . . . ideals of personal moral development."<sup>19</sup> He adds, "*All* teachers are directly involved in moral education."<sup>20</sup> This view suggests that modified particularism does not take seriously the ways in which teachers, including professors, are involved in students' moral development. The scope of a professor's role

model status and obligations is more general, and closer to parents', than modified particularism entails.

Despite the apparent extreme divergence between modified particularism and Carr's position, our positions are not as different as the objector might think. Carr is correct to claim that teachers necessarily are involved in the moral development of students. Modified particularism acknowledges this because it holds that teachers' role model obligations automatically extend to virtues such as academic integrity, treating interlocutors with respect, and commitment to excellence in learning. Modeling such virtues necessarily involves more general character traits such as honesty, integrity, compassion, a good work ethic, and respect for others.

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Carr, however, appears to extend further the scope of teachers' role model status and obligations than does modified particularism. He seems to hold that teachers are obligated to conduct their private lives, away from their activities as teachers, in ways that model virtuous behavior for students. This extends P's role model obligations beyond the virtues associated with being a professor and encompasses far more of P's private life than modified particularism allows.

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If this is correct, then the difference between modified particularism and Carr's position lies in the scope of the moral development of students in which teachers necessarily are involved. I support the former because it allows for teachers' privacy and freedom to conduct their lives as they choose. As long as teachers continue to model the kinds of virtues previously mentioned, their private activities, about which others might disapprove, do not violate their role model obligations.

[10.44]

Suppose P frequents strip clubs. Provided doing so does not violate P's contract and does not affect P's ability to model the virtues associated with being a professor, whether or not others approve of it, moral liberalism deems P free morally to frequent strip clubs. Allowing others' disapproval alone to restrict P's behavior away from P's activities as a professor intrudes too far into P's life and unduly restricts P's privacy and freedom to conduct P's life as P chooses.

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### Too Strict

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If one holds that modified particularism is too strict in ascribing role model status, one might object to classifying failures to live as one mentors or advocates as role model failures. One might argue that, instead, they are instances of hypocrisy or weakness of the will. Although the objector is correct that such failures are hypocritical and may well result from weakness of the will, we must classify those who fail in this way as role model failures in order to capture the full seriousness of their failures. The people in question are not ordinary citizens. They hold positions of fame, authority, or

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power through which they influence others. When they use their positions to claim or imply that they know what is best, they must take seriously the influence of their special positions. When they voluntarily expand their roles through mentoring others or advocating particular behavior, we are justified in using something akin to detrimental reliance to judge their behavior. That concept obligates them to act as they mentor or advocate.

**[10.48]** The objector, however, is correct to be concerned about ascribing role model status too strictly. In fact, the objection should remind us to tread cautiously when determining the extent to which one invites others into one's life when one expands a role beyond its typical parameters. When P delves into a student's nonacademic life, P invites the student into P's life. That invitation, however, is not necessarily for all aspects of P's life. It is for only those aspects that correspond to the aspects of the student's life about which P mentors.

**[10.49]** Suppose Professor P mentors the student about how to treat a difficult friend. We are justified in expecting P's friendships to be models for the student. If P acts contrary to how P mentors with respect to P's own difficult friend, then P fails as a role model. We, however, are not justified in expecting other aspects of P's life to be models for the student. By mentoring the student about the difficult friend, P does not invite the student into P's love life and, thus, has no role model obligations regarding it. If, on the other hand, P mentors the student about the student's love life, then P invites the student into P's love life.<sup>21</sup> That invitation requires P to model for the student what P mentors. If P acts contrary to how P mentors in P's own love life, P fails as a role model.

**[10.50]** If politician Q invites others into Q's life, Q is subject to role model obligations beyond those involving the virtues associated with being a politician. If Q argues that adultery is destroying the fabric of society, we are justified in expecting Q to be a role model regarding adultery. Should Q commit adultery, Q fails as a role model. This is true whether or not we agree with Q's assessment of adultery's effects on society. Even if we disagree, because Q has used a public position to proclaim what is best for society, we are justified in expecting Q to model that proclamation. Q's invitation, however, does not extend to other aspects of Q's life. Suppose Q has never made similar proclamations about gambling or alcohol. If Q gambles and drinks, those activities are not role model failures. Even though one who agrees with Q about adultery's effects on society might argue that Q should hold similar positions about gambling and alcohol, Q has not adopted role model status regarding those activities.

A NEW DIRECTION FOR OUR  
DISCOURSE ON ROLE MODELS

[10.51]

If what I have argued is correct, it has important implications for our discourse, both public and in ethics literature, on role models. Currently, that discourse primarily comprises efforts to convince various individuals that they are role models whether they like it or not, that their behavior does not accord with their role model obligations, and that they should change their behavior for the sake of young people who might imitate them. We should dispense with that focus for three reasons.

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First, far too much of the discourse erroneously attributes role model status and obligations to individuals. In essence, the discourse often is an attempt to convince people to satisfy purported obligations that, in fact, they do not have. If we change the focus, we may avoid many of those false attributions.

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Second, much of the discourse involves, either intentionally or unintentionally, claims that are based on matters quite different from role model status and obligations. We can place these claims on a spectrum. At one end are claims about purported role model obligations that actually are claims about behavior one merely likes or dislikes. One claims some public figure is a bad role model because one dislikes that person's behavior and would prefer that person act differently. The claim that role model status is involved is a misguided attempt to provide force to a claim that lacks philosophical support.

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Such claims often are rhetorical moves to end debate. When one says something along the lines of, "but think of how that behavior influences children," it is difficult for others to continue debating the moral status of the behavior at issue. It is similar to another rhetorical move that many have encountered. When I was a teenager, I told my grandmother that it was silly for us to have a drawer full of used aluminum foil because it was more trouble than it was worth. When she replied, "You wouldn't think so if you had lived through the Depression," I knew that it was fruitless to try to discuss the utility costs of cleaning and saving used foil versus the costs of new foil. The implication in what she said was that, because I had lived through much better economic times, I did not understand the need to be frugal in that way. Likewise, when one uses a role model claim as such a rhetorical move, others know it is fruitless to attempt to argue that the behavior in question is morally permissible. The implication is that those who disagree with the claim either do not care about children or do not understand what children need.

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At the other end of the spectrum are claims that correctly assert that individuals have obligations but erroneously classify them as role model obligations. Perhaps one is seeking a firm foundation for person A's obliga-

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tion to X, but settles on the wrong one. Perhaps one is seeking a persuasive way to convince A and others to satisfy the obligation to X, and believes that an appeal to the effects that the failure to X might have on impressionable youths would be persuasive. One of these things likely was involved when many criticized NBA player LeBron James for being a bad role model after he was ticketed for driving in excess of 100 mph. James's critics were correct that he is obligated not to drive at such an excessive speed. That obligation, however, is not a role model obligation. Like all of us, James is obligated not to drive at such a speed because of the jeopardy in which doing so places others' lives.

**[10.57]** Regardless of where a claim falls on the described spectrum, it, at best, is false to some degree or other. At worst, it is both false and disingenuous. Like discourse on any public or other important matter, we need to remove falsity and disingenuousness from our discourse on role models. In the long run, falsity and disingenuousness add little to, and usually hamper the progress of, discourse on important matters.

**[10.58]** The third reason we should dispense with the current way many approach role model matters is that the current approach has little, if any, chance of success. The athletes and performers to whom many ascribe role model status often are, as Arthur Ashe states, too young and inexperienced. Expecting such people to be role models is expecting them to be something they are not yet, and may never be, equipped to do. Many are not ready even to desire to be role models because they still are engaged in youthful worship of their own heroes. They have not yet reached points in their lives where they are capable of recognizing that they are a new generation's objects of admiration.

**[10.59]** Other young athletes and performers may recognize that they are objects of admiration and desire to be good role models, but, despite the best of intentions, make too many mistakes to be effective role models. Wellman acknowledges this concern when he writes on behalf of Malone that we should "try to reshape our culture so that when children look for moral exemplars they choose people better suited for the job."<sup>22</sup> Unfortunately, the current discourse on role models often sends the opposite message. The fact that Phelps was criticized on role model grounds tells young people that they ought to look to a then twenty-three-year-old swimmer to find a role model.

**[10.60]** Feezell points to another reason for the unlikelihood of success. He writes, "We simply do not know enough about our . . . heroes in order to believe that they are moral exemplars whose life or conduct in general is worthy of imitation."<sup>23</sup> Those who try to convince public figures to be good role models are misguided because they look for role models in people about whom they know relatively little. History is riddled with examples of public figures disappointing admirers who learn of those persons' conduct away from their fields. As Dennis J. Moberg writes, "Washington owned slaves.

Eisenhower had an extramarital affair. Kennedy was a philanderer. And Martin Luther King was a plagiarist.”<sup>24</sup>

Tiger Woods is a prominent, recent example. Many people assumed that, just because he is one of the greatest golfers of all time, he conducts his off-the-course life in ways that are worthy of imitation. Those people were disappointed when his many adulterous affairs became public.<sup>25</sup> The disappointment resulted from the misguided idea that excellence in one area of life means excellence in all areas of life. That misguided idea was so widespread that Woods was compelled to apologize publicly to parents who had allowed, or encouraged, their children to see him as a role model. This does not mean that Woods owed those parents an apology. If modified particularism is correct, he did not.<sup>26</sup> Given her reaction when the story broke, presumably Woods did not have an open marriage agreement with his former wife, Elin. If that is correct, Woods owed an apology to Elin, but not to the parents who mistakenly identified him as a role model for their children.

[10.61]

The unlikelihood of success is exacerbated further by the fact that the traits that help one to excel as a public figure often are traits that make one unworthy of imitation regarding other aspects of one’s life. Christian Bale is a tremendous actor in large part because of his unwavering and uncompromising focus on, and commitment to, the roles he plays. Those who have worked with him say that he is consumed by the characters he portrays and that is why his performances are exceptional. Because of his unwavering and uncompromising nature, however, he has a reputation for at times being a very difficult person off screen.<sup>27</sup> The same traits that make him a great actor also make him the kind of person most do not wish to imitate with respect to at least some other aspects of his life. Similar accounts are true of many public figures.

[10.62]

All this suggests that we need a more fruitful focus for our discourse on role models. Feezell makes an observation that suggests a promising avenue to pursue. He describes a father who, after learning that then NBA player Kobe Bryant was charged with sexual assault, does not know what he should tell his sons who see Bryant as a hero. Feezell writes, “The father has a valuable opportunity to make a significant point related to sports and moral education. Admire the athlete as a player, but withhold judgment and the disposition to imitate the player when he leaves the arena.”<sup>28</sup> We should use this idea to reframe our discourse on role models. Participants in that discourse should redirect their efforts to convince public figures to be better role models toward educating young people about who are proper role models and with respect to what aspects of life particular persons are proper role models. Young people should learn that Phelps is a proper role model when it comes to swimming, but they do not know enough about the rest of his life to believe he is a proper role model when he is not in the pool. We should help young people recognize that public figures are not above the human frailties

[10.63]

that afflict us all. If young people learn this, they will benefit more than they do from the misguided attempt to convince a multitude of diverse people to be better role models.

[10.64]

The proposed direction also would help us avoid a problem Kristján Kristjánsson finds in the discourse on role models.<sup>29</sup> Kristjánsson writes, “What is spoken of is the . . . imitation of *persons* rather than of *qualities* displayed by persons.”<sup>30</sup> He adds, “We risk ending up with blind hero-worship.”<sup>31</sup> The proposed direction would allow us to impress upon young people the importance of imitating the specific traits persons display in particular aspects of their lives rather than imitating the persons themselves. This would help young people distinguish the traits Phelps displays as a swimmer from Phelps himself, thereby helping them to avoid the blind hero-worship Kristjánsson fears.

[10.65]

The life of scholar-athlete Myron Rolle demonstrates well this proposed new direction and why we need it. Rolle played American-style football for Florida State University. When his college career ended, he delayed for one year entering the NFL draft. That draft is the primary way former college players transition to the NFL. Rolle made the decision to delay entering the draft so that he could study at Oxford as a Rhodes Scholar. Rolle chose this course because he planned to be a neurosurgeon after his football career. Many NFL experts criticized his decision by arguing that, because accepting the Rhodes Scholarship caused NFL teams to fear that he was not truly committed to football, he would have made more money had he entered the draft immediately upon completing his last college season.<sup>32</sup> While he was at Oxford, the Tennessee Titans drafted Rolle and he spent the 2010 season on their practice squad. The team released him in September 2011. On January 31, 2012, the Pittsburgh Steelers signed Rolle to a contract that gave him the opportunity to compete for a position on that team’s roster for the 2012 season.<sup>33</sup> Rolle since has retired from football and is a neurosurgery resident at Massachusetts General Hospital in Boston, where, as I write this, he volunteers for shifts in the hospital’s COVID-19 surge clinic.<sup>34</sup>

[10.66]

I admire greatly Rolle’s decision to delay entering the NFL draft. If I had children, I would point to him as a role model while stressing to the children that they should see him as a role model regarding only particular aspects of his life. His commitment to education and a career after football are worthy of imitation. Like Rolle, all young people should identify what they truly desire in life, whether those desires are educational, professional, financial, leisure, or lifestyle, and do what is necessary, within reason, to fulfill those desires. What makes Rolle’s decision truly admirable, and worthy of imitation, is that he chose to do what was necessary to fulfill *his* dreams rather than to do what others thought was best for him. In that respect, I can think of no better role model than Myron Rolle.



When it comes to the rest of Rolle's life, however, most of us are not in positions to recommend him as a role model. This is not because we know that Rolle acts badly. By all accounts, Rolle acts admirably in all aspects of his life. The problem is that we simply are not privy to enough of Rolle's behavior to claim that his life more generally is worthy of imitation. Moreover, even if we are certain that his behavior thus far is worthy of imitation, we do not know what the future holds for his behavior. Even though it is likely that he will behave admirably, we do not know how he will act in the years to come as he, like all of us, faces new challenges and difficulties in life.

[10.67]

This leads to the following lesson that we should teach young people about role models: see others as role models only when they have earned it, and see those people as role models regarding only those aspects of life about which they have earned it. That lesson has far more potential than does the fool's errand of attempting to convince a multitude of diverse people to satisfy purported role model obligations that, often, they actually do not have.<sup>35</sup>

[10.68]

## NOTES

[10.69]

1. California youths who identified a role model most frequently named parents and, of those surveyed, only 11 percent named entertainers and only 15 percent named athletes. Antronette K. Yancey et al., "Role Modeling, Risk, and Resilience in California Adolescents," *Journal of Adolescent Health* 48 (2001): 36–43. A Christian polling firm found that, when asked to identify their role models *other than parents*, only 15 percent of US teens named athletes, celebrities, and politicians, while 52 percent pointed to other relatives, friends, and religious leaders. Barna Group, "Teen Role Models: Who They Are, Why They Matter," Barna Group, January 31, 2011, <https://www.barna.com/research/teen-role-models-who-they-are-why-they-matter/>. Fewer than 50 percent of Norwegian youths named public figures when asked who they want to be like, while over 50 percent named family members when asked who has highly valued qualities. Karl Halvor Teigen et al., "Who Would You Most Like to be Like? Adolescents' Ideals at the Beginning and the End of the Century," *Scandinavian Journal of Educational Research* 44 (2000): 5–26. Austrian and German youths named parents and other relatives as role models significantly more frequently than they named public figures. Anton A. Bucher, "The Influence of Models in Forming Moral Identity," *International Journal of Educational Research* 27 (1997): 619–27.

[10n1]

2. Randolph Feezell identifies the two broad views and terms them "skeptical voluntarism" and "moral exemplarism." Randolph Feezell, "Celebrated Athletes, Moral Exemplars, and Lusury Objects," *Journal of the Philosophy of Sport* 32 (2005): 20–35.

[10n2]

3. Christopher Wellman, "Do Celebrated Athletes Have Special Responsibilities to Be Good Role Models? An Imagined Dialog between Charles Barkley and Karl Malone," in *Sports Ethics: An Anthology*, ed. Jan Boxill (Oxford: Blackwell Publishing, 2003), 333.

[10n3]

4. *Ibid.*

5. *Ibid.*, 334.

6. *Ibid.*

7. *Ibid.*

8. Chapter 2 demonstrates the various values of privacy for which philosophers have argued, and it presents my own view concerning privacy's values.

[10n4]

[10n5]

[10n6]

[10n7]

[10n8]

9. Feezell, "Celebrated Athletes," 25.

[10n9]



## Role Model Status and Obligations

[10n10]  
[10n11]  
[10n12]

10. Ibid.

11. Ibid.

12. A twenty-year-old college student accused Roethlisberger of sexually assaulting her at a bar on March 5, 2010. Roethlisberger was not charged, but the NFL's commissioner suspended him for six games. Judy Battista, "Roethlisberger Isn't Charged, but the N.F.L. Could Act," *New York Times*, April 12, 2010, <http://www.nytimes.com/2010/04/13/sports/football/13roethlisberger.html> and "Roethlisberger Suspended for 6 Games," *New York Times*, April 21, 2010, <http://www.nytimes.com/2010/04/22/sports/football/22roethlisberger.html>.

[10n13]

13. Spitzer later became governor of New York. While holding that position, he was identified as a client of a prostitution ring that was under wiretap surveillance by federal authorities. Shortly thereafter, he resigned his position. David Kocieniewski and Danny Hakim, "Felled by Scandal, Spitzer Says Focus Is on His Family," *New York Times*, March 13, 2008, <https://www.nytimes.com/2008/03/13/nyregion/13spitzer.html>.

[10n14]

14. Danny Hakim and William K. Rashbaum, "Spitzer Is Linked to Prostitution Ring," *New York Times*, March 10, 2008, <https://www.nytimes.com/2008/03/10/nyregion/10cnd-spitzer.html>.

[10n15]

15. Although I, along with many others, believe that prostitution ought to be legal, the fact remains that Spitzer advocated the view that no one is above the law while behaving as though he is.

[10n16]

16. Jack Coulehan et al., "The Best Lack All Conviction: Biomedical Ethics, Professionalism, and Social Responsibility," *Cambridge Quarterly of Healthcare Ethics* 12 (2003): 28.

[10n17]

17. Edmund L. Erde, "The Inadequacy of Role Models for Educating Medical Students in Ethics with Some Reflections on Virtue Theory," *Theoretical Medicine* 18 (1997): 35. Erde raises several problems with this type of role model. See pp. 37–38.

[10n18]

18. Ibid., 35. Erde also raises concerns about this type of role model. See p. 38.

[10n19]

19. David Carr, *Professionalism and Ethics in Teaching* (London: Routledge, 2000), 186.

[10n20]

20. Ibid., 187.

[10n21]

21. All examples of expanding roles are for explanatory purposes only. By constructing them, I do not adopt positions on the moral permissibility of expanding the roles in the ways described.

[10n22]

22. Wellman, "Do Celebrated Athletes Have Special Responsibilities?" 336.

[10n23]

23. Feezell, "Celebrated Athletes," 32.

[10n24]

24. Dennis J. Moberg, "Role Models and Moral Exemplars: How Do Employees Acquire Virtues by Observing Others?" *Business Ethics Quarterly* 10 (2000): 688.

[10n25]

25. On November 27, 2009, Woods crashed his vehicle outside his house in Orlando, Florida. Since the crash happened just two days after a tabloid magazine reported that Woods had an adulterous affair, it fueled speculation about Woods's infidelities and led to many revelations about his formerly private life. Ultimately, Woods admitted his infidelities, apologized publicly for them, and sought treatment for sexual addiction. For a timeline of how the scandal unfolded, see Jill Mahoney, "Chronology of the Tiger Woods scandal," *The Globe and Mail*, December 8, 2009, updated May 1, 2018, <https://www.theglobeandmail.com/sports/chronology-of-the-tiger-woods-scandal/article4313560/>.

[10n26]

26. I am not aware of Woods, prior to the scandal, holding himself out to be a role model regarding his private life. If he did, then I retract this claim and hold that he owed the parents an apology.

[10n27]

27. After a crewmember made a mistake on a film set, Bale berated the crewmember for almost four minutes. Audio of Bale's rant is available at <http://www.youtube.com/watch?v=0auwpvAU2YA>. After a domestic incident, Bale's mother and sister filed assault charges against him. He was questioned by police, but no charges were filed. Michael Cieply, "'Dark Knight' Star Denies Assault," *New York Times*, July 23, 2008, <http://www.nytimes.com/2008/07/23/movies/23batm.html?ref=christianbale>; and Julie Bloom, "No Charges Filed Against the Dark Knight," *New York Times*, August 14, 2008, [https://www.nytimes.com/2008/08/15/arts/15arts-NOCHARGESFIL\\_BRF.html?mtrref=www.nytimes.com&gwh=444A8AA01054BA52130EA380BAE8C445&gwt=pay](https://www.nytimes.com/2008/08/15/arts/15arts-NOCHARGESFIL_BRF.html?mtrref=www.nytimes.com&gwh=444A8AA01054BA52130EA380BAE8C445&gwt=pay).

[10n28]

28. Feezell, "Celebrated Athletes," 34.

## Chapter 10

29. Kristján Kristjánsson, "Emulation and the Use of Role Models in Moral Education," *Journal of Moral Education* 35 (2006): 37–49. [10n29]
30. *Ibid.*, 41. [10n30]
31. *Ibid.* [10n31]
32. Pete Thamel, "Rolle Wins Rhodes Scholarship," *New York Times*, November 22, 2008, <https://www.nytimes.com/2008/11/23/sports/ncaafootball/23rolle.html?mtrref=www.nytimes.com&gwh=503ECA10D7CFA0504183A7C7797C8E70&gwt=pay> and NBC Sports, "Myron Rolle Faces Doubts about His Love for Football," *NBCSports.com*, April 7, 2010, <https://profootballtalk.nbcsports.com/2010/04/07/myron-rolle-faces-doubts-about-his-love-for-football/>. [10n32]
33. Michael David Smith, "Myron Rolle Signs with the Steelers," *NBCSports.com*, February 1, 2012, <http://profootballtalk.nbcsports.com/2012/02/01/myron-rolle-signs-with-the-steelers/>. [10n33]
34. Sally Jenkins, "Myron Rolle, Now a Doctor Treating Coronavirus Patients, Draws on Football Background in Crisis," *Washington Post*, April 6, 2020, <https://www.washingtonpost.com/sports/2020/04/06/myron-rolle-former-football-star-doctor-coronavirus-massachusetts-general/>. [10n34]
35. In two other treatments of role model status and obligations, I examine roles this chapter does not address. They are Earl Spurgin, "Do Business Leaders Have Role-Model Obligations to be Good Political Actors?" *Business and Society Review* 120 (2015): 277–301 and "Are Coaches Obligated to Serve as Good Role Models?" in *Philosophy: Sport*, ed. R. Scott Kretchmar (Farmington Hills, MI: Macmillan Reference USA, 2017), 185–202. [10n35]

## *Chapter Eleven*

# **African American Athletes' and Celebrities' Use of the N-Word**

**[11.0]** Speech acts have the potential to affect others. Something as simple as me saying, as I pass you on a sidewalk, “good morning,” has that potential. It could lift your spirits if you are down about what you perceive as a loss of community togetherness, or it could irritate you if I am your neighborhood nemesis whom you would rather never speak to you. Because speech acts have the potential for such effects, they are governed by the liberty of external acts. This chapter demonstrates that liberty’s application to speech acts by examining one aspect of a broader controversy over a commonly used word.

**[11.1]** In 2014, the leadership of the NFL instructed the league’s game officials to penalize players who use the n-word<sup>1</sup> on the field. The league’s action sparked considerable public debate in the United States for two reasons. First, because of its immense power and popularity, the NFL’s action or inaction on many social matters frequently captures the public’s attention. Second, the United States often carries out much of its public debate on social matters through sports. When Jackie Robinson broke Major League Baseball’s “color barrier” in 1947, and when track athletes Tommie Smith and John Carlos gave “Black Power salutes” during their medal ceremony at the 1968 Olympic Games in Mexico City, considerable discussion of civil rights ensued. More recently, Penn State University’s handling of Jerry Sandusky’s sexual abuse of children and the NFL’s handling of Ray Rice’s domestic violence generated widespread discussion of sexual abuse and domestic violence.

**[11.2]** Many, including the Fritz Pollard Alliance (FPA), praised the NFL’s stance on players’ use of the n-word. Named after the first African American coach in the NFL, the FPA comprises active and retired minority coaches,

management, and other NFL personnel. Its mission is to promote “candidate talent development for coaching, front office executives and scouting staff throughout the National Football League.”<sup>2</sup> The FPA issued a press release supporting the NFL that included quoting Harry Carson, FPA executive director, and John Wooten, FPA chair, as follows:

The Fritz Pollard Alliance commends the National Football League and its Competition Committee on their commitment to ridding the League of racial slurs and other offensive, threatening, and abusive language. . . . Racial slurs . . . are the ugliest words in our language. And whatever arguments people want to make about the “N-Word” being benign, it reeks of hatred and oppression, and no matter the generation or the context, it simply cannot be cleansed of its taint.<sup>3</sup>

[11.3]

Others, including many African American players in the NFL, condemned the league’s stance and disputed the position that the n-word is an offensive term even when African Americans use it. As word spread that the NFL might ban the term, sportswriter Peter King interviewed three African American players. He writes, “[Banning the n-word] is an atrocious idea,” Richard Sherman said. ‘It’s almost racist, to me. It’s weird they’re targeting one specific word. Why wouldn’t all curse words be banned then.’<sup>4</sup> King also writes, “‘It’s a common word in so many players’ everyday lives,’ said . . . Jason McCourty. ‘Among African-American players and people, it’s used among friends all the time. . . . It’s a pretty common term in the locker room.’”<sup>5</sup>

[11.4]

The contrasting responses to the NFL’s action constitute another installment of the long-running public debate in the United States over whether African Americans should use the n-word.<sup>6</sup> The parties to the debate often are influential African Americans whose positions divide along generational lines. Dave Sheinin and Krissah Thompson write, “‘The n-word was created to divest people of their humanity,’ the poet Maya Angelou once said . . . . ‘When I see a bottle—[and] it says “P-O-I-S-O-N,” then I know [what it is]. The bottle is nothing, but the content is poison. If I pour that content into Bavarian crystal, it is still poison.’”<sup>7</sup> They also write, “‘It’s just a word, a word whose power is owned by the user and his or her intention. People give words power, so banning a word is futile . . . ,’ rapper Jay-Z wrote. . . . ‘The key is to change the person. And we change people through conversation, not through censorship.’”<sup>8</sup>

[11.5]

The parties to the debate often adopt, either explicitly or implicitly, contrasting positions on whether African American athletes and celebrities are obligated morally not to use the n-word. This chapter examines the most significant arguments, revealed by the public debate, in favor of such an obligation. By demonstrating that all of those arguments fail, I conclude that, unless there is a sound argument for the obligation that I have overlooked,

[11.6]

African American athletes and celebrities have no moral obligation that prohibits them from using the n-word. Moral liberalism's liberty of external acts insulates from moral judgment their use of the term.

[11.7]

## PRELIMINARY MATTERS

[11.8]

The debate concerning African American athletes' and celebrities' use of the n-word is part of a larger collection of moral matters concerning African Americans, many of which the presented arguments likely bring to readers' minds. This section situates the question at issue within three of the most significant of those matters.

[11.9]

### **A Relevant Power Relation in Sports**

[11.10]

The fact that, in the context of their sports, African American athletes typically are subject to predominantly white authorities is relevant to most examinations of moral issues concerning those athletes. The purported obligation with which this chapter is concerned is no exception. Although this power relation exists in most sports, professional and nonprofessional alike, the NFL's action with which this chapter begins demonstrates well the issue.

[11.11]

African American players in the NFL who are penalized for using the n-word on the field are subject to predominantly white authorities on multiple levels. Only two of the NFL's thirty-two teams have majority owners who are persons of color, neither of whom is African American.<sup>9</sup> Team owners employ a white man, Roger Goodell, as the league's commissioner. African Americans hold 10.2 percent of the management positions in the league's office, none of the teams' CEO positions, 6.3 percent of the teams' general manager positions, 9.4 percent of the head coach positions, 29.6 percent of the assistant coach positions, and 29.5 percent of the game official positions.<sup>10</sup> Given that African Americans account for 58.9 percent of the players in the NFL, the described power relation is evident.<sup>11</sup>

[11.12]

This power relation, in part, produces fertile ground for criticisms of contemporary sports and the roles they play in broader society. Perhaps the most significant is that contemporary sports perpetuate the exploitation and oppression of African Americans.<sup>12</sup> This chapter does not examine the many specific matters concerning that issue such as the ways sports perpetuate exploitation and oppression, how and why the exploitative and oppressive structures of sports were instituted, why those structures persist, and what steps society should take to end them. This chapter, instead, addresses one specific question for which the described power relation serves as a backdrop. The fact that the NFL authorities who instruct African American players not to use the n-word on the field are predominantly white contrib-

utes to the complexity and moral significance of the question this chapter seeks to answer.

### Some Complexities of the Debate

[11.13]

For several reasons, both the parties to the debate over whether African Americans should use the n-word, and the debate itself, are more complex than the introductory paragraphs of this chapter reveal. First, not only African Americans take positions on African Americans' use of the n-word. Jennifer Granholm, Michigan's white then-governor, made her position public by attending the mock burial of the word performed by the National Association for the Advancement of Colored People (NAACP) during its annual convention in 2007.<sup>13</sup> Kelly Brewington writes, "'Let's say good riddance to this vestige of slavery and racism, and say hello to a society that embraces all its people,' said Michigan Gov. Jennifer M. Granholm."<sup>14</sup> Tom Burlington, a white man who was fired from his news anchor position at Philadelphia's Fox 29 television station for using the n-word in the workplace, took his position on the matter to federal court. He claimed that "he was fired by Fox29 for using the N-word—without malice—during a news-room meeting, while black employees were not punished for using the same word at the station."<sup>15</sup> Essentially, Burlington stakes out what I term, and argue against later in this chapter, the "unfairness position." Those who adopt that position typically are white or otherwise are not African American. Burlington lost his case.<sup>16</sup>

[11.14]

Second, among African Americans, the debate is not merely a dispute for academicians, nor is it merely one more cross-generational dispute over taste or etiquette such as those concerning hair and clothing styles, entertainment preferences, and public displays of affection. As later sections of this chapter demonstrate, it is a debate over whether African Americans' use of the n-word perpetrates practical, moral wrongs such as harming African Americans, impeding their progress toward equality, and disrespecting iconic African American leaders. The dimensions of the debate are evidenced by what the NAACP sought to achieve through its mock burial of the n-word. Kevin Krolicki writes, "Demonstrators marched in a mock funeral procession through downtown Detroit on Monday in a symbolic burial of the 'N-word' and an effort to persuade black Americans to stop using . . . the racial slur in hip-hop music, comedy and casual conversation."<sup>17</sup> He adds, "Victoria Lanier . . . gave a mock obituary. . . . 'We will bury this offensive usage among all people, including African Americans,' Lanier said."<sup>18</sup>

[11.15]

Finally, among African Americans, the positions that the parties to the debate adopt are not a neat function of the parties' generations. Julian Bond was sixty-seven and chair of the NAACP at the time of the mock burial. Brewington provides comments by participants whose ages, at the time of the

[11.16]

event, ranged from seventeen to fifty-eight. She writes of the youngest, “I know people who use it [the n-word] as a term of endearment, with the idea that if you use it yourself, you can ease the pain of the word,” said Crystalee Forbes, 17, . . . who participated in the procession. ‘But in reality, the weight of the word is not gone.’”<sup>19</sup> Brewington writes of the oldest: “Young people aren’t completely to blame, said Kenneth Curry, 58. . . . ‘Older people haven’t been educating younger folks about the power, the negative power, of that word,’ the Detroit resident said.”<sup>20</sup> She writes of another older participant, “Cheryl Banks Boston, 54, was on vacation . . . in Detroit . . . and heard about the funeral. She decided to take part. ‘This is such an important statement,’ she said. ‘I’m so pleasantly surprised to see young people leading this. I’m impressed.’”<sup>21</sup> These comments demonstrate that, among African Americans, there is no necessary connection between one’s age and whether one believes that African Americans should not use the n-word.

### [11.17] “-er” and “-a” Variants of the N-Word

[11.18] In large part because of its two principal forms, the “-er” and “-a” variants, even the n-word itself is more complex than the introductory paragraphs of this chapter suggest. Some African Americans use both forms of the term, some use the “-a” variant but not the “-er” variant, while some eschew both variants. This suggests that not all consider the two variants to be on equal moral footing. Some argue that the “-a” variant does not carry with it the same moral baggage as does the “-er” variant. Whereas the “-er” variant has an oppressive history that cannot be ignored, the “-a” variant performs quite different, useful functions for African Americans.

[11.19] Jacquelyn Rahman summarizes the useful functions many ascribe to the “-a” variant this way: “The form has been productive in its capacity to convey a range of attitudinal stances . . . including solidarity, censure, and a proactive stance that seeks to bring about positive change.”<sup>22</sup> Because many African Americans recognize these useful functions and many whites do not, African Americans and whites often view the “-a” variant quite differently.<sup>23</sup> Rahman writes, “[*N-word, -a variant*] . . . , for some African Americans, is particularly salient for foregrounding an aspect of identity that casts the speaker, addressee, or referent as a pragmatic and resourceful survivor. . . . For some African Americans, this meaning overall counters the negative meanings that have historically existed outside the community.”<sup>24</sup>

[11.20] Positive attitudes about the “-a” variant, however, are not universal among African Americans. In her mock obituary during the NAACP’s burial of the nword, Lanier provides good reason to believe that many participants in the burial oppose both variants. According to Krolicki, Lanier argued that “the racist slur with its roots in American slavery and all its modern variations as used by some blacks and in hip-hop could not be separated.”<sup>25</sup>

Brewington writes of Lanier's obituary, "'To be a [n-word, -a variant] was about keeping it real,' Lanier said. 'It made it hard for young NAACP members like myself to fight for justice while being a member of the hip-hop generation.'"26

Those comments at the mock burial are consistent with Jabari Asim's scholarly treatment of the two variants. He writes that those who support African Americans' use of the "-a" variant think "'[n-word, -a variant]' can be used without malice between blacks and also to distinguish acceptable forms of black behavior from uncouth ones, which shall remain the exclusive province of '[plural n-word].'"27 Asim rejects that reasoning because it ignores the "-a" variant's history. He writes,

The logic behind the new spelling breaks down . . . when one recalls that racist whites have used "[n-word, -a variant]" nearly as often as they've used "[n-word]." To accept the validity of "[n-word, -a variant]," we'd have to forget those lovely "[n-word, -a variant] songsters" that used to grace the music parlors of respectable white families in nineteenth-century America. We'd also have to wink at all those segregationist senators—Helms, Thurmond, Stennis, et al.—who used to insist that "Negro" sounded just like "[n-word, -a variant]" when pronounced with a Southern accent.<sup>28</sup>

In what follows, I apply the question this chapter seeks to answer to both variants of the n-word. The preceding paragraphs reveal two justifications for doing so. First, although there is considerable disagreement among both laypersons and scholars over whether the two variants are on the same moral footing, it is clear that many of those who argue that African American athletes and celebrities are obligated not to use the n-word intend their arguments to apply to both variants. Thus, I evaluate the significant arguments for the obligation as those persons intend the arguments to apply.

Second, given that I conclude African American athletes and celebrities have no moral obligation that prohibits them from using the n-word, applying the question to both variants does justice to the correct side, no matter which it is, of the disagreement over the two variants. Any argument for the obligation is stronger, or, at least, just as strong, when applied to the "-er" variant as it is when applied to the "-a" variant. This is because the case for the useful functions of the "-a" variant are stronger than, or, at least, just as strong as, any similar case for useful functions of the "-er" variant. Thus, if my arguments are sound concerning the "-er" variant, then, *a fortiori*, they are sound concerning the "-a" variant.

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[11.23]

[11.24]



[11.25]

## DISPENSING WITH TWO POSITIONS

[11.26]

In large part because of the n-word's oppressive history, African Americans' use of the term has evoked a variety of positions over the years. This section addresses two common positions that divert attention away from the considerations relevant to determining whether African American athletes and celebrities are obligated not to use the n-word.

[11.27]

### **Unfairness Position**

[11.28]

African Americans who defend their use of the n-word generally agree with those who oppose them on this important matter: It is unacceptable for whites to use the term. The earlier quotation from McCourty's defense, for example, reveals only part of his position. Again quoting him about uses of the n-word, King writes, "Once a white person says it, it's a derogatory term."<sup>29</sup> Similarly, Sheinin and Thompson quote Patricia Wilson, an African American television producer, about whites using the term, "It's not okay, and I don't think it will ever be okay. Because when others use it, it's more dehumanizing, and they don't take on the historical responsibility."<sup>30</sup>

[11.29]

This leads some to argue that African Americans who defend their use of the n-word adopt a position that is unfair to and, thus, discriminatory against those who are not African American. They reason that if African Americans are free to use the term, others also ought to be free to use it. If not, then those who are not African American are denied a moral right solely on the basis of their race. Such denials are precisely what many have been fighting against for years. Granting one racial group the freedom to use a particular term while denying other racial groups the same freedom is in opposition to the goal of equality that many have long sought.

[11.30]

The preceding position is unhelpful in this context for several reasons. First, because we are so far from achieving equality, whether only African Americans should be free to use the n-word is a peripheral matter of little significance at this stage of our societal development. Given the plethora of unfair situations various racial groups face, whether whites and others are treated unfairly by those who hold that only African Americans may use the n-word is an issue that can wait until society resolves other, more pressing, unfair situations.

[11.31]

Moreover, even if it is unfair that others are not free to use the n-word while African Americans are, it is reasonable to hold that the unfairness is a necessary step toward the goal of equality. After all, it is others', not African Americans', use of the n-word that produced its oppressive history. Those others used, and continue to use, the term to reinforce stereotypes of, promote violence against, and justify denying rights to African Americans. Denying others the right to use the term today is an obvious step toward chang-

ing attitudes about African Americans. Changing those attitudes, in turn, is necessary in order to move closer to equality.

Perhaps the most important reason that raising the fairness issue in this context is unhelpful, however, is that, no matter how we resolve the issue, it gets us no closer to determining whether African American athletes and celebrities are obligated not to use the n-word. Suppose, on the one hand, we determine that because many African American athletes and celebrities use the n-word, fairness demands that others also are free to use the term. This tells us nothing about whether those athletes and celebrities should use the term in the first place. They may well be wrong to use it, and it is only through their error that others also are free to use it. If so, the correct inference is that African American athletes and celebrities misguidedly and unintentionally produce the conditions that grant others the freedom to use the n-word.

[11.32]

Suppose, on the other hand, we determine that fairness does not demand that others also are free to use to use the term. Again, this tells us nothing about whether African American athletes and celebrities should use the term. It tells us only that, if those persons are free to use the term, it does not follow that others also are free to use it. There may be a sound argument, unrelated to fairness, for why African American athletes and celebrities are obligated not to use the term.

[11.33]

### Benign Intent Position

[11.34]

Many African American athletes and celebrities defend their use of the n-word by claiming they do not mean anything negative when they use the term. While racists use the term to further oppression, African Americans use it to express endearment or affection for other African Americans. Moreover, as Asim explains, many argue that, actually, they are doing something positive by using the term: changing its meaning. By using the term to express endearment or affection, African Americans strip the term of its power to oppress. They take control of the term and infuse it with a new meaning that they provide. Once they have fully co-opted the term, it will be considerably more difficult for racists to use it for oppressive purposes.

[11.35]

Asim, however, argues that the attempt to co-opt the term is not as clean as many suggest. He writes, "I'm not at all suggesting that such change is impossible, but in this instance it is a romantic conclusion at best. . . . [T]he N word doesn't appear to have lost much of its 'sting in *the general culture*.' . . . Outside hip-hop's boundaries, it remains an underground word."<sup>31</sup> Asim concludes that using the term in public is unacceptable. He writes, "Out in public is where we depend on polite speech. . . . In a public space, say on a subway train, I should not expect my fellow commuters' tacit permission to assault their ears with '[n-word]'-laden speech any more than I

[11.36]

should expect their acceptance of my shouting into a cell phone or scrawling obscenities on the windows and seats.”<sup>32</sup>

**[11.37]** Asim’s concerns demonstrate that, like other moral questions, there are additional relevant considerations besides actors’ intent that we must examine. Typically, benign intent alone does not insulate us from possible obligations. Consider a spousal relationship between A and B. Suppose A innocently uses a particular phrase, X, in interactions with B.<sup>33</sup> A’s intent when using the phrase not only is perfectly benign, but A actually intends X to be an expression of affection for B. Moreover, others outside A’s and B’s relationship also recognize X as an expression of affection and welcome hearing their loved ones use it. Upon hearing X, however, B does not feel affection from A. Because of a particular history with the phrase, B becomes sad and depressed. B explains the history to A and asks A not to use X. A responds that B’s request is unreasonable because A means only to express affection. In this case, A’s benign intent alone does not determine whether A is free morally to continue using X when interacting with B. We must examine B’s history with X in order to make that determination.

**[11.38]** Suppose we find that B was kidnapped as a child, held hostage for many months, and tormented by a captor who used X repeatedly in his sadistic torture of B. In such a case, we likely would conclude that A is obligated not to use X in interactions with B. On the other hand, if B’s history with X were significantly different, we might conclude that A has no such obligation. The point is that we must examine B’s history with X, and perhaps other matters, in order to draw a justified conclusion. A’s benign intent alone does not tell us everything we need to know. Likewise, n-word users’ benign intent does not tell us everything we need to know in order to draw a justified conclusion regarding whether African American athletes and celebrities are obligated not to use the term.

### **[11.39]** SIGNIFICANT ARGUMENTS IN FAVOR OF THE OBLIGATION

**[11.40]** The public debate reveals several relevant considerations that form the bases for arguments that conclude African American athletes and celebrities are obligated not to use the n-word. This section examines the most significant of those arguments.

#### **[11.41]** The Term Is Offensive

**[11.42]** Many believe African American athletes and celebrities should not use the n-word because it is offensive no matter who uses it. These words in the previously cited FPA press release suggests that view: “Whatever arguments people want to make about the ‘N-Word’ being benign, it reeks of hatred and oppression, and no matter the generation or the context, it simply cannot be

cleansed of its taint.”<sup>34</sup> Likewise, Angelou claims that just as a poison is poisonous no matter its container, the n-word is offensive no matter who uses it.

It is tempting to reason in this fashion: If important African Americans, such as Angelou and FPA officers, think other African Americans should not use the n-word, the matter must be settled in favor of athletes and celebrities having an obligation not to use the term. Despite the temptation, however, drawing that conclusion is unwarranted for two reasons. First, we are not justified in concluding that, in fact, the term is offensive when African Americans use it. Various quotations presented thus far demonstrate that many influential African Americans hold opposing views. Those opposing views include both the weaker claim that the term is not offensive when African Americans use it and the stronger claim that it actually is empowering when African Americans use it. When it comes to forming the basis of a moral obligation, it is problematic to argue that one set of influential African Americans’ views is more justified than are some other set’s views. Concluding that African American athletes and celebrities are obligated not to use the term because Angelou and the FPA believe the term is offensive no matter who uses it would be to privilege one side of the debate without good reason. We are no more justified in privileging Angelou’s and the FPA’s views than we are in privileging the opposing views.

[11.43]

Suppose, however, that there actually is some good reason for privileging the FPA’s and Angelou’s positions. We still should not draw the further conclusion, from that fact alone, that African American athletes and celebrities are obligated not to use the n-word. Because African Americans’ uses of the term are instances of expression, perhaps the best way to demonstrate why we should not draw that further conclusion is through Mill’s views on freedom of expression. Mill argues that society ought not censor the expression of deviant views. That, however, is exactly what drawing the conclusion at issue does. It censors African American athletes and celebrities by ascribing to them an obligation not to express themselves as they wish because their chosen expression deviates from what is acceptable.

[11.44]

Mill argues that society pays one of two costs if it censors a deviant view.<sup>35</sup> If the deviant view is true or partially true, society loses access to the truth, something of obvious value. If the deviant view is false, society loses the value gained by confronting false ideas with the truth. Confronting false ideas helps maintain the “living” nature of the truth, thereby, preventing it from lapsing into mere dogma.

[11.45]

The costs Mill identifies apply if society censors African American athletes and celebrities by ascribing to them an obligation not to use the n-word. If African Americans who defend their use of the n-word are correct, then society loses either the minimal value of a harmless term of affection or the significant value of co-opting from racists a term they use to further oppres-

[11.46]

sion. If, as we have been assuming for this argument, those African Americans who defend their use of the n-word are incorrect, then society loses the significant value of confronting its history of racism through experiences with those who use the term. Many of us cringe when we hear the term in a song or through a microphone that is placed too close to the action on a sports field or in a sports arena. Our discomfort, however, is of great value. It forces us to consider why we cringe. In so doing, we confront society's racism, both past and present, thereby ensuring that it remains a "living" aspect of our history that we must overcome rather than it being relegated to the status of a historical concern that few care to understand and confront.

### **[11.47] Using the Term Harms African Americans**

**[11.48]** The public debate suggests a related argument according to which African Americans' use of the n-word harms all African Americans through reinforcing stereotypes and segregation. Reinforcing stereotypes and segregation causes a plethora of possible harms, both physical and psychological. The possible physical harms include, but are not limited to, promoting racist violence against African Americans and impeding African Americans' ability to satisfy their basic needs. The possible psychological harms include, but are not limited to, producing feelings of despair and inferiority among African Americans.

**[11.49]** This argument is implied by these words in the previously cited FPA press release: "[The n-word] reeks of hatred and oppression."<sup>36</sup> This part of the previously presented quotation from Angelou suggests the argument more directly: "'The n-word was created to divest people of their humanity."<sup>37</sup> Sheinin and Thompson develop the idea further when they write that the n-word "obtain[ed] its awful power during the era of slavery, [and] retain[ed] that power through a century of lynchings and Jim Crow segregation."<sup>38</sup> They add, "The word is visible almost anywhere there is racial conflict: the lawless realm of social media, the vast landscape of pop culture or the streets of Ferguson, Mo."<sup>39</sup>

**[11.50]** The driving spirit of this argument is the view that eradicating stereotypes and segregation would produce a more desirable state of affairs than is the current state. Because few would deny that, I take as a given that our society sans stereotypes and segregation would be more desirable, *ceteris paribus*, than it is now. Despite considerable agreement regarding that desirability, using it to argue that African American athletes and celebrities are obligated not to use the n-word is problematic.

**[11.51]** Unsurprisingly, this argument is subject to a debate similar to that involving the first argument. There simply is no consensus, even among influential African Americans, regarding whether African Americans' use of the n-word contributes to the harm at issue. Undoubtedly, Angelou, the FPA, and many

others believe that it reinforces stereotypes and segregation. On the other hand, undoubtedly, those who claim that their use of the term either is a harmless expression of affection or actually co-opts the term from racists believe that it does not contribute to the harm at issue. As was the case with the first argument, concluding that African American athletes and celebrities are obligated not to use the term because Angelou, the FPA, and others believe the term harms African Americans as a group privileges, without good reason, one side of the debate.

Similarly to the first argument, however, even if African Americans' use of the n-word, in fact, harms African Americans as a group, it does not ground successfully an obligation that prohibits African American athletes and celebrities from using the term. Attempting to ground the obligation at issue on that group harm encounters two significant problems.

[11.52]

First, it is not clear that the group harm is a type of harm that one is obligated not to produce. Harms come in a plethora of forms. Of those forms, some are such that individuals clearly are obligated not to cause them. Others are such that individuals clearly are not obligated to avoid causing them. Still others are such that it is quite complicated to sort out whether individuals are obligated not to cause them. The group harm in question does not fall into the first category as it has little in common with other harms in that category. It is most closely akin to the harms in the second category.

[11.53]

The salient feature of harms that fall into the first category is that they generally harm directly other persons' bodies, property, or interests.<sup>40</sup> Under typical circumstances, Joe is obligated not to assault Tom and he is obligated not to steal Mary's car because the former harms directly Tom's body and the latter harms directly Mary's property. Likewise, Sally is obligated not to defeat Ann in an athletic competition by nefarious cheating because it harms directly Ann's interests.

[11.54]

The group harm African Americans purportedly cause when they use the nword does not share the salient feature of harms in the first category. The concern that underlies the argument at issue is that African Americans' use of the term reinforces stereotypes and segregation. Reinforcing those things does not harm directly persons' bodies, property, or interests for two reasons. First, it is not a direct harm at all. Reinforcing stereotypes and segregation contributes indirectly to such harms, but does not cause directly those harms. Second, other people cause the countless harms that stem from stereotypes and segregation, not the African Americans who use the n-word. Stereotypes and segregation might motivate racists to do bodily harm to African Americans, to damage their property, or otherwise to harm their interests, but it is the racists who actually cause those harms. Even if African Americans reinforce stereotypes and segregation by using the n-word, racists still choose to cause the harms at issue.

[11.55]

**[11.56]** The group harm at issue is more akin to the harms that fall into the second category. The salient feature of harms in that category is that they generally are harms persons cause to other persons' interests through morally justified activities. If Sally defeats Ann in the athletic competition through fair play, she violates no obligation even though she harms Ann's interests. If Sally is admitted to law school over Sue because her activities produced a better application than did Sue's activities, she violates no obligation even though she harms Sue's interests. In neither case is there anything to which one can point that is nefarious or unfair on Sally's part. Although Sally's successes harm Ann's and Sue's interests, the harm was caused by Sally's morally justified activities.

**[11.57]** Likewise, African American athletes and celebrities typically are engaging in morally justified activities when they use the n-word. Often, they are producing art, such as music or films, or they are interacting with people with whom they have special bonds, such as teammates or opponents during athletic competitions. Those situations have more in common with the situations associated with the harms in the second category than they do with the situations associated with the harms in the first category. After all, the harms in the first category involve assaults, thefts, and other nefarious activities.

**[11.58]** An earlier point suggests a second problem with the argument at issue. The harm from reinforcing stereotypes and segregation is not caused by African Americans who use the n-word, but, rather, by racists who cause harms in the name of stereotypes and segregation. Instead of asking who causes the harm, however, one can push the question further back and ask who actually reinforces stereotypes and segregation. That reinforcement is not perpetrated by African Americans who use the n-word, but, rather, is perpetrated by racists who point to African Americans' use of the term as an excuse to retain stereotypes and segregation. There is no good reason why African Americans' use of the n-word should further stereotypes. If I see a video of an offensive anti-immigration diatribe by a person from Texas wearing a gun and riding a horse, I am not justified in drawing any conclusions about what all people from Texas, or all people who own guns, or all people who ride horses think about immigration. If I see a video of a Muslim inciting violence against the United States and Europe, I am not justified in drawing any conclusions about what all Muslims think of such violence. If I draw conclusions in either case, the error is mine. If one draws conclusions about all African Americans because some use the n-word, then one makes a similar error. We should not place the burden of eradicating that error on African Americans who use the n-word. It should rest on the persons who make the error.



## Those Who Use the Term Are Bad Role Models<sup>41</sup>

[11.59]

Many believe African American athletes and celebrities should not use the n-word because they are bad role models when they do so. Again, this argument is implied by words in the previously cited FPA press release: “NFL players are among the hardest working young men in this country, courageously trying to win for their teams and millions of fans. However, there is no valor in using these disgusting words. It just diminishes the game and everyone involved.”<sup>42</sup> Although the press release does not state this directly, it implies that the players who use the n-word are bad role models because they do not present themselves to fans and the league in which they participate in an appropriate manner.

[11.60]

Wilson also implies that there is a role model element to African Americans’ use of the n-word. An expansion of Sheinin’s and Thompson’s previously presented quotation of Wilson reads,

[11.61]

“One should have a lot of responsibility when using the word.” . . . “When [non-black] people say, ‘Well, you hear it in rap music. . . . Is it okay for others to use?’ And the answer is hell no. It’s not okay, and I don’t think it will ever be okay. Because when others use it, it’s more dehumanizing, and they don’t take on the historical responsibility. Anybody can be checked at any time, [and told], ‘Look, that’s not cool. You can’t use it like that. I don’t give a damn what you hear on the radio.’”<sup>43</sup>

[11.62]

Wilson’s words join those who worry that African Americans who use the n-word are bad role models whose examples cause others to use the term. Many worry that those examples cause whites, a group that almost all believe should not use the n-word, to think they are free to use the term. Sheinin and Thompson state the concern directly when they write, “It isn’t difficult to imagine how a white teenager, perhaps lacking a deep understanding of the United States’ racial history, could be left wondering whether it is okay to use the word—when it is a constant presence in his generation’s music and in the hallways of his school, and when African American peers sometimes give him a ‘pass’ to use it.”<sup>44</sup>

[11.64]

Because people often mimic their favorite athletes’ and celebrities’ behavior, both in and out of competition, it is unsurprising that many ascribe to athletes and celebrities role model status that obligates them not to use the n-word. Doing so, however, encounters difficulties both in the assumption that those persons have role model status and obligations, and in the assumption that using the n-word is a role model failure.

[11.65]

Assume for the time being that athletes and celebrities have role model status and obligations. Even granting that, we are not justified in concluding that African American athletes and celebrities violate their role model obligations by using the n-word. To claim justifiably that a person has violated a

[11.66]



role model obligation, we must point to some wrong that person has committed. We cannot do this without begging the question, however, because we have not yet found a successful argument concluding that African American athletes' and celebrities' use of the n-word actually is wrong.

[11.67] This argument has the matter backward. It attempts to demonstrate that African American athletes' and celebrities' use of the n-word is wrong because using the term is a role model failure. One needs to approach the matter in the reverse direction. One needs to demonstrate that African American athletes and celebrities are role model failures when they use the n-word because using the term is wrong. So far, however, we have not identified a successful argument for that position.

[11.68] Perhaps I am uncharitable to this argument by claiming that it begs the question. That claim is based on the fact that we have not yet identified some *moral* wrong African American athletes and celebrities commit by using the n-word. One might object that in order for a person to fail as a role model, that person need not commit a moral wrong. Because being a role model involves demonstrating to some set of others how to live well, or, at least, how to live well in some particular aspect of life, being a good role model involves more than doing what is morally right and avoiding doing what is morally wrong. It also involves doing morally neutral things that contribute to living well, while avoiding morally neutral things that detract from so living. Using the n-word is one of the latter things.

[11.69] Although I do not believe those in the public debate have demonstrated successfully that using the n-word detracts from living well, I will not quibble with them on that matter at this point. There is something to be said for the claim that using a term that makes many people feel badly speaks negatively about how one lives even if one does not intend to make those others feel badly. *Prima facie*, any behavior that makes many people feel badly provides a reason to judge negatively that aspect of how one lives even if the behavior is not immoral. Thus, I will accept for the time being that, *ceteris paribus*, one lives better if one does not use the term.

[11.70] Even granting that point, however, the argument at issue still fails. Using African American athletes' and celebrities' role model status to argue that they should not use the n-word encounters two difficulties. The first is in the assumption that they have role model status. Proponents of this argument typically ascribe role model status to athletes and celebrities too readily and extend that status too far into those athletes' and celebrities' lives beyond the particular fields, such as football or music, for which the public knows them.

[11.71] I argue in the preceding chapter that academicians and laypeople alike are prone to this mistake, especially when they evaluate athletes' and celebrities' behavior. Too often, they ascribe a generalized role model status to well-known individuals that extends into aspects of those individuals' lives beyond their chosen fields. I do not repeat here the arguments for my position

except to note that ascriptions of generalized role model status often unreasonably violate individuals' privacy and freedom to conduct their lives as they choose.

To counter that mistake, in the preceding chapter I argue for an account of role models that ascribes generalized role model status to individuals less frequently and, typically, does not extend it as far into individuals' lives beyond their chosen fields. Elsewhere, I describe my position this way:

[11.72]

One adopts role-model status either by taking on roles that make one a role model or by holding oneself out to be a role model. Individuals do the former by freely accepting roles that carry with them an understood role-model status such as becoming a parent, priest, professor, doctor, judge, or police officer. Holding oneself out to be a role model is the more controversial and complex of the two ways one can become a role model. . . . Although some actually proclaim that they are, or desire to be, role models, they typically hold themselves out to be role models more indirectly by using positions of fame, authority, or power to proclaim what is best or how people should live.<sup>45</sup>

[11.73]

If this position is sound, unless athletes and celebrities hold themselves out to be role models in a generalized sense, one is justified in ascribing role model status to them only with respect to matters that are associated with success in their fields, such as skills, efforts, and motivations. Because their role model status does not extend further into their lives, by not living well outside their fields, they might violate other sorts of obligations they owe to various people, but they violate no obligation to model for people generally how to live well.

[11.74]

Like athletes and celebrities as a whole, some African American athletes and celebrities hold themselves out to be role models in a generalized sense beyond their chosen fields. Colin Kaepernick, an African American and former quarterback in the NFL, held himself out to be a role model in a more generalized sense by kneeling during the playing of the national anthem prior to the start of games. He did so to protest, and raise awareness of, oppressive treatment of persons of color. Steve Wyche writes, "I am not going to stand up to show pride in a flag for a country that oppresses black people and people of color," Kaepernick told NFL Media . . . after the game. . . . 'I am not looking for approval. I have to stand up for people that are oppressed.'"<sup>46</sup> By taking this admirable and courageous stance, Kaepernick holds himself out to be a role model in a sense that is generalized beyond his chosen field. More of his behavior is open to evaluation from a role model perspective than is the behavior of other athletes and celebrities who do not similarly hold themselves out to be role models. This is why one can ask reasonably whether Kaepernick failed as role model by not voting in the 2016 election, while one cannot ask reasonably the same question of other nonvoting athletes and celebrities who do not hold themselves out to be role models.<sup>47</sup>

[11.75]

[11.76] Also like athletes and celebrities as a whole, those African American athletes and celebrities who hold themselves out to be role models in a generalized sense are a relatively small minority. Nevertheless, if those who hold themselves out to be such use the n-word, proponents of this argument can ask whether their use of the term violates a role model obligation. Even if proponents successfully demonstrate that using the term violates a role model obligation in a particular case or set of cases, however, it does not provide what proponents want. Proponents argue that all African American athletes and celebrities are obligated not to use the n-word, not just those relatively few who hold themselves out to be role models in a generalized sense.

[11.77] Suppose my position is mistaken, and athletes and celebrities have a generalized role model status. There still is a second problem with using African American athletes' and celebrities' role model status to argue that they should not use the n-word. That problem lies in determining for whom they are bad role models when they use the term.

[11.78] The most obvious group for whom African American athletes and celebrities could be role models comprises young African Americans. With respect to that group, it is hard to understand how using the n-word violates a role model obligation. Remember that proponents of the argument have not demonstrated successfully that it is morally wrong for African Americans to use the term, and I simply have granted thus far that, *ceteris paribus*, one lives better if one does not use the term. For the present purposes, I no longer grant that point because the *ceteris paribus* clause does not hold for this group. Because the n-word already is ensconced in the lives of many young African Americans, it is unclear how athletes' and celebrities' use of the n-word affects how those young people live. It is unlikely that young African Americans follow athletes' and celebrities' lead when they use the term. It is more likely that African American athletes and celebrities use the n-word as adults because they began using it when they were young. If that is correct, one is not justified in claiming that African American athletes and celebrities who use the n-word are role model failures with respect to young African Americans.

[11.79] As the quotations in the second paragraph of this subsection indicate, however, those who raise the role model issue often are not concerned with young African Americans following the leads of athletes and celebrities. They frequently are concerned with another group for whom those athletes and celebrities might be role models: young whites. Given that almost everyone agrees that whites ought not use the term, it is clear that, *ceteris paribus*, whites live better when they do not use the n-word. Thus, with respect to young whites, many question whether African American athletes and celebrities who use the n-word model living well.

[11.80] Using young whites to argue that African American athletes and celebrities who use the n-word are role model failures, however, is extremely

problematic. Because white oppressors created the n-word, it is negatively ironic to use young whites to argue that African Americans are obligated not to use the term. Whites should not use the n-word because of the history of white racists using the term to further oppression of another racial group. The burden of making that clear to young whites should not rest with African American athletes and celebrities. That burden should rest with whites such as parents, teachers, and clergy. Holding that African American athletes and celebrities have a role model obligation not to use the n-word because young whites might follow their lead and use the term saddles them with a burden they do not deserve. The last people who should bear the burden of demonstrating to young whites that they should not use the n-word are African Americans who are, or whose ancestors were, oppressed by racist whites who use(d) the term as a tool of that oppression. Many African Americans freely take on that burden and contribute greatly to teaching young whites about the oppressive history of the n-word. Freely taking on such a burden, though, is quite different from having the burden thrust upon them through a moral obligation.

### Using the Term Dishonors Those Who Fought for Equality

[11.81]

The public debate reveals a fourth argument in favor of the obligation at issue that perhaps is the most powerful. That argument is based on the view that African American athletes and celebrities who use the n-word dishonor those, such as Martin Luther King Jr., Malcolm X, Jackie Robinson, and Muhammad Ali, who fought for equality. Peter King raises this position directly when he writes about Bill Willis, one of the early African American players in the NFL who, because of then-legal segregation, could not join his team for a road game in Miami. King writes, “‘For someone who uses the n-word,’ said [Harry] Carson, ‘it dishonors Bill Willis, and it dishonors the sacrifices he and others have made for others in the future. I find it disheartening players can justify using the word in any form today.’”<sup>48</sup> Even some African Americans who defend their use of the term readily acknowledge the suffering of, and the sacrifices made by, earlier generations of African Americans. Sheinin and Thompson write, “‘I’m empathetic to the older generation because they lived it . . . ,’ said [Donte] Stallworth, the former NFL wide receiver. . . . ‘I’m not saying let the emotions go or let what happened [in the past] go . . . . ‘I’m not downplaying the significance of it.’”<sup>49</sup>

[11.82]

The moving nature of this argument is undeniable. Few, if any, find it comfortable to be charged with dishonoring those who fought for equality. Likewise, most, if not all, African Americans desire to honor earlier generations of African Americans who suffered and sacrificed much in their quest for equality. The argument, nevertheless, encounters difficulties. The first is that there is no reason to conclude that African Americans who use the n-

[11.83]

word believe they are dishonoring anyone. This is because there is no reason to think that, compared to African Americans who eschew the term, athletes and celebrities who use it hold in any less esteem those who fought for equality. Because it is an empirical matter, absent evidence to the contrary, there is no reason to conclude that Sherman and Jay-Z have any less reverence for the iconic figures who suffered and sacrificed much for equality than do Carson and Angelou. For all we know, if asked about their views of those iconic figures, Sherman, Jay-Z, Carson, and Angelou would respond with similar language.<sup>50</sup>

[11.84] Proponents of this argument, however, might claim that how much esteem African Americans who use the n-word have for those iconic figures is irrelevant. The relevant fact is that their behavior dishonors those who suffered and sacrificed for equality even if they do not intend such dishonor. By using the n-word, they, in fact, dishonor those who suffered and sacrificed, even if they hold those persons in high esteem.

[11.85] Although it is true that one's behavior can dishonor another person whom one actually holds in high esteem, the objection is unconvincing. It unjustifiably applies a standard of behavior across generations. Although we often are justified in applying standards of behavior across generations, such as when we expect every generation of individuals not to violate the persons and property of others, we often are unjustified in applying one generation's standards to younger generations. Some standards of behavior, such as aesthetic standards, simply do not carry the weight necessary to justify applying them across generations. Those who expected young people in the 1960s and 1970s to wear their hair in the dominant fashions of the 1950s were unjustified in applying their aesthetic standards to younger generations. Likewise, those who expect contemporary artists to produce music similar to the music they enjoyed decades ago also are unjustified. The position captured by the objection is more akin to applying across generations aesthetic standards than it is to applying across generations the expectation that individuals not violate the persons and property of others.

[11.86] Consider a different context in which one might expect future generations to behave similarly to one's own generation. I have deceased relatives who came of age in Oklahoma during the Dust Bowl and the Great Depression. Quite naturally, later in their lives, they had striking emotions and reactions to reading John Steinbeck's *The Grapes of Wrath*. Because the novel concerns life as they knew it when they were young, those relatives would be justified in expecting me to be moved by the novel's depiction of the sorts of struggles and hardships they endured. They would not be justified, however, in expecting me to be moved, and behave because of being moved, in exactly similar ways as they were. I simply lack the personal history with the time and events that is necessary for me to be moved, but react in exactly similar ways. In the likely event that I read the novel and am moved and react in

ways different from how they were moved and react, they would be unjustified in arguing that I dishonor them.

Those who think all African Americans must behave in similar ways in order to honor those who suffered and sacrificed for equality are similarly unjustified. Carson and Angelou are justified in expecting Sherman and Jay-Z to honor those who suffered and sacrificed for equality, but they are not justified in expecting Sherman and Jay-Z to demonstrate that honor in exactly similar ways as they do. Sherman and Jay-Z came of age during a different time and lack the personal history with the time and events that helped to shape Carson's and Angelou's identities. Those identities produce the ways in which Carson and Angelou honor those who suffered and sacrificed for equality. Because a different time and different events helped to shape Sherman's and Jay-Z's identities, we should not expect them to honor those who suffered and sacrificed for equality in exactly similar ways as do Carson and Angelou.

[11.87]

## CONCLUSION

[11.88]

Because of its oppressive history, it is common for people to cringe when they hear the n-word. Those who cringe comprise African Americans, whites, and persons of all races. For many of those who recoil at utterances of the n-word, their shock is intensified when they hear African American athletes and celebrities use the term. This is not surprising because those figures' use of the term finds its way into various media, such as the Internet, television, and radio, to which most people have easy and frequent access. It is one thing to overhear someone use the n-word while walking on the street and quite another to hear it repeatedly in music, during sporting events, and the like. For those who cringe when they hear the term, the former is bad, but the latter, because of its frequency and how difficult it is to avoid, is much worse. All this makes it unsurprising that many wish African American athletes and celebrities would not use the n-word. It also is unsurprising that many go so far as to argue that those athletes and celebrities are obligated morally not to use the term.

[11.89]

Despite being an idea with which it is easy for many to sympathize, the position that African American athletes and celebrities are obligated not to use the n-word is unjustified. The public debate on the matter reveals several significant arguments in favor of such an obligation, all of which are based on compelling concerns. If my arguments are sound, however, all those arguments in favor of the obligation fail. Unless there is a sound argument for the obligation that I have overlooked, African American athletes and celebrities have no obligation that prohibits them from using the n-word.

[11.90]

Using the term is part of their liberty of external acts that moral liberalism affords them.

[11.91]

## NOTES

[11n1]

1. Because the n-word is incendiary, I do not use the actual word in speech or writing. That includes when I am engaged in critical examinations of the term such as this chapter. So as to apply this approach to quotations from writers who use the actual word, I have redacted from quotations instances of the actual word.

[11n2]

2. Fritz Pollard Alliance, "Mission Statement," *FritzPollard.org*, <https://www.fritzpollard.org/missionpage>.

[11n3]

3. Fritz Pollard Alliance, "FPA Commends NFL on Commitment to Rid the League of Offensive Language," *FritzPollard.org*, April 13, 2014, <https://www.fritzpollard.org/press/2014/4/13/fpa-commends-nfl-on-commitment-to-rid-the-league-of-offensive-language>.

[11n4]

4. Peter King, "Legislating Language: Will the NFL Ban the N-Word?" *SI.com*, March 3, 2014, <http://mmqb.si.com/2014/03/03/nfl-n-word-ban-monday-morning-quarterback/>.

[11n5]

5. *Ibid.*

[11n6]

6. For a history of the debate, see Jabari Asim, *The N Word: Who Can Say It, Who Shouldn't, and Why* (Boston: Houghton Mifflin, 2007).

[11n7]

7. Dave Sheinin and Krissah Thompson, "Redefining the Word: Examining a Racial Slur Entrenched in American Vernacular that Is More Prevalent than Ever," *Washington Post*, November 9, 2014, <http://www.washingtonpost.com/st/national/2014/11/09/the-n-word-an-entrenched-racial-slur-now-more-prevalent-than-ever/>.

[11n8]

8. *Ibid.*

[11n9]

9. Richard Lapchick et al., "The 2019 Racial and Gender Report Card: National Football League," *Institute for Diversity and Ethics in Sport*, October 30, 2019, 9, [https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5\\_5af5faf45ba7443da733f900f54638b4.pdf](https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5_5af5faf45ba7443da733f900f54638b4.pdf).

[11n10]

10. *Ibid.*, 27–37.

[11n11]

11. *Ibid.*, 27.

[11n12]

12. For a thorough and powerful treatment of the numerous ways sports in predominantly white colleges and universities perpetuate such exploitation and oppression, see Billy Hawkins, *The New Plantation: Black Athletes, College Sports, and Predominantly White NCAA Institutions* (New York: Palgrave Macmillan, 2010).

[11n13]

13. NAACP, "The 'N' Word Is Laid to Rest by the NAACP," *NAACP.org*, July 9, 2007, <http://www.naacp.org/latest/the-n-word-is-laid-to-rest-by-the-naacp/>.

[11n14]

14. Kelly Brewington, "NAACP Aims to Bury the 'N-Word,'" *Baltimore Sun*, July 10, 2007, <https://www.baltimoresun.com/news/bs-xpm-2007-07-10-0707100124-story.html>.

[11n15]

15. Sam Wood, "Suit Over Fired Fox Anchor's Use of 'N-Word' Gets Green Light," *Philadelphia Inquirer*, February 15, 2015, [http://www.philly.com/philly/news/Suit\\_over\\_fired\\_Fox\\_anchors\\_use\\_of\\_N-word\\_gets\\_green\\_light\\_.html](http://www.philly.com/philly/news/Suit_over_fired_Fox_anchors_use_of_N-word_gets_green_light_.html).

[11n16]

16. Andrew Thompson, "Fox Anchor's 'N-Word' Case Ends in Defeat," *Courthouse News Service*, March 30, 2016, <https://www.courthousenews.com/fox-anchors-n-word-case-ends-in-defeat/>.

[11n17]

17. Kevin Krolicki, "U.S. Civil Rights Group Holds Funeral for 'N-Word,'" *Reuters*, July 9, 2007, <https://www.reuters.com/article/us-naacp-nword/u-s-civil-rights-group-holds-funeral-for-n-word-idUSN0929653620070709>.

[11n18]

18. *Ibid.*

[11n19]

19. Brewington, "NAACP."

[11n20]

20. *Ibid.*

[11n21]

21. *Ibid.*

[11n22]

22. Jacquelyn Rahman, "The N Word: Its History and Use in the African American Community," *Journal of English Linguistics* 40 (2012): 137.



## Chapter 11

23. African Americans' and whites' often differing attitudes about the "-a" variant are part of a larger set of differing attitudes that result from whites frequently not understanding the functions of various aspects of African American culture. Marcyliena Morgan and Tommy J. Curry examine those functions through analyses of hip-hop. Marcyliena Morgan, *The Real Hip-hop: Battling for Knowledge, Power, and Respect in the LA Underground* (Durham, NC: Duke University Press, 2009); and Tommy J. Curry, "I'm Too Real for Yah: Krumpin' as a Culturalogical Exploration of Black Aesthetic Submergence," *Radical Philosophy Review* 12 (2009): 61–77.

[11n23]

24. Rahman, "The N Word," 163.

[11n24]

25. Krollicki, "U.S. Civil Rights Group."

[11n25]

26. Brewington, "NAACP."

[11n26]

27. Asim, *The N Word*, 224.

[11n27]

28. Ibid.

[11n28]

29. King, "Legislating Language."

[11n29]

30. Sheinin and Thompson, "Redefining the Word."

[11n30]

31. Asim, *The N Word*, 214.

[11n31]

32. Ibid., 230.

[11n32]

33. Although this example involves language, I do not claim that the language A uses to communicate to B is analogous to African Americans' use of the n-word in either of its variants. The two cases differ in many respects, most notably that the language A uses does not involve the centuries of oppression in broader society that the n-word involves. Because I recognize that and other ways the two cases differ, I claim merely that the example demonstrates that moral questions concerning acts are not answered by considering only actors' intent.

[11n33]

34. Fritz Pollard Alliance, "FPA Commends NFL."

[11n34]

35. Chapter 3 presents Mill's argument against censoring the expression of deviant views. For Mill's own presentation, see John Stuart Mill, *On Liberty*, ed. and intro. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing Company, 1978 [1859]), 16–17, 33–38.

[11n35]

36. Fritz Pollard Alliance, "FPA Commends NFL."

[11n36]

37. Sheinin and Thompson, "Redefining the Word."

[11n37]

38. Ibid.

[11n38]

39. Ibid.

[11n39]

40. Producing exhaustive accounts of the kinds of harms that fall into the three categories is beyond this chapter's purposes. Identifying the salient features of the harms that fall into the three categories is sufficient to demonstrate that the group harm at issue does not successfully ground an obligation that prohibits African American athletes and celebrities from using the n-word.

[11n40]

41. The entirety of chapter 10 is an examination of role model status and obligations.

[11n41]

42. Fritz Pollard Alliance, "FPA Commends NFL."

[11n42]

43. Sheinin and Thompson, "Redefining the Word."

[11n43]

44. Ibid.

[11n44]

45. Earl Spurgin, "Do Business Leaders Have Role-Model Obligations to be Good Political Actors?" *Business and Society Review* 120 (2015): 280.

[11n45]

46. Steve Wyche, "Colin Kaepernick Explains Why He Sat during National Anthem," *NFL.com*, August 27, 2016, <http://www.nfl.com/news/story/0ap3000000691077/article/colin-kaepernick-explains-why-he-sat-during-national-anthem>.

[11n46]

47. Christina Capatides, "Colin Kaepernick Didn't Vote in the Election, and Some People Are Furious," *CBSNews.com*, November 11, 2016, <http://www.cbsnews.com/news/colin-kaepernick-didnt-vote-in-the-election-and-stephen-a-smith-let-him-have-it/>. I do not introduce this question in order to argue for what I hold to be the correct answer. I introduce it only to demonstrate that Kaepernick is subject to questions about whether he fails as a role model, questions to which athletes and celebrities who have not similarly held themselves out to be role models are not subject.

[11n47]

48. King, "Legislating Language."

[11n48]

49. Sheinin and Thompson, "Redefining the Word."

[11n49]



[11n50]

50. Although I am unaware of empirical evidence that demonstrates African American athletes and celebrities who use the n-word hold iconic figures in as high esteem as do those who eschew the term, anecdotal evidence suggests they do. The hip-hop artist Common, for example, includes the n-word in his lyrics, yet he honors Martin Luther King Jr. in his “I Have a Dream” song. Jillian Mapes, “10 Songs Honoring Dr. Martin Luther King, Jr.” *Billboard*, January 20, 2014, <http://www.billboard.com/articles/news/513484/10-songs-honoring-dr-martin-luther-king-jr>. Also, in a striking move, Common uses both a poem recited by Maya Angelou and the n-word in his “Dreamer” song. Roman Cooper, “Maya Angelou Criticizes Common’s Use of the N-Word,” *HipHopDX.com*, December 18, 2011, <http://hiphopdx.com/news/id.18014/title.maya-angelou-criticizes-commons-use-of-the-n-word>.



## *Chapter Twelve*

# **Punishment by Nongovernmental Institutions**

**[12.0]** This part of the book closes by examining the liberty of external acts from a different perspective. Whereas the two preceding chapters examine whether individuals who act in particular ways are free morally to act as they do, this chapter assumes that the individuals in question have acted wrongly. Given that assumption, one significant issue is to what entity, or entities, moral liberalism grants the moral authority to punish wrongdoers. Because it grants that authority to only some entities, the liberty of external acts does not provide all entities the freedom to punish wrongdoers.

**[12.1]** Popular media's considerable coverage of high-profile persons' wrongdoings suggests a set of entities that are ripe for consideration. The coverage reveals that many in the United States often call on nongovernmental institutions, such as sports leagues, corporations, universities, and professional organizations, to impose their own punishments on wrongdoers that are in addition to punishments government imposes.<sup>1</sup> The calls often, perhaps even usually, concern wrongs committed outside those institutions.<sup>2</sup>

**[12.2]** I term "NGIP" a punishment that a nongovernmental institution imposes on one of its members for wrongdoing outside the institution.<sup>3</sup> Because the cases that produce calls for NGIPs generally concern troubling violence, the calls are understandable. Perhaps the most infamous, captured on video in 2014, is of then-NFL player Ray Rice striking, and rendering unconscious, his then-fiancée and now-wife Janay Palmer.<sup>4</sup> Rice struck Palmer, outside NFL confines and activities, at a casino in Atlantic City, New Jersey. Initially, NFL Commissioner Roger Goodell suspended Rice two games. After much public criticism of the perceived insufficiency of that suspension, Goodell suspended Rice from the NFL indefinitely, and Rice's team terminated his contract.

In addition to the incidents' disturbing natures, many often are dissatisfied with government's adjudication of the cases. They believe wrongdoers too often suffer insufficient punishments that appear to condone, rather than redress, the wrongs. Many were dismayed when the Atlantic County, New Jersey, prosecutor dropped all charges after Rice agreed to undergo court-supervised counseling. Because of the violent nature of Rice's act, they believed that government should impose a harsher punishment. Because government did not, many of the dismayed wanted the NFL to impose on Rice what they perceived to be an appropriate punishment.

[12.3]

Other cases engender similar reactions. Joe Mixon, then-player for the University of Oklahoma (OU) football team, broke four bones in another student's face when he struck her during an off-campus incident in 2014.<sup>5</sup> Mixon pleaded guilty to a misdemeanor charge for which he served no prison time, and OU suspended him from its football team for one year. After video of the incident was released in late 2016, many decried that OU did not dismiss Mixon from the team permanently. After Mixon completed his collegiate career, many argued that no NFL team should select him in the league's annual draft of incoming players.<sup>6</sup>

[12.4]

Calls for NGIPs are not limited to incidents involving athletes. Kristen Lindsey, a veterinarian, killed a cat with an arrow in 2015. She posted to Facebook a photo of her posing with the dead cat and included this text: "My first bow kill . . . lol. The only good feral tomcat is one with an arrow through it's [*sic*] head! Vet of the year award . . . gladly accepted."<sup>7</sup> Lindsey's act, as well as her glee afterward, enraged many. That outrage grew when the public learned later that the cat actually was not feral, but, rather, was a neighbor's pet named Tiger. The outrage grew even further when the Texas Board of Veterinary Medical Examiners suspended Lindsey's license for only one year rather than revoking it.<sup>8</sup> This suggests both that many supported the veterinary clinic at which Lindsey worked when it fired her, and that those persons likely opposed any clinic hiring Lindsey after the suspension ended.

[12.5]

Despite being understandable, calls for NGIPs are misguided morally. Although I often concur with both the public outrage particular cases engender and the dissatisfaction many feel regarding government's adjudication of those cases, I will argue that NGIPs do not satisfy the most noteworthy, necessary condition for punishment to be justified morally. That condition requires punishment to serve some morally necessary or desirable function. Nongovernmental institutions' natures preclude them from fulfilling that function. Thus, moral liberalism's liberty of external acts does not extend to NGIPs.

[12.6]

[12.7]

## LEGAL MATTERS

[12.8]

Instances of employers punishing employees constitute a significant number of NGIPs. Employment-at-will is the background assumption of employment in the United States.<sup>9</sup> According to that doctrine in its purest form, absent contractual agreements to the contrary, employees serve at the will of employers who are free to determine as they wish employment conditions. Because NGIPs are among the conditions employers are free to set, there are no legal barriers to employers imposing on employees NGIPs.

[12.9]

The United States' employment laws no longer follow employment-at-will in its purest form. Both federal and state laws restrict the doctrine by prohibiting employers from making at will certain kinds of employment decisions. The most notable restrictions are those that prohibit various forms of discrimination. Even with the moderating of employment-at-will, however, unless some law or contractual arrangement prohibits them from doing so, employers are free to make employment decisions as they wish. Generally, neither federal nor state laws prohibit employers from levying NGIPs.

[12.10]

Employment laws do not apply to all NGIPs because many institutions, such as universities and professional organizations, have nonemployee members who are subject to possible NGIPs. Those possible NGIPs include, but are not limited to, expulsion, suspension, and censure. Despite not being under the purview of employment laws, such NGIPs still generally are legal in the United States. Similarly to employers' control over employment conditions, unless some law prohibits them from doing so, institutions are free to determine as they wish the conditions of nonemployee membership. Although federal and state laws often prohibit discriminatory conditions, they generally allow institutions to impose on nonemployee members NGIPs.

[12.11]

The legality in the United States of still other NGIPs results from laws' and courts' recognition of employers' rights to levy NGIPs as authorized by collective bargaining agreements (CBAs) and other contracts. This recognition renders legal the NGIPs imposed on Rice.<sup>10</sup> As a member of the players' union, Rice was subject to the CBA that empowers the NFL Commissioner to punish players "for conduct detrimental to the integrity of, or public confidence in, the game."<sup>11</sup> Rice also was subject to a player contract that his team could terminate "if [the] Player has engaged in personal conduct reasonably judged by [the] Club to adversely affect or reflect on [the] Club."<sup>12</sup>

[12.12]

Although the preceding demonstrates that NGIPs generally are legal in the United States, it demonstrates little concerning whether they are justified morally. It merely demonstrates that, when they impose NGIPs, institutions face no moral problems associated with this plausible position: If a particular law is justified morally, then, absent overriding considerations, violating that law is wrong morally. Because laws do not prohibit NGIPs, institutions cannot commit the moral wrong that plausible position identifies.

A more relevant consideration, however, essentially reverses the direction of the preceding legality/morality connection. Although this likely serves merely to state what readers already know, an act's legality does not entail that it is moral. Sue breaks no law by violating Joe's confidence, but that does not entail that Sue acts morally if she does so. Suppose Joe confides to Sue that he plans to deface his former spouse's artworks exhibited in a local museum. Sue acts morally by informing the proper authorities of Joe's plan, but preventing the damage to the artworks, not the fact that Sue violates no law, renders moral her act. Suppose, instead, Joe confides to Sue an embarrassing, traumatic event he suffered as a child. Sue acts immorally if she conveys to a mutual friend Joe's story merely so they can laugh at Joe's expense, but it is her reason for conveying the story, not the violation of a law, that renders immoral her act.

[12.13]

Although legality does not entail morality, the concepts are related in an important way. Many moral determinations raise normative questions about the law. This chapter suggests such a question. If I am correct that NGIPs are unjustified morally, then it is both reasonable and important to ask whether NGIPs also ought to be illegal.

[12.14]

This does not mean that morality and law always should correspond. This, too, likely serves merely to state what readers already know, but such a correspondence is both impractical and undesirable. Many immoral acts are too insignificant to justify society applying to them its legal system. Sue violating Joe's confidence so that she and a mutual friend can laugh at Joe's expense is such an example. Although Sue is wrong morally, Joe's embarrassment simply is not significant enough to justify government involvement.

[12.15]

Bringing society's legal system to bear on many other immoral acts, even if they are significant, requires too extensive governmental intrusion into individuals' lives. Consider the extensive monitoring by government authorities that would be necessary if society deemed illegal all immoral breakings of promises and sought to enforce that legal determination. Even if many such acts are significant, government can monitor them only through oppressive means.

[12.16]

Some immoral acts, nevertheless, such as murder and rape, clearly are so significant that they also ought to be illegal. This suggests that, if I succeed in demonstrating NGIPs are unjustified morally, determining whether they are significant enough to warrant concluding that they also ought to be illegal is the obvious next step. This chapter does not pursue that step. I raise it only to demonstrate the broader relevance of determining whether NGIPs are justified morally.

[12.17]

[12.18]

## PARTIAL CONCEPTUAL ANALYSIS

[12.19]

NGIPs are not of one kind conceptually. A desired NGIP can be either what I term “governmental punishment by proxy” (GPP) or what I term “independently authorized punishment” (IAP).<sup>13</sup>

[12.20]

### **Governmental Punishment by Proxy**

[12.21]

Advocates<sup>14</sup> frequently point to government’s alleged failures to redress wrongs in order to justify, or engender support for, the NGIPs they desire.<sup>15</sup> When they do, they call for GPPs. Such calls are most obvious when advocates say something like, “since the court didn’t take Smith off the streets, ABC Corporation cannot allow him to continue his life as though nothing happened.” This calls explicitly for ABC to act as a proxy for government by levying a punishment that does what advocates believe government should have done: alter Smith’s life in a way that redresses his wrong.

[12.22]

Calls for GPPs need not be so explicit. Even though saying something like, “because of what Smith did, XYZ Organization should not allow him to remain a member,” does not refer to an alleged governmental failure to redress Smith’s wrong, it still might be an implicit call for a GPP. The determining factor is what motivates advocates to call on XYZ to punish Smith.

[12.23]

Although determining advocates’ actual motivations in specific cases might be beyond our capabilities, a thought experiment demonstrates the relevant matters. Suppose government imposes stiff punishments on Rice and Mixon in the form of prison sentences. During their incarcerations, Rice and Mixon cannot continue as members of their institutions. Assuming advocates believe the lengths of their sentences are sufficient, calls for NGIPs in their cases cannot be calls for GPPs. There are no alleged government failures to which advocates can point. There is nothing for advocates to ask the NFL and OU to do, as government’s proxies, because government already removed Rice and Mixon from those institutions.

[12.24]

This does not mean that, were Rice and Mixon serving prison sentences, no one would call for NGIPs. Some, perhaps even many, still might call for NGIPs after Rice and Mixon complete their sentences. In order for their calls to have any chance of being justified morally, however, advocates must be either seeking the IAPs described in the next subsection or still seeking GPPs. Assuming they are not seeking IAPs, the only possibly moral basis for their calls is that advocates believe the prison sentences government imposed are insufficient. That belief could ground a plausible, albeit ultimately unsound, argument that NGIPs are necessary to rectify government’s alleged failure to redress Rice’s and Mixon’s wrongs. Such an argument, though, is an argument for GPPs. Otherwise, the only remaining motivations are things

like revenge, sadism, malicious envy, and jealousy. Such motivations cannot ground the argument advocates need because they render immoral calls for NGIPs.<sup>16</sup>

### **Independently Authorized Punishment**

[12.25]

Advocates need not be motivated by government's alleged failures. They, instead, might be motivated by two connected positions. First, nongovernmental institutions are more than mere proxies for government when they impose NGIPs. They have the independent authority, without reference to government, to punish their members for wrongdoings.<sup>17</sup> Second, those institutions are obligated morally to exercise that authority when their members' wrongs warrant doing so. When advocates are so motivated, they seek IAPs rather than GPPs.

[12.26]

Similarly to GPPs, the words advocates use to justify, or engender support for, NGIPs might be implicit calls for IAPs. Advocates might say things like, "a sports league that provides entertainment for families should not tolerate domestic violence by its players," or "a university committed to educational equality should not have on one of its sports teams a player who punched a woman student." Such words, by themselves, do not reveal whether the call is for a GPP or for an IAP. The answer to this question determines the matter: Does the advocate desire the NGIP to rectify government's alleged failure to redress a wrong, or does the advocate desire the NGIP because the relevant nongovernmental institution has the authority, and is obligated morally, to punish the wrongdoer? If the answer is the former, then the call is for a GPP. If the answer is the latter, then the call is for an IAP.

[12.27]

### **THE FUNCTION CONDITION**

[12.28]

Within philosophy's punishment literature, there is considerable agreement on this necessary condition that punishment must satisfy in order to be justified morally: It must serve some morally necessary or desirable function. I term this "the function condition" (FC). Generally, contributors to the literature examine FC in the context of governmental punishment. FC, however, also applies to both types of NGIPs.

[12.29]

If contributors to the literature are correct that FC applies to governmental punishment, then FC obviously applies to GPPs because moral issues about governmental punishment clearly apply to GPPs. Suppose a moral issue arises if a person or institution acts in a particular manner. That issue still arises if, instead of acting directly, the person or institution uses a proxy to perform the act. Just as a legal dispute does not disappear if the disputing parties enlist attorneys to act for them during legal proceedings, a moral issue

[12.30]



about governmental punishment does not disappear if government allows others to levy its punishments.<sup>18</sup>

**[12.31]** Demonstrating why contributors are correct that FC applies to governmental punishment serves two purposes. First, it completes the argument that FC applies to GPPs. Second, it demonstrates that FC also applies to IAPs. One way to provide such a demonstration begins with contributors' definitions of "punishment."

## **[12.32] Definitions of Punishment**

**[12.33]** Definitions coalesce around the idea that punishment imposes burdens on wrongdoers. Thomas Hobbes writes, "A PUNISHMENT *is an evil inflicted . . . on him that hath done or omitted that which is . . . a transgression of the law.*"<sup>19</sup> Jeremy Bentham similarly describes punishment as an evil, but adds, "it ought only to be admitted in as far as it promises to exclude some greater evil."<sup>20</sup> One aspect of Antony Flew's definition with which S. I. Benn<sup>21</sup> and H. L. A. Hart<sup>22</sup> essentially concur is that punishment must be "an evil, an unpleasantness."<sup>23</sup>

**[12.34]** Contributors use "evil" to capture the burdens punishment imposes on wrongdoers. Joel Feinberg writes that many think of those burdens as the pains from "hard treatment" and he identifies that from "imprisonment at hard labor" as paradigmatic.<sup>24</sup> Others have in mind taking wrongdoers' rights to liberty, privacy, and various goods. Incarceration, sex offender registries, fines, and license revocations are some examples. Feinberg argues that punishment imposes on wrongdoers the burden of condemnation or censure because it is "the expression . . . of resentment and indignation, and . . . of disapproval and reprobation."<sup>25</sup>

**[12.35]** The definitions' agreement that punishment imposes burdens demonstrates that FC applies to governmental punishment. Imposing a burden in any context is justified morally only if there is a good reason to impose it. Governmental punishment is not exempt from this requirement. Thus, contributors who support governmental punishment attempt to provide a good reason for government imposing punishment's burdens. They do so by arguing that governmental punishment serves some morally necessary or desirable function.

**[12.36]** Like governmental punishment, NGIPs must satisfy FC. No matter which vision of punishment's burdens is correct, it captures both GPPs and IAPs. NGIPs prevent wrongdoers from either continuing as members of institutions or operating as members in the same ways they did prior to their wrongdoings. Both inflict pains on wrongdoers. For some, such as those who must accept less lucrative employment, the pain is physical in that it requires them to work harder in order to satisfy their needs and wants. For others, the pain is psychological in that it requires them to cope with involuntary changes to

their lifestyles. NGIPs also take from wrongdoers institutional goods such as titles, authority, power, and incomes. Finally, NGIPs condemn wrongdoers by announcing that the institutions that impose them disapprove of, or acknowledge the public's disapproval of, the wrongdoers' behavior.

## Function Theories

[12.37]

Contributors point to disparate functions to argue that governmental punishment satisfies FC. Some argue that punishment serves the rehabilitative function of providing wrongdoers with incentives to begin choosing right over wrong, thereby beginning to reform their characters.<sup>26</sup> Aristotle argues that society should help persons choose the virtues over the vices in part by punishing those who choose the latter. He writes, "Legislators should urge people toward virtue and exhort them to aim at what is fine, . . . but should impose corrective treatments and penalties on anyone who disobeys or lacks the right nature."<sup>27</sup>

[12.38]

Many doubt the efficacy of attempts to rehabilitate wrongdoers. These doubts stem, in large part, from high recidivism rates. A study that followed over 400,000 former prisoners in the United States from their release in 2005 until 2010 found that 56.7 percent were arrested again within one year, 67.8 percent within three years, and 76.6 percent within five years.<sup>28</sup> Faced with such depressing statistics regarding changes in punished wrongdoers' future behavior, many believe that rehabilitation cannot be punishment's justifying function.

[12.39]

This leads some to argue that punishment's function is to deter persons from committing wrongs. Punishment is society's tool to motivate citizens to follow its rules. General obedience to the rules allows persons with differing interests to live together and cooperate in ways that help them promote their interests better than they can individually. This account is associated with utilitarianism because, in Bentham's language, punishment is the evil that prevents the greater evil of the violation of the rules.<sup>29</sup>

[12.40]

The same recidivism statistics that cast doubt on rehabilitation lead many to doubt the efficacy of punishment as a deterrent. Others, such as Immanuel Kant, reject deterrence accounts because they oppose using persons, even wrongdoers, merely as means to achieve desired outcomes. Kant writes, "Punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society."<sup>30</sup> Imposing punishment solely to deter persons from committing wrongs treats the wrongdoer merely as a means to achieve the desired outcome of a more stable society.

[12.41]

Those who reject deterrence accounts often turn to retribution.<sup>31</sup> Punishment's purpose is to give wrongdoers what they deserve. Punishment must capture, but must not exceed, the wrongdoing. Kant writes, "Only the Law of retribution . . . can determine exactly the kind and degree of punishment."<sup>32</sup>

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**[12.43]** Many reject retributivist accounts because they believe that either it is too difficult to determine what a wrongdoer deserves or retribution merely is revenge in disguise.<sup>33</sup> Others reject retributivist accounts for a reason that applies to all the preceding accounts. Because they hold that no single purpose, by itself, captures punishment's function, they argue for some hybrid of the preceding accounts, most often a hybrid of deterrence and retribution.<sup>34</sup>

**[12.44]** Still others reject all of the preceding accounts.<sup>35</sup> Many of them argue that punishment's function is to allow society to express certain attitudes and judgments.<sup>36</sup> Through such expressions, society conveys morally necessary messages to wrongdoers. Some see those messages as necessary for the order and subsistence of society. Others see them as necessary in themselves, independent of any effects they might have on society's order and subsistence.<sup>37</sup>

**[12.45]** THE FUNCTION CONDITION AND  
NONGOVERNMENTAL INSTITUTIONS

**[12.46]** Regarding governmental punishment, the competing accounts of punishment's function all establish the same requirement. Each requires government, through its punishment system, to pursue a specified, morally justified goal. Because that goal differs across the competing accounts, and because I offer no argument favoring one account over the others, I use the term "justice" to refer to the goal that the correct account, whichever it is, identifies. Using that terminology, FC requires government to pursue justice, punishment's function as the correct account conceives it, through its punishment system.

**[12.47]** Some are skeptical of government's ability, either in theory or in practice, to satisfy FC.<sup>38</sup> Because they question whether government is capable of pursuing justice through a punishment system, they argue that society should abandon punishment, either entirely or in part, and pursue alternative ways to rectify wrongs. The skeptics' concerns are noteworthy, and attempts to demonstrate that governmental punishment can satisfy FC should respond to those concerns.<sup>39</sup> This section, however, is not one of those attempts as justifying governmental punishment is not among this chapter's goals. This section, instead, argues for a skepticism, similar to the described skepticism regarding government's ability, about nongovernmental institutions' abilities to pursue justice through NGIPs. In order to satisfy FC, an institution must be the kind of entity that is capable of pursuing justice through imposing punishment. Whether or not government is the kind of entity that is so capable, nongovernmental institutions are not.

## Opponents' Plausible Position

[12.48]

No doubt, many reject the preceding claim. Similarly to individuals, they might reason, quite plausibly, that nongovernmental institutions are capable of pursuing justice. Like individuals, nongovernmental institutions engage in many activities to which morality often applies such as setting goals, establishing policies, making decisions, and acting in the world. Although many of the possible activities do not involve morality, many do. Among the latter, some are moral and some are immoral. Like individuals, institutions pursue justice by choosing the moral over the immoral. If institutions choose the immoral instead, again like individuals, they pursue injustice.

[12.49]

Our ability to evaluate morally institutions, opponents' reasoning might continue, depends on acknowledging that institutions are capable of pursuing justice by choosing the moral over the immoral. Like individuals, when institutions consistently so choose, we should evaluate those institutions positively and classify them as just or moral institutions. If institutions instead consistently choose the immoral, again like individuals, we should evaluate those institutions negatively and classify them as unjust or immoral institutions.

[12.50]

Such reasoning is plausible because opponents can use countless examples to support it. Suppose Helpful Industries, Inc., manufactures a product that, rather than being a mere luxury, helps society's members meet their basic needs. Unfortunately, Helpful's manufacturing process produces byproducts that harm the environment. Given the current state of science and technology, there is no extant way to manufacture the product without also producing the byproducts. Helpful, however, can choose from multiple methods for releasing the byproducts into the environment, all of which satisfy applicable laws. Those methods vary both in cost and in the harm they cause the environment.

[12.51]

Surely, opponents might reason plausibly, Helpful can, and should, analyze the various methods' relative costs and benefits to the corporation's stakeholders, including the differing harms they cause the environment. Moreover, Helpful can, and should, use that analysis to determine which method constitutes the moral means for releasing the byproducts. If Helpful chooses the moral means, then the corporation pursues justice. If Helpful chooses otherwise, the corporation pursues injustice. This demonstrates that Helpful is the kind of entity that is capable of choosing whether or not to pursue justice.

[12.52]

Suppose Better World is a professional organization of humanities professors that has a strong revenue stream from its members' dues and various parties' donations. Better World has a clear mission statement, and its bylaws grant the organization's leadership broad authority regarding the use of its

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funds. The leadership devotes a specified percentage of those funds, as applicable laws allow, to lobbying for legislative proposals the leaders support.

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Better World can, and should, choose the moral over the immoral in its lobbying efforts. Legislative agendas vary in their connections to Better World's mission and their potential benefits and harms to society and the surrounding world. Better World can, and should, choose against lobbying for legislation that is unconnected to the organization's mission. The organization can, and should, choose against lobbying for bad legislation that would impede social progress or cause unnecessary harm. Better World chooses appropriately when it lobbies for legislation that accords with its mission and promotes social, and other types of, progress.

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For an example of lobbying Better World should avoid, imagine the organization, because its president's family operates a fishing company, considers supporting legislation that gives fishing boats greater freedom to use a type of net that, although extremely effective at catching tuna, catches and kills dolphins and sea turtles. For an example of lobbying that would be appropriate, imagine that Better World considers supporting legislation that reasonably attempts to broaden societal interest in, and promote greater diversity among those active in, the humanities. Because Better World is capable of forgoing the former and opting for the latter, it is the kind of entity that is capable of choosing whether or not to pursue justice.

[12.56]

Idyllic University's mission statement includes the claim that the institution seeks to better the community of which Idyllic is a part. Idyllic's leadership interprets this to mean that, in addition to the societal contributions it makes through providing education, Idyllic should engage its members in community service. To that end, Idyllic established a center that identifies service opportunities for which it recruits and organizes student, faculty, staff, and administrator participation.

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Idyllic can, and should, choose the moral over the immoral when it identifies and promotes service projects. Possible projects are more or less tied to Idyllic's broader educational goals, and the projects are more or less burdensome to participants. Idyllic chooses the immoral when it promotes projects that are unconnected to Idyllic's educational mission or are unduly burdensome to participants. Idyllic chooses the moral when it promotes projects that further its educational mission and make reasonable demands of participants. Because Idyllic is capable of forgoing the former and opting for the latter, it is the kind of entity that is capable of choosing whether or not to pursue justice.

[12.58]

Big League Team is a popular major professional sports franchise. Because it is the only such franchise in a geographical region that, overall, is struggling economically, Big League benefits the region in multiple ways. It employs a considerable number of people, both within the franchise's organizational structure and within the team's stadium during games. Many fans

travel from outside the region to attend Big League's games. Those fans spend money in hotels, restaurants, bars, and other venues. Many also take advantage of the region's other tourism opportunities, thereby spending even more money in the region. Because it has such positive effects on the region's economy, Big League wields considerable power in the region.

Big League can, and should, choose the moral over the immoral when it wields that power. Because of its economic benefits, Big League likely can extract from political leaders concessions such as tax abatements, public funding for stadium construction or renovation, and exemptions from regional and local regulations and ordinances. The various concessions Big League might seek are more or less justified morally depending on their roles in the team's economic contribution to the region.

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If a concession is a mere indulgence that does not further Big League's economic contribution, the team chooses the immoral by seeking it. If the concession furthers Big League's economic contribution in a manner that outweighs the concession's cost to the region, the team chooses the moral by seeking it. For the former, imagine that Big League's current stadium is relatively new, still of appropriate size, and fans remain quite fond of it. Big League's ownership, nevertheless, seeks public funding for the construction of a new stadium because it is envious of elaborate stadia other teams have built in recent years. For the latter, imagine that Big League asks the city to suspend an archaic nighttime noise ordinance so that it can bring music concerts to its stadium that would increase the team's benefits to the region's economy. Because Big League is capable of forgoing the former and opting for the latter, it is the kind of entity that is capable of choosing whether or not to pursue justice.

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The preceding examples involve a range of nongovernmental institutions. Each demonstrates that the institution in question is capable of choosing between moral and immoral activities. This means that each is capable of choosing whether or not to pursue justice. There is no reason to think we cannot construct similar examples for all, or, at least, almost all, other nongovernmental institutions. Moreover, there is no reason to think that nongovernmental institutions' abilities to choose the moral over the immoral excludes those institutions' decisions about punishing members for outside wrongs. Thus, opponents might conclude that nongovernmental institutions are capable of pursuing justice through imposing NGIPs.

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### **Moral Agency/Personhood**

[12.62]

The described reasoning likely suggests to readers the debate concerning whether collectives, various institutions, and other groups of persons are moral agents and/or moral persons.<sup>40</sup> Most readers likely know that the Supreme Court of the United States recognizes corporations as legal persons

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entitled to many of the legal rights the Constitution of the United States affords individuals.<sup>41</sup> The debate in philosophy literature, however, takes the matter beyond legal rights. It asks whether, when we subject them to moral assessment, it is proper to attribute institutions' and groups' activities to the collective entities themselves or only to the individuals, or some subset of the individuals, who constitute the collectives. This requires us to determine whether, when we praise or blame collectives' activities, we actually should praise or blame the entities themselves or only the individuals who direct and/or carry out the collectives' activities.<sup>42</sup>

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Although taking a position on the debate is necessary in order to draw conclusions about some moral issues concerning institutions, this is not one of those issues. Opponents need not argue for the truth of one side of the debate over the other. Opponents' principal views are

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1. institutions are capable of choosing the moral over the immoral; and,

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2. we should evaluate morally institutions depending on how they choose.

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Both positions are consistent with either side of the debate. The phrases "institutions are capable" and "evaluate institutions negatively" can refer either to the institutions themselves or to those individuals who direct and/or carry out the institutions' activities. If opponents intend the former, they view institutions themselves as moral agents and/or moral persons capable of pursuing justice. We rightly judge negatively those entities when they do not pursue justice. If opponents intend the latter, they view individuals who direct and/or carry out institutions' activities as moral agents and/or moral persons capable of directing institutions' activities toward justice. We rightly judge negatively those individuals when they do not direct institutions' activities toward justice.

[12.68]

## DEFENDING MY POSITION

[12.69]

Although opponents' reasoning is plausible and enticing, it is misdirected. The reasoning does not address the actual meaning of my claim that nongovernmental institutions are not the kinds of entities that are capable of pursuing justice through NGIPs. I do not deny opponents' view that institutions, either as entities or as the individuals who direct and/or carry out institutions' activities, are capable of choosing the moral over the immoral. I do not deny opponents' view that we should classify institutions as just/moral or unjust/immoral depending on how they choose. My position, instead, is that nongovernmental institutions are not capable of doing what FC



requires of institutions that impose punishment. Opponents' reasoning, as I presented it, does not address FC's requirement.

FC does not merely require that institutions produce the right outcomes by choosing the moral over the immoral when they impose NGIPs. It requires that institutions pursue a specified goal, one that the correct account of punishment's function establishes, through imposing NGIPs. Pursuing that specified goal requires institutions to act from a particular motivation when they levy NGIPs. This, however, is something that nongovernmental institutions cannot do. The institutions' natures preclude them having, and acting from, that particular motivation.

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As is the case with opponents' reasoning, the preceding claim does not require taking a position on the moral agency/personhood debate. It accommodates whichever side is correct. If institutions are moral agents and/or moral persons, the claim is about the characteristics of institutions as entities. The claim is that those entities' inherent natures preclude them from having, and acting from, the particular motivation. If institutions are not moral agents and/or moral persons, the claim is that institutions' natures preclude individuals from having, and acting from, the particular motivation when they direct and/or carry out institutions' activities. The claim is not about individuals' inherent natures, but, rather, it is about the characteristics the institutional roles at issue require individuals to adopt.

[12.71]

FC's requirement that institutions have, and act from, a particular motivation is unique, or at least rare, among those things morality requires of institutions. Typically, morality requires institutions to act, or refrain from acting, in particular ways. Consequently, moral evaluation of institutions typically consists of assessing the things institutions do or refrain from doing. For FC, however, doing or refraining is only part of the story. FC also requires that doing or refraining come from the right motivation. The right motivation is whatever the correct account of FC identifies. Thus, evaluating morally NGIPs is not merely a matter of assessing the particular NGIPs various institutions choose to levy or not levy, but, rather, it also involves assessing why those institutions so choose.

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The examples presented in support of opponents' reasoning demonstrate what morality typically requires of institutions. Each example involves an institution choosing or not choosing the right outcome, and each involves evaluating morally that institution by assessing its choice. What matters is whether the institution produces the outcome that morality requires. The institution's motivation for doing so does not affect our evaluation. We expect institutions to act morally, not that they do so for what we deem to be noble or praiseworthy reasons. This is supported by the fact that we often make practical arguments for why institutions should act morally, such as when we try to demonstrate to corporations that ethical activity is more likely to enhance their long-term profits than is unethical activity.

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**[12.74]** Consider the examples in turn. What matters is that Helpful Industries use the moral means for releasing into the environment the byproducts from its production process. Helpful's motivation for doing so need not be noble or praiseworthy. We do not deem Helpful unjust/immoral if it uses the moral means because it fears the negative publicity that would result from using an immoral means. We simply want, and expect, Helpful to do the right thing.

**[12.75]** What matters is whether Better World lobbies only for good legislation that is connected to its mission. It does not matter, when evaluating Better World, if the organization actually would prefer to lobby for legislation unconnected to its mission, but chooses not to do so only from the fear that membership dues and donations will decline if it does so. We still are satisfied that Better World does the right thing.

**[12.76]** Suppose Idyllic University actually does not care whether a given service project furthers its educational mission, nor does it care how much of a burden the project is for participants. Idyllic, nevertheless, chooses only service projects that further its educational mission and make reasonable demands of participants because it fears enrollments will decline if it does not do so. Although there is nothing noble or praiseworthy about that motivation, we do not deem Idyllic unjust/immoral because of it.

**[12.77]** If the Big League example were actual, the real reason for the team asking the city to suspend the noise ordinance likely would be the revenue increases the team expects from having music concerts in its stadium. When we evaluate the matter, we do not require, in order to evaluate Big League positively, that the proposal does nothing for Big League. If the proposal actually benefits the region's economy, we evaluate positively Big League even though the team's reason for making the proposal is self-interested.

**[12.78]** This reasoning does not carry over to persons when they choose and act for themselves rather than for institutions. It is common and reasonable to judge persons in part by why they choose and act as they do. We frequently judge negatively, and are justified in doing so, a person who does the right thing for the wrong reason. Although we are satisfied to some degree if Mixon refrains from further acts of violence, the level of our satisfaction is determined by why he refrains. If he refrains only because he is afraid of being denied an opportunity to play in the NFL if he again acts violently, then our satisfaction is rather moderate. If he refrains because he realizes that violence is wrong and he wants to act rightly, then our satisfaction is more robust. This is because we believe correctly that persons not only should do the right things, but, also, they should do those things for the right reasons.<sup>43</sup>

**[12.79]** The reasoning suggests that there is a relevant difference between institutions and persons. The possible motivations institutions, either as entities or as the individuals who direct and/or carry out the institutions' activities, are capable of having and acting from are limited in a way that the corresponding possible motivations for persons choosing and acting as individuals are not.

The former are limited by the reasons, a matter that varies across institutions, for which persons establish the institutions. They cannot include any motivation that is at odds with those reasons. There is no such limitation on the latter. The possible motivations are as broad as are the persons' capacities to recognize, and choose from, the innumerable conceptions of the good and their accompanying motivations. Although those capacities are not unbounded, because both logical possibilities and practical matters, such as legal restraints and physical abilities, constrain them, there is no limitation that corresponds to the limitation on an institution's motivations that its reasons for existing establish. Within the described bounds, persons can adopt any conception of the good and its accompanying motivations.

FC requires of institutions a particular motivation for levying punishment because that motivation gives punishment its moral justification. The motivation is the good reason that justifies imposing punishment's burdens. Imposing those burdens, as punishment, for any other reason is unjustified.<sup>44</sup> This is true even if, in given cases, the imposed burdens are the same as those that are justified by punishment's function. Imposing the right punishment for the wrong reason is unjustified.

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The particular motivation that FC requires is not among the possible motivations nongovernmental institutions at issue can have, and from which those institutions can act. That motivation is excluded by the reasons for which persons establish the institutions. Although the reasons persons establish particular nongovernmental institutions vary widely, those reasons exclude the motivation FC requires, no matter which account of punishment's function is correct.

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The various types of nongovernmental institutions mentioned or examined thus far demonstrate the wide range of those reasons. Some are corporations established to raise capital for the purpose of producing profits. Some are professional organizations established to promote members' interests in given facets of life. Some are universities established to deliver given conceptions of education. Some are sports leagues or teams established to advance a game and create wealth for their owners. The types of nongovernmental institutions, and persons' varying reasons for establishing them, are innumerable.

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All those varying reasons, however, preclude nongovernmental institutions from having, and acting from, the particular motivation FC requires. When those institutions choose and act, assuming they are not corrupt, they do so in order to advance the reasons for which persons established them. This is no less true of punishment than it is of other types of decisions and acts. Corporations levy NGIPs because they believe doing so helps them maximize profits. Professional organizations levy NGIPs because they believe doing so helps them promote members' interests. Universities levy NGIPs because they believe doing so helps them deliver their conceptions of

[12.83]

education. Sports leagues and teams levy NGIPs because they believe doing so helps them advance their games and create wealth for their owners. For all of those institutions, the motivations for levying NGIPs cannot be rehabilitation, deterrence, retribution, expression of attitudes and judgments, or some hybrid of the preceding. The motivations, instead, must be furthering the institutions' reasons for existing.

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This is not to criticize nongovernmental institutions for choosing and acting in ways that the reasons for which persons established those institutions determine. Not to so choose and act, in fact, is a kind of corruption, or at least a kind of failure, by the institutions. The purpose, instead, is to acknowledge a fact about NGIPs that advocates either do not recognize or do not take seriously enough. Like all other activities in which they engage, institutions' motivations for imposing NGIPs are a function of the reasons for which persons established the institutions. Except in the possible case of an institution established to promote society's pursuit of punishment's correct function, those reasons have nothing to do with the motivation FC requires.

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To bring the argument back to the opening case, those who criticized Goodell for imposing on Rice what they believed to be an insufficient punishment missed the crucial point. No matter the particular NGIP Goodell imposes in a given case, that NGIP is unjustified morally. His motivation for imposing any NGIP is not the particular motivation FC requires. Like all other activities he directs in his NFL commissioner role, his motivation for imposing any NGIP is to advance the game and create wealth for owners. That motivation is subject to all sorts of influences, some of which are extremely troubling when they bear on imposing punishment.

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The public pressure to which Goodell yielded after the initial NGIP he imposed on Rice demonstrates the point. Although noble sentiments may have generated the public pressure he received, such public pressure in any given case need not have noble roots. Public pressure can be motivated by troubling sentiments, such as racism and jealousy, just as easily as it can be motivated by noble sentiments. Thus, rather than devote their efforts to demanding Goodell impose a more severe punishment than the one he imposed, those who believe Rice's wrong was not redressed should devote their efforts to searching for other ways to respond to the types of wrongs about which they rightly are troubled.

[12.87]

## CONCLUSION

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The position for which I have argued is reminiscent of Michael Blake's position concerning the criminal tribunal the United Nations established in 1993 to prosecute atrocities in the former Yugoslavia. Blake writes, "Most

thoughtful persons, faced with . . . images of concentration camps and mass graves . . . , will respond with a desire to do *something*—and the tribunal, whatever its problems, seems like a start. It seems . . . almost perverse to argue against . . . the tribunal.”<sup>45</sup> Blake, nevertheless, writes in opposition to that reasoning, “I sympathize with this . . . , but . . . it is fundamentally mistaken. It is wrong to focus on easy solutions which comfort the conscience in preference to what actually comports with our considered moral judgments.”<sup>46</sup> He concludes, “The international community . . . is unable to legitimately act as agent of legal punishment, and the . . . tribunal it has set up is . . . morally illegitimate.”<sup>47</sup>

As disturbing as are many of the wrongs that produce advocates’ desires for NGIPs, there is no equivalency between them and the atrocities that caused the United Nations to establish the tribunal. There are interesting parallels, however, between my position on NGIPs and Blake’s position on the tribunal. We both oppose practices, supported by people with whom we sympathize, that are intended to respond to wrongs we want eradicated. Similarly to Blake sympathizing with those who are horrified by, and desire to respond to, the atrocities in the former Yugoslavia, I sympathize with advocates who are exasperated by the wrongs, and government’s adjudication of those wrongs, that produce advocates’ desires for NGIPs. Not only do I understand why advocates believe NGIPs are necessary in order to punish appropriately many wrongdoers, I also understand why advocates might find determining whether NGIPs are justified morally a small matter compared to the wrongs that produce their desires for NGIPs. Like Blake, however, I hold that we should not allow such exasperation to lead us. Advocates’ desires for NGIPs, though understandable, ask us to redress the wrongs at issue through a practice that is unjustified morally. We should resist those desires and search for morally justified ways to redress the wrongs that produce advocates’ desires.

[12.89]

## NOTES

[12.90]

1. The reference to the United States does not imply that such calls are absent from other countries. I suspect that they are frequent in most, if not all, other countries. I refer to the United States merely because its culture is the one with which I am most familiar.

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2. Phrases such as “outside those institutions” refer to matters that involve neither institutions’ physical confines nor institutions’ activities beyond those confines. Thus, neither my acts on campus nor those at off-campus events where I represent my university are outside my institution.

[12n2]

3. This chapter does not concern punishments for wrongdoings within institutions such as sports leagues punishing players who violate their rules prohibiting the use of performance-enhancing drugs and corporations punishing employees who violate their expense account policies.

[12n3]

4. The video is available at <https://www.youtube.com/watch?v=-TAA87yvd-w>. For a timeline of the first seven months of the case, see CNN Staff, “Key Events in the Ray Rice Story,” *CNN.com*, September 16, 2014, <http://www.cnn.com/2014/09/09/us/ray-rice-timeline/>.

[12n4]

[12n5] 5. For the facts of this case, as well as commentary on it and two similar cases, see Andrea Adelson, “We Shouldn’t Need to See Joe Mixon’s Assault Tape to Be Outraged,” *ESPN.com*, December 19, 2016, [http://www.espn.com/college-football/story/\\_/id/18300128/we-need-seen-oklahoma-sooners-running-back-joe-mixon-assault-tape](http://www.espn.com/college-football/story/_/id/18300128/we-need-seen-oklahoma-sooners-running-back-joe-mixon-assault-tape).

[12n6] 6. The Cincinnati Bengals selected Mixon during the second round of the draft on April 29, 2017.

[12n7] 7. Sarah Larimer, “The Case of the Veterinarian Who Shot a Cat with a Bow and Arrow, then Posed with Its Body,” *Washington Post*, October 19, 2016, [https://www.washingtonpost.com/news/animalia/wp/2016/10/19/the-case-of-the-veterinarian-who-shot-a-cat-with-a-bow-and-arrow-then-posed-with-its-body/?utm\\_term=.f8e871dea3c1](https://www.washingtonpost.com/news/animalia/wp/2016/10/19/the-case-of-the-veterinarian-who-shot-a-cat-with-a-bow-and-arrow-then-posed-with-its-body/?utm_term=.f8e871dea3c1).

[12n8] 8. Along with many other groups and individuals, the nonprofit cat advocacy group Alley Cat Allies urged the board to revoke Lindsey’s license. Alley Cat Allies, “Punishment for Cat-Killing Veterinarian in Texas Too Lenient, Says Alley Cat Allies,” *AlleyCat.org*, October 18, 2016, <https://www.alleycat.org/punishment-for-cat-killing-veterinarian-in-texas-too-lenient-says-alley-cat-allies/>.

[12n9] 9. For expositions and critical analyses of employment-at-will, see Joseph DesJardins, “Fairness and Employment-at-Will,” *Journal of Social Philosophy* 16 (1985): 31–38; Mark Harcourt, Maureen Hannay, and Helen Lam, “Distributive Justice, Employment-at-Will and Just-Cause Dismissal,” *Journal of Business Ethics* 115 (2013): 311–25; John J. McCall and Patricia H. Werhane, “Employment at Will and Employee Rights,” in *The Oxford Handbook of Business Ethics*, ed. George G. Brenkert and Tom L. Beauchamp (Oxford: Oxford University Press, 2010), 602–27; and Tara J. Radin and Patricia H. Werhane, “Employment-at-Will, Employee Rights, and Future Directions for Employment,” *Business Ethics Quarterly* 13 (2003): 113–30.

[12n10] 10. Although an arbitrator who heard Rice’s appeal of his indefinite suspension ruled in Rice’s favor, she did not question the legality of the CBA authorizing the NFL to levy NGIPs. She, instead, determined that Goodell violated the terms of the CBA’s authorization by levying an arbitrary second punishment for the same offense. She noted that Goodell would have been within his legal rights had he imposed the indefinite suspension at the outset. Ken Belson, “Ray Rice Wins Reinstatement to N.F.L. in Arbitration,” *New York Times*, November 28, 2014, [https://www.nytimes.com/2014/11/29/sports/football/ray-rice-suspension-overturned-in-arbitration.html?\\_r=0](https://www.nytimes.com/2014/11/29/sports/football/ray-rice-suspension-overturned-in-arbitration.html?_r=0). Although the arbitrator’s ruling lifted Rice’s suspension, no team offered him a contract.

[12n11] 11. National Football League and National Football League Players Association, *Collective Bargaining Agreement*, August 4, 2011, 204, <https://nflabor.files.wordpress.com/2010/01/collective-bargaining-agreement-2011-2020.pdf>.

[12n12] 12. *Ibid.*, 260. The CBA details the standard contract between players and teams on pp. 256–64.

[12n13] 13. I present this distinction because it is relevant to my arguments, not to suggest that it is NGIPs’ only significant conceptual matter.

[12n14] 14. The noun “advocates” refers to those who call for NGIPs.

[12n15] 15. I use “alleged” because I do not argue in this chapter for a position on whether governmental punishment, either generally or in specific cases, actually is insufficient. That proposition’s truth value does not bear on whether my arguments are sound.

[12n16] 16. In order to examine only possibly moral bases of advocates’ calls for NGIPs, I assume that advocates are not motivated by any such motivations. Readers, nevertheless, may wish to consider Brian Rosebury’s analysis of revenge. Although he accepts the position that revenge is immoral, he argues that the case for that position is not as straightforward as most believe. Brian Rosebury, “Respect for Just Revenge,” *Philosophy and Phenomenological Research* 77 (2008): 451–71 and “Private Revenge and Its Relation to Punishment,” *Utilitas* 21 (2009): 1–21.

[12n17] 17. Reasonable advocates surely recognize that law places limits on this independent authority. Nongovernmental institutions, for example, cannot impose on their members the death penalty.

[12n18] 18. Not only does using proxies not avoid existing moral questions, doing so often produces new questions or illuminates additional aspects of existing questions. The advent of govern-

## Chapter 12

ments contracting private companies to administer prisons is a notable example. See Alon Harel, "Why Only the State May Inflict Criminal Sanctions: The Case Against Privately Inflicted Sanctions," *Legal Theory* 14 (2008): 113–33; Richard L. Lippke, "Thinking about Private Prisons," *Criminal Justice Ethics* 16 (1997): 26–38; Charles H. Logan, *Private Prisons: Cons and Pros* (Oxford: Oxford University Press, 1990); Douglas C. McDonald, "Public Imprisonment by Private Means: The Re-Emergence of Private Prisons and Jails in the United States, the United Kingdom, and Australia," *British Journal of Criminology* 34 (1994): 29–48; Yoav Peled and Doron Navot, "Private Incarceration—Towards a Philosophical Critique," *Constellations* 19 (2012): 216–34; and David Shichor, *Punishment for Profit: Private Prisons/Public Concerns* (Thousand Oaks, CA: Sage Publications, 1995).

19. Thomas Hobbes, *Leviathan*, ed. and intro. Edwin Curley (Indianapolis, IN: Hackett Publishing Company, 1994 [1651]), 203. [12n19]

20. Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (The Library of Economics and Liberty, 1789), chap. XIII.1.II, <http://www.econlib.org/library/Bentham/bnthPML13.html#Chapter%20XIII,%20Cases%20Unmeet%20for%20Punishment>. [12n20]

21. S. I. Benn, "An Approach to the Problems of Punishment," *Philosophy* 33 (1958): 325–41. [12n21]

22. H. L. A. Hart, "Prolegomenon to the Principles of Punishment," *Proceedings of the Aristotelian Society* 60 (1959–1960): 1–26. [12n22]

23. Antony Flew, "The Justification of Punishment," *Philosophy* 29 (1954): 291–307. [12n23]

24. Joel Feinberg, "The Expressive Function of Punishment," *Monist* 49 (1965): 397–98. [12n24]

25. *Ibid.*, 400. [12n25]

26. For a treatment of the rehabilitative function, see Richard C. Prust, "How to Treat a Criminal," *Public Affairs Quarterly* 2 (1988): 33–50. [12n26]

27. Aristotle, *Nicomachean Ethics*, trans., intro., notes, and glossary Terence Irwin, second edition (Indianapolis, IN: Hackett Publishing Company, 2000 [ca. 350 BCE]), 293. [12n27]

28. National Institute of Justice, "Recidivism," *NIJ.gov*, <https://www.nij.gov/topics/corrections/recidivism/Pages/welcome.aspx>. [12n28]

29. Treatments of the deterrence function include Anthony Ellis, "A Deterrence Theory of Punishment," *Philosophical Quarterly* 53 (2003): 337–51 and "Punishment as Deterrence: Reply to Sprague," *Philosophical Quarterly* 55 (2005): 98–101; Michael Otsuka, "Quinn on Punishment and Using Persons as Means," *Law and Philosophy* 15 (1996): 201–208; Philip Pettit, "Republican Theory and Criminal Punishment," *Utilitas* 9 (1997): 59–79; Warren Quinn, "The Right to Threaten and the Right to Punish," *Philosophy & Public Affairs* 14 (1985): 327–73; and Michael Sprague, "Who May Carry Out Protective Deterrence?" *Philosophical Quarterly* 54 (2004): 445–47. [12n29]

30. Immanuel Kant, *The Metaphysical Elements of Justice*, trans. and intro. John Ladd (New York: Macmillan Publishing Company, 1965 [1797]), 100. [12n30]

31. Treatments of the retributivist function include J. Angelo Corlett, *Responsibility and Punishment* (Dordrecht, The Netherlands: Kluwer Academic Publishers, 2001); Michael Da Silva, "Public Reason and the Need to Identify State-Relevant Desert," *Criminal Justice Ethics* 33 (2014): 128–54; Michael Davis, "Punishment as Language: Misleading Analogy for Desert Theorists," *Law and Philosophy* 10 (1991): 311–22; Anthony Ellis, "Punishment and the Principle of Fair Play," *Utilitas* 9 (1997): 81–97; Thomas E. Hill Jr., "Punishment, Conscience, and Moral Worth," *Southern Journal of Philosophy* 36 (1997): 51–71; David A. Hoekema, "The Right to Punish and the Right to Be Punished," in *John Rawls' Theory of Social Justice*, ed. H. Gene Blocker (Athens: Ohio University Press, 1980), 239–69; Stephen Kershnar, "Mercy, Retributivism, and Harsh Punishment," *International Journal of Applied Philosophy* 14 (2000): 209–24 and "Respect for Persons and the Harsh Punishment of Criminals," *International Journal of Applied Philosophy* 18 (2004): 103–21; Richard L. Lippke, "Retributive Parsimony," *Res Publica* 15 (2009): 377–95; Michael S. Moore, *Placing Blame: A General Theory of the Criminal Law* (Oxford: Clarendon Press, 1997); Herbert Morris, "Persons and Punishment," *Monist* 52 (1968): 475–501; Jeffrie G. Murphy, "Marxism and Retribution," *Philosophy & Public Affairs* 2 (1973): 217–43; Brian Rosebury, "Moore's Moral Facts and the Gap in the Retributive Theory," *Criminal Law and Philosophy* 5 (2011): 361–76; Thomas M. Scanlon, [12n31]



“Giving Desert Its Due,” *Philosophical Explorations* 16 (2013): 101–16; and George Schedler, “On Relishing the Guilty,” *Ethics* 86 (1976): 256–60.

[12n32]  
[12n33]

32. Kant, *The Metaphysical Elements*, 101.

33. R. F. Stalley responds to the former worry by arguing that Adam Smith provides a retributivist account that determines proper punishment through an impartial spectator’s judgments. R. F. Stalley, “Adam Smith and the Theory of Punishment,” *Journal of Scottish Philosophy* 10 (2012): 69–89. Rosebury provides a version of the latter worry by arguing that one cannot distinguish state retribution from private revenge without appealing to nonretributivist considerations. Rosebury, “Private Revenge.”

[12n34]

34. For a hybrid account, see Don E. Scheid, “Constructing a Theory of Punishment, Desert, and the Distribution of Punishments,” *Canadian Journal of Law and Jurisprudence* 10 (1997): 441–506. Paul Russell attributes a hybrid account to David Hume. Paul Russell, “Hume on Responsibility and Punishment,” *Canadian Journal of Philosophy* 20 (1990): 539–63. Thom Brooks attributes a hybrid account to Adam Smith. Thom Brooks, “Punishment and Moral Sentiments,” *Review of Metaphysics* 66 (2012): 281–93. On a related matter, Donald A. Dripps argues that, because persons in liberal democracies hold differing moral theories of punishment, criminal law in such societies should not reflect a single theory of punishment. Donald A. Dripps, “The Priority of Politics and Procedure Over Perfectionism in Penal Law, or, Blackmail in Perspective,” *Criminal Law and Philosophy* 3 (2009): 247–60.

[12n35]

35. Nicola Lacey argues that deterrence and retributivist accounts are flawed because they are rooted in liberalism, and she offers a communitarian alternative to those accounts. Nicola Lacey, *State Punishment: Political Principles and Community Values* (London: Routledge, 1988).

[12n36]

36. Treatments of the expressive function include Davis, “Punishment as Language”; Feinberg, “The Expressive Function”; Jean Hampton, “The Moral Education Theory of Punishment,” *Philosophy & Public Affairs* 13 (1984): 208–38; Igor Primoratz, “Punishment as Language,” *Philosophy* 64 (1989): 187–205; A. J. Skillen, “How to Say Things with Walls,” *Philosophy* 55 (1980): 509–23; and Alan Strudler, “Mass Torts and Moral Principles,” *Law and Philosophy* 11 (1992): 297–330. Hampton adopted an expressive account in the cited article but later adopted a hybrid account of expressive, deterrence, and retributive functions. Jean Hampton, “Righting Wrongs: The Goal of Retribution,” in *The Intrinsic Worth of Persons: Contractarianism in Moral and Political Philosophy*, ed. Daniel Farnham (Cambridge: Cambridge University Press, 2007), 108–50.

[12n37]  
[12n38]

37. Primoratz, “Punishment as Language” examines differing views of the messages.

38. See Randy E. Barnett, “Restitution: A New Paradigm of Criminal Justice,” *Ethics* 87 (1977): 279–301 and “Pursuing Justice in a Free Society: Part One—Power vs. Liberty,” *Criminal Justice Ethics* 4 (1985): 50–72; David Boonin, *The Problem of Punishment* (Cambridge: Cambridge University Press, 2008); and Nathan Hanna, “Liberalism and the General Justifiability of Punishment,” *Philosophical Studies* 145 (2009): 325–49 and “It’s Only Natural: Legal Punishment and the Natural Right to Punish,” *Social Theory and Practice* 38 (2012): 598–616.

[12n39]

39. As do many of the previously cited treatments of punishment’s function, the following respond, either explicitly or implicitly, to skeptics’ concerns: Daniel Farrell, “Punishment Without the State,” *Noûs* 22 (1988): 437–53; Stephen Kershnar, “The Forfeiture Theory of Punishment: Surviving Boonin’s Objections,” *Public Affairs Quarterly* 24 (2010): 319–34 and “Does Necessity Justify Punishment? Assessing the Main Threat to David Boonin’s Restitution Theory,” *Public Affairs Quarterly* 26 (2012): 71–79; A. John Simmons, “Locke and the Right to Punish,” *Philosophy & Public Affairs* 20 (1991): 311–49; and Christopher Heath Wellman, “Rights and State Punishment,” *Journal of Philosophy* 106 (2009): 419–39.

[12n40]

40. I use “and/or” because some attribute to certain collectives both moral agency and moral personhood, while others attribute to certain collectives only one of the concepts.

[12n41]

41. The Court uses “corporations” broadly so that it captures many types of collectives, not just those businesses that general use of the term captures. For a history of the Court’s decisions on corporate personhood, see Ciara Torres-Spelliscy, “The History of Corporate Personhood,” *Brennan Center for Justice at New York University School of Law*, April 7, 2014, <https://www.brennancenter.org/blog/hobby-lobby-argument>.

42. Among the innumerable contributions to the debate are David Copp, “The Collective Moral Autonomy Thesis,” *Journal of Social Philosophy* 38 (2007): 369–88; Thomas Donaldson, *Corporations & Morality* (Englewood Cliffs, NJ: Prentice-Hall, 1982), chap. 2; Peter A. French, “The Corporation as a Moral Person,” *American Philosophical Quarterly* 16 (1979): 207–15 and *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984); Kendy M. Hess, “Because They Can: The Basis for the Moral Obligations of (Certain) Collectives,” *Midwest Studies in Philosophy* 38 (2014): 203–21 and “The Free Will of Corporations (and Other Collectives),” *Philosophical Studies* 168 (2014): 241–60; Tracy Isaacs, *Moral Responsibility in Collective Contexts* (Oxford: Oxford University Press, 2011); Michael Keeley, “Organizations as Non-Persons,” *Journal of Value Inquiry* 15 (1981): 149–55; Larry May, *The Morality of Groups* (Notre Dame: University of Notre Dame Press, 1987); Seumas Miller, “Against the Collective Moral Autonomy Thesis,” *Journal of Social Philosophy* 38 (2007): 389–409; Jens David Ohlin, “The One or the Many,” *Criminal Law and Philosophy* 9 (2015): 285–99; David T. Ozar, “Do Corporations Have Moral Rights?” *Journal of Business Ethics* 4 (1985): 277–81; Amy J. Sepinwall, “Denying Corporate Rights and Punishing Corporate Wrongs,” *Business Ethics Quarterly* 25 (2015): 517–34; and Edmund Wall, “The Problem of Group Agency,” *Philosophical Forum* 31 (2000): 187–96.

[12n42]

43. The reasoning in this paragraph does not contradict chapter 2’s and chapter 5’s arguments concerning the liberty that moral liberalism affords mental states on which individuals do not act. The arguments in those chapters establish that we are not justified in controlling such mental states through moral judgment, while the reasoning here concerns our assessments of the characters of those who refrain from certain activities. Moral liberalism does not preclude us from having positive or negative assessments of individuals’ characters based on the reasons why they refrain from wrongdoing.

[12n43]

44. I indicate “as punishment” because, in given cases, institutions might be justified in imposing the burdens at issue for other reasons such as freedom of association.

[12n44]

45. Michael Blake, “International Criminal Adjudication and the Right to Punish,” *Public Affairs Quarterly* 11 (1997): 212–13.

[12n45]

46. *Ibid.*, 213.

[12n46]

47. *Ibid.*

[12n47]



*Part IV*

**Obligations and Undue Burdens**



## Chapter Thirteen

# General Arguments Regarding Obligations and Undue Burdens

**[13.0]** Moral liberalism recognizes many moral obligations that restrict individuals' liberty of external acts and, to a lesser degree, individuals' liberty of internal states. Many of those obligations are derived from the more general moral obligation not to create undue burdens for others. On the flipside, although even legitimate obligations are burdens to some degree or other, the obligations we ascribe to individuals, in order to be justified, can be neither unreasonable nor undue. Although arguments in some of the preceding chapters have made use of those points, this part of the book addresses more fully how the undue-burden concept applies to practical morality.<sup>1</sup> This chapter provides a brief refresher on chapter 2's explanation of the concept, and the remaining three chapters apply the concept to specific, practical issues.

### **[13.1]** UNDUE BURDENS AND AUTONOMY

**[13.2]** To be truly autonomous, individuals, to the extent possible, must be able to pursue their conceptions of the good life. Thus, *prima facie*, moral liberalism deems unjustified anything that restricts individuals' ability to pursue their conceptions. Moral liberalism restricts that ability, and, thus, individuals' autonomy, only when there is a reason that overrides the value of autonomy. The value of serial killers' victims' lives clearly override the value of the serial killers' autonomy, so there is a moral obligation against serial killing that restricts serial killers' liberty of external acts. Burdens that individuals do not deserve, however, or burdens that are unreasonable, are not reasons that override the value of individuals' autonomy. Such burdens preclude

individuals from pursuing their conceptions of the good life without producing something of value that is greater than the value of autonomy.

The most significant challenge about this idea is determining when a burden is undue. There is no formula by which we can make such determinations, but, rather, only examining the contexts in which burdens are imposed settles the matters. The principal consideration when examining contexts is whether the burdens in question legitimately are parts of the burdened parties' roles and activities in the contexts. This is why it is legitimate to ascribe to me a role model obligation with respect to my academic life.<sup>2</sup> The role of professor, a role that I adopted voluntarily, carries with it an understood role model status with respect to my academic life. Differing roles carry with them differing understood obligations, many of them role model obligations, many of them not.

[13.3]

### AN ILLUSTRATIVE CASE

[13.4]

A matter that currently is under much debate in the United States provides a good case study for the undue-burden concept. That matter is whether, because of the COVID-19 pandemic, individuals are obligated morally to wear masks when in public places such as shops and grocery stores. In chapter 9, I indicated that I wished, even before the governor of the state in which I live mandated it, that everyone would wear masks in such places. I also noted that my desire alone does not constitute a moral obligation for others. An examination of the pandemic context, however, demonstrates that others are so obligated.

[13.5]

There is no doubt that a mask requirement restricts individuals' autonomy. Individuals who, for whatever reasons, believe that wearing masks in public places is an impediment to pursuing their conceptions of the good life have their ability to pursue those conceptions impeded. That fact alone, however, does not preclude them from having a moral obligation to wear masks. The determining factor is whether there is a reason for the mask requirement that outweighs the value of autonomy that those individuals lose. I contend that there is such a reason.

[13.6]

Those who do not wear masks both extend the length of the pandemic and increase its scope. That produces several costs that society must bear such as increasing the pandemic's death toll, lengthening bans on elective, medical procedures, delaying the openings of various community places, and furthering the drag on the economy. Although those who do not wear masks bear at least some of those costs, others also bear the costs, frequently to a greater extent. Those who are at higher risk for the disease, such as the elderly, those with diabetes or heart disease, and the obese are among those others. Citizens at large, not just at-risk individuals, must bear the costs through conse-

[13.7]

quences such as losing loved ones, unemployment, tax increases to fund government bailouts of businesses and individuals, mental health issues caused by a sense of isolation, and higher rates of domestic violence.<sup>3</sup>

**[13.8]** How people come to bear the costs produced by those who do not wear masks in public places is an important contextual consideration when it comes to determining whether individuals are obligated morally to wear masks. Those who eschew masks bear at least some of the costs of their own behavior, but their own choices subject them to the burdens they bear. They choose to run the risks that produce the costs that constitute their own burdens. Those who wear masks, on the other hand, do not determine their own burdens. Their burdens are forced on them by those who choose not to wear masks. Others' risky behavior produces the costs that constitute mask-wearers' burdens.

**[13.9]** The burdens borne involuntarily by mask-wearers are undue because those burdens outweigh the value of the freedom to be in public places sans masks. The health and economic values garnered by wearing masks are considerable, while the value of being in public places sans masks are, or are close to, insignificant. The extent to which wearing masks impedes individuals' ability to pursue their conceptions of the good life is both minimal and temporary. Although I do not deny the possibility, it is hard to imagine conceptions of the good life that individuals cannot pursue while wearing masks in public places. Any that exist are thwarted only temporarily. Once the pandemic eases and the mask requirement is lifted, there no longer is an impediment to individuals pursuing conceptions of the good life that require not wearing masks in public places.

**[13.10]** If the context of the mask requirement were different, then the burden on those who do not wish to wear masks might be undue. Suppose that, rather than applying to indoor spaces, the requirement applied to outdoor spaces, such as hiking trails, where crowding is not a problem and physical distancing is easy to manage. If that were the case, the requirement would violate individuals' autonomy without producing anything of value. It, in fact, would come at a cost to society because it would discourage people from garnering the mental and physical benefits of being in, and exercising in, the outdoors. Forgoing those benefits produces health care and other social costs that affect us all.

**[13.11]** Like the preceding case, this part's remaining chapters address obligations that many ascribe, in specific contexts, to individuals or institutions. The chapters examine the contexts in order to determine whether the purported obligations are justified or constitute undue burdens on those to whom they are ascribed.

## Chapter 13

### NOTES

[13.12]

1. Chapter 10, for example, argues that many often are unjustified in ascribing to individuals role model obligations because the purported obligations actually are unreasonable burdens.

[13n1]

2. The qualifier “with respect to my academic life” is important. Voluntarily adopting the professor role does not automatically give me role model obligations with respect to other aspects of life. Only holding myself out as a role model in other areas of life produces role model obligations with respect to those areas. Chapter 10 provides my arguments for this position.

[13n2]

3. For insights regarding the pandemic’s possible effects on suicide rates, see Romeo Vitelli, “Are We Facing a Post-COVID-19 Suicide Epidemic?” *Psychology Today*, June 7, 2020, <https://www.psychologytoday.com/us/blog/media-spotlight/202006/are-we-facing-post-covid-19-suicide-epidemic>. For insights regarding the pandemic’s effects on domestic violence rates, see Maclen Stanley, “Why the Increase in Domestic Violence during COVID-19?” *Psychology Today*, May 9, 2020, <https://www.psychologytoday.com/us/blog/making-sense-chaos/202005/why-the-increase-in-domestic-violence-during-covid-19>.

[13n3]

## *Chapter Fourteen*

# **Social Media Users' Duty to Self-Censor**

**[14.0]** Moral liberalism restricts behavior more often than many might expect. Individuals frequently have moral obligations that override their liberty of external acts, including in aspects of life that are far from obvious. Though not the only source of such obligations, the general obligation not to create undue burdens for others frequently grounds those obligations. This chapter examines one aspect of life in which, perhaps surprisingly, a moral obligation, grounded by the more general obligation not to create undue burdens for others, restricts individuals' liberty.

**[14.1]** Social media has made it much easier, and much more common, for individuals to reveal personal matters about themselves. Such revelations often have negative consequences for social media users. The many examples include a teacher who was fired after posting that she should drown her students because she hated them, a teen who was fired after posting that her job was boring, a nurse who was fired after posting a photo of a patient, a doctor who was reprimanded after posting patient information, and airline employees who were fired after posting jokes about passengers and the conditions of airplanes.<sup>1</sup> Such negative consequences trigger frequent warnings that social media users should consider carefully what they reveal about themselves because their revelations might cause them various difficulties in the future. Although I generally concur with such practical warnings, I will set them aside and argue that social media users have a moral obligation to maintain their own privacy that is rooted in the duty to self-censor, which, in turn, is derived from the general obligation not to create undue burdens for others.

**[14.2]** In the past several decades, ethicists have devoted considerable attention to the right to privacy, but have been relatively silent on whether individuals

have a duty to self-censor that requires them to maintain their own privacy. This relative silence is not surprising because recent decades have provided ethicists with innumerable reasons to focus on the right to privacy. The exponential growth in the capabilities of governments, employers, educational institutions, health-care providers, and others to monitor and record individuals' activities has produced a corresponding growth in ethical issues involving individuals' privacy.

A notable exception to this relative silence on the duty to self-censor is Anita L. Allen.<sup>2</sup> Allen uses paternalism to argue that, in some circumstances, the state should require individuals to maintain their own privacy. She writes, "We should live some of our lives in private, some in public; and . . . there is often a role for government in requiring us to live this way. . . . [W]e . . . need government to help us preserve forms of privacy that are important to our lives but to which we may be unwisely indifferent."<sup>3</sup> Allen recognizes a duty to self-censor and, in some circumstances, is prepared to have the state enforce it for individuals' own good.

[14.3]

Allen aside, ethicists who address privacy and information technology usually pursue a variety of questions related to the right to privacy. Many ask whether it is ethical for various institutions, such as governments, employers, educational institutions, and libraries, to monitor and/or restrict what individuals do through information technology.<sup>4</sup> This includes monitoring individuals' emails, the websites they visit, and the items they post on social media, as well as using the findings of such monitoring to make employment, admission, legal, and other decisions about the monitored individuals.

[14.4]

Others address the collection and use of information.<sup>5</sup> They ask whether it is ethical for institutions, such as corporations, to gather information about individuals while those individuals use information technology, engage in data mining to produce information about groups or individuals, or disseminate or disclose items individuals place on the Internet.

[14.5]

Still others address the ethics of psychological and social science research into items available through information technology.<sup>6</sup> Often, their concern is whether those who place items on the Internet intend the items to be available for research purposes and, thus, consent to their use in studies.

[14.6]

By and large, the disparate issues concerning privacy and information technology ethicists address have an important feature in common. They focus on whether institutions' various uses of information technology violate individuals' right to privacy. This suggests that ethicists primarily are concerned with what institutions do with matters they discover about individuals on social media, not primarily with whether social media users have a duty to self-censor what they reveal about themselves.

[14.7]

Although I generally concur with those who argue that it is not ethically permissible for institutions to use matters they glean from social media for decision-making purposes, like Allen, I seek to demonstrate that social media

[14.8]



users ought to self-censor what they reveal about themselves. The directive to self-censor is not simply a practical recommendation. Those who violate it are not subject merely to the criticism that they are acting unwisely with respect to their own interests. They, instead, violate a moral duty and rightfully are subject to moral condemnation.

[14.9] Unlike Allen, however, my argument for that moral duty is not based on paternalism. It rests, instead, on the moral obligation not to create undue burdens for others. Individuals' failure to self-censor often creates undue burdens for others that those individuals are obligated morally not to create. In particular, social media revelations often create undue burdens for those, such as employers and university personnel, who are obligated morally to respect individuals' privacy in their decision-making processes regarding hiring, firing, admission, dismissal, and the like.

## [14.10] A PRELIMINARY MATTER

[14.11] I use the term "self-censor" differently from what many readers might expect. In recent years, political theorists, legal scholars, and others have made significant contributions to academic literature through their works on self-censorship.<sup>7</sup> Given the title of this chapter, readers familiar with those works might expect my usage of "self-censor" to coincide with the usage those authors employ. My usage, however, differs in an important way. This departure stems neither from a rejection of the authors' reasons for addressing self-censorship nor from a challenge to the authors' usage of the term "self-censorship." On the contrary, I am a sympathetic reader of those works that engage a pressing social and political issue. Moreover, given the authors' purpose, I do not quibble with how they use the term. The departure stems, instead, merely from the fact that my overall purpose differs from those authors' purpose. They address self-censorship as a question of political liberalism, while I address it as a question of moral liberalism.<sup>8</sup>

[14.12] Despite our differing purposes, some points concerning those authors' arguments are warranted. One such point is that, by referring to the authors' usage of the term, I do not suggest that all the authors define the term "self-censorship" identically. I recognize that the definition of the term often is a matter of dispute among them. Nevertheless, the matters the authors address, as well as their reasons for addressing them, coalesce. Essentially, the authors' purpose is to examine political concerns about self-censorship. No matter the definitions of "self-censorship" they hold, they all wish to determine whether self-censorship has a place in liberal democracies.

[14.13] That determination is a particularly pertinent issue for two reasons. First, self-censorship seemingly is antithetical to one of the most important tenets of liberal democracy: the special significance afforded freedom of expres-

sion. With that special significance in mind, the authors examine whether self-censorship has a corrosive effect on democracy by unduly restraining expression. Matthew Festenstein states well why the authors are concerned that self-censorship might have that corrosive effect. He writes, “Self-censorship seems to . . . [constrain] citizens’ ability to speak to each other, to speak truth to power and freely to express themselves. What gives rise to it are unacceptable and degrading relationships of power or influence.”<sup>9</sup>

Second, there often is a tension between the value of unfettered expression and other values such as security, equality, and inclusion. Because liberal democracies seek to promote such values, the authors examine whether there can be circumstances where those values override the value of freedom of expression, thereby justifying self-censorship. Such considerations lead Festenstein to conclude, “Our relation to self-censorship is (or should be) ambivalent, since the democratic values that underpin the criticism of self-censorship also suggest reasons it should be tolerated in some circumstances.”<sup>10</sup> Such considerations also are why at least some of the authors are motivated by the controversies and violence that followed the Danish newspaper *Jyllands-Posten* and the French magazine *Charlie Hebdo* publishing cartoons of the Prophet Muhammad. Those authors examine whether considerations such as security, equality, and inclusion support claims that the publications should have censored themselves and not published the cartoons.

As important as it is to determine whether self-censorship has a place in liberal democracies, attempting to do so is not this chapter’s goal. Despite invoking the duty to self-censor, this chapter is not an examination of the political concerns about self-censorship. Its purpose is both broader and more modest. It is broader because my usage of the term “self-censor” encompasses more of individuals’ lives than does the usage employed by authors who examine self-censorship’s political concerns. According to my usage, the question, “Does individual X have a duty to self-censor?,” applies to circumstances beyond those that spawn worries about whether self-censorship corrodes democracy by unduly restraining freedom of expression. This chapter’s purpose is more modest because, although the question applies to potentially-corrosive-of-democracy circumstances, I do not seek to answer the question regarding those circumstances. I, instead, seek only to answer the question in the narrowly defined context of social media users revealing personal matters about themselves.

Although we have differing purposes, there are some overlaps between how I use the term “self-censor” and how those who examine political concerns about self-censorship use it. Philip Cook and Conrad Heilmann distinguish two types of self-censorship. They write,

[14.17]

*Public self-censorship* refers to a range of individual reactions to a public censorship regime. . . . [I]ndividuals internalize some aspects of the public censor and then censor themselves. . . . [*P*]rivate self-censorship is the suppression by an agent of his or her own attitudes where a public censor is either absent or irrelevant. Private self-censorship is a process of regulation between what an individual regards as permissible to express publicly, and that which he or she wishes to express publicly.<sup>11</sup>

[14.18]

Although the question, “Does individual X have a duty to self-censor?” applies to both of Cook’s and Heilmann’s types, their private self-censorship captures the context of social media revelations about which I am concerned. My position that social media users have a duty to self-censor their revelations is not based on the idea that users are obligated to internalize the directives of some public censorship regime. It, instead, is based on the idea that moral liberalism obligates users to censor their revelations that, if not censored, impose undue burdens on others.

[14.19]

Despite the fact that Cook’s and Heilmann’s private self-censorship is the kind of self-censorship with which I am concerned, there are two reasons not to conclude that my usage of “self-censor” is identical to the usage employed by those who examine political concerns about self-censorship. First, my overall purpose departs from Cook’s and Heilmann’s. They present the concept of private self-censorship so that they can distinguish it from public self-censorship. They draw that distinction so they can demonstrate that only public self-censorship raises the political concerns at issue. They write, “The principles of free speech apply only to public self-censorship . . . [because] the intrapersonal conflicts that . . . characterize private self-censorship are not subsumable under normative notions of freedom of speech.”<sup>12</sup> This demonstrates that although Cook’s and Heilmann’s usage of “self-censor” overlaps with mine, they hold that the type of self-censorship that applies to this paper’s subject does not raise the potentially-corrosive-of-democracy issue that they and the other authors examine.

[14.20]

Second, some of the authors at issue hold that given their political concerns, cases captured by Cook’s and Heilmann’s private self-censorship actually are not cases of self-censorship at all. Festenstein writes,

[14.21]

The political conception of self-censorship . . . is constituted not only by non-performance of a speech act but also by non-performance underpinned by a certain kind of explanation, in terms of a problematic power or influence relationship. This account allows us to distinguish political self-censorship from other forms of expressive self-restraint, including prudential silence [and] ethical tact.<sup>13</sup>

[14.22]

Cases of private self-censorship lack the problematic relationships between self-censoring individuals and powerful or influential parties that are neces-

sary to qualify them as cases of political self-censorship that raise the potentially-corrosive-of-democracy issue. Thus, my usage of “self-censor” differs from Festenstein’s and like-minded authors’ usage.

The preceding considerations demonstrate two main points. First, my examination of whether social media users have a duty to self-censor departs from examinations of political self-censorship with which readers might be familiar. Second, my examination concerns a matter that falls under what Festenstein terms “expressive self-restraint.” Unlike him, I use the term “self-censor” in a broad manner that captures moral matters beyond what he terms “political self-censorship.” More precisely, I employ the term to address a particular moral duty’s application to a given context.

[14.23]

### THE TMI RESTRICTION

[14.24]

For the most part, ethicists who suggest that there is a duty to self-censor, as I conceive it, have in mind an uncontroversial sense of the duty. George G. Brenkert writes, “The person who . . . makes a practice of revealing his most intimate thoughts and feelings to unconcerned strangers may be condemned . . . for his refusal to treat such matters as private.”<sup>14</sup> Brenkert does not develop this idea, however, for two reasons. First, his primary purpose is not to examine the duty to self-censor, but, rather, is to demonstrate both that employees have a right to privacy and the extent of that right. Second, his motive for suggesting that there is a duty to self-censor is to demonstrate that privacy is a function of the relationship between the parties in question. There is no set of matters that are rightfully private in all contexts. Rightfully private matters vary among relationships according to what is necessary for the parties involved to perform their roles in the relationships.

[14.25]

Richard D. Mohr writes, “In all societies there are obligations flowing from customs and mores to keep some activities, possessions, thoughts and things out of the public eye.”<sup>15</sup> Although Mohr provides some examples of those obligations across cultures, like Brenkert, his purpose is not to examine the duty to self-censor. His purpose, instead, is to provide an argument that derives, from the duty to self-censor, the privacy right that insulates our sex lives from governmental interference. Because we are obligated to pursue our sexual activities in private, we have a corresponding right to privacy with respect to those activities. Mohr writes, “Across the range of actions for which there is an *obligation* to privacy there is generated from that very obligation in turn a *right* to privacy. For society cannot consistently claim that these activities must be carried out in private . . . and yet retain a claim to investigate such activities and so, to that extent, make it public behavior.”<sup>16</sup>

[14.26]

Laypersons also acknowledge an uncontroversial sense of the duty to self-censor. When we share with others personal matters that they believe we

[14.27]

should keep to ourselves, they often reply with the widely known refrain, “That’s too much information!” In fact, a simple reference to the TMI acronym quickly informs us that we have shared too much about ourselves. Like ethicists, laypersons recognize that the sharing of personal matters is not a “no-holds-barred” activity. Even in discussions among close friends, we expect a certain amount of self-censoring during our interactions. Many of us have that friend who is prone to taking a discussion one step too far by revealing some personal matter that the rest of us later wish we did not know.<sup>17</sup> When that happens, we wish the friend were more adept at self-censorship.

[14.29]

I call this uncontroversial sense of the duty to self-censor the “TMI restriction.” Strictly speaking, the restriction is part of the duty to self-censor in that it requires us to keep certain matters private. It is a special part of the duty, however, that captures many situations that most are reticent to classify as violations of a duty. Imagine one who, at a dinner party, describes to others in vivid detail the preparation one endured for a colonoscopy. Others at the dinner table likely view this as a violation of the TMI restriction and perhaps even say to the offending party things like, “that’s disgusting,” “please, not at the table,” or “that’s too much information.” Those same others likely are reluctant to classify the behavior as a violation of a duty, however, because we typically reserve the term “duty” for more pressing matters. Even though, strictly speaking, one violates the duty to self-censor by telling such a story in that context, there is little controversy over the case. The behavior in the case is so insignificant that others are reluctant to debate whether the behavior violates a duty.

[14.30]

The preceding example illustrates that the kinds of relatively uncontroversial cases the TMI restriction captures have at their core a notion that plays a significant role in the substantive arguments of this chapter. That notion is the relevance of creating undue burdens for others. Free speakers at dinner tables cause no significant burdens for others. Their topics might disgust others and might even cause some to walk away from the table. Although that is a burden in some sense, it is not a significant burden. The lack of a significant burden for others produces our reticence to categorize the free speakers’ behavior as violating the duty to self-censor in any pressing way. The lack of a significant burden also is why such cases are uncontroversial.

[14.31]

#### A MORE CONTROVERSIAL SENSE OF THE DUTY TO SELF-CENSOR

[14.32]

Creating burdens for others in any context is justified morally only if there is a good reason to create them. Absent a good reason for creating a given burden in a given context, the burden is undue. If a burden is undue, then one

is obligated not to create it. This moral requirement grounds a sense of the duty to self-censor that applies to cases that are more controversial than are those the TMI restriction captures. The undue-burden concept provides a criterion for determining which of the countless instances where individuals reveal personal matters, including those involving social media, violate the duty to self-censor. Revelations of personal matters that create undue burdens for others violate the duty. Those that do not might be imprudent or immoral for other reasons, but they do not violate the duty to self-censor.

### The Extent of the Duty to Self-Censor

[14.33]

Although I argue that the undue-burden concept grounds the duty to self-censor, I hold that neither social media users, nor individuals in general, have a broad duty to self-censor. A broad duty to self-censor would come at too great individual and societal costs. Persons who self-censor too readily fail to explore new ideas and modes of living from which they, as well as society as a whole, might benefit. As does the loss of privacy, broad self-censorship thwarts individual pursuits, innovation, and growth.<sup>18</sup> Similarly to how we need freedom from the judgment of others in order to explore new ideas and modes of living, we also need freedom from self-judgment in order to explore those things. Similarly to how we often are too reticent to think or act outside the mainstream if we know we are subject to the constant judgment of others, we also often are too reticent to explore new ideas and modes of living if we too readily, or too often, judge ourselves.

[14.34]

The individual and societal costs of broad self-censorship are similar to those John Stuart Mill argues result from state and societal censorship. As chapter 3 explains, he argues that society pays one of two costs if it censors a deviant view.<sup>19</sup> If the deviant view is true or partially true, society loses access to the truth, something that Mill sees of obvious value. If the deviant view is false, society loses the value gained by confronting a false idea with the truth. By so confronting the false idea, the truth remains “alive” rather than lapsing into mere dogma. Similarly, if one self-censors too readily, or too often, one does not explore ideas and modes of living that might be beneficial. One might not find the idea or mode of living that is more true to one’s, or society’s, deep-seated commitments, or one might not reinforce why one’s current idea or mode of living actually is most true to one’s, or society’s, deep-seated commitments.

[14.35]

John Horton describes another concern that is applicable to broad self-censorship. A given instance of self-censorship might actually be state or societal censorship by proxy.<sup>20</sup> One might have internalized state or societal restrictions to such an extent that one actually is “no more than a tool or cipher of . . . the person who is really the source of the censorship.”<sup>21</sup> He adds that such self-censorship “disguises the real source of the censorship”

[14.36]

and “may work to undermine the agency of the self-censor through subverting the deliberative process in a way that straightforward censorship characteristically does not.”<sup>22</sup>

[14.37] Garry C. Gray presents a case study that demonstrates how the costs of self-censorship can arise through censorship by proxy.<sup>23</sup> Gray conducted a two-hour interview with a medical professor about his first experience with industry-funded pharmaceutical research. During the interview, the professor indicated that he felt a motivation to self-censor. He said, “I am upsetting the apple cart, potentially, but I don’t know what they’re going to do. If we come up with something and say, ‘Oh you know what? It doesn’t hit where you think it does’—I mean, that’s a scientific truth. And the question is, maybe I’ll never get another dollar from them, potentially.”<sup>24</sup>

[14.38] Motivations such as the professor’s can produce two forms of self-censorship for industry-funded researchers. Both clearly come with societal costs. First, researchers might exercise what Gray terms “self-censorship by non-disclosure” simply by keeping to themselves findings that are contrary to the interests of the firms that fund their research.<sup>25</sup> Second, researchers might exercise what Gray terms “self-censorship by narrowing the scope” which is “deliberately avoiding the discovery of relevant information. This is done by strategically constraining the scope of the research design.”<sup>26</sup> Both forms of self-censorship cost society access to scientific truths. The former suppresses already-discovered truths, while the latter suppresses potential discoveries of truths.

[14.39] Because of the problems with a broad duty, I adopt a narrow duty to self-censor. Without good reasons, individuals should not self-censor what they do, the things they say, or how they live. Despite being narrow, however, the duty to self-censor captures more than the uncontroversial matters of the TMI restriction. The duty captures those additional matters because refraining from creating undue burdens for others is a good reason to self-censor.

[14.40] Although this chapter’s purpose is not to provide an exhaustive account of the various circumstances in which the duty to self-censor arises, the social media revelations with which I am concerned are not the only circumstances in which the duty might arise. The duty applies to many circumstances that involve neither social media nor personal matters. A patron who talks incessantly during a play creates undue burdens for both other patrons and the performers and, thus, has a duty to self-censor by refraining from talking during the performance. The duty hinges on the undue burdens on others that the patron’s talking causes, not on whether the patron is speaking about personal matters. The factor that determines whether one has a duty to self-censor in any situation, whether or not the situation involves social media or personal matters, is whether one’s failure to self-censor creates undue burdens for others that are not overridden by other considerations. Because social media users often create undue burdens for others when they do not



maintain their own privacy, they have a duty to self-censor what they reveal about themselves.

### Undue Burdens as Contextual Matters

[14.41]

As chapter 2 explains, determining whether given burdens are undue is a complex process. There is no simple definition or formula through which we can identify undue burdens. Nevertheless, by examining the contexts in which burdens are imposed, we can determine whether the burdens are undue.<sup>27</sup> Needless to say, this chapter cannot examine all the possible contexts in which individuals reveal personal matters. Examining some of those contexts, however, demonstrates how the undue-burden concept provides a criterion for determining when personal revelations, including those on social media, violate the duty to self-censor.

[14.42]

Suppose Jane is a research study's principal investigator and Joe is one of the study's many subjects. The study began with Jane meeting one-on-one with each subject so that she could acquire from the subjects necessary background information. The study's purpose necessitated acquiring information about the subjects' basic likes and dislikes. When Jane asked Joe what kinds of activities he enjoys, he replied, "I like virtual-child pornography. Mind you, I'd never look at the real thing, but I like the computer-made pictures." Jane kept her composure and completed the meeting, but she was troubled afterward. Because she dreaded the burden of trying to maintain her objectivity about him, she wondered whether she should drop Joe from the study. After considerable thought, Jane decided to keep Joe in the study and do what she must in order to maintain her objectivity.

[14.43]

Although Joe's predilection raises other moral questions, the undue-burden concept does not capture Joe's revelation. Whether or not his answer provided the kind of information Jane actually was seeking, Joe merely answered the question she asked. No matter how troubling Jane finds subjects' responses to her questions, Jane's researcher role requires her to cope with the information she encounters. Her role also requires her to respond to the situation as she did. Removing subjects because of their various predilections threatens the research's integrity by arbitrarily shaping the subject pool. Thus, the duty to self-censor does not apply to Joe's revelation in this context.

[14.44]

Suppose, however, that the context is different. Instead of being researcher and subject, Jane and Joe are coworkers. Even though the pair merely are friendly acquaintances, the nature of their work and their close proximity in the workplace make it inevitable that they have conversations unrelated to their work. Much to Jane's surprise, Joe began one such conversation by blurting out his predilection. Unsurprisingly, Jane was troubled by the revelation and finds it burdensome to continue working in close proximity to Joe.

[14.45]



**[14.46]** The undue-burden concept captures Joe's revelation in this context. Even when a workplace allows for conversations unrelated to work, certain personal revelations create undue burdens. Among them are those involving subject matters that are inappropriate for the workplace. Other moral questions about Joe's predilection aside, the subject matter of Joe's revelation renders it inappropriate for the workplace. Because workplaces have a history of sexual harassment and discrimination, Jane justifiably was troubled by Joe beginning a conversation in the fashion he did. Even if some conversations of a sexual nature are permissible morally in the workplace, Joe's predilection potentially is too disturbing to be among them, especially given that he shared it with someone who merely is an acquaintance. Because nothing in the pair's roles or activities justifies Joe creating for Jane the burden of enduring knowledge of his predilection, the burden is undue. Because the burden it created was undue, the revelation violated the duty to self-censor.

**[14.47]** Consider the same context, but a different revelation expressed in a different manner. Instead of revealing a morally questionable, sexual predilection, Joe revealed that his deceased father was the imperial wizard of the Ku Klux Klan for much his adult life, and he remained active in the Klan up until his death a few years ago. He did not simply blurt it out, but, rather, told Jane when she innocently asked about Joe's family. Even though Joe said he disapproves of his father's affiliation with the group, he spoke highly of his father's character and expressed deep affection for him. Jane was troubled by what she learned. Because many of her ancestors suffered at the hands of the Klan, she cannot understand how anyone can hold in high esteem the character of a person who is part of such a hateful, violent group. Even though she knows Joe was not to blame for his father's beliefs and actions, she finds it difficult to think of Joe as she did prior to the revelation.

**[14.48]** It is easy to understand Jane's troubled feelings, and there is no reason to respond to them with anything other than sympathy and compassion. Nevertheless, the undue-burden concept does not capture Joe's revelation. Joe merely responded truthfully to an innocent question posed by a coworker. Life is such that we often are burdened by our interactions with others even when neither they nor we act wrongly. This is one of those unfortunate instances. Although there may be reasons, such as sensitivity's demands, why Joe should have opted not to tell Jane about his father's Klan affiliation, he did not violate the duty to self-censor by doing so.

**[14.49]** A slight change in the context, however, complicates matters in a way that moves us toward considering social media revelations. Suppose that, instead of being coworkers, Jane is Joe's supervisor. This increases her burden in a significant way. She no longer merely must work alongside Joe, but she also must evaluate him. Her burden now is similar to that in the researcher case. Just as Jane the researcher bore the burden of maintaining her objec-

tivity about Joe the subject despite knowing about Joe's predilection, Jane the supervisor bears the burden of evaluating fairly Joe the employee despite her troubled feelings caused by Joe's revelation about his father's Klan affiliation.

Again similarly to the researcher case, the burden Jane bears in this case is not undue. As do many ethicists, I accept something like Brenkert's position that employers are obligated to consider only job-relevant matters when they make employment decisions.<sup>28</sup> Jane is obligated not to hold Joe's revelation against him unless its subject matter affects his ability to perform his job duties. Such would be the case if somehow internalizing his father's beliefs caused Joe to mistreat African American coworkers and customers. There is no such internalization in this case, however, and there is no reason to assume his father's beliefs affect Joe's actions. Thus, despite her troubled feelings, Jane still is obligated to evaluate Joe fairly. The burden Jane bears is not undue simply because his revelation makes it harder for her to evaluate him fairly. After all, the burden arose by Joe truthfully answering an innocent question Jane posed to him. Joe did nothing untoward by so answering his supervisor's question.

[14.50]

This reasoning has an implication for social media revelations that many readers might find surprising. Despite concluding that Joe's revelation did not create an undue burden for Jane, the basis of that conclusion produces the opposite conclusion about many social media revelations. The following subsection explains why.

[14.51]

### **Undue Burdens and Social Media Revelations**

[14.52]

Although this is not the only possible way in which the duty to self-censor might arise for social media users, the duty often arises when others are obligated to respect users' privacy. This is because, unlike the previous subsection's last case, social media users' revelations often create undue burdens for others who are obligated to respect users' privacy. I take as a given that individuals have a right to privacy that governments, employers, educational institutions, and the like are obligated to respect.<sup>29</sup> Individuals who hold the right to privacy are obligated not to create undue burdens for others who are obligated to respect those individuals' right to privacy. Social media users, then, have a duty to self-censor what they reveal about themselves when the failure to do so creates undue burdens for others who are obligated to respect the users' privacy.

[14.53]

Most ethicists hold that privacy promotes some value that is necessary for persons to flourish, though their accounts often disagree as to the identity of that value.<sup>30</sup> As I noted in chapter 2, I argue elsewhere that each of the identified values of privacy, by itself, is insufficient to explain the true value of privacy.<sup>31</sup> I write,

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[14.55]

The value of privacy is multifarious and contextual. The value of privacy for a person qua client in psychotherapy may be quite different from the value for a person qua employee or qua citizen in a liberal democracy. Moreover, the value in each of those contexts has multiple aspects, many of which may or may not come into play for a particular person. The value of privacy varies according to both the context in which it is considered and the circumstances a particular person brings to that context.<sup>32</sup>

[14.56]

If the preceding is correct, it helps demonstrate the complementary roles of the duty to self-censor and privacy. Earlier, I argued that whether the burden X imposes on Y is undue depends on the context in which X imposes the burden. It is a function of whether the burden is part of Y's role in X's and Y's relationship. The value of privacy is similarly contextualized, rendering counterparts the value of privacy and undue burdens. Just as the true value of privacy varies according to the context at issue, what qualifies as undue burdens varies according to the same context.

[14.57]

This has an important implication for the matters the duty to self-censor often captures. If we hold that various institutions are obligated to respect individuals' privacy so that those individuals can garner the values of privacy, as the particular contexts determine them to be, then we also should hold that those individuals are obligated not to create undue burdens, as the particular contexts determine them to be, for the institutions that must respect their privacy. In this way, the duty to self-censor often is the flipside of the right to privacy. If institutions are obligated to take certain steps to allow individuals to garner the values of privacy, those individuals are obligated not to make it unduly burdensome for institutions to fulfill that obligation.

[14.58]

This reasoning is not unique to obligations related to privacy. Whenever one has an obligation, others, especially those to whom one owes the duty, are obligated not to make it unduly difficult for one to fulfill that obligation. Although I am obligated to obey posted traffic signs when I drive, governments are obligated to construct and locate those signs in ways that do not make it unduly difficult for me to see and read the signs. Although universities in the United States are obligated legally to make accommodations for students with various kinds of disabilities, students are obligated not to make it unduly burdensome, by demanding unreasonable accommodations, for universities to fulfill their obligations.

[14.59]

Social media revelations often make it unduly burdensome for various institutions to fulfill their obligations to respect individuals' privacy. Consider employers and educational institutions. Similarly to the previous subsection's last case, both are obligated to consider only relevant matters when making their employment or admissions decisions. If they seek out irrelevant personal matters about applicants, they violate the applicants' privacy. Many social media revelations, however, make it practically impossible, and, thus, unduly burdensome, for those institutions to ignore irrelevant personal mat-

ters. The advent of social media means that face-to-face contact, communication over the telephone, written communication, and the like no longer are necessary to reveal such matters. In a few seconds, individuals can reveal personal matters to many more people than once was possible. Then, in merely seconds more, those who access the revelations can share them with still others, beginning a seemingly unending process of disseminating the revealed matters. This broad dissemination greatly increases the frequency of employers, universities, and others accessing, either intentionally or unintentionally, individuals' personal matters.

Consider the teacher who posted that she should drown her students. Surely, she merely was venting after a particularly bad day or set of days. Such venting, rather than being a job-relevant matter that her employer should take into account, likely is a rather healthy way, in mental health terms, for the teacher to release tension and explore the circumstances of her life and career. The very fact that she had that thought has the potential to encourage her to explore matters such as whether she interacts with her students in the most productive ways available, takes the proper steps to cope with teaching's stresses, and effectively separates students' behavior from her self-concept. By itself, the teacher's thought is not a job-relevant matter warranting her firing. Nevertheless, should students, parents, guardians, and others read her post and call for her dismissal, school administrators would be required to use much of their valuable time defending the teacher's right to have her thought on the grounds that such a thought is not a job-relevant matter.

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Likewise, the fact that the teen posted that she finds her job boring is not a job-relevant matter because, by itself, it says nothing about how well she actually performs her job duties. Her supervisor, however, must use valuable time making that case on her behalf should others who desire the position or higher-level management read her post and object to her continued employment.

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Similarly to the teacher, surely the airline employees who posted jokes about passengers and the conditions of airplanes simply were venting and commiserating. Just as professors often vent and commiserate about the quality, immaturity, laziness, and naïveté of their students by making jokes and unwarranted, exaggerated claims about students and their work, other employees, regardless of the type of workplace, similarly vent and commiserate. Just as it is healthy for professors to so vent and commiserate, it also is healthy for other employees. In neither case are the venting and commiseration job-relevant matters. When those professors or employees use social media for venting and commiserating, however, their superiors must use valuable time to defend them against the charges of customers, students, parents, guardians, and others who become enraged after reading their posts.

[14.62]

[14.63] In all these cases, the employees, students, and professors have a right to privacy with respect to their thoughts, venting, and commiseration because those things are not job or admission relevant. Nevertheless, they violated their obligations not to create undue burdens for others for two reasons. First, each of them could have engaged in their thoughts, venting, and commiseration in ways that maintained their own privacy. They could have chosen ways that did not affect those who employ or admit them. Second, given how they proceeded, someone must bear the burden of making the case that their posts are not job- or admission-relevant. That burden falls not on them, but, rather, on those who employ or admit them. Because the burden is undue, placing it on those others violates a moral obligation. If employees, students, professors, and others wish to retain the right to privacy that obligates decision-makers to consider only relevant matters, they should honor their obligation not to make it unduly burdensome for those decision-makers to respect their right to privacy.

[14.64] Those two reasons demonstrate why the undue-burden concept often produces the opposite conclusion about social media revelations from the conclusion it produces for the previous subsection's last case. In that case, Joe did not choose on his own to reveal the information about his father. Jane, his supervisor, instigated the troubling revelation, albeit unintentionally and innocently, by asking Joe about his family. Whether or not Joe should have withheld the information for other reasons, we are not justified in concluding that Joe created an undue burden for Jane simply by answering truthfully her own innocent question.

[14.65]

#### A LIKELY OBJECTION

[14.66] One might raise a twofold objection to my position. First, one might argue that the burden on decision-makers that I describe is not undue at all. Decision-makers assume that burden by accepting voluntarily their decision-maker roles. The obligation to respect the privacy of those about whom they must make judgments is among the many obligations assumed by those who accept certain roles. Moreover, decision-makers often are required to explain to others why they act as they do. The burden I describe merely is one of those instances. It is no more burdensome for decision-makers to explain why they ignore irrelevant matters when making their judgments than it is for them to explain why they consider or ignore any other factors in their decision-making processes.

[14.67] Second, even if the burdens I describe are undue, they arise only in cases where others have read the posts and challenge the decision-makers' judgments. Decision-makers still are obligated not to use social media to seek out

irrelevant matters pertaining to those about whom they must make judgments.

The described objection fails to account adequately for many of the practical matters that decision-makers often face. The most significant of the possible negative consequences a decision-maker faces stem from others determining that the decision-maker made an incorrect decision. Granted, possibly being wrong is a risk all decision-makers face when they adjudicate matters, and all good decision-makers learn to deal effectively with the fallout of bad decisions. Ignoring the social media posts by those about whom they make judgments, however, places decision-makers in much more vulnerable positions than do most other factors that could cause them to make bad decisions. Because social media revelations are accessible so easily, if one does not take into account social media revelations when making a decision that turns out to be bad, it raises the specter of legal action against, and public relations fallout for, one's institution.

[14.68]

Imagine an employer who learns of an applicant's post of a video taken at a party in which the applicant clearly is intoxicated and behaving in a disgusting manner. Suppose the employer reasons as follows:

[14.69]

What employees do during their free time is none of my business. I have no reason to believe that the applicant would behave that way at work. In fact, the applicant's behavior in the interview indicated quite the opposite. The question before me is whether this applicant is the best qualified for the position, not whether I find objectionable the behavior in the video.

[14.70]

The employer concludes that the applicant is the best qualified and hires the applicant. A few weeks later, the new employee, because of drunkenness, causes a workplace accident that seriously injures several customers and other employees.

[14.71]

Clearly, the injured persons' attorneys would relish learning that the employer had seen the video prior to hiring the employee. Those attorneys likely would argue that the employer should have foreseen the possibility of the employee arriving at work drunk and causing such an accident. Because the judge or jury hearing the case was not privy to the interview that led the employer to believe the employee would not exhibit at work the behavior in the video, that argument likely would have considerable force. Meanwhile, the employer's attorneys would have a difficult time explaining away the so-called "bad fact" of the employer having seen the video by arguing that it is a matter the employer was obligated morally to ignore during the hiring process. A similar legal scenario could ensue in the unlikely event that the venting teacher acted violently against a student after school officials ignored her social media rant about her students.

[14.72]

**[14.73]** In a significant way, social media posts like the described video and the teacher's rant are similar to a phone call in a public venue. As I write this in a coffee shop, another customer is speaking loudly into his phone explaining why he cannot pay his past-due bill at this time. Although, given the nature of the conversation, I believe I have an obligation to attempt to respect his privacy, he is making it practically impossible for me to do so. His voice simply is too loud for me to ignore. The employer and the school officials are in similar situations. It is not practically possible for them to ignore the posted video and rant because of the serious threat potential legal action or public relations fallout pose for their respective business and school. Although the practical impossibility is not a physical/psychological impossibility like mine in the phone case, it is just as significant. Decision-makers are obligated to protect their institutions from foreseeable harms, and potential legal liabilities and possible public relations fallouts often are foreseeable when decision makers ignore social media revelations.

**[14.74]** Regarding the claim that decision-makers are obligated not to use social media to seek out irrelevant matters pertaining to those about whom they must make judgments, I could not agree more. This, however, does not account for the fact that decision-makers often discover social media users' revelations unintentionally. Decision-makers also are individuals with rights, and, thus, they have the right to use social media just as do those about whom they make judgments. As they use social media, they easily can discover such revelations by "stumbling" upon them accidentally, or by others bringing the revelations to the decision-makers' attention. When this happens, decision-makers face the described practical impossibility of ignoring the posted matter even if that matter, by itself, is not relevant to the decision-making process. Thus, even though decision-makers are obligated not to use social media to seek out irrelevant matters concerning those about whom they must make judgments, social media users still are obligated to self-censor their revelations so as to avoid creating undue burdens for those decision-makers.

**[14.75]** **CONCLUSION**

**[14.76]** The proffered arguments for a narrow duty to self-censor that applies to social media users are at odds with Allen who summarizes her position in this way:

**[14.77]** Privacy is too important to be left entirely to chance and fleeting taste. . . . [W]e . . . need government to help us preserve forms of privacy that are important to our lives but to which we may be unwisely indifferent. We may be unwisely indifferent because we are young, . . . busy, or . . . unfamiliar with the risks of data collection, sharing and storage that come with the technology we enjoy without understanding.<sup>33</sup>



Allen's justification of the duty to self-censor is rooted in judgments about what actually is best for individuals, and in individuals' frequent inability to recognize and act on what is best for them. This firmly situates her justification within paternalism. Allen acknowledges both the situation of her justification within paternalism and that paternalism is anathema to many liberals. She writes, "The recoil at the spectre of paternalism can be nearly instinctive for political liberals. But the modest paternalism defended here is consistent with, and indeed required by a robust, liberalism appreciative of the respects in which unchecked losses of privacy can render one nearly a slave to unfor- giving masters."<sup>34</sup>

[14.78]

Admittedly, I am one of those liberals who recoil at the specter of pater- nalism. Despite that, I do not challenge Allen's judgment that liberalism sometimes is consistent with, or even requires, modest paternalism. That judgment might well be correct. Moreover, I do not challenge her claim that individuals, especially social media users, often do not fully recognize or appreciate the harm they might cause themselves by failing to self-censor. That claim is correct, and various aspects of my arguments implicitly accept it.

[14.79]

Despite not challenging those aspects of Allen's justification of the duty to self-censor, there is an important reason why, if my arguments are sound, the undue burden justification of the duty should be more palatable to liberals than is Allen's. Suppose the truth, as I already have acknowledged might well be the case, of Allen's judgment that liberalism sometimes is consistent with modest paternalism. Even with that truth at their disposal, liberals are not justified in appealing to paternalism at will in order to support obligations regarding, or efforts to bring about, states of affairs that are consistent with liberalism. This truth justifies liberals' appeals to paternalism only in cases where there is no nonpaternalistic support available to which they can appeal. That necessary condition is not present in the case of social media users' duty to self-censor because the undue burden justification of the duty does not rest on paternalism. Liberals, moreover, have another reason to find the undue burden justification more palatable. It rests on this idea that liberals readily should endorse: Individuals should not create undue burdens for others.

[14.80]

## NOTES

[14.81]

1. See Dawn Branley, "Fired via Facebook: Five Social Media Mistakes to Avoid," *The Cyber Psyche*, August 8, 2013, <https://thecyberpsyche.wordpress.com/2013/08/08/fired-via-facebook-five-social-media-mistakes-to-avoid/>.

[14n1]

2. Anita L. Allen, *Unpopular Privacy: What Must We Hide?* (Oxford: Oxford University Press, 2011).

[14n2]

3. *Ibid.*, 194.

[14n3]

4. For examples, see Stephen Coleman, "E-Mail, Terrorism, and the Right to Privacy," *Ethics and Information Technology* 8 (2006): 17–27; Martin L. Garner, "For the Sake of One

[14n4]



Child: Privacy, Anonymity, and Confidentiality in Libraries," *Journal of Information Ethics* 21 (2012): 12–20; John Gorman, "Monitoring Employee Internet Usage," *Business Ethics: A European Review* 7 (1998): 21–24; Terence J. Lau, "Towards Zero Net Presence," *Notre Dame Journal of Law, Ethics & Public Policy* 25 (2011): 237–77; Keren Lehavot, "'MySpace' or Yours? The Ethical Dilemma of Graduate Students' Personal Lives on the Internet," *Ethics and Behavior* 19 (2009): 129–41; Robert L. McArthur, "Reasonable Expectations of Privacy," *Ethics and Information Technology* 3 (2001): 123–28; Seumas Miller and John Weckert, "Privacy, the Workplace and the Internet," *Journal of Business Ethics* 28 (2000): 255–65; and Anna May Wyatt, "Do Librarians Have an Ethical Duty to Monitor Patrons' Internet Usage in the Public Library?" *Journal of Information Ethics* 15 (2006): 70–79.

[14n5]

5. Among such works are Darren Charters, "Electronic Monitoring and Privacy Issues in Business-Marketing: The Ethics of the DoubleClick Experience," *Journal of Business Ethics* 35 (2002): 243–54; Joseph S. Fulda, "Written for the Moment," *Journal of Information Ethics* 21 (2012): 21–26; Donald Gotterbarn, "Privacy Lost: The Net, Autonomous Agents, and 'Virtual Information,'" *Ethics and Information Technology* 1 (1999): 147–54; Mathias Klang, "Spyware—The Ethics of Covert Software," *Ethics and Information Technology* 6 (2004): 193–202; Irene Pollach, "A Typology of Communicative Strategies in Online Privacy Policies: Ethics, Power and Informed Consent," *Journal of Business Ethics* 62 (2005): 221–35; Lambèr Royakkers, "Ethical Issues in Web Data Mining," *Ethics and Information Technology* 6 (2004): 129–40; and Herman T. Tavani, "Informational Privacy, Data Mining, and the Internet," *Ethics and Information Technology* 1 (1999): 137–45 and "Philosophical Theories of Privacy: Implications for an Adequate Online Privacy Policy," *Metaphilosophy* 38 (2007): 1–22.

[14n6]

6. Some of them are Robert P. Holley, "The Ethics of Scholarly Research and the Internet: Issues of Publication, Privacy, and the Right to Speak," *Journal of Information Ethics* 15 (2006): 27–34; Peter Øhrstrøm and Johan Dyhrberg, "Ethical Problems Inherent in Psychological Research Based on Internet Communication as Stored Information," *Theoretical Medicine and Bioethics* 28 (2007): 221–41; David J. Pittenger, "Internet Research: An Opportunity to Revisit Classic Ethical Problems in Behavioral Research," *Ethics & Behavior* 13 (2003): 45–60; and Michael Zimmer, "'But the Data Is Already Public': On the Ethics of Research in Facebook," *Ethics and Information Technology* 12 (2010): 313–25.

[14n7]

7. Those works include Philip Cook and Conrad Heilmann, "Two Types of Self-Censorship: Public and Private," *Political Studies* 61 (2013): 178–96; Matthew Festenstein, "Self-Censorship for Democrats," *European Journal of Political Theory* 17 (2018): 324–42; John Horton, "Self-Censorship," *Res Publica* 17 (2011): 91–106; Sune Læggaard, "The Cartoon Controversy: Offence, Identity, Oppression?" *Political Studies* 55 (2007): 481–98; Glenn C. Loury, "Self-Censorship in Public Discourse: A Theory of 'Political Correctness' and Related Phenomena," *Rationality and Society* 6 (1994): 428–61; Randal Marlin, "The Muted Bugle: Self-Censorship and the Press," in *Interpreting Censorship in Canada*, ed. Klaus Petersen and Allan C. Hutchinson (Toronto: University of Toronto Press, 1999), 290–317; Robert A. Sedler, "Self-Censorship and the First Amendment," *Notre Dame Journal of Law, Ethics & Public Policy* 25 (2012): 13–45; and R. George White, "Self-Censorship and the Constriction of Thought and Discussion under Modern Communication Technologies," *Notre Dame Journal of Law, Ethics & Public Policy* 25 (2012): 123–42.

[14n8]

8. For more on political liberalism versus moral liberalism, see chapter 1.

[14n9]

9. Festenstein, "Self-Censorship for Democrats," 325.

[14n10]

10. *Ibid.*, 339.

[14n11]

11. Cook and Heilmann, "Two Types," 179.

[14n12]

12. *Ibid.*, 191.

[14n13]

13. Festenstein, "Self-Censorship for Democrats," 326.

[14n14]

14. George G. Brenkert, "Privacy, Polygraphs and Work," *Business & Professional Ethics Journal* 1 (1981): 22.

[14n15]

15. Richard D. Mohr, "Why Sex Is Private: Gays and the Police," *Public Affairs Quarterly* 1 (1987): 58.

[14n16]

16. *Ibid.*, 59.

[14n17]

17. I confess that I too often am that offending friend.

[14n18]

18. See chapter 2's examination of the values of privacy.

## Chapter 14

19. For Mill's presentation of his argument, see John Stuart Mill, *On Liberty*, ed. and intro. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing Company, 1978 [1859]), 16–17, 33–38. Chapter 3 examines Mill's argument. [14n19]

20. Cook and Heilmann provide a somewhat different account of self-censorship by proxy when they address private self-censorship. Cook and Heilmann, "Two Types," 187ff. Festenstein examines their account. Festenstein, "Self-Censorship for Democrats," 6ff. [14n20]

21. Horton, "Self-Censorship," 101. [14n21]

22. *Ibid.* [14n22]

23. Garry C. Gray, "The Ethics of Pharmaceutical Research Funding: A Social Organization Approach," *Journal of Law, Medicine & Ethics* 41 (2013): 629–34. [14n23]

24. *Ibid.*, 631. [14n24]

25. *Ibid.* [14n25]

26. *Ibid.*, 632. [14n26]

27. The political concerns about self-censorship often complicate the contexts. An individual who publicly protests against a governmental policy likely creates burdens for others such as the individual's employer, coworkers, and family. When determining whether those burdens are undue, political concerns, such as the role of free speech in liberal democracies, are among the many matters that we must take into account. [14n27]

28. Brenkert, "Privacy, Polygraphs and Work." [14n28]

29. See chapter 2's examination of the values of privacy and their necessity for autonomy. [14n29]

30. Chapter 2 presents the broad categories of accounts. [14n30]

31. Earl W. Spurgin, "The End of Romance and the Value of Privacy," *Public Affairs Quarterly* 20 (2006): 247–65. [14n31]

32. *Ibid.*, 247. [14n32]

33. Allen, *Unpopular Privacy*, 194. [14n33]

34. *Ibid.* [14n34]

## Chapter Fifteen

# Harmful Sports Revisited

**[15.0]** Harmful sports are those, such as boxing and American-style football, the essential elements of which have significant probabilities of causing grave injury to, or the death of, participants.<sup>1</sup> Whereas chapter 8 examines moral liberalism's conclusions regarding those who participate in harmful sports, this chapter examines the theory's application to nonparticipants.<sup>2</sup> For ease of exposition, the chapter focuses on professional sports. Many of the chapter's arguments, however, also apply to preprofessional sports, and the chapter's penultimate section addresses those sports.<sup>3</sup> Perhaps surprisingly, the chapter demonstrates that nonparticipants, by supporting harmful sports, often violate their moral obligations as determined by moral liberalism.

### **[15.1]** THE SCOPE OF "NONPARTICIPANTS"

**[15.2]** The term "nonparticipants" captures the many institutions and individuals, beyond participants, who associate themselves with harmful sports. Some of the most notable nonparticipants, and those this chapter examines, are<sup>4</sup>

- [15.3]** 1. sports leagues and team owners;<sup>5</sup>
- [15.4]** 2. state and local governments;
- [15.5]** 3. media organizations and advertisers; and,
- [15.6]** 4. sports fans.

**[15.7]** Those parties contribute much to harmful sports. Participants typically would have no venues through which they could participate in such sports without leagues and owners. State and local governments frequently recruit teams in harmful sports leagues and fund, either in whole or in part, the construction of stadia for those teams. Many media organizations broadcast, or otherwise

provide coverage of, harmful sports, while advertisers fund the coverage. As league commissioners, team owners, and sports commentators are fond of saying, leagues' and teams' revenues, as well as participants' salaries, depend on fans' support.

Nonparticipants' contributions to harmful sports differ from participants' contributions. Participants risk their health and lives, thereby providing the product others consume. Nonparticipants do not risk their own health and lives, but provide the conditions under which participants risk theirs. Thus, chapter 8's conclusions, drawn primarily from the liberty of internal states, about whether moral liberalism grants to individuals the liberty to participate in harmful sports do not apply to nonparticipants. We must consider whether moral liberalism grants to institutions and individuals the liberty to contribute to harmful sports in the ways nonparticipants do. The answer lies in the undue-burden concept.

[15.8]

## INDIVIDUALS AND BURDENS

[15.9]

Some burdens are not due individuals simply because individuals are humans.<sup>6</sup> Perhaps the most obvious is the burden of being a slave. Individuals are not due being stripped of their autonomy involuntarily as the practice of slavery entails.<sup>7</sup> Similarly, no one is due abuse, starvation, lack of health care, and many other burdens individuals often endure. Others unjustifiably place on some individuals those burdens, and some individuals, through poor choices, sometimes place on themselves the burdens. The point, however, is that there is nothing about being human that makes individuals deserving of such burdens.

[15.10]

Moral liberalism grants individuals the moral freedom to burden themselves in ways that are not due humans provided that, by doing so, they do not violate their moral obligations to others.<sup>8</sup> This conclusion is a product of the liberties of internal states and external acts.<sup>9</sup> Provided that doing so does not violate my moral obligations to others, I am free morally to embark on, without proper preparation and adequate water and food, a backpacking trip in challenging terrain, and risk becoming lost and suffering from dehydration and starvation.

[15.11]

It, however, does not follow, from individuals' moral freedom to act in certain ways, that others are free morally to help them so act. The fact that you are free morally to take your own life or to become a drug addict does not, by itself, imply that I am free morally to help you do either. I may well be free, in a given context, to help you, but I am free to do so only if a sound argument justifies my helping.<sup>10</sup> This means that others are not free morally to contribute to burdening individuals in ways that are not due humans unless there is sound argument that justifies them doing so. Regarding the back-

[15.12]

packing example, others are not free morally to stop me from taking the trip, but there is no sound argument that comes to mind that would justify them being free morally to encourage me to embark on the trip in the described unwise and dangerous manner. They are free, and perhaps even obligated, to give me helpful advice about how I should prepare for the trip, but they are not free to encourage me to proceed with the trip in my unprepared state.

[15.13]

## NONPARTICIPANTS AND UNDUE BURDENS ON PARTICIPANTS

[15.14]

The preceding raises this chapter's central questions:

[15.15]

1. Do nonparticipants contribute to burdening individuals in ways that are not due humans?

[15.16]

2. If they do, does moral liberalism render it immoral for them to do so?

[15.17]

I contend that, at least in many cases, the answer to both questions is "yes."

[15.18]

### **Sports Leagues and Team Owners**

[15.19]

In the realm of professional sports, perhaps the most obvious nonparticipants are leagues and owners. They provide the venues through which individuals participate in harmful sports. The venues allow participants to earn salaries while developing comradery with other participants. They provide an entertainment product that state and local governments pursue in efforts to benefit their economies. Media organizations use those venues to garner advertising revenue. Fans consume, for their viewing pleasure, the product that the venues provide and media broadcasts.

[15.20]

Whether leagues and owners provide net value to society is unclear. Like all businesses, they produce jobs, something of obvious value. They do so directly within their organizational structures and their stadia, and indirectly through the local businesses, such as restaurants and bars, that spring up, or flourish, around their venues. On the other hand, state and local governments do not always get adequate returns on their investments when they pursue, and help fund stadia for, sports teams.<sup>11</sup> The products corporations market during sports broadcasts often are of questionable value. For too many, sports fandom becomes obsessive in ways that damage relationships and contribute to gambling addictions.<sup>12</sup>

[15.21]

One might use the preceding to argue that leagues and owners act immorally by associating themselves with harmful sports. Because it is far from clear that leagues and owners produce net value for society, and because they organize sports that are harmful to participants, they act immorally by promoting those sports.

I am sympathetic to the sentiment behind the preceding argument, and I, too, am skeptical about whether leagues and owners provide net value for society. Despite those facts, I reject the argument. Moral liberalism does not require individuals to create net value for society. If I count the steps it takes me to walk to the coffee shop, it provides no net value for society. There, however, is nothing immoral about me doing so. Moral liberalism would deem immoral my counting the steps only if my doing so harms others or violates my moral obligations to others. I cannot think of a realistic situation in which my counting the steps would do either of those things.

[15.22]

This suggests that we should determine whether leagues and owners act morally when they promote harmful sports not by assessing whether they provide net value for society, but, rather, by examining whether they harm others or violate their moral obligations to others. Arguing that leagues and owners harm others is destined for failure for the simple reason that the harm from sports is caused either by the participants themselves or by the sports themselves. Leagues and owners provide the venues where the harms occur, but they do not actually cause the harms. There might be some rare exceptions to this, such as team personnel giving participants dangerous performance enhancing drugs under the guise of safe supplements. Even in such cases, however, team personnel also violate their moral obligations to participants, most notably their obligation not to defraud participants.<sup>13</sup>

[15.23]

The immorality of leagues' and owners' associations with harmful sports lies in leagues and owners violating their obligations to others. They contribute to burdening participants in ways that are not due humans without a sound argument that justifies them doing so. Even if leagues and owners produce net value for society, that value does not override their obligation not to contribute to burdens that are not due humans.

[15.24]

If chapter 8's arguments are sound, then leagues and owners might contribute to such burdens through coercive offers.<sup>14</sup> In that chapter, I argue that a financial offer enticing person P to participate in a harmful sport is coercive if P lacks what William James, in the context of beliefs, terms a "living option" to accept or refuse the offer.<sup>15</sup> If refusing the offer is a dead possibility for P, which is the case for at least some of those who accept offers to participate in harmful sports, then the offer does not propose to P a living option. This renders the offer coercive because the only live possibility for P is to accept the offer and run the risks associated with participating in the harmful sport.

[15.25]

Only the empirical facts about P's specific circumstances can tell us whether the offer is coercive. Offers are made in social contexts. The fact of the matter is that societies, at least the United States and many others, do not provide all people with equal opportunities to have living options about harmful sports. While for some refusing an offer to participate is a live possibility, for others it is not.<sup>16</sup>

[15.26]

**[15.27]** Determining whether offers to participate in harmful sports are coercive settles the issue at hand only if the offers, in fact, are coercive. Coercion is not due humans, so we are obligated morally not to make coercive offers. Leagues and owners who make such offers violate that obligation and, by doing so, go beyond the liberty of external acts that moral liberalism grants them.

**[15.28]** If, on the other hand, the offers are not coercive, it still is an open question whether, by making the offers, leagues and owners contribute to burdening participants in ways that are not due humans. The answer to that question is, because significant injury and death are not due humans, leagues and owners make such contributions. By providing the venues through which individuals participate in harmful sports, leagues and owners help individuals burden themselves in ways that are not due humans. Similarly to the suicide and drug addiction cases, leagues and owners are obligated morally not to provide such assistance unless a sound argument justifies them doing so.

**[15.29]** I am at loss to find such a sound argument. The most obvious place to look is in the value that harmful sports provide for society. As I already indicated, however, it is far from clear that such sports actually provide net value for society.

**[15.30]** A more promising approach is to argue that a moral obligation prohibiting leagues and owners from promoting harmful sports actually violates participants' autonomy. Assuming their participation is not coerced, leagues and owners provide participants with opportunities to pursue the lifestyles they choose. If leagues and owners are not free morally to provide those opportunities, then participants are not free to live as they wish. Most notably, participants cannot earn the salaries that leagues and owners provide, and they cannot develop comradery with their teammates and other participants throughout the leagues.

**[15.31]** Despite its basis in autonomy, an essential part of moral liberalism, the argument has two problems. First, even with a moral obligation prohibiting leagues' and owners' involvement, moral liberalism does not preclude individuals from participating in harmful sports. Just as many nonprofessional athletes get together to play soccer, basketball, volleyball, softball, and countless other sports, individuals can get together to participate in harmful sports even if no leagues or teams provide them venues for doing so. Gathering in such ways allows participants to achieve the pleasure associated with the sport and to develop the comradery that the argument contends is lost if leagues and teams cannot provide venues.

**[15.32]** The second problem concerns the claim that the moral obligation at issue prevents participants from earning the salaries that leagues and teams provide. The claim undeniably is true, but it is not a compelling objection to the obligation. Moral liberalism does not guarantee that individuals can earn money in the ways they wish, no matter what those ways might be.<sup>17</sup> I very

much would like to earn a living by being paid for every mile I ride my bicycle and for every step I take while hiking. Although moral liberalism guarantees my freedom to cycle and hike, it does not guarantee me the right to be paid for doing those things. Likewise, moral liberalism guarantees individuals the freedom to participate in harmful sports, but it does not guarantee them the right to be paid for participating.

## State and Local Governments

[15.33]

The first year I lived in Cleveland, Ohio, the Cleveland Browns, the city's NFL team, completed their final season before moving to Baltimore, Maryland, to become the Baltimore Ravens.<sup>18</sup> Art Modell, then the franchise's owner, moved the team because the city of Cleveland would not or, depending on whose story you believe, could not fund the construction of a new stadium for the franchise.<sup>19</sup> In 1999, Al Lerner began a new franchise in Cleveland using the original franchise's name, and the NFL helped the city fund the construction of a new stadium for the team.<sup>20</sup>

[15.34]

Those events demonstrate just how intertwined with harmful sports state and local governments often are. When they recruited the new franchise and funded the new stadium, both the NFL and the city of Cleveland were responding to public outrage from many football fans, both those in Cleveland and many others outside the city. The NFL saw opportunities for increased revenues and healing public relations wounds, while city officials feared being blamed for there being no NFL team in Cleveland and the accompanying, either actual or merely perceived, economic losses. The opportunities and fears were such driving forces that the NFL and the city of Cleveland reached their deal regarding a new franchise and a new stadium not long after the original franchise's last game in Cleveland, and several months before the Ravens played a game in Baltimore.<sup>21</sup>

[15.35]

Governments do no wrong when they seek economic benefits for their states or cities, and, in fact, they would be violating their obligations if they did not seek such benefits. That does not mean, however, that governments are free to seek any economic benefit no matter how it is achieved. A city, for instance, acts immorally if it recruits a corporation that has racist, sexist, homophobic, or any other kind of bigoted policies and activities. Similarly, a state acts immorally if it recruits an industry that would do significant damage to the state's unique ecosystems. The immorality of the former stems from governments' moral obligation to strive for equality for their residents. They must seek to prevent discrimination, not invite it. The immorality of the second case results from governments' moral obligation to protect the ecosystems over which they have jurisdiction, if not for the ecosystems themselves, then for the humans who are affected by damage to those ecosystems.<sup>22</sup>

[15.36]



**[15.37]** Governments also act immorally if they recruit, or fund stadia construction for, harmful sports teams. Although I share the serious doubts many have about whether governments actually obtain net value for their constituents when they invest in harmful sports, those doubts do not feature in my argument for why such investments are immoral. Even if governments obtain net value from investments in harmful sports, they still act immorally by so investing. Governments' associations with harmful sports, in fact, are more problematic morally than are leagues' and owners' associations.

**[15.38]** Like individuals, governments are obligated morally not to contribute to burdening individuals in ways that are not due humans. So contributing is contrary to one of the principal purposes of governments, namely, to protect the individuals they govern. Although moral liberalism's antipaternalist position<sup>23</sup> often denies governments the moral freedom to prevent individuals from harming themselves, it prohibits governments from assisting individuals with their self-harm.<sup>24</sup>

**[15.39]** The moral wrong, however, does not end there. When governments associate with harmful sports, they do so by using tax dollars. This effectively forces individual taxpayers to contribute to burdening other individuals in ways that are not due humans. This is wrong morally in two ways. First, similarly to the backpacking case, it is immoral for taxpayers to so contribute to burdening others even if the taxpayers desire to support harmful sports. Second, it violates the moral freedom of those taxpayers who do not wish to contribute to burdening individuals in ways that are not due humans. In essence, governments force such taxpayers to help others harm themselves. This is as problematic as would be government requiring others to encourage me to embark on the backpacking trip in the described unwise and dangerous manner.

**[15.40]** At this point, one might build an objection to the second point on the fact that governments often force taxpayers to contribute to practices and actions to which taxpayers might not wish to contribute. One might argue that taxpayers have no right to withhold their tax dollars that support governmental practices and actions to which they happen to object. One, for example, has no right to withhold their tax dollars that are earmarked for national defense merely because one objects to the military.

**[15.41]** Although I do not disagree with the argument per se, it fails as an objection to my position. I agree that, just because one does not wish to contribute to certain practices and actions does not entail that one has a right not to contribute to them. If, however, it is immoral for governments to engage in particular practices and actions, then governments commit further moral wrongs when they require taxpayers to support those practices and actions. To claim that the preceding holds for any particular practice or action, one must provide a sound argument for why it is immoral for governments to engage in the practice or action. That is what I am seeking to do here. I am

attempting to argue that governments are wrong morally when they support harmful sports, and, thus, they commit further wrongs when they force taxpayers to contribute to such sports.

## Media Organizations and Advertisers

[15.42]

During typical, nonpandemic times, television in the United States, as well as in many other countries I have visited, is replete with coverage of sporting events.<sup>25</sup> Sports coverage, including that of harmful sports, is so engrained in our culture that the Super Bowl, the NFL's championship game, is one of the biggest cultural events of the year. Advertisers play significant roles in this part of the United States' culture by funding media organizations' broadcasts of sporting events.<sup>26</sup> Advertisers' roles are so significant that, in the weeks leading up to the Super Bowl, many Americans look forward to the television commercials that will be debuted during the event.

[15.43]

I have serious reservations about whether sports of any kind should be as significant a part of any culture as they are in the United States, but I set aside those reservations and take as a given that it is moral for media organizations and advertisers to associate themselves with sports in general.<sup>27</sup> I do not object to them generating revenue by broadcasting or sponsoring sporting events. I, however, hold that it is immoral for them to associate with *harmful* sports.<sup>28</sup> It is not the fact that media organizations and advertisers generate revenue through associations with harmful sports that leads to the immorality of the associations. If football and boxing were not harmful sports, moral liberalism would grant media organizations and advertisers as much moral freedom to associate with those sports as it grants them to associate with sports such as softball and basketball.

[15.44]

As was the case with the two preceding nonparticipant groups, the moral problem rests in burdens that are not due humans. Media organizations and advertisers generate revenue for themselves, but they do so by investing in leagues and teams. The NFL, for example, earns \$5 billion per year by selling television rights alone.<sup>29</sup> Because harmful sports leagues and teams contribute to burdening individuals in ways that are not due humans, media organizations' and advertisers' investments in those leagues and teams also contribute to so burdening individuals. Their investments help make possible leagues and teams and, thus, help make possible participants' salaries. Without the leagues and teams they make possible, state and local governments would have opportunities to recruit, and fund stadia construction for, only teams associated with sports that are not captured by the definition of "harmful sports."

[15.45]

There is another nuance to the described immorality. Not only do media organizations' and advertisers' investments in harmful sports contribute to burdens that are not due humans, broadcasting harmful sports events nor-

[15.46]

malizes those burdens. Just as we should not normalize slavery, abuse, starvation, and lack of health care, we should not normalize the prospects of significant injury and death that participants in harmful sports face. The bombardment of football games on television, for example, does just that. When I was young, and I suspect this is true of many others, I had no idea of the risks associated with football. The game seemed just as unproblematic, with respect to the natures of the risks associated with them, as are baseball and track and field events.

**[15.47] Sports Fans**

**[15.48]** Without fans, harmful sports leagues and teams, as we know them, could not exist. Fans purchase tickets, team apparel, souvenirs, and food and drink from stadia concessions. Perhaps most importantly, they provide audiences that media organizations and advertisers seek. Without fans, none of the preceding nonparticipant groups could achieve the goals they seek through their associations with harmful sports.

**[15.49]** The fact that fans consume products, in itself, is no cause for moral concern. Moral liberalism grants individuals the moral freedom to consume. The fact that other entities seek fans' consumption of products, in itself, similarly is no cause for moral concern. Moral liberalism grants individuals and institutions the moral freedom to seek out, and benefit from, individuals' consumption of goods and services. As chapter 8 explains, in order for moral liberalism to apply to practical matters, it must work within many of the extant circumstances that individuals face. Because most live in societies with varying degrees of capitalist elements, moral liberalism must accept the idea of production and consumption.<sup>30</sup>

**[15.50]** Moral liberalism, however, does not permit the production and consumption of all possible products. The theory condemns products that violate producers' obligations to others. Imagine a company that produces apparel with nonsatirical, demeaning images of a particular ethnic group, and that those images promote, and condone, violence against the group. Moral liberalism has no difficulty condemning the company, its products, and individuals who purchase and/or wear the products. Except in rare cases, such as self-defense or a just war, the liberty of external acts does not include the freedom to promote violence against others. Nor does it include the freedom to treat others with disrespect for no good reason.<sup>31</sup> The ethnicity of individuals is not a good reason.

**[15.51]** For a different, but related, reason, moral liberalism condemns fans' consumption of harmful sports. What readers might now view as this chapter's mantra, individuals are not free morally to contribute to burdening others in ways that are not due humans. Fans do exactly that when they support harmful sports. As much as it pains me to write this, fans' contributions to such

burdens may be the most immoral of all nonparticipants' contributions.<sup>32</sup> Because they make possible other nonparticipants' involvement with harmful sports, they are the most essential feature of the business of harmful sports.<sup>33</sup>

Moreover, fans' support perhaps is the most enticing aspect of harmful sports for participants. The praise they heap on athletes undeniably draws participants to harmful sports at young ages. Most ten-year-olds who desire to participate surely are enticed more by the praise, esteem, and popularity that athletes obtain than they are by the money athletes make. That praise, esteem, and popularity is the work of fans. Leagues, owners, and media organizations promote and perpetuate those things, but their ultimate source lies in the fans.

[15.52]

Fans also cannot claim that they are not responsible for the business of harmful sports and, thus, have no obligations regarding those sports. The fact of the matter is that the future of harmful sports leagues and teams very much is in fans' "hands." If fans recognized they are contributing to burdening individuals in ways that are not due humans, and if they recognized that they are obligated not to so contribute to such burdens, and if they acted in accordance with those recognitions, then the business of harmful sports would cease to exist.

[15.53]

### THE "CAPTURES-TOO-MUCH" OBJECTION

[15.54]

This chapter's arguments most assuredly have many detractors, including within liberal circles. A liberal might base an objection on the arguments' scope by arguing that it condemns morally many companies that provide goods and services that, although potentially harmful, any liberal theory worth the name should allow. Companies should be permitted to provide those goods and services so that individuals can choose whether or not to consume them. Skydiving and whitewater rafting, for example, are activities that can cause serious injury to, or the death of, those who partake in them. Individuals, nevertheless, should have the moral freedom to take part in those activities. My position, so the argument might go, prohibits companies from providing skydiving and whitewater rafting excursions, nor does it permit them to sell or rent the equipment individuals need to partake in those activities. By doing either of those things, companies would contribute to burdening individuals in ways that are not due humans.

[15.55]

This chapter's arguments, however, do not capture as much as the objection suggests. Moral liberalism, in fact, both grants individuals the moral freedom to partake in activities such as skydiving and whitewater rafting and grants companies the freedom to support those activities. Regarding the former, my arguments do not suggest that individuals are not free morally to

[15.56]

participate in dangerous activities. I, in fact, claim the contrary in an earlier section of this chapter, as well as in other chapters of this book.

**[15.57]** Regarding the latter, we must return to the definition of “harmful sports” that this chapter concerns. That definition captures only those sports the essential elements of which have significant probabilities of causing grave injury to, or the death of, participants. Unlike football and boxing, the risks of skydiving and whitewater rafting are not functions of the activities’ essential features. Whereas at least some of the risks of the former stem from one of the principal objectives of both sports, to strike other participants, the risks of the latter stem from accidents or failures to execute the objectives of the activities. Like a basketball player colliding with an opponent who is out of the player’s field of vision, a parachute failing to open is an accident, not an essential feature of skydiving. Like a baseball pitcher who hits a batter with a pitch, falling out of a raft and drowning is a failure to execute whitewater rafting’s objective.

**[15.58]** SOME THOUGHTS ON PREPROFESSIONAL SPORTS

**[15.59]** Although this chapter’s focus has been on nonparticipants’ associations with the professional level of harmful sports, their associations with preprofessional levels, such as high school and collegiate, are no less problematic. No matter the level, harmful sports burden participants in ways that are not due humans. Thus, no matter the level, nonparticipants contribute to those burdens, something moral liberalism deems immoral.

**[15.60]** Participants’ associations with various levels of harmful sports, however, are not equally problematic morally. There are important ways in which participants’ associations with preprofessional levels of harmful sports are more problematic than are their associations with the professional level. One reason lies in the participants’ capacities for autonomy. Professional athletes are adults. Although not all individuals’ capacities for autonomy are developed fully by the time they reach professional sports ages, they at least are at life stages where we no longer are justified in treating them paternalistically. Paternalism at those life stages is characterized better as strong, rather than weak, paternalism, and moral liberalism prohibits strong paternalism.

**[15.61]** Many participants at preprofessional levels, however, are far from autonomous. Those in youth sports, for instance, are not yet capable of assessing the risks of harmful sports. We would be negligent in our duties to care for children if we let them choose for themselves to participate. High school participants are not so much more autonomous than children that we should give them full freedom to make their own decisions about participation. At the very least, parents and guardians do no wrong when they make such decisions for high school athletes.

There is a significant difference between autonomous participants burdening themselves in ways that are not due humans and nonautonomous participants so burdening themselves. Thus, there is a significant difference between nonparticipants contributing to one versus the other. Although it is morally wrong for nonparticipants to contribute to either, it is far worse for them to contribute to nonautonomous participants burdening themselves in ways that are not due humans. Providing the nonautonomous with the conditions to participate is worse than so providing the autonomous. The most obvious reason why is that it is far easier for nonparticipants to coerce the nonautonomous into participating than it is for them to coerce the autonomous into participating.

[15.62]

Perhaps the best way to capture why providing the nonautonomous with the conditions to participate is worse than is so providing the autonomous is by considering the praise, esteem, and popularity athletes obtain from fans. Through the feelings fans have toward athletes, fans encourage athletes to participate in harmful sports. In any circumstance, not just in sports, it is a greater moral wrong to encourage nonautonomous persons to risk their health and lives than it is to encourage autonomous persons to risk theirs. This is similar to how it is worse to encourage a child to eat a ghost pepper than it is to encourage an adult to eat one, when neither fully appreciates that ghost peppers are among the hottest in the world. It is immoral to so encourage either unaware person, but encouraging the unaware child is worse.

[15.63]

The preceding problems are exacerbated by the fact that many of the nonparticipants involved with preprofessional sports are individuals and institutions with obligations to care for the young people who are participants. Parents and guardians often are fans whose feelings of admiration for athletes influence their children. High schools and youth sports organizations by definition are charged with caring for the youths under their supervision. It is more than unsettling to think of such caretakers encouraging youths to risk their health and lives through sports with essential elements that have significant probabilities of causing grave injury to, or the death of, participants.

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I would be remiss if I closed this section without remarking on collegiate sports. Although the case is not as clear as it is with high school and youth sports, nonparticipants' associations with harmful sports on the collegiate level also are greater moral wrongs than are their associations with harmful sports on the professional level. Although I abhor the way many, including many individuals and departments in the university of which I am part, treat, and refer to, college-age students as children, providing such students with the conditions to participate in harmful sports is worse morally than is providing those conditions to professional-age athletes. Although this has been taken to a far greater level than I think appropriate, in recent years, colleges and universities have taken on more extensive caretaker roles with respect to students than they once did. To some extent, this is the result of legislation

[15.65]

and court decisions, but, to a great extent, it is the result of colleges' and universities' own commitments. In efforts to compete with other schools for students, institutions of higher learning often encourage parents and guardians to believe that they will be surrogate caretakers for their children should they choose them over other schools. Once schools make those commitments, it is problematic morally for them to encourage the students in their charge to risk their lives in the ways that are essential features of harmful sports.

[15.66]

## CONCLUDING REMARKS

[15.67]

In part because it has been in my life for as long as I can remember, on Sunday afternoons I often feel the pull to settle in front of the television to watch NFL football. In recent years, I have begun to see that as a moral failing. It has been slow progress, but I am nearing the point where harmful sports no longer are a part of my life. Until I reach that point, I will continue to fail morally. I cannot justify my watching harmful sports by claiming that they will continue even if I stop watching, that my viewing helps various people earn income, or that the entertainment I get is good for my mental health.

[15.68]

Although I am under no delusions that this will happen any time soon, or even that it will ever happen at all, nonparticipants are obligated morally to dissociate from harmful sports. No claims about the social benefits of harmful sports justify nonparticipants' contributions to participants' burdens that are not due humans. Until the United States and other countries remove harmful sports from their cultures, they will continue to fail morally in manners similar to how the Romans failed by supporting and encouraging gladiatorial combat.

[15.69]

## NOTES

[15n1]  
[15n2]

1. Chapter 8 develops further the scope of "harmful sports."

2. There are tensions, some real and some only apparent, between this chapter's arguments and matters that chapter 8 takes as givens. In the earlier chapter, for example, I assumed that wealth will be earned and distributed through harmful sports, while this chapter challenges that practice.

[15n3]

3. I use "preprofessional" rather than "nonprofessional" so as to capture levels of sports where the participants are youths. "Nonprofessionals" suggests no age range of the participants.

[15n4]

4. By no means is this an exhaustive list of nonparticipants. There are innumerable others such as the National Collegiate Athletic Association (NCAA), universities and colleges, secondary schools, high school athletic associations, and youth sports organizations. This chapter examines only those listed because examining all possible nonparticipants would be impractical.

[15n5]

5. Throughout this chapter, "leagues" refers to sports leagues and "owners" refers to team owners.



6. I also hold that some burdens are not due any sentient creatures, but that is a matter that is beyond the scope of this book.

7. Although among philosophers today there is a consensus that slavery is unjust, that was not always the case. Aristotle, for example, infamously argued that some persons, by nature, are slaves. Aristotle, *Politics*, trans., intro., and notes C. D. C. Reeve (Indianapolis, IN: Hackett Publishing Company, 1998 [ca. 350 BCE]), 5–12. Contemporary treatments of Aristotle's argument include Tim Christiaens, "Aristotle's Anthropological Machine and Slavery: An Agambenian Interpretation," *Epoché* 23 (2018): 239–62; Stephen R. L. Clark, "Slaves, Servility and Noble Deeds," *Philosophical Inquiry* 25 (2003): 165–76; Robert L. Gallagher, "Aristotle on *Eidei Diapherontoi*," *British Journal for the History of Philosophy* 19 (2011) 363–84; Eugene Garver, "Aristotle's Natural Slaves: Incomplete *Praxeis* and Incomplete Human Beings," *Journal of the History of Philosophy* 32 (1994): 173–95; C. F. Goodey, "Politics, Nature, and Necessity: Were Aristotle's Slaves Feeble Minded?" *Political Theory* 27 (1999): 203–24; Rachana Kamtekar, "Studying Ancient Political Thought through Ancient Philosophers: The Case of Aristotle and Natural Slavery," *Polis* 33 (2016): 150–71; Joseph A. Karbowski, "Aristotle's Scientific Inquiry into Natural Slavery," *Journal of the History of Philosophy* 51 (2013): 331–53; Javier Martinez, "Slavery and Citizenship in Aristotle's *Politics*," *Filozofia* 68 (2013): 124–31; Darren Nah, "Aristotle as Realist Critic of Slavery," *History of Political Thought* 39 (2018): 399–421; Anthony Preus, "Aristotle on Slavery: Recent Reactions," *Philosophical Inquiry* 15 (1993): 33–47; Eckart Schütrumpf, "Aristotle's Theory of Slavery—A Platonic Dilemma," *Ancient Philosophy* 13 (1993): 111–23; Peter Simpson, "Aristotle's Defensible Defence of Slavery," *Polis* 23 (2006): 95–115; and Nicholas D. Smith, "Aristotle's Theory of Natural Slavery," *Phoenix* 37 (1983): 109–22.

8. Chapter 3 examines whether individuals are free morally to contract themselves into slavery.

9. Chapter 2 examines both liberties, and chapter 1's examination of paternalism provides insights about them. Chapter 5 examines the liberty of internal states, while chapter 9 examines the liberty of external acts.

10. I do not take a position on the practice in this book, but one type of context for which such a sound argument may exist is physician-assisted suicide. Some of the many contributions to the debate over the morality of the practice are Dan W. Brock, "A Critique of Three Objections to Physician-Assisted Suicide," *Ethics* 109 (1999): 519–47; E. Dahl and N. Levy, "The Case for Physician Assisted Suicide: How Can It Possibly Be Proven?" *Journal of Medical Ethics* 32 (2006): 335–38; J. M. Dieterle, "Physician Assisted Suicide: A New Look at the Arguments," *Bioethics* 21 (2007): 127–39; Ezekiel J. Emanuel, "What Is the Great Benefit of Legalizing Euthanasia or Physician-Assisted Suicide?" *Ethics* 109 (1999): 629–42; Michael B. Gill, "Is the Legalization of Physician-Assisted Suicide Compatible with Good End-of-Life Care?" *Journal of Applied Philosophy* 26 (2009): 27–45; F. M. Kamm, "Physician-Assisted Suicide, the Doctrine of Double Effect, and the Ground of Value," *Ethics* 109 (1999): 586–605; Hon-Lam Li, "What We Owe to Terminally Ill Patients: The Option of Physician-Assisted Suicide," *Asian Bioethics Review* 8 (2016): 224–43; Edmund D. Pellegrino, "Physician-Assisted Suicide and Euthanasia: Rebuttals of Rebuttals—The Moral Prohibition Remains," *Journal of Medicine and Philosophy* 26 (2001): 93–100; Diane Raymond, "'Fatal Practices': A Feminist Analysis of Physician-Assisted Suicide and Euthanasia," *Hypatia* 14 (1999): 1–25; Danny Scoccia, "Slippery-Slope Objections to Legalizing Physician-Assisted Suicide and Voluntary Euthanasia," *Public Affairs Quarterly* 19 (2005): 143–61 and "Physician-Assisted Suicide, Disability, and Paternalism," *Social Theory and Practice* 36 (2010): 479–98; Manne Sjöstrand et al., "Autonomy-Based Arguments against Physician-Assisted Suicide and Euthanasia: A Critique," *Medicine, Health Care and Philosophy* 16 (2013): 225–230; Andrew Sneddon, "Equality, Justice, and Paternalism: Recentring Debate about Physician-Assisted Suicide," *Journal of Applied Philosophy* 23 (2006): 387–404; B. Steinbock, "The Case for Physician Assisted Suicide: Not (Yet) Proven," *Journal of Medical Ethics* 31 (2005): 235–41; Judith Jarvis Thomson, "Physician-Assisted Suicide: Two Moral Arguments," *Ethics* 109 (1999): 497–518; Carl Wellman, "A Moral Right to Physician-Assisted Suicide," *American Philosophical Quarterly* 38 (2001): 271–86 and "A Legal Right to Physician-Assisted Suicide Defended," *Social Theory and Practice* 29 (2003): 19–38; and Susan M. Wolf, "Confronting

[15n6]

[15n7]

[15n8]

[15n9]

[15n10]



Physician-Assisted Suicide and Euthanasia: My Father's Death," *Hastings Center Report* 38 (2008): 23–26.

[15n11]

11. See Scott A. Wolla, "The Economics of Subsidizing Sports Stadiums," *Economic Research, Federal Reserve Bank of St. Louis*, May 2017, <https://research.stlouisfed.org/publications/page1-econ/2017-05-01/the-economics-of-subsidizing-sports-stadiums/>.

[15n12]

12. Ferris Jabr writes, "Various surveys have determined that around two million people in the U.S. are addicted to gambling, and for as many as 20 million citizens the habit seriously interferes with work and social life." Ferris Jabr, "How the Brain Gets Addicted to Gambling," *Scientific American*, November 1, 2013, <https://www.scientificamerican.com/article/how-the-brain-gets-addicted-to-gambling/>.

[15n13]

13. Moral liberalism concurs with all other moral theories of which I am aware that there is a moral obligation not to defraud others.

[15n14]

14. Whether offers, like threats, can be coercive is a matter of much debate among philosophers. In chapter 8, I argue that they can, and I cite several works on both sides of the debate.

[15n15]

15. William James, "The Will to Believe," in *William James: The Essential Writings*, ed. Bruce W. Wilshire (Albany, NY: State University of New York Press, 1984 [1896]), 309. See also the "Coercive Offers and Voluntary Participation in Harmful Sports" subsection of this book's chapter 8.

[15n16]

16. See the Ignatius and Dominic examples in chapter 8.

[15n17]

17. Nor does any other moral theory of which I am aware make such a guarantee.

[15n18]

18. The franchise moved to Baltimore and changed its name after the 1995 season.

[15n19]

19. For retrospective looks at Modell's decision, see Tony Grossi, "Battle for the Browns: The Inside Story," *The Plain Dealer*, September 5, 1999, [https://www.cleveland.com/pdextra/2012/09/battle\\_for\\_the\\_browns\\_the\\_insi.html](https://www.cleveland.com/pdextra/2012/09/battle_for_the_browns_the_insi.html); and Branson Wright, "Cleveland Browns Move to Baltimore Left City Stunned, Angered: PD 175th (Photos)," *The Plain Dealer*, April 30, 2017, [https://www.cleveland.com/ohio-sports-blog/2017/04/cleveland\\_browns\\_move\\_to\\_balti.html](https://www.cleveland.com/ohio-sports-blog/2017/04/cleveland_browns_move_to_balti.html).

[15n20]

20. Ibid.

[15n21]

21. The deal was official on February 8, 1996, and the Ravens did not play their first game in Baltimore until the new season began later that year. Ibid.

[15n22]

22. I actually think that governments are obligated to protect ecosystems for the ecosystems' own sakes, but I do not argue for that claim here because the soundness or unsoundness of the present argument is independent of the claim's truth value.

[15n23]

23. Chapter 1 examines moral liberalism's antipaternalist position.

[15n24]

24. There might be some exceptions to this such as when governments make legal physician-assisted suicide.

[15n25]

25. As I write this, the United States is struggling, and essentially failing, to respond to the COVID-19 pandemic. Professional, collegiate, and high school sports leagues are struggling to restart, and schools at all levels are determining whether, and, if so, how, to reopen. Many sporting events in other countries, such as the 2020 Tour de France and the 2020 Olympic Games in Tokyo, have been postponed or canceled.

[15n26]

26. I refer to the United States' culture in the singular only for ease of exposition. I recognize that no country's culture is a monolith and that there are many subcultures within societies.

[15n27]

27. Lest readers think my concerns about the role of sports in the United States is driven by a disdain for, or disinterest in, sports, since childhood I have participated in, and have been a fan of, sports.

[15n28]

28. Note that most sports do not fall under the definition of "harmful sports" with which this chapter is operating.

[15n29]

29. Scott Soshnick and Eben Novy-Williams, "The NFL Nears \$25 Billion Revenue Goal Ahead of Super Bowl," *Chicago Tribune*, January 28, 2019, <https://www.chicagotribune.com/sports/ct-spt-nfl-revenue-super-bowl-20190128-story.html>.

[15n30]

30. Chapter 8 also indicates that I am sympathetic to, and often make, many criticisms of capitalism. That chapter also cites several works in philosophy literature that address such criticisms.

## Chapter 15

31. Good reasons are possible. If a coworker continually treats me disrespectfully, moral liberalism would not condemn me if I were to treat the coworker disrespectfully in return. Similarly, I am not obligated to treat bigots with respect as they spew their hatred.

[15n31]

32. It pains me for two reasons. First, I became a football fan when I was a child. I began to question my support of that harmful sport only a few years ago. I was much quicker to question my support of boxing, but, even at the time, the reasons I had for questioning my support of boxing also applied to my support of football. Second, I would much prefer that the lion's share of the blame for the existence of harmful sports as we know them rest with abstract entities such as leagues and teams rather than with actual individuals such as myself. Alas, my preference does not make it so.

[15n32]

33. The "business of harmful sports" means the institutions and practices that deliver harmful sports events for our consumption.

[15n33]

## Chapter Sixteen

# Obligations and Nongovernmental Institutions

**[16.0]** Fools rush in where angels fear to tread.

**[16.1]** —Alexander Pope

**[16.2]** This chapter closes the book because it examines two matters that so far have been implied, but not examined specifically. The following questions capture those matters:

**[16.3]** 1. Does moral liberalism apply only to individuals, or does it also apply to institutions?

**[16.4]** 2. How virtuous does moral liberalism require individuals and, if it applies to them, institutions to be?

**[16.5]** By arguing that nongovernmental institutions act immorally when they punish members for wrongs committed outside those institutions, chapter 12 suggests that the answer to the first question is “yes.” Chapter 15 also suggests the affirmative answer when it examines whether leagues, teams, governments, and media organizations have moral obligations with respect to their contributions to harmful sports. This chapter demonstrates more fully the affirmative answer by addressing businesses. Although most of my arguments apply to other institutions, I address businesses because they are among the most prevalent of institutions.

**[16.6]** Regarding the second question, I have suggested, throughout the book, that what we can demand of individuals is limited. This chapter examines directly that limit. The arguments in it concern businesses, but, for the most part, they apply both to other institutions and to individuals.

Susan Wolf provides the basis for this chapter's arguments. She famously argues that moral perfection is not an ideal for which persons should aim.<sup>1</sup> She writes, "Moral perfection, in the sense of moral saintliness, does not constitute a model of personal well-being toward which it would be particularly rational or good or desirable for a human being to strive."<sup>2</sup> Moral sainthood requires one to cultivate moral virtues to a degree that discourages "the discovery and development of significant nonmoral interests and skills."<sup>3</sup> Wolf's argument is compelling in her context of persons, and it remains so when the context is expanded to businesses.<sup>4</sup> This chapter argues that we should avoid demanding an analogous moral sainthood of businesses that similarly discourages them from promoting certain nonmoral values. It also examines whether businesses' greater social power justifies demanding moral sainthood from them even though we should not demand moral sainthood from persons.

[16.7]

### WOLF'S MORAL SAINTS

[16.8]

Most of us know good people. Few, if any of us, know moral saints. Most of us know people who almost always do the right thing, and whose character traits and beliefs are almost always admirable. Few, if any of us, know people whose actions, traits, and beliefs satisfy the much higher standard for moral sainthood. To be a moral saint, one must be "a person whose every action is as morally good as possible, a person . . . who is as morally worthy as can be."<sup>5</sup> Although there is a consensus that the vast majority fall short of moral sainthood, at least some believe it is an ideal for which we should aim. Wolf denies that view. She argues that some of the very traits required for moral sainthood, although seemingly desirable when considered in isolation, preclude one from developing other important, nonmoral traits.

[16.9]

For Wolf, we rightly appreciate, and benefit from, many nonmoral traits in others such as cynical and sarcastic wits and senses of humor, and drives to succeed in various arenas like gourmet cooking, fashion, athletics, and the arts.<sup>6</sup> The very concept of moral sainthood discourages the cultivation of such traits, but such traits often lead individuals to "push the envelope" in ways that are beneficial. People with such traits often challenge societal norms and traditions, thereby becoming the vanguard of positive social change. One need only think of the roles musicians, filmmakers, and other artists played in the civil rights and women's rights movements to find examples.

[16.10]

### What Is Good about Moral Saints?

[16.11]

Moral saints possess many admirable traits such as those that are evident in the following description of Jill:

[16.12]

**[16.13]** She treats people justly and kindly. She is patient, considerate, even-tempered, hospitable, and charitable in both thought and deed. She is reluctant to make negative judgments of other people and is careful not to favor some people over others on the basis of properties they could not help but have.<sup>7</sup>

**[16.14]** Few would deny that each of Jill's traits is admirable. Few would deny that, given what we know, Jill is a good person. Moreover, most of us hope that others feel they can describe us in like fashions. Perhaps even more telling, most of us hope that we have helped those over whom we have influence to develop such traits. I suspect most any mother would like to hear her adult child say, "My mom taught me how to be patient and considerate." I, and I suspect most other professors, would like to hear a former student say something like, "Professor Spurgin helped me see the importance of treating people justly." When we think of these traits as stated, there is little negative to say about them. These traits, when considered as we commonly use the terms that describe them, are traits we would like to see in ourselves and others.

### **[16.15] What Is Wrong with Moral Saints?**

**[16.16]** Moral saints, however, do not possess Jill's traits in the way we commonly use the terms that describe them suggests. Moral saints "have the standard moral virtues to a nonstandard degree."<sup>8</sup> The moral virtues are "*all* present in the same individual, and to an extreme degree."<sup>9</sup> Moral saints, if any actually exist, possess all the moral virtues all the time.

**[16.17]** The problem with possessing the moral virtues in this manner is that they "are apt to crowd out the nonmoral virtues, as well as many of the interests and personal characteristics that we generally think contribute to a healthy, well-rounded, richly-developed character."<sup>10</sup> Moral saints cannot be merely generally patient, but, rather, must be patient come what may. Moral saints cannot be merely generally charitable, but, rather, must be charitable at all times.

**[16.18]** Patience, however, is not always desirable or admirable. One should be impatient when a colleague is being intentionally obtuse in order to obstruct the progression through the agenda of a department meeting. Without such impatience, one develops the kind of character that allows obstructionists to have their way.

**[16.19]** Likewise, charitableness is not always desirable or admirable. One who is always charitable cannot devote sufficient time and effort to other interests. Wolf writes, "If the moral saint is devoting all his time to feeding the hungry or healing the sick or raising money for Oxfam, then necessarily he is not reading Victorian novels, playing the oboe, or improving his backhand."<sup>11</sup> A well-rounded person has interests beyond the moral virtues. Professors who are fortunate enough to work with students who are dedicated to their academic pursuits and are involved in many worthy social causes often remind

those students to save some time to do things they enjoy. We do so precisely because we believe well-rounded persons develop a variety of interests, skills, and tastes.

The costs of moral sainthood are not borne only by those who, by seeking moral perfection, fail to develop well-rounded characters. The fact that moral saints do not pursue certain nonmoral values is a loss both to other individuals and to society as a whole. A friend once told me that I have a mischievous personality. When I cringed, she told me that it is one of the things she likes about me. So, even though we do not include a mischievous personality in the list of the traits of moral perfection, it is a trait that we can value in others because of the amusement it can provide and because it can help us find others interesting. If I sought moral perfection, my friend would lose the value she gains from my mischievous personality, however great or small that value is for her.

[16.20]

The costs of moral sainthood others bear are not limited merely to what they find amusing or interesting. Wolf explains that the traits moral saints must forgo “might be described as going against the moral grain.”<sup>12</sup> Abandoning or challenging societal norms and traditions, however, often can benefit other persons or society at large. Dr. Gregory House, a character portrayed by Hugh Laurie in the television series *House* that aired from 2004 to 2012, illustrates these values well.<sup>13</sup> House’s specialty is diagnosing and treating difficult cases that have stumped other physicians. To do this, House often bends or breaks ethical norms and standards of his profession and society. When chastised by colleagues or hospital administrators, House usually responds with something like, “If I had followed the rules, my patient would be dead instead of going home to her family.” Like Alexander Pope’s fool, House rushes in where angels fear to tread. In doing so, he often saves the lives of those who would have died in the hands of moral saints.

[16.21]

We need not think only of fictional characters to find examples of how challenging norms and traditions can benefit society. Again, think of the musicians, filmmakers, and other artists who used their works to help advance the civil rights and women’s rights movements. These artists often challenged commonly accepted views about the proper roles of women and minorities. In the 1967 film *Guess Who’s Coming to Dinner*, the daughter of an educated, progressive, white couple brings home her African American fiancé to meet her parents. This was a rather shocking scenario for many at the time, and it directly challenged the social taboo against interracial marriages and relationships. Other films of the era, such as *100 Rifles* in 1969, challenged this taboo in ways many found even more shocking by including interracial sex scenes.

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Those and other works of art helped advance the discussions that were necessary for positive social change. If the artists behind them had chosen to strive for moral sainthood, they would not have developed the traits that

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allowed them to challenge societal norms and traditions in the ways they did. They would not have had the disregard for, or, perhaps, even the disdain for, the sensitivities of others that was necessary, nor would they have had the self-importance to believe that their artistic visions were more important than norms and traditions.<sup>14</sup> Without their challenges, social progress regarding interracial marriages and relationships likely would have been even more slow than it has been.

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## APPLYING WOLF'S IDEAS TO BUSINESSES

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Just as we lose on both the individual and societal levels when persons seek the ideal of moral perfection, we lose similarly if businesses seek an analogous moral perfection. Just as we need individuals to challenge societal norms and traditions, we need businesses to act similarly. If businesses seek moral perfection, they will not cultivate the traits that lead them to lodge such challenges.

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The concern is not that we live in a world full of morally perfect businesses. As Wolf writes about persons, "I don't know whether there are any moral saints."<sup>15</sup> Thus, my position is not that we need to rein in all those saintly businesses and make them less perfect morally. My position, rather, is that we should rethink how we write and speak about businesses so that we avoid advocating, either intentionally or unintentionally, the ideal of moral perfection. If we use moral perfection as the standard, we are likely to judge too harshly businesses when they challenge societal norms and traditions.

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The usages of "we" in the preceding paragraph do not refer only to ethicists. Although ethicists often are at the forefront of efforts to persuade businesses to think and act ethically, both individuals and interest groups often speak out against various businesses in efforts to push them toward what they believe to be ethical behavior. Both individuals such as Joe Gibbs, former head coach of Washington, D.C.'s NFL team, and interest groups such as the National Coalition for the Protection of Children & Families expressed moral outrage over *A&F Quarterly*, a "magalog" formerly issued by Abercrombie & Fitch, and actively sought to move the company to disperse with the sexually suggestive images the publication contained.<sup>16</sup>

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## What Is Good about Moral Perfection in Businesses?

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Just as individuals who seek moral perfection possess many desirable traits, so do businesses that seek moral perfection. Consider the amount of effort ethicists and others have expended in order to convince businesses that they should account for the interests of stakeholders, other than shareholders, when making decisions. Little effort, if any, is necessary to convince a saintly business of that point. Just as saintly persons seek to treat others justly and

considerately, so do saintly businesses. With such efforts at the forefront, saintly businesses need little coaxing to examine how their activities affect other parties. Moreover, they need little coaxing to adjust their activities because of those effects. Just as saintly persons find troubling undue harm caused to others, so do saintly businesses. In both cases, the trouble they feel moves them to alter their behavior.<sup>17</sup>

Just as saintly persons do not see laws as the only limitations on personal behavior, saintly businesses do not see laws as the only limitations on business activities. A saintly person recognizes the moral problem with violating a friend's confidence even though the law does not prohibit it, and, thus, a saintly person does not betray a friend in that way.<sup>18</sup> Likewise, a saintly business recognizes the moral problem with dumping its toxic waste upriver from a village that depends on the river for food and water even if the laws of the country in question do not prevent such dumping, and, thus, a saintly business finds alternative ways to dispose of the waste.

In these and many other ways, moral perfection on the part of all businesses would make easier the lives of ethicists, as well as other concerned individuals and interest groups. We would need to expend far less, if any, effort to promote the ethical behavior we desire from businesses.

### **What Is Wrong with Moral Perfection in Businesses?**

Despite the positive traits of saintly businesses, and despite the fact that the lives of ethicists and other concerned individuals and interest groups would be much easier if all businesses were morally perfect, such moral perfection would generate significant losses for society. Like saintly persons, saintly businesses do not develop the traits that are necessary to abandon or challenge societal norms and traditions. Moral saints, whether individuals or businesses, tread lightly so as not to harm, offend, or insult others. Thus, saintly businesses are cautious in their public statements, protective of their public images, and careful in their marketing efforts. Such traits lead saintly businesses to reinforce, either intentionally or unintentionally, societal norms and traditions at the very times society most needs those norms and traditions challenged. Society often benefits when businesses are at the forefront of challenges to norms and traditions.

Examples of society benefiting from businesses challenging societal norms and traditions are easy to find. The musicians, filmmakers, and artists referred to earlier did not always act merely as individuals when they challenged norms and traditions. Artists often have corporate sponsors, recording studios finance and release the works of musicians, and film studios finance and release the works of filmmakers. Columbia Pictures did not act cautiously like a moral saint when it released *Guess Who's Coming to Dinner*, nor did 20th Century Fox when it released *100 Rifles*. They were willing to risk

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insulting and offending in order to challenge a social taboo, and society benefited from their willingness. Although those studios' efforts were admirable, we can go so far as to say that perhaps even they, and other studios, acted too saintly. Had they challenged the social taboo more quickly and more often, social change might have come earlier and progressed more quickly.<sup>19</sup>

**[16.35]** In the not-too-distant past, companies began running television ads for various feminine hygiene products. I remember vividly my grandmother's and great-grandmother's shock and moral outrage when those ads first appeared. My grandmother and great-grandmother expressed the commonly held view that it is morally unacceptable to speak publicly about such matters. By disregarding the norm, however, companies that began to advertise feminine hygiene products helped society to begin to talk more openly and effectively about such matters. The products in question help women live more comfortably with natural bodily functions.<sup>20</sup> Surely, society is better off when we can speak openly of such bodily functions, and of products like feminine napkins, tampons, and douches, without embarrassment and without snickers from others.

**[16.36]** More recently, companies began running television ads for adult undergarments designed for those with incontinence. Formerly a problem that many, especially the elderly, suffered in silence, the ads have helped society speak more openly and effectively about the problem. Because the companies involved had to ignore the norm against speaking publicly about incontinence, we see, once again, an example of how businesses helped us overcome a problematic norm.<sup>21</sup>

**[16.37]** Even more recently, pharmaceutical companies began running television ads for drugs to help men with erectile dysfunction. Again, once a problem many suffered in silence, the ads helped society speak more openly and effectively about the problem. One ad even goes so far as to encourage men to overcome the embarrassment that might prevent them from raising the topic of their erectile dysfunction with their physicians. Surely, such open communication is beneficial.

**[16.38]** All of these ads challenge societal norms and traditions. The companies that run them rush in where moral saints fear to tread. They are willing to risk insulting and offending many in ways that saintly businesses are not. Even after several years of ads for erectile dysfunction medications, I frequently hear people, often rather progressive people, expressing distaste for the ads. For some, the distaste concerns the ads themselves, while, for others, it concerns the times the ads are aired. The latter are often expressed something like, "I hate to answer my children's questions about erectile dysfunction. They shouldn't run those ads at times children are likely to watch TV."

**[16.39]** Such expressions of distaste suggest that the companies in question fall short of moral sainthood in at least two ways. First, they speak openly about

erectile dysfunction. Second, they do so at times to which many object. Sainly businesses would be cautious about both perceived offenses and, thus, would not challenge societal norms in those ways. Both challenges, however, are beneficial as they encourage us to speak more openly and effectively about a natural problem many men face. Even forcing parents to confront their children's questions is helpful. It encourages them to teach children about such matters earlier and more effectively. This is true even when the age-appropriate answer for some young children is an evasion like, "It's a medical problem some men have when they get older." Even if such an evasive answer is appropriate, parents are encouraged to begin thinking about how they will address such issues when their children are mature enough for the full answer.

Others object to the efforts pharmaceutical companies have made regarding erectile dysfunction medications because they believe those companies should redirect their efforts toward life-threatening medical problems such as acquired immunodeficiency syndrome (AIDS), cancer, and treatable illnesses afflicting many in developing nations. The resources that pharmaceutical companies devote to developing and marketing erectile dysfunction medications could save many thousands of lives if those resources were devoted to other life-threatening illnesses.

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No doubt, saintly businesses would be moved by such an argument. It is hard to imagine how saintly businesses could be comfortable using their resources to help older men have sex when those same resources could be used to save lives, often the lives of children.<sup>22</sup> This is analogous to the saintly person who cannot spend time practicing correct swimming techniques because the moral saint must devote that time to feeding the hungry. Such saintliness by businesses, however, would come at societal costs, both those of continued silence about erectile dysfunction and those from the loss of sex lives for the men so afflicted.

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One need not think about products associated with natural, bodily functions or medical problems to find ways we lose when businesses seek moral perfection. The *A&F Quarterly* provides a good example. Sainly businesses do not display the sexually suggestive images of young people that Abercrombie & Fitch used in the publication. Had Abercrombie & Fitch been saintly at the time, it would have been too cautious to risk the shock and moral outrage that followed. It would not have risked offending parents and interest groups in the way that it did.

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Elsewhere, however, I identify the cost society bears when no businesses are willing to take such risks. I argue that the real moral problem lies not in what Abercrombie & Fitch did, but, rather, in society's unhealthy attitudes about sexuality. I write,

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**[16.44]** A&F's critics have not focused their attention on the real problem associated with A&F's magazine. As the cliché goes, critics are trying to treat the symptoms rather than the disease. . . . Rather than focus their efforts on speaking out against A&F's break from the mainstream, they should use it as motivation to promote healthy attitudes about sexuality in our culture. Critics, as well as the rest of society, should begin a real discussion about what healthy sexuality entails and how we can promote it in teens.<sup>23</sup>

**[16.45]** Even challenging norms and traditions in the manner that Abercrombie & Fitch did benefits society. It allows us to identify a way in which we are failing young people. We should see the images in Abercrombie & Fitch's publication, and other companies' similar images, as a challenge to educate young people about sexuality in a healthy way. Sainly businesses, however, cannot lodge such challenges to norms and traditions that we can use to better society. They fear to tread on Abercrombie & Fitch's ground and do not wish to endure the offense and outrage Abercrombie & Fitch endured.

**[16.46]** In these and many other ways, society benefits from businesses not seeking moral perfection. This does not mean that society always benefits from businesses challenging societal norms and traditions. At times, such challenges can harm society. The same is true, however, of individuals who challenge societal norms and traditions. Many of the musicians, filmmakers, and other artists who helped advance the civil rights and women's rights movements also contributed to some of the excesses of the era, such as those associated with drug abuse, for which they and society have borne heavy costs. Such costs that we sometimes bear from individuals and businesses eschewing moral perfection, however, are outweighed by the costs we would bear if individuals and businesses sought to be saintly.

**[16.47]** **POSSIBLE OBJECTIONS**

**[16.48]** Undoubtedly, many reject the position for which I have argued. This section is devoted to the three most significant challenges to my position.

**[16.49]** **The No-Need-to-Worry Objection**

**[16.50]** One might agree that society has much to lose if businesses seek moral perfection and, thus, also agree that such moral perfection is undesirable. Despite accepting these aspects of my position, one might argue that presenting my view is both unnecessary and potentially harmful. Businesses are so far from moral perfection that they need no reminders not to seek it. Businesses, in fact, are so far from moral perfection that we should avoid doing anything that might be perceived to downplay ethics. In order to obtain a merely acceptable state of affairs regarding ethics in business, we need to

take every opportunity we can to turn businesses' attention to ethics. Worrying about the costs of moral perfection unnecessarily, and harmfully, clouds the message we need to send. After all, we already are combating the profit motive when we ask businesses to think and act ethically, and that motive is so strong that it will not allow businesses to seek moral perfection.

Even if the analysis of the current state of ethics in business is correct, there are two responses to this objection. First, it applies to sainthood of businesses no more than it applies to sainthood of persons. Wolf does not impede the moral progress of persons by expressing her concerns about the costs of persons seeking moral perfection. To think she does requires considerable overestimation of the effects the *Journal of Philosophy* has on our culture. Likewise, to think that academic examination of the costs of businesses seeking moral perfection will move businesses to take ethics less seriously considerably overestimates academic literature's capacity to affect how businesses think and act.

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Moreover, to the extent that academic literature has the capacity to affect persons and businesses, questioning moral sainthood likely is beneficial. Both persons and businesses are more likely to take seriously the literature if they realize we are not expecting moral perfection from them. This is akin to how students respond better to assignments when they know that their professors' expectations are reasonable rather than demanding a perfection students cannot achieve.

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Second, the objection misunderstands the intended audience. Wolf's goal is not to convince typical persons to cease their efforts to be moral saints. She, in fact, doubts that any persons actually are engaged in such efforts. Her goal, rather, is to speak to ethicists about how we view moral virtues in relation to other nonmoral values. Likewise, because I doubt that any businesses actually are seeking to be moral saints, my goal is not to convince businesses to cease such efforts. My goal, instead, is to challenge how we, both ethicists and other concerned individuals and interest groups, view the ethics of businesses in relation to other values that businesses produce. Essentially, I am challenging us to judge businesses less harshly when they fall short of moral perfection by appreciating better the nonmoral values they often produce when they challenge societal norms and traditions.

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### **The Moral-Saints-Often-Challenge-Norms-and-Traditions Objection**

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One might agree with my claim that we often benefit when businesses challenge social norms and traditions, but deny that seeking moral perfection prevents businesses from lodging such challenges. Individuals who approach moral perfection often are at the forefront of movements that seek social change, and it requires certain virtues, such as courage, for them to act as

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they do. Mahatma Gandhi, a person most would agree approached moral sainthood, is most famous for his courageous work to end British rule over India. So even though Gandhi approached moral perfection, his culture still benefited from his challenges to norms and traditions. If individuals can approach moral sainthood while still challenging norms and traditions, then businesses can as well. Thus, it is a mistake to suggest that we lose the potential benefits of businesses challenging norms and traditions if businesses seek moral perfection.

**[16.56]** The objector is correct to suggest that moral sainthood leaves room to challenge at least some societal norms and traditions, and is correct to claim that those who make such challenges often exhibit certain virtues. Few would argue that the mere fact that Gandhi challenged British rule precluded him from approaching moral sainthood. The real issue, however, is whether moral sainthood precludes one, either an individual or a business, from challenging norms and traditions under certain circumstances or in particular ways. I contend, and I believe Wolf would agree, that moral sainthood precludes, at certain times and in certain ways, potentially beneficial challenges.

**[16.57]** The reason most would agree that Gandhi's challenges to norms and traditions are consistent with moral sainthood is that the British rule he fought clearly was immoral, and the means he chose were nonviolent. It is not surprising that we find using nonviolent means to combat immorality consistent with moral perfection. It is less clear, however, how much agreement there would be if Gandhi were challenging norms and traditions that are not clearly immoral, or if he were using violent means to do so.

**[16.58]** Suppose that one wishes to change a societal norm or tradition that either is not immoral or is not clearly so. Imagine one who believes that, given increasing globalization, it would be more practical and efficient for the United States to adopt the metric system as have most other nations. Even though the current measuring system is not an immoral system, moral sainthood does not preclude one from challenging that system.

**[16.59]** Moral sainthood, however, does preclude one from challenging the measuring system in certain ways or, said another way, requires one to maintain certain virtues as one lodges one's challenges to the system. One must remain patient, kind, and charitable as one tries to demonstrate the practical benefits of changing to the metric system. To maintain those virtues, one must assume that others have good reasons for opposing the change. One must go out of one's way to avoid concluding that opponents are motivated by stubbornness, resistance to change, xenophobia, or the like, even though such motivations are very real possibilities in this example and challenging those possible motivations directly may well be the best, or only, way to bring about the desired change. Thus, the moral saint is precluded from challenging opponents in the way that has the best chance to bring about what the saint sees as positive social change. The moral saint cannot say

openly, or even think, that opponents are being silly, stubborn, or fearful of new or foreign things because attributing such motivations to others violates the virtue of charity as applied to judging others.<sup>24</sup>

Businesses are in a similar position if they seek moral perfection. In cases where the norms or traditions they wish to challenge are not clearly immoral, they are precluded from doing so at certain times and in certain ways. The examples of the social taboos against presenting feminine hygiene products and erectile dysfunction medications in televisions ads demonstrate the point. Unlike the taboo against interracial marriages and relationships, neither of these taboos is immoral, or at least neither is clearly so.<sup>25</sup> Saintry businesses cannot challenge those taboos simply by ignoring them and running the ads as several businesses have done. They, instead, must maintain the virtues as they try to demonstrate to others how society can benefit from dispensing with the taboos.

When a norm or tradition is not clearly immoral, a moral saint must be careful with the feelings of others as the saint challenges that norm or tradition. In such a case, after all, the feelings of those who support the norm or tradition may be just as well-grounded morally as are the saint's feelings. Thus, the virtue of treating others with respect requires the saint to challenge the norm or tradition slowly. This seriously restricts businesses' ability to run the kinds of ads they do, and at the times they do, for the products at issue. In fact, it likely precludes them from running the ads without first engaging in expensive, time-consuming efforts to educate the public about the benefits of dispensing with the taboos. These efforts might involve seemingly endless meetings with concerned individuals, interest groups, and various governmental oversight agencies. Even worse, should those efforts fail to persuade the public, then moral sainthood precludes businesses from ever running the ads. In those cases, society loses from the delay in beginning, or complete failure, to speak openly about the issues in question.

### The Relevant Difference Objection

One might accept Wolf's position on moral saints and persons but deny my extension of her position to businesses. One might argue that there is a relevant difference between businesses and persons that justifies demanding efforts to reach moral sainthood from the former but not from the latter. By and large, businesses have far greater social power than do individuals. As a result, businesses' ethical failures generally cause far greater, and more far-reaching, harms than do individuals' ethical failures. One need only think of the effects of the Enron, WorldCom, and Tyco scandals, as well as the effects of the 2008 financial crisis, to see why.<sup>26</sup> Because society generally suffers such greater and more far-reaching harms from businesses' ethical failures, we should push them to seek moral perfection. What we might lose by

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businesses striving to act saintly pales in comparison to what we often lose from their ethical failures.

**[16.64]** The preceding is perhaps the most challenging objection to my position. The objector clearly is correct about the power difference between businesses and persons. The objection, however, misses an important point about both Wolf's argument and my extension of it. By arguing that we risk demanding too much moral goodness from businesses, I do not deny that there should be ethical constraints on businesses, nor do I deny that businesses should think and act ethically. By questioning the desirability of moral sainthood for persons, Wolf does not argue for a moral free-for-all that allows wanton disregard for human life, the property of others, the well-being of others, and the like. Likewise, by questioning the desirability of moral sainthood for businesses, I am not advocating a moral free-for-all for businesses.

**[16.65]** My aim, instead, is that which Wolf pursues in the context of persons: to "call into question the assumption that it is always better to be morally better."<sup>27</sup> She explains,

**[16.66]** The role morality plays in the development of our characters and the shape of our practical deliberations need be neither that of a universal medium into which all other values must be translated nor that of an ever-present filter through which all other values must pass. This is not to say that moral value should not be an important, even the most important, kind of value we attend to in evaluating and improving ourselves and our world. It is to say that our values cannot be fully comprehended on the model of a hierarchical system with morality set at the top.<sup>28</sup>

**[16.67]** Questioning the desirability of seeking moral perfection does not commit one to the view that persons and businesses need not think and act ethically, nor does it commit one to the view that there are few or no ethical constraints on behavior. Even if one denies that moral sainthood is an ideal for which businesses should aim, one still is in a position to apply reasonable, ethical standards and constraints to businesses, and to expect businesses to adhere to those standards and constraints. Surely, any set of reasonable ethical standards and constraints would preclude the troubling behavior involved in the scandals and financial crisis referred to earlier.

**[16.68]** The objector might reply by asking this question Wolf considers when closing her paper: "How *are* we to decide when and how much to be moral?"<sup>29</sup> The objector might raise this question from frustration that can be described in this way: "First you tell me not to ask businesses to be too good, but now you tell me to ask them not to be too bad. So, how good am I to ask them to be?"

**[16.69]** Wolf responds to the question by adopting a form of intuitionism. In ethics, intuitionism is "the view that basic moral truths are known by intuition—that is, directly, rather than by inference."<sup>30</sup> Wolf writes, "In the back-



ground of this paper, . . . there lurks a commitment to . . . a healthy form of intuitionism. It . . . is not intended to take the place of more rigorous, systematically developed, moral theories—rather, it is intended to put these . . . moral theories in their place.”<sup>31</sup> Wolf doubts that any moral theory can provide a satisfactory answer to the question attributed to the objector. This leads her to conclude that “we must be willing to raise normative questions from a perspective that is unattached to a commitment to any particular well-ordered system of values.”<sup>32</sup>

Wolf’s response is the correct answer to the objector’s question whether we are considering individuals or businesses. Essentially, the question asks for something that applied ethicists have been seeking for decades, independent of any considerations of moral sainthood. Those in all areas of applied ethics have struggled with the disagreement over which ethical theory, in the traditional sense of the term, is the right one to apply to the various questions with which we struggle. By asking this question, the objector is asking supporters of the position for which I argue in this chapter to supply something that has eluded applied ethicists for decades.

Applied ethicists would be served better by dispensing with the question and abandoning the pursuit of the right ethical theory. The answer they seek lies in moral liberalism and its basis in Hume’s sentiments theory. Although I explain that approach in part I, elsewhere I argue explicitly for it with respect to businesses.<sup>33</sup> I write,

Ethical theory is an ongoing debate. Approaching business ethics issues through an ethical theory immediately moves the question to the realm of that debate. One’s efforts then are spent on questions that pertain to the debate over theories rather than on the issues that affect people’s lives on a daily basis. A Humean approach, however, does not have this problem. Instead of examining theories, it searches for an understanding of the facts related to various issues and agreement in our sentiments as they apply to those issues.<sup>34</sup>

Searching for an understanding of the facts and circumstances related to ethical issues concerning businesses, and seeking agreement in our sentiments about those facts and circumstances, is a more promising approach to those issues than is pursuing the right ethical theory. It allows us to answer the objector’s question by pointing out that the Humean process informs us, over time, how much moral goodness we should demand from businesses.

## NOTES

1. Susan Wolf, “Moral Saints,” *Journal of Philosophy* 79 (1982): 419–39.
2. *Ibid.*, 419.
3. *Ibid.*, 421.

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- [16n4] 4. Not all philosophers find Wolf's argument compelling. See Dipasikha Chakraborty, "A Critique on Susan Wolf's Essay on 'Moral Saints,'" *Journal of Indian Council of Philosophical Research* 22 (2005): 61–70; and Edward Lawry, "In Praise of Moral Saints," *Southwest Philosophy Review* 18 (2002): 1–11.
- [16n5] 5. Wolf, "Moral Saints," 419.
- [16n6] 6. *Ibid.*, 421–22.
- [16n7] 7. This is a "watered down" version of Wolf's description of a moral saint. *Ibid.*, 421.
- [16n8] 8. *Ibid.*
- [16n9] 9. *Ibid.*
- [16n10] 10. *Ibid.*
- [16n11] 11. *Ibid.*
- [16n12] 12. *Ibid.*, 421–22.
- [16n13] 13. Although House is a fictional character, the series' writers and advisors took care to present medical and ethical dilemmas that are based on factual scenarios. To see the merits of using House to explicate philosophical problems, see Henry Jacoby, ed., *House and Philosophy: Everybody Lies* (Hoboken, NJ: John Wiley and Sons, 2009).
- [16n14] 14. This does not mean that the artists exhibited no virtues when they challenged norms and traditions. For many, it took great courage, a virtue, to proceed with their challenges. The point is that they also needed certain nonmoral traits to proceed.
- [16n15] 15. Wolf, "Moral Saints," 419.
- [16n16] 16. For a brief description of the kinds of images the publication contained, see Earl W. Spurgin, "What Was Wrong with Abercrombie & Fitch's 'Magalog?'" *Business and Society Review* 111 (2006): 388–89.
- [16n17] 17. Throughout this chapter, references to how businesses "feel" and "think," and to what they "recognize" and "see," merely are shorthand for referring to the feelings, thoughts, and acknowledgments of those who manage businesses.
- [16n18] 18. This assumes that there are no mitigating factors such as violating the friend's confidence being necessary to save the friend or others from undue harm.
- [16n19] 19. How we should view the film studios' slowness to challenge that social taboo, as well as others, depends on the studios' actual motivations. If, for example, they were moved by the fear of lost ticket sales, the pursuit of moral sainthood was not involved.
- [16n20] 20. This does not imply that all such products are helpful to women, nor does it deny the concern many have that advertising some such products actually creates discomfort in women that they should not, and otherwise would not, have.
- [16n21] 21. As is the case with artists, this does not mean that businesses exhibit no virtues when they challenge norms and traditions. It often takes courage to challenge a problematic norm.
- [16n22] 22. Although it is false that only older men have erectile dysfunction, they are the primary users of erectile dysfunction medications and they are the primary targets of ads for those medications.
- [16n23] 23. Spurgin, "What Was Wrong?" 405.
- [16n24] 24. One might object that the virtue of honesty requires the moral saint to state how the saint truly feels about the motivations of others. The moral saint, however, cannot feel so negatively about others' motivations because charity requires the saint to assume the best of others' motivations.
- [16n25] 25. I use the term "is" rather than "was" because, despite the prevalence of such ads, many people still believe they should not be aired on television or should not be aired at certain times of the day.
- [16n26] 26. This does not mean that individuals' ethical failures never cause great and far-reaching harms, nor does it mean that the 2008 financial crisis resulted solely from ethical failures by businesses.
- [16n27] 27. Wolf, "Moral Saints," 438.
- [16n28] 28. *Ibid.*
- [16n29] 29. *Ibid.*
- [16n30] 30. Jonathan Dancy, "Intuitionism, ethical," in *The Oxford Guide to Philosophy*, ed. Ted Honderich (Oxford: Oxford University Press, 2005), 442.
- [16n31] 31. Wolf, "Moral Saints," 439.

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32. Ibid.
33. Earl W. Spurgin, "Looking for Answers in All the Wrong Places," *Business Ethics Quarterly* 14 (2004): 293–313.
34. Ibid., 303.

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## About the Author

[J01.0]

After earning a PhD in philosophy from the University of North Carolina at Chapel Hill in 1995, **Earl Spurgin** joined the Department of Philosophy at John Carroll University in Cleveland, Ohio. Now professor of philosophy, Spurgin specializes in ethics and social and political philosophy and has served as director of both the Program in Applied Ethics and the University Core Curriculum. He is author of numerous journal articles, coauthor of *Historical Dictionary of Ethics*, and coeditor of *Ethics: Contemporary Readings*. Before turning to philosophy, Spurgin worked as an accountant. He remains a certified public accountant (inactive) licensed by the Oklahoma Accountancy Board.