

# **The Ends of Morality**

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# Statement of Authorship

This thesis contains no material published elsewhere or extracted in whole or in part from a thesis by which I have qualified for or been awarded another degree or diploma.

No parts of this thesis have been submitted towards the award of any other degree or diploma in any other tertiary institution.

No other person's work has been used without due acknowledgement in the main text of the thesis.

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# Abstract

The thesis looks at the part played by failure in the life of the moral actor; the importance of integration between different facets of the moral actor's life; the possibility of being obliged to do evil; and the scope of morality.

Essential to the moral actor is the ability to choose to accept failure or defeat on moral grounds; to have capabilities to further a cause but to forsake those capabilities because of a belief in their application being illicit, evil and immoral.

Over the course of the thesis we will discuss the different ways in which we might fail both practically and morally. The moral actor will, at times, be unable to achieve particular desired outcomes due to practical limits to her personal powers. However, if it is a moral rather than a practical limit, and if the outcome of her failing negatively affects others, the freedom of the moral actor to be constrained by the limit will come under a great deal of strain. A consideration of the way in which this strain ought and ought not be relieved is the work of this thesis.

The necessary singularity of her moral position, and the multiplicity of roles and obligations connected to her is apt to generate for her conflict.

Because this occasion for conflict exists, there may be a temptation to engineer a disintegration of the moral actor's moral position. Such a move needs to be avoided, as it leaves the moral actor bereft of a suitably conjunctive view of herself from which she might make determinations on matters of moral significance.

The moral agent or actor whose life and differing roles are poorly integrated is not well placed for discerning between conflicting putative obligations.

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**Dedication**

*For Louise*

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# Introduction

This thesis began as an investigation into failure. Although it has been necessary to take many widely divergent paths in the process of this investigation, the thesis, I believe, remains true to its original and stated proposal: the place of failure in the moral life.

To be a moral agent or actor is to be capable of choice, and one choice that is inevitable for the moral actor is the choice to accept failure or defeat on moral grounds; to have capabilities to further a cause but to forsake those capabilities because of a belief in their application being illicit, evil and immoral. There is of course nothing odd about accepting failure; being far from omnipotent some level of failure is inevitably the lot of every human. Over the course of the thesis we will discuss the different ways in which we might fail both practically and morally (this includes our failing to do what is morally right, and our failing in order to do what is morally right).

To be in any way realistic about ourselves is to accept that at times we will be unable to achieve the outcomes we desire, no matter how laudable those outcomes are, their achievement will at times be beyond our abilities: we will at times come up against our own limits. However, if it is a moral rather than a practical limit that we face, and if the outcome of our accepting that limit negatively affects others – especially others in our care – the freedom of the individual to be constrained by those limit will come under a great deal of strain. A consideration of the way in which this strain ought and ought not to be relieved is the work of this thesis.

The thesis begins with an examination of moral limits. It puts forward the claim that the moral actor can be the holder of only a singular moral position, and that this moral position is what is responsible for determinations, within the life of that moral actor on matters of moral significance. It is the singularity of this moral position against the multiplicity of roles and obligations connected to the moral actor that is apt to

generate for him or her serious conflict. Because of this conflict there may be a temptation towards an engineering of a further dis-integration of the moral actor's moral position: a creation of multiple moral positions, each assigned the task of giving counsel and direction on discrete aspects of the moral actor's life.

The thesis rejects moves in the direction of creating specialized moral positions within the one moral actor tailored to the requirements of roles or institutions or other types of commitments, and instead champions the idea of the wholly integrated moral agent or actor as the only viable candidate for discernment between conflicting putative obligations.

We also consider the freedoms necessary for the individual to function as a fully responsible moral actor; the imprecision of charges of moralism, and how we might better describe such cynical or sententious behaviour and misuses of morality; and the limits or scope of morality: if, and if how, some aspects of our lives fall outside of the purview of morality.

There will also be focus on the idea of a private/public split within the moral actor's life. It will be argued that such a division is misleading and destructive of the unity of the moral actor and therefore destructive of his or her moral agency; that roles and the obligations connected to public roles must be consistent with the moral outlook of the individual filling them if they are to create for that individual compelling demands.

As well, we will put forward a particular view on the way in which roles are best understood. On this view a danger exists in the over inflation of roles and their attendant obligations, as it brings about the possibility of our losing sight of the individuals who fill the roles as responsible for their own actions whilst acting in the role. It will be suggested that roles have the unfortunate tendency to overshadow the individuals who fill them, making it appear as though for the individual to act rightly he or she need only fulfill the duties attached to the role.

Commitment to a role can be an instance of moral integrity, but could also be an occasion of moral ablation. To paraphrase a saying often attributed to Edmund Burke: at times all that is needed for evil to triumph is for good men and women to do their

duty. Of course it is the recognition of an authentic and inauthentic duties that is the real question here; the moral actor encounters any number of plausible apparent duties, and it is her task to take a sufficiently wide view of herself, as a agent in the world, to allow her to make a reasonable determination on which duties ought to be discharged.

One way in which the moral actor will decide these matters will be by a consideration of the legitimacy of the institutions from where these claimed duties emanate. The thesis makes the point that obligations are easily got; institutions are easily set-up; and what is morally right is (at times) different to what is necessary for the success or continuation of any institution, or the satisfaction of an obligation. So that in order to decide on the rightfulness of a demand made on her, then the moral actor will need to decide some questions concerning the legitimacy of the institution or agreement making the demand.

To do this, she will need to have some idea of what constitutes a legitimate institution or what constitutes a legitimate agreement, these are unavoidable questions for the moral actor.

Because of the significance of these questions for the moral actor, the thesis is required to enter into debate over what constitutes a legitimate institution or agreement. These questions lead naturally enough into the neighbouring territory of what types of social settings best suit the nature of humans; what types of agreements are consistent with our natural affiliations and what types of control are needed to counter less sociable aspects of human nature.

At that point we will concentrate much of our energies and restrain the scope of this enquiry into one main idea – that of our being part of a social contract – or human society being explicable through a contractual model.

Looking primarily at Hobbes we will argue against the applicability of the contractual model as a way in which typical human relations might be deciphered. It will not be in any way a systematic or thorough enquiry into social contract theory, because such an enquiry would be out of place here. It is not of great importance to the work of the

thesis that there are better and worse social contract theories, because the thesis wishes only to say something about the suitability of the foundational idea of human society being founded on or explicable by a model of contractual agreement.

The primary interest the thesis has in contracting/social contract theory is connected to the way in which contracts generate novel obligations for the moral actor, and how demands created contractually impact upon the moral actor's pre-existing, pre-contractual obligations. To this end, we will consider the formation of human society, and becoming a member of a society, either by accident of birth or through a more deliberate act. This of course demands an analysis of consenting, implicit and explicit, and whether morality is equivalent to convention, contracting and agreement.

Through the examples of sports and games, as forms of human interaction founded in essentially arbitrary rules, we will examine the extent to which there exists a freedom to create rules in some parts of life but not others. Having made some determination on the fittingness of an institution or rule, the moral actor is better placed to decide on the rule's moral weight.

There will also a consideration of legitimate authorities and moral autonomy and the individual; how moral actors stand to the institutions to which they belong; if it is possible, for the moral actor, to be obligated by an illegitimate authority.

Our final topic will be concerned with moral actors doing evil. It will be argued that there is little point in engaging in moral philosophy if areas of our lives are excised from moral scrutiny for reasons other than being morally negligible; that for a moral theory to be worth professing the integration of it into all morally significant aspects of life must be attempted; that simply accepting, at times, we should not do what is morally right, or that at times what is morally wrong is obligatory, is destructive of the worth of any project that attempts to construct a moral framework for our lives.

Although at times we may be unsure of how we ought to act on morally significant matters, we should never be content with the excision of those matters from moral consideration as a solution to this problem. We might at times be unsure of just what is the morally right action, and we should expect to be dogged by this unsurprising

and very human shortcoming. However, we should also be clear that our ignorance is not remedied by our rejection of the moral question and substitution instead of something more willing to furnish us with an answer.

These are the main themes of the thesis. To begin our investigations we will consider the moral actor's connection to his or her moral outlook.

## CHAPTER ONE

# Moral Limits

### Introduction

The central claim of this chapter, put simply, is that a rational moral agent or actor cannot hold, simultaneously, conflicting moral positions, and that the entirety of a moral actor's life must be accessible by, and answerable to, a singular moral view. What she believes to be morally binding for herself in one part of her life, must be equally binding in all parts of her life; any considerations she may feel obliged to take account of, such as holding particular roles or positions or being uniquely responsible for others, can and must be accounted for from within her single moral position – not shared between a raft of moral positions, or be seen to affect her moral position from a place outside of the moral domain.

This idea runs counter to an approach in moral philosophy (and no doubt more generally, outside of moral philosophy) that supports the possibility of there existing, within the one moral actor, variations in moral outlook based in differing obligations and considerations connected with certain roles the moral actor might fill, or situations in which the moral actor might be required to function.

According to such views alongside a private moral outlook the moral actor can be said to also hold another view that might be called a public moral view.<sup>1</sup> As this public moral view might be expected to rely for moral determinations on considerations that are not necessarily identical to, the considerations active within the moral actor's private moral view, and different considerations can bring about different moral

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<sup>1</sup> It might be noted here that the number of moral views need not, of course, be limited to just two. As the moral actor is more than likely the holder of numerous roles within her public life, her moral positions are, under this understanding, capable of multiplication in line with the number of distinct roles she might fill.

determinations, then such an actor can be said to be the holder of more than one moral position.

This is not to be confused with the quite reasonable claim that moral actor's experience differing demands in differing situations. It would be foolish to deny that moral actors face what might be classed as role based obligations, and this thesis does not wish to make a claim of that sort. Rather it is the failure to integrate, or to see the importance of integrating, role based obligations with broader moral obligations that this thesis is critiquing.

It will be argued over the course of the thesis that integration is often not pursued with enough vigour, and instead attempts are made at accommodating conflicting obligations through a more complete disintegration of the moral actor, most often (but not exclusively) along public private lines. A fuller examination of the possibility of there being this type of divide within the one actor will take place in the next chapter, at this stage I intend only to briefly introduce the idea and state the thesis' opposition to it.

This chapter will introduce questions of moral freedom; the strength of personal moral commitments; the charge of moralism; and the scope of morality. The chapter begins by considering the need for unity in the moral actor's outlook.

### **One Moral Position**

A moral actor's role based obligations are ultimately answerable to the standards held within her personal moral outlook. This is not to say that an actor's personal moral outlook is to be expected to provide univocal pronouncements on all moral matters. In fact it is an unavoidable aspect of moral reasoning that it has the ability to present conclusions to moral actors that demand of them the satisfaction of incommensurable obligations. This thesis does not make the claim that these types of conflicts can be altogether avoided; what it does suggest is that these conflicts cannot be avoided, in an honest manner, by the creation of multiple moral views within the one moral actor. Attempts by the moral actor to accommodate the varying demands she faces in this way will be essentially meaningless. Just as I cannot successfully balance my personal finances through the acquisition of a never ending stream of new credit cards, moral



actors cannot overcome conflicting demands simply through the creation of more accommodating moral personas. In the case of the credit cards, all that is achieved is the ability to service one debt through the creation of an alternative debt. Although individual credit accounts might be more or less indebted, ultimately the totality of the debt fixes itself to a central responsible agent. In the case of the alternate moral positions, demands can be accommodated only by acceptance of a deliberate self deception, and the avoidance of taking responsibility for one's actions from a central inclusive moral position.

The creation of multiple moral positions is one form the avoidance of inconvenient demands might take; another is the deference of moral responsibility to some alternate authority. Martha Nussbaum sees not only the possibility of moral actors transferring their moral obligations to some institutional structure, but sees this transference as necessary in order to achieve justice at any level beyond the personal: "It is far better to create a decent institutional structure and then to regard individuals as having delegated their personal ethical responsibility to that structure."<sup>2</sup>

The motivation for Nussbaum, in delegating ethical responsibility, appears to be the creation of an impersonal perspective and so hopefully a perspective from which one will have more success in the just distribution of resources and rights. Although, she does accept that in a complicated world, the distribution of duties between individuals and institutions and further between institutions needs clarification.

However, in morality we remain the central and solitary responsible moral actor, no matter how many roles we fill or how many conflicting obligations we are subject to. The fact that the demands made upon us have the ability to conflict should not be a surprising fact. The conflicts inherent in morality, with an emphasis on the particular problems of political responsibility, are pointed to here by Stuart Hampshire:

It seems an unavoidable feature of moral experience that men should be torn between the claims entailed by effectiveness in action, and particularly in politics, and the moral claims derived

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<sup>2</sup> Nussbaum, M. C. (2006). *Frontiers of Justice*. Cambridge, The Belknap Press. pp. 307-8. In the next chapter, there will be further examination of Nussbaum's views on the relationship between the individual moral actor and the institution.

from the ideals of scrupulous honesty and integrity: between candour and kindness: between spontaneity and conscientious care: between open-mindedness, seeing both sides of a case, and loyalty to a cause. Such dispositions as these, and the contrary moral claims associated with them, generate the more difficult moral problems, because morality originally appears in our experience as a conflict of claims and a division of purposes.<sup>3</sup>

In other words to live morally is to live in conflict and to question the correctness of our actions even when those actions are what effectiveness in fields as serious as politics demands of us. Further, the demands and obligations generated by a moral actor's roles or the institutionally defined positions she might hold, will depend for their legitimacy, on the legitimacy of *that* moral actor being in *that* role and the constitution of that role and the legitimacy of the institution promoting the role. The contingent necessities of immorally constituted roles can never function to justify obligations that are seriously compromising to a moral actor's personal moral outlook. A moral actor cannot, from a moral perspective, accept obligations to a role or social organisation inconsistent with her personal moral outlook, without either being guilty of moral inconsistency or revising his or her personal moral outlook in order to make it consistent with the demands of the role.

### **Being in a Role**

Roles, or more broadly the demands connected to playing a part in some social organisation or institution cannot, in and by themselves, substitute for a moral actor's moral obligations. Their demandingness being based in (possibly) arbitrary manufactured laws cannot be accepted as a replacement for the moral actor's less convenient, less efficient morality. Demands and obligation created – for the moral actor – in this way, although internally compelling, cannot be accepted as overriding true moral obligations and considerations in matters of moral significance<sup>4</sup>. This

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<sup>3</sup> Hampshire, S. (1978). *Public and Private Morality*. Cambridge, Cambridge University Press. p. 43

<sup>4</sup> They may in fact be taken to be totally non-compelling for the moral actor: "The problem of role obligations deriving from institutions that are unjust is not, specific to non-contractual role obligations. The same arises with respect to contractual role obligations. The solution is in each case the same: unless the institution from which a putative role obligation derives is just, the obligation does not bind. It is not a genuine obligation." Hardimon, M. O. (1994). "Role Obligations." *The Journal of Philosophy* 91(7): 333-363. p. 344

comparison between true and manufactured obligations will require a good deal of support if it is to be at all meaningful, and to this end supports will be constructed over the course of this thesis. What might be flagged here is that the thesis takes a position against morality having a basis in no more than convention. If morality were to be viewed as no more than convention, the demands of roles and institutions would be capable of deciding the moral actor's obligations.

Obviously achieving an incontestable definition of what constitutes 'true' morality is beyond the scope of this thesis, however, the thesis is I believe capable of supporting the less ambitious claim that demonstrably corrupt forms of "morality" do exist and can be identified as such. What shows a moral position to be corrupt, in the view of this thesis, is connected to matters of its internal consistency and the scope allowed to the moral view.

The thesis will argue, in part, that what the leader of a community or nation accepts as obligatory and binding for her in her personal moral outlook, cannot be neutralised, sidelined or overridden by her taking on some role with conflicting demands and obligations. This is in part because it is a reasonable expectation of a system of private morality that, if it is to be taken as a serious and thoughtful position, it be able, for example, to incorporate the types of claims that might be made on a leader; even those claims that arise only at times of extreme national crisis<sup>5</sup>. No sensible claim of absolute prohibition can ignore the possibility of there being, from this or that

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<sup>5</sup> In this discussion much depends on how the community or nation or state that defines our being an *us* or *we* and others as not one of us is viewed – just what type of entity we take it to be – what we mean when we talk of *us*. Is the protection of our nation to be seen as our prime responsibility? Jonathan Glover writing on the dangers of tribalism says this: "A good Enlightenment principle might be: always treat nations merely as a means and never as an end in themselves." (Glover, J. (2001). Humanity: A Moral History of the Twentieth Century. New Haven, Yale University Press p 149) Something like this approach is needed in order for us to avoid the possibility of our elevating our nation's status to that of a moral entity, equal or superior to the moral entities that go to making the nation or the moral entities that might threaten the nation's future existence. Looking to the origins of the First World War, Glover asserts that: "Nations as imaginary people were put before the real people who made them up." (Glover, J. (2001). Humanity: A Moral History of the Twentieth Century. New Haven, Yale University Press p 199). Morality that aims to treat every moral actor as one, has no real method for weighing collective moral groups or moral superagents.

perspective, an overwhelming necessity for the prohibition to be overridden. If a leader holds as a personal moral position an absolute prohibition, on the use of torture for example, then were she to be tempted to consider the use of torture, she would need in order for her to remain consistent with her moral position, to either recant her position and accept that torture is only contingently wrong or hold to her position and accept the consequences of her actions (or inaction).

It is not open to her to maintain her absolute prohibition against torture and yet use torture to achieve some particular outcome. When the leader's private moral system maintains a prohibition against the use of torture she is making a claim to the effect that: she does not accept that there can be compelling arguments to the moral acceptability of torture, even under the most dire of circumstances; even with the highest level of responsibility; even with the most predictable and tragic of consequences.

### **Being a Leader**

If a leader expresses a personal belief in torture being invariably wrong, then for her torture is rejected in all cases.<sup>6</sup> It is always open to her to recant this view, she may come to see her opposition to torture as naïve, her experience as leader may open her eyes to the utility of torture or she may come to the conclusion that her most sacred duty is that of the protection of her community.<sup>7</sup> Any of these reasons might be thought to constitute good grounds for her to rethink her moral position, what these reasons do not provide however, are grounds for the division of the leader's morality into separate public and private spheres. The conflict cannot be resolved in this way. The conflict (between an obligation to her role and her moral position) may not be resolvable in a way that allows for her to satisfy the demands of both. It may be the

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<sup>6</sup> Were the private moral system of the leader not to be cognizant, in this way, of the demands of leadership, it would be exposed as being so thoroughly deficient in foresight that what it had to say on torture would essentially be pointless. Although no one is capable of predicting perfectly every demand some role they might fill will make on them, to fail to predict some of the more commonplace demands of a role suggests, of itself, a person is ill suited to filling the role.

<sup>7</sup> The thesis would take such a claim to be an expression of the leader's singular moral position, and not a role based alternative moral position.

case that an obligation that has been accepted by the moral actor was never an appropriate obligation for her to accept – she may not have had the freedom<sup>8</sup> to accept it or she may have misunderstood, at the time of accepting it, what it truly entailed.

Whatever is known to a moral agent prior to her naming some act as absolutely prohibited has a potential influence on that agent's naming the act as absolutely prohibited. Whatever comes to be known by the agent post her naming some act as absolutely prohibited has an ability to recast the agent's position. As all reasons must fall either into the prior or post categories, all reasons will act on the agent's moral position in the ways described – either they add weight to her taking a certain position, or they add weight to her changing her position. There is no cut off point in moral decision making, no matter how late in the day morally significant reasons come to light they will always act in the same way on our moral positions.

If we consider the position of the leader tempted to use torture in spite of her belief that all torture is evil she may, as has been suggested already, have simply become aware of previously hidden morally significant considerations that seem to her to justify the use of torture in the present circumstances; or perhaps she may come to find reasons to use torture that while compelling are not apparently morally significant. In the case of the novel moral reasons, if they are suitably compelling, it seems she will be obliged, in order to be consistent, to alter her personal moral position on torture. With regards the second category – compelling but non-morally significant reasons to use torture, we might on one hand see such reasons as lacking the ability to alter an agent's moral position (by reason of them being without moral significance), therefore leaving our leader free to ignore them. But we might also see, and this would be consistent with the position of this thesis, the existence of non-morally significant reasons concerned with such a morally significant topic to be an impossibility: as any consideration that claims to make the use of torture necessary cannot be thought to be morally insignificant. Claims that we need to use torture are either morally compelling or morally dismissible. They can never be morally insignificant – just as an instance of torture can never be morally insignificant.

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<sup>8</sup> More will be said on the idea of freedom to accept obligations in chapter five in particular.

A conception of the wrongness of torture that failed to foresee that at times torture may appear necessary, from some particular perspective, for the achievement of worthwhile ends would be a woefully short-sighted one; as torture is not a morally neutral activity, moral deliberations on its use seem sensibly to begin with and confine themselves to the doing or not doing of torture on the grounds of a perceived necessity. That perceived necessity will be linked to the achievement of certain ends that might only be got through the use of torture.

Therefore, we can quite reasonably assume that when claims are made for the acceptability of torture, there will be behind those claims certain desired ends that are said to make torture necessary. So, we might put aside any moral questions concerning the use of unnecessary torture (because if torture is not morally neutral but morally wrong, then unnecessary torture is a morally wrong act lacking further justification), and from a moral perspective the answer to whether unnecessary torture is ever acceptable is already framed in the question.<sup>9</sup> All that is of interest, from a moral perspective, with regards the question of torture's acceptability is whether morally significant reasons can be used to support the use of torture. A claim might be made for the need to use torture from some non-moral perspective supported on non-moral grounds. However, this thesis would maintain that there can be no non-moral justifications for the use of torture: as any justification or consideration for a morally significant act has to be itself a morally loaded consideration.

If we assume, for the moment, that there might be reasonable grounds under specific circumstances that justify our use of torture, we will need to fall short of naming torture absolutely prohibited. We might accept the use of torture on grounds of political necessity or the security of our community. The justification of any particular instance of torture might depend on the level of need we believe exists (what we risk by failing to torture) and the level of harm caused to the one being tortured (what type

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<sup>9</sup> Presumably someone could practice torture as a form of recreation or hobby. As such practices would be all but universally condemned, this thesis need waste no time in pointing to their being inappropriate.

of torture will be used and on whom will it be used).<sup>10</sup> These calculations could decide for someone, inclined towards a morality based on calculation of consequences that torture is, on balance, justifiable or even morally obligatory.

Finding justification for the use of torture could be meant to mean that we accept the moral rightness of torture or we accept its moral rightness for these people under these circumstances. As well as this it could be intended to mean we do not accept the moral rightness of torture but concede its necessity, in this instance, on these non-moral grounds. The first of these claims is a clear statement of a moral position and as such is of not really of much interest to this thesis, as this thesis is not so much concerned with particular moral positions held by particular moral agents, but rather with the way in which positions are held by moral agents. However, the other two statements are of the type this thesis *is* concerned with testing, as they suggest the possibility of a moral position being subject to considerations external to it: considerations that function on a moral actor's decisions about her actions in morally significant circumstances that cannot be accounted for within the moral actor's moral outlook.

If the leader's private moral system rejects the use of torture, absolutely, it places itself outside of any attempts at justification through appeals to practical necessity.<sup>11</sup> The leader in claiming the prohibition of torture an absolute dismisses the possibility of there being reasons why torture might be morally acceptable. She therefore dismisses the possibility of there being reasons that might oblige her to accept the use of torture. Any leader worthy of the role can be expected to exercise a reasonable level of prediction and imagination in deciding to become a leader, and that prediction or imagination could quite reasonably be expected to allow her to consider, prior to

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<sup>10</sup> No doubt there is much to be said on what constitutes torture. Questions about where robust interviewing techniques end and torture begins might need addressing and a clear working definition might need to be produced. But for the purposes of this thesis torture might be understood as the deliberate inflicting of pain for the purposes of gaining information or confession, or the subjugation of the victim or satisfaction of the torturer.

<sup>11</sup> For a clear exposition of 'absolute' in morality see: Hampshire, S.(ed) (1978). *Public and Private Morality*. Cambridge, Cambridge University Press. p 41

becoming leader, that the demands of being leader might test her prohibition on the use of torture.

From what has been argued here it should be clear that appeals by a moral actor who holds torture to be absolutely prohibited to the necessity, in these or those circumstances to accept the use of torture, must either be ineffectual in allowing the torture or expose the fact that the moral actor has inappropriately used the term absolute prohibition. Perhaps what has been argued for here did not need to be argued, as all that has been said is that absolute prohibitions are – absolute.

Nonetheless, an absolute means very little when it is understood to be contained within defined limits inside a designated moral realm. The absolutes in a restricted version of morality demand only an absolute stance by the moral actor when she understands herself to be acting from within an aspect of her life overseen by her moral outlook. In such a view the weight of that moral stance against non-moral stances or alternate moral stances remains to be decided upon. The leader's personal absolute prohibition on the use of torture is a guarantee that she will not use torture only in as far as she accepts herself to be bound by her moral position. It is for this reason that a moral actor's personal moral outlook cannot be restricted to a partial view of her life or sidelined or overridden, but must be maintained in a position from where it can effect an overview of her actions in the variety of roles she might act from.

### **Choosing a Leader**

However, the very idea of a leader holding absolute prohibitions based in her personal moral outlook will be considered by some to be inappropriate. It is argued by some that a leader must leave herself room to manoeuvre; retain a certain amount of wriggle room for herself; that the holder of inflexible moral principles is ruled out of certain public positions on grounds that clashes between the demands of her moral position and the obligations she accepts as part of their role as leader may be expected to lead



to conflicts.<sup>12</sup> One solution to this problem (the problem of leaders being required from necessity to act out of accord with their personal moral position), is to avoid putting in place morally good leaders. The idea is that we ought to accept that politics and the business of running a state is not consistent with the holding of certain absolute moral principles; or, that a role such as leader demands of an individual a less rigid more plastic and malleable approach to the moral positions that they do hold. On the question of whether being morally good is compatible with being a leader, Bernard Williams says this: ‘If one adapts Plato’s question, *how can the good rule?*, to Machiavelli’s, *how to rule the world as it is?*, the simplest conflation – *how can the good rule the world as it is?* – is merely discouraging.’<sup>13</sup>

No doubt, *how can the good rule the world as it is?* sounds a little defeatist, and unless one is prepared to accept that there may be times when the good are obliged not to succeed at ruling that world, any community blessed with a morally good leader can be seen as a community in possession of a poison chalice. Williams suggests that requiring too much goodness in our leaders would only produce individuals incapable of leadership or anything else for that matter<sup>14</sup>. However, Williams also questions what might be done with a world like Machiavelli’s world and in the end settles for the leader who although a little world weary and far from wet behind the ears has at least some ideals left. Williams’ point being that both excessive idealism and excessive cynicism are not good attributes in a leader.

There doesn’t appear to be the expectation here, in what Williams says, of an actor really being required to compromise his moral position in order to successfully carry

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<sup>12</sup> It is in this vein that, for example, many believed John F Kennedy’s being Roman Catholic made him an unfit candidate for the American presidency in 1960. They argued that Kennedy’s allegiances would ultimately sit with Rome and not his nation. How leaders of liberal democratic states are to remain faithful to their personal beliefs without those beliefs being too much a part of how they fulfil the demands of the office, is an important question in light of the topic of this thesis. Electing morally vacuous leaders might be one way around the problem, but that may see us perpetually governed by amoral careerists.

<sup>13</sup> Hampshire, S. (ed) (1978). *Public and Private Morality*. Cambridge, Cambridge University Press. pp 68-9

<sup>14</sup>Ibid. p 69

out his responsibilities. Instead it seems that what is required is that the right type of person is put in the job. Someone who is not entirely ruthless but at the same time is not hobbled into a state of complete inertia by having too many scruples. This suggests that installing the good, as in the morally good leader, is like harnessing a racehorse to a milk cart or employing a three Michelin star chef as cook at the local McDonalds. It is not simply overkill but can make doing the job in the way expected practically impossible.

Beyond the question of leaders being free to maintain moral absolutes, or the appropriateness of installing moral absolutists in positions requiring moral flexibility, there are those who see moral absolutes incongruous with being a good citizen or harmful to morality in general. The idea that moral absolutes discourage moral thinking is put forward in this quote from Jonathan Glover:

One legacy of the idea of a moral law whose commands and prohibitions are absolute, regardless of consequences, is the assumption that morality cannot realistically be applied to practical decisions.<sup>15</sup>

Glover seems to be suggesting here that moral absolutes perhaps ought to be avoided on the grounds that they give morality a bad name: their excessive demands frighten others from considering their actions from a moral perspective at all for fear of what morality might demand of them. However, this seems an odd claim as clearly some forms of moral reasoning produce absolutes while others do not. Those who see moral reasoning as rightly informed by reference to consequences see the moral absolutist as mistaken in his moral reasoning, not as someone who takes the demands of morality too far, as it were. As well as this, the holder of an absolutist position would be in conflict with his claimed position were he to consider adapting it in view of its off-putting nature to others, which is simply just another consequence: he could not recognize the absolute but then put it aside on grounds of its disutility, for him to do so would be for him to fail to recognize it as an absolute.

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<sup>15</sup> Glover, J. (2001). Humanity: A Moral History of the Twentieth Century. New Haven, Yale University Press p 221

Surely whether or not morality can be applied to practical decisions depends on whether we are prepared to accept the possibility of morality making less than practical, inconvenient, demands upon us. Glover is right in pointing out that morality is at times less than practical and throughout this thesis we will return to the idea of the acceptance of failure as an integral part of the moral actor's kit. The thesis will put forward the claim that for a moral actor not to recognize that accepting failure as an integral part of being a serious moral actor is for the moral actor to be under a grave misunderstanding of what it means to be a moral actor. It will be argued that sincerely held moral positions always have the potential to expose a moral actor to failure in his projects and endeavours.<sup>16</sup>

It will also be argued that our moral positions can, to a large extent, be described through their potential to demand of us acceptance of these failures. As well as this it will be argued that a serious moral outlook acknowledges the need for us to accept risk; that in the same way that moral seriousness demands we consider the fair distribution of material resources, it also demands the fair distribution of risk. In just the same way we can be guilty of greed or selfishness on a personal or community level with regards the just distribution of resources such as food or water or housing or education, we can also be guilty in the same way over our distribution of risk. From the perspective of moral responsibility, we *can* actually be too careful. A failure to acknowledge this fact can lead to our believing ourselves justified in improving our safety through pre-emptive strikes against any possible perceived future aggressor; or our imprisoning those individuals we mark out as potentially dangerous on the

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<sup>16</sup> The question that might be asked is - are there projects that are *too* important to be allowed to fail? Are there times when the consequences of allowing a project to fail would be so disastrous, or the positive outcomes so important, that an actor is obliged to do anything to avoid that failure? Is the challenge Dostoyevsky has Ivan issue to Alyosha to be accepted or rejected? Or is even universal happiness and perfect knowledge still not worth the tears of one tortured child: "Tell me yourself directly, I challenge you - reply: imagine that you yourself are erecting the edifice of human fortune with the goal of at the finale making people happy, of at last giving them peace and quiet, but that in order to do it it would be necessary and unavoidable to torture to death only one tiny little creature, that same little child that beat its breast with its little fist, and on its unavenged tears to found that edifice, would you agree to be the architect on those conditions, tell me and tell me truly?" Dostoyevsky, F. (2003). The Brothers Karamazov. London, Penguin. p. 321

grounds of their incarceration might help us to avert even the most minuscule of risks<sup>17</sup>.

The acknowledgment of the necessity, if we are to be morally serious, to risk failure is the acknowledgement of a limit to our powers to bring about the outcomes we desire. For us to believe ourselves cut off from the freedom to risk failure would be for us to believe ourselves incapable of acting as autonomous moral actors.

### **Tempering the Absolute**

Moral absolutes set points at which we assert that we would rather accept failure than act in a way prohibited by the absolute. In professing an absolute I make the admission that I have reached the limits of my imagination. If I claim X to be absolutely prohibited I am admitting that I cannot imagine any set of circumstances or situation in which the doing of X would be morally permissible. This may point to either a shortcoming in my imagination or that there are no circumstances in which it is morally acceptable to do X.

When looked at in this way the moral absolute is simply the most honest account of the moral actor's most diligent imaginative predictions. A moral actor claiming that torturing children is absolutely prohibited is equivalent to his saying that he is unable to sincerely imagine that there could exist reasons that would make the torturing of a child morally permissible. This claim might of course be made too readily: the moral actor may just have not sufficiently applied himself to the task of justifying the torture of children. If this is the case it might be explained to him how he could imagine the morally justifying circumstances. But without his being illuminated in this way, his assertion that torturing children is absolutely prohibited seems the most accurate statement of his position.

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<sup>17</sup> The notion of risk here is closely related to the way in which this thesis talks about failure. The central idea being that where risk cannot be eliminated it needs to be shared fairly and that we can no more ignore others in acting only to reduce *our* risk, than we can in gaining material goods or power or other finite commodities.

As has been said earlier absolutes can delineate the point at which we will accept failure in projects and endeavours we wish to see succeed. We cannot imagine the necessity of our being obliged to perform actions, without at the same time accepting those actions to be acceptable, to us, from a moral perspective.

We cannot build into our moral outlook the obligation to dismiss its directives. We cannot predict the change of our moral position in the future without the change being effected in the present. The following quote from Raimond Gaita suggests we can be obliged to do evil; that political communality depends on moral actors making the confident prediction that they will not be restrained by their moral limits:

The acknowledgement that we must do evil is not merely a condition of the survival of this or that community under these or those contingent circumstances. The acknowledgement, in advance, that we will do evil is a condition of political communality as such. It is a condition of the sober acknowledgement of one's political persona.<sup>18</sup>

It is difficult to see that one could hold simultaneously, an absolute prohibition against any action and accept Gaita's realist demand of a commitment to doing evil. This is due to the open-ended nature of the demand, as the evil one agrees to is not quantified in any way by Gaita. It is also left unclear just what constitutes evil here, is evil to be defined by each individual who puts up his hand as it were to pledge to do evil for his community? Or does membership of the political community require of the individual an acceptance of a community's standard of evil? The acceptance of Gaita's position would appear to be the acceptance of a type of social contract or agreement on the primacy of *our* survival, however, instead of there being a redefining of good and evil in the interest of the goals of the community, Gaita obligates the community member to do evil. The substitution is not that of new morality agreed on by the community's members for their mutual protection and prosperity, but an acceptance of the need for morality to be overridden in the interest of this community. Of course by the lights of this thesis such an action should be understood to simply expose an individual's true moral position: the obligatory actions becoming (by their reasoning at least) the

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<sup>18</sup>Gaita, R. (1991). Good and Evil: An Absolute Conception. Houndmills, MacMillan. p. 261.

morally correct actions. A position would appear to be incoherent if it were to demand the doing of evil as a moral obligation, or named an action evil *and* outside of the domain of morality.

I point to this now, even though a more detailed analysis will be reserved for the chapter on Doing Evil, because it is a claim that is, I believe, difficult for anyone with any sympathy for the arguments put forward in this thesis to accept. It purports to make a demand on the actor from outside of morality but at the same time, through its call to do evil, seems to be in some way morally based.

Robert Louden writes of morality's pervasiveness<sup>19</sup> as one quality of morality that makes it *supremely important*, while it is the contention of this thesis that morality should be understood to pervade all parts of an actor's life, it is not clear whether the importance of morality follows from its pervasiveness or if it is better to understand that support flows in the opposite direction: it is due to its importance that morality needs to have unfettered access to an actor's life.<sup>20</sup>

This thesis argues for the restriction of an actor's moral position to a singular view, capable of encompassing differing roles she might inhabit and possessing prescience enough to take account of at least the most foreseeable objections and problems to those positions. To this end it has been argued, by way of example, that if a leader maintains the private moral position that, say, torture is absolutely prohibited, neither contingent necessity nor special role based obligations can figure in or contribute to her having a different view of torture in her role as leader without there being a

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<sup>19</sup> Louden, R. B. (1988). "Can We Be Too Moral?" *Ethics* 98(2): 361-378.p 374

<sup>20</sup> In Gaita's view it is not just the leader who must accommodate *realpolitik*, it is rather a requirement of all members of a political community to accept that moral considerations are at times just that – moral considerations - and other considerations, such as political ones, can count for as much or more than moral ones. He appears to claim that to fail to comprehend this is to so thoroughly misunderstand the nature of political communalities that one excludes oneself from membership of that community. Gaita himself points to the pacifist as one excluded by this test and I will have more to say of his pacifist example later, but the point must be made that the demand to do evil for the good of one's community excludes all who maintain that good ends must not be reached through evil means.

necessity for her to reframe her personal moral position. The thesis puts forward two reasons for this: one: if the factors the leader encounters are sufficiently weighty to impact upon her choice of action then they must be sufficiently weighty to impact upon her personal moral position also; two: if these factors are not novel then they ought to have been accommodated within her original pre-leader role personal moral position. Contingent necessities and role based obligations are either novel and therefore to be expected to impact on the leader's personal moral outlook or they are not novel and therefore required accommodation into the leader's personal moral outlook prior to her accepting the role.

With this in mind, we need next to consider the validity of demands placed on a leader which might be seen to oblige her to act contrary to her private moral position. It is the freedom of the moral actor to be allowed to function as a full moral actor, responsible for her choices and not having her one course of action mandated to her by her being in the role of leader that is the core of the argument here. When demands are made on a moral actor to relinquish her ability to choose, the moral actor is being neutralised and her place is taken by the culture or style or expectation of the role she fills. This neutralisation also disrupts what would normally be the point to which moral responsibility affixes.

One such demand has been alluded to in the discussion on Gaita's requirement for a preparedness to do evil. Gaita's demand, we might note here, extends beyond the leader the politician to all members of the community with a *sober acknowledgement* of their *political persona*. This must include not only those who lead but those who take care in choosing who will lead, the politician and the politically serious citizen. Being prepared to do evil when necessary is not simply a requirement of the leader, but for all who seriously wish to be one of the *us*. The acknowledgement that responsibility rightly flows beyond the leader is correct, without this acknowledgment we might install leaders to dirty their hands on our behalf and at the same time take ourselves to be blameless for the consequences of their actions.

We will now consider more closely the way in which responsibility for actions attaches to moral actors in differing situations. Again there is a strong connection here with the idea that the moral actor is often freer to act in predicting future morally

compromising circumstances than he is in choosing how best to act once compromised by being in an inappropriate role.

## **Being Responsible**

The delineation of moral responsibility between ruler and ruled or a leader and her community is brought out in this quote from Michael Walzer:

We draw a line between the war itself, for which soldiers are not responsible, and the conduct of the war, for which they are responsible, at least within their own sphere of activity. Generals may well straddle the line, but that only suggests that we know pretty well where it should be drawn. We draw it by recognizing the nature of political obedience.<sup>21</sup>

Of the individual soldier Walzer says this:

The atrocities that he commits are his own; the war is not. It is conceived, both in international law and in ordinary moral judgement, as the king's business – a matter of state policy, not of individual volition, except when the individual is the king.<sup>22</sup>

This is an understanding of soldiers as having responsibility for their actions within war, but not for their being at war. What needs to be noted is, however, that nothing could be more important in deciding on the licitness of a soldier's actions than the context of that soldier being at war – legitimately.<sup>23</sup>

The soldier bears responsibility for making his or her own determination on the war's legitimacy, from whatever information relating to the war she or he is privy to, if he

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<sup>21</sup> Walzer, M. (2000). Just and Unjust Wars. New York, Basic Books. pp. 38-39

<sup>22</sup> Ibid. p. 39

<sup>23</sup> Walzer seems to acknowledge this point through the invocation of a sliding scale of permissibility for soldier's actions: the more just the cause, the more liberal the restrictions on his actions: "The greater the justice of my cause, the more rules I can violate for the sake of the cause – though some rules are always inviolable. The same argument can be put in terms of outcomes: the greater the injustice likely to result from my defeat, the more rules I can violate in order to avoid defeat – though some rules, and so on. The value of this position is that it grants the existence of rights (of some sort) while still opening the way for soldiers resisting aggression to do (some of) the things they believe necessary for victory. It allows the justice of one's cause to make a difference in the way one fights." Ibid. p. 229



or she is mistaken and accepts as legitimate the lies of his or her government, the soldier by acting in that war will be participating in a morally terrible enterprise; the soldier's actions, although the result of his or her ignorance, will be unjust.

The soldier is not free to say: *I have no idea of the merits of this war. That is someone else's concern. All I need do is act as a good soldier and none of the guilt, if there is guilt in our going to war, will attach to me.* If this is how his ignorance was to come about, it would be an ignorance for which he is culpable. Or if he was not actually ignorant, but disregarded the concerns he had over the legitimacy of the war, he would be knowingly complicit in doing evil.

Within this territory there is a great deal of difference in the individual soldier's guilt and responsibility for his actions. Going to war with a misguided confidence in the justness of one's nation's cause, is very different to being uninterested or choosing to ignore worrying indicators of the war being unjust. Yet all these approaches seem to fall inside the area Walzer expunges from individual responsibility.

Of Walzer's view that individuals don't go to war, their rulers do, and so it is the rulers who shoulder the responsibility for the war in general, Tony Coady has this to say:

Whenever the citizen is called on to act upon the government's judgement by taking up arms, the potentiality for conflict is very high. One way of resolving it is to deny the validity of the citizen's judgement in such a way that the obligation to fight is overwhelming. Michael Walzer has taken this path by insisting that moral responsibility for going to war rests entirely with the ruler and never with the individual citizen or soldier, though the individual must take a certain amount of responsibility for his own acts during war.<sup>24</sup>

Coady argues against a neat end to the moral responsibility of the individual for a war in which they participate. Of Walzer's view Coady says:

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<sup>24</sup> Coady, C. A. J. (2008). Morality and Political Violence. Cambridge, Cambridge University Press. p. 231

[it] removes much of the point of just war theory by making most of it a matter of no concern to the people who are called upon to kill and maim on the basis of someone else's application of this critical piece of moral thinking.<sup>25</sup>

If those who 'kill and maim' do so simply on the authority of others, and take no personal stake in their actions then there will be little point in considering them moral actors at all. If we do consider them to be moral actors we must also acknowledge their responsibility to personally choose how they will act.

By putting aside the moral responsibility of the moral actor in the case of the soldier going to war, Walzer creates an artificial immunity supported only by an unquestioning obedience to the authority of the state, creating a deliberate vagueness of responsibility where none need exist.

This is an attempt to sideline personal morality by over inflating public responsibility. We will consider other ways in which attempts are made to accommodate the demands of an individual's personal morality or to avoid them altogether (the concept of avoiding the overly good leader, suggesting earlier by Williams seems to fit here). Our recognition that someone is too good to lead us is damning of us, because it is not the questioning of a moral position but the questioning of the utility to us of a moral position that we in fact accept. The too good leader is too good to do what we want her to do: too good to do evil.

Rather than avoiding these demands we might also question their legitimacy. The following quote from Thomas Nagel suggests we must always remain attentive to the context that legitimises the leader's role; ultimately the permissibility of the actions we carry out, regardless of the role we fill, will be answered through moral argument. Therefore, we need to be wary of a "Lack of attention to the context that is necessary to make these roles legitimate..."<sup>26</sup>, as failing in this way "... can lead to rejection on

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<sup>25</sup> Ibid. p. 232

<sup>26</sup> Nagel, T. (1978). Ruthlessness in Public Life. Public and Private Morality. S. Hampshire. Cambridge, Cambridge University Press: 75-91. p 90

all limits on the means thought to be justified by ever greater ends.<sup>27</sup>... It is Nagel's view that although public morality is not simply derived from private morality, core considerations of private morality must remain referents for discerning the legitimate limits of public power. This question will be taken up again in the next chapter which will be an examination of the possibility of constructing a division within the one moral actor along private public lines.

It is most probably a thoroughly obvious point but one that in any case will be made here, that there are unique and significant moral differences to be accounted for between the role of national leader and that of private citizen. Clearly the two roles make differing demands on a moral actor and it is clearly the case that behaviours, as well as responsibilities, connected to one do not necessarily flow through to the other. However, as this chapter has argued that a moral actor's personal moral outlook must be, as far as practicable, inclusive of all morally significant considerations and therefore needs to strive to be a singular moral view, where one part of the moral actor's life appears to call for a divergence from this singular view the whole must be re-examined in order to reclaim moral consistency.

Having said this, something must also be said about what constitutes morally significant considerations. Therefore, the next section will explore what is required for something to be morally significant and what type of act it is to decide on that moral significance.

### **Moral Significance**

The simplest answer to this question seems to be that what is of moral significance is whatever an actor believes to be morally significant. Either in that he believes he needs to make a moral determination about this or that, or that he believes this or that impacts on his moral determination about something else.

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<sup>27</sup> Ibid. p 90

However, were we to follow this way of determining moral significance and therefore a particular aspect of the limits of morality, we would be accepting that an actor has the power to place outside of the moral sphere whatever it is he chooses to put there, and as it may well suit him to set aside from his moral reckoning considerations that *we* find morally significant, we may be required to rethink this simplistic formulation of moral significance.

Such an approach to determining moral significance would therefore be acceptable only from something like an extreme moral relativist standpoint. The determination of what is of moral significance is central to any moral position, and as such demands our scrutiny if we are to say anything about the validity of any moral position or claim. This is not to say that there are not things that are morally insignificant. It might well be claimed that the reason some considerations and some parts of our lives stand out as being of real moral significance is that they are seen against a background made up of the morally vacuous. We may rightly ignore what we judge too morally uninteresting, concentrating only the occasional morally significant stone amongst piles of morally undistinguished gravel.

Such an idea has a certain reasonableness to it. However, it does little to progress our search for just what is of moral significance. That is unless it presents as a standard to our deliberations on the morally significant, some type of idea of things that are universally accepted as morally vacuous. If something were to pass a test of universal moral vacuity, good grounds would indeed have been established for it being put aside in our moral determinations and it would establish a moral limit at least at the point of universal disinterest.

There is then a strong case for triviality as grounds for excluding a situation from moral consideration. No doubt there exists a category of actions or considerations connected to actions that have so little moral import that a moral actor need not consider them as morally significant, and might quite reasonably ignore them in his moral deliberations. By way of example, my choosing to have either tea or coffee at a café seems to fit this category of a morally indifferent decision. In such a case I appear to be quite free to choose simply on the grounds of my own personal preference. There do not appear to be morally compelling reasons for me to choose

one beverage over the other. Of course reasons might be proffered, it might be suggested that tea is more beneficial to my health, and that it is a moral requirement to try to remain healthy for as long as possible so as not to be a burden on others. But to disallow me choice in this matter simply on the possibility of a possible small health benefit seems to limit too severely my personal liberty.

I might also be challenged of course on the ethical provenance of what I am buying: is the coffee grown on land cleared from rainforests for that purpose; do the people picking the tea receive fair wages; does the café recycle its milk cartons and use biodegradable cleaning products? It might also be asked of me as café patron whether or not I should be spending money on this indulgence at all; when I could instead forgo this short lived pleasure and send the money, insignificant as it is to me, to be used to feed a child for a day or perhaps vaccinate a child for lifetime from Polio<sup>28</sup>.

These considerations of course may be dismissed or their concerns might be ameliorated in different ways, and I might be allowed to enjoy my moment of peace in the café free from accusations of failing to consider the full moral implications of my choices. However, they do point to the ubiquitous nature of moral considerations; they suggest that even when the topography of a subject suggests it as being morally innocuous, quite often morally serious considerations are not too far below the surface.

It also suggests that there are not moral matters and matters without moral significance, but rather moral considerations are part of all aspects of our lives in varying degrees. We may not choose to waste too much time on considering the moral implications of every choice we make, but we ought to be aware of the possibility of latent moral aspects in even the most unpromising of places. This is why simplistic divisions of moral issues/non-moral issues, moral actions/non-moral actions can lead us away from clear thinking about morality. There are no simple divisions: moral significance comes in a variety of weights and colours. All of this suggests that we

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<sup>28</sup> Singer, P. (1997). *Practical Ethics*. Cambridge, Cambridge University Press. p 222. Singer suggests it might be argued that a lack of attention to the best use of our abundant resources could in fact make murderers, passive neglectful murderers, of many of us.

may in fact find one of morality's limits when we exhaust the moral possibilities of considerations around our actions, and therefore we might best view the very finding of these limits to be itself a task of moral inquiry: an unsatisfyingly circular way of thinking.

## **Moralism**

It is of course possible for us to go too far in either direction; we might find ourselves jumping at moral shadows, looking for moral significance in what ought to be accepted as morally neutral activities. Coady puts forward some ways in which the charge of moralism might be understood to function, we will deal here with what he has to say of the moralism of scope, then we will look more broadly at whether the charge of moralism has anything serious to offer:

Moralism of scope involves seeing things as moral issues that aren't, and thereby over-moralizing the universe. A variation on this is a tendency to see minor moral matters as major ones or to collapse certain pertinent spheres of morality into other, more demanding ones, so that the morally advisable becomes the morally obligatory, or the somewhat morally preferable becomes a stern duty.<sup>29</sup>

While it is true that moral actors can be overly morally sensitive, and that moral actors can at times allow their overzealousness to impinge unhelpfully on others, these two facts need separating. One's finding some situation or set of actions morally interesting or worthy of moral consideration, does not necessarily mean that one will take a dogmatic stance on just how everyone involved ought to behave. The criticism Coady is making might be better stated as a criticism of being overly keen to lay down moral prescriptions and proscriptions: there is nothing inherently wrong in attempting to find the moral significance in actions. To find practically everything morally interesting need not be a vice. I might be morally interested, or find moral significance, in practically every aspect of life without necessarily imposing on others in a boorish manner my opinion on how they ought to behave.

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<sup>29</sup> Coady, C. A. J. (2008). Messy Morality. Oxford Clarendon press p 17

As well as this the one moral actor might be generally insensitive to the moral significance of much but obsess on certain aspects of life as moral hobby horses. Someone who understands the world in this way seems to exhibit opposite vices simultaneously of hyper and hypo morally sensitive: too ready to extend morality's scope in one instance whilst lacking the ability to discern moral significance in general. A person might see the moral universe contained within a single issue, for example climate change or sexuality, while taking little interest in much else from a moral point of view.

Obsessing over the morally trivial as though it were of moral significance is, for Coady, a manifestation of one version of moralism. It is therefore reasonable that the scope of morality be restricted:

A weak version of the scope restriction is the view that there are many matters that are too trivial for direct moral concern: whether to go to this movie or that, whether to exercise by swimming or walking – these are the sorts of things that it would usually be foolish to bring within the purview of morality (though there may be contexts in which they could have moral significance). An excessive concern for the sway of morality can bring with it crippling psychological attitudes that themselves damage the operation of moral judgement. This has been recognised in the tradition of Christian moral theology by the use of the term 'scrupulosity' to refer to the condition where someone is given to damaging self-doubt as a result of excessive worry about whether various, basically minor and harmless pursuits are morally wrong.<sup>30</sup>

There are morally trivial points in even the most serious moral situations. The problem is typically one of poorly directed focus. If someone decided to commit a murder and then obsessed over whether or not to use a gun or a knife (as though it mattered morally) or worried from a moral perspective over the colour of the knife he would use for the murder, that person might be said to have lost perspective on what really matters in his actions. Similarly the moral actor being concerned over which movie to watch or how to take his exercise is misdirecting his moral view: to obsess over this level of detail is to misunderstand oneself as an agent acting in a broader context. Perhaps it might be worth considering by the lights of morality whether one

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<sup>30</sup> Ibid. p 18

goes to the movies (even which movie one goes to see), but what is wrong here (assuming that in this particular case choosing which movie to see *was* an entirely morally trivial matter) is the loss of focus on oneself as acting in a sufficiently broad context; fussing over detail and losing sight of ‘the big picture’: a general fault that we can be guilty of in any type of decision making and not in any way specific to morality.

Beyond the restriction based on triviality, Coady says that morality might also be subject to further limitations of scope:

A stronger version of the restriction of the scope of morality’s claims challenges either the comprehensiveness of morality and/or its dominance with respect to matters that are both intrinsically important and amenable to reason. One version of this restriction is the claim that there may be rational limits that not only conflict with morality but override it.<sup>31</sup>

The obvious question here is what would motivate those who wish to pursue the overriding of morality? Why the concern over morality’s scope? In the case of triviality it was supposedly an attempt to avoid moral confusion – the morally over scrupulous are not putting their moral attention to that which deserves moral attention, or are placing inappropriate moral attention on parts of life, thereby setting the scene for mistakes to be made in their moral discernments.

However, in this stronger form of restriction to morality’s scope, it is not so clear that the claim is that the moral reasoning is confused, just that we would be better off, more successful in our projects, if it were not present. Coady also puts forward a further iteration of the restriction:

A more extreme version of the scope restriction can be found in the insistence by some theorists that politics and morality are distinct and autonomous realms of judgement and decision.<sup>32</sup>

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<sup>31</sup> Ibid. p 18

<sup>32</sup> Ibid. p 25



The desire to restrict what is open to moral criticism need not come from a lack of confidence in the truth of the moral opinion; in this case a moral opinion might be both accepted as reasonable and also inconvenient. We may believe in the substance of a moral position but wish ourselves free to ignore its demands temporarily. It is not moralism that we are concerned with but morality's demandingness. What we then need to face is the possibility of an incompatibility of our success in our projects and our understanding of what is morally required of us. What we need to do is understand the necessity of accepting failure as integral to being a serious moral actor.

### **Not Too Moral**

So, along with the claim that moral inquiry finds its limits in triviality there could be a similar claim for morality being limited through what might be termed worldly seriousness. Typically, this would involve the pointing to the serious consequences we, or especially others in our care, might suffer if our moral positions were allowed to restrict our ability to fulfil, say, the role of protector. This suggests that there are limits to how far one should follow his moral ideals at the other extreme from triviality. The claim would be that there are indeed limits to what morality might be concerned with; the implication here is that there is something perverse in following moral rules above all else, that maintaining an intransigent moral position in the face of the suffering of others, for whom we hold special responsibilities, is a corrupt or distorted understanding of morality's bindingness.

Objections along these lines suggest that the moral actor who remains too faithful to his moral position will be guilty of a form of moralism. However, there are serious questions raised by claims that a moral actor can be too morally faithful. The charge of moralism reveals the accuser to understand morality in a particular way: as something with only a limited facility to order our actions in such a way as to promote the best outcome. Morality in this view can be said to be guaranteed to promote only the morally best outcome. The claim that the moral actor's position is moralistic might more accurately be put as a claim that they are morally mistaken in one of a variety of ways. I would suggest that it is normally not the overly rigid adherence of a moral actor to a moral position that is being attacked in charges of moralism, but the conclusions of her moral deliberations. My claim is supported by the fact that if the

moral position of the moral actor we charge with moralism, allowed or demanded that they act as we believe they ought to act, we would not question their overzealous fidelity to that position: going too far in what started out as the right direction is the same as going the wrong way. We simply do not believe that the person we charge with moralism is acting rightly, and it is incorrect to make a claim of their being too moral or too good: we believe they are not doing what is the right thing to do – they are acting morally badly.<sup>33</sup>

Although we might accept some particular moral point a moral actor is making, we must find him in some broader sense morally mistaken, if we are to charge him with moralism. Our charge of moralism might be connected to the refusal of a moral actor to carry out some action we believe to be necessary. If his moral position contains an exceptionless clause prohibiting the doing of that act, and so he cannot act, and maintain moral consistency, the charge against him ought to be one of having an inappropriate and exceptionless clause within his moral position, not one of taking his moral position too seriously.

In the same way we might question just what is meant by those who like Walzer believe we ought not to install the morally *too good* as leader. When such a claim is made, do those making the claim truly accept the correctness of the moral discernments of the too good leader, but find their decisions inconvenient? Or do they think that the morally too good leader takes a morally principled stance at an inappropriate moment, or to absurd ends – thereby distorting morality and making what is in reality a poor moral choice? Or do they see the too good leader as having gone too far in a generally good direction and having overshot the mark? These are

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<sup>33</sup> Stephen Nathanson puts forward a conception of moralism that has the moralistic actor blind to the interests of others – insufferably partisan: “Morality degenerates into moralism when interests and pragmatic concerns are ignored in understanding the actions of other nations and groups. When the interests of adversaries are ignored, the idea emerges that our conflicts with them exist solely because they are evil or committed to an evil ideology.” Nathanson, S. *Terrorism and the Ethics of War*, Cambridge University Press. p. 120. Firstly, as I have said earlier, this type of criticism is simply a criticism of a moral position – what is to be gained by naming it moralism? Secondly, conflicting ideas (such as giving *too much* weight to the interests of others), might also be called moralistic – consider a charge made by supporters of ‘supreme emergency’ measures that someone was being moralistic by demanding necessary actions could not be performed because of their immorality – their impact on others.

very different understandings and should lead to very different criticisms. A blanket charge of moralism will not do here.

The above holds for those who we take to hold their moral principle sincerely, however, where a charge of moralism is directed at someone hiding behind a convenient moral rule, insincerely or cynically, it is not necessarily the case that they are morally mistaken - or at the very least we cannot be confident in making the claim that they are morally mistaken, as we are not privy to any sincere moral position they might hold. The correct charge here would be that they are hypocrites or morally mendacious. Such a person is more accurately described as lacking a true moral position, or, with not being candid in the profession of his true moral position; therefore, a charge of being too morally precious or morally straitjacketed is nonsense. He is simply a moral impostor. In both cases the charge of moralism can be reduced to something more descriptive and so, I suggest, for reasons of clarity the more descriptive charge should be preferred.

The suggestion above that it would often be useful for those who charge others with moralism to put forward more descriptive critiques of what it is that find objectionable in the moral reasoning of the other, gives only a limited picture of the types of behaviours that might be seen to fall under the descriptor of moralism. It may be the case that the charge of moralism generally is simply a lazy descriptor, an unhelpful broad coverall and that more specific criticisms are to be preferred. The charge of moralism may have some usefulness that I am missing here, however, it seems to be the case that the charge of moralism can always be more accurately spelt out as some particular moral error, and so more precisely targeted.<sup>34</sup>

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<sup>34</sup> If however, we for the moment put aside these qualifications on the charge of moralism, we might then be well placed to see that when Simon charges Garfinkle with moralism, Simon may be seen to be in defining, what is for him, morality's edge. Simon in pointing to areas of Garfinkle's life where he believes that how it is that Garfinkle should act is not to be decided by Garfinkle's moral position, is asserting that Garfinkle's morality ought to be understood as being applicable within certain aspects of Garfinkle's life.

If morality is limited in its scope, what Simon appears to be saying can be seen to have some sense to it, Simon can be understood to be pointing to non-moral considerations that he believes to be more significant than considerations contained in Garfinkle's moral position. If however, morality has no

## Problems with Being Too Moral

Another position on the problem with a moral actor being too morally good is that it leaves no time for her to become good or committed to anything else. The morally perfect person, it might be said, needs to 'get a life'. That the world would be intolerably dull if it were peopled only by the morally consistent. Susan Wolf calls such people "Moral Saints", she says this about the Moral Saint: "...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>35</sup>

On Wolf's reading the moral saint is too busy being moral to be a fully rounded person; therefore, we should be grateful that most people fall far short of moral sainthood. Morality ought to be restrained from making us all into tedious do-gooders. However, Wolf is assuming here that all moral positions to be concerned only with maximizing outcomes, and ignores the fact that being morally good is not constrained to morally heroic activities. One can be a morally good, or bad, shoe salesman or dentist. Morality requires some activity or other as a platform, as it were, to play out on, and the list of such activities is really not as limited as Wolf suggests. We cannot go out and simply be morally good, we need to do something and in the doing of that thing we will have an opportunity to demonstrate our moral worth. An activity is or is not morally demanding for a particular individual, in part, because of her talents and abilities – moral demands are not universalizable in the way that Wolf suggests: they are not indifferent to the particularities of being *this* moral actor.

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edge in this way, no limits and there is really nothing known to Garfinkle but at the same time inaccessible or censored to his moral view, then would be pointing to nothing when he pointed to these non-moral considerations. There would be appear nothing contained in the set of things which moral actors ought to consider in making decisions, but which are inaccessible to the moral actor's morality. Nothing to which Simon can point and demand Garfinkle take account of. Simon really ought to charge Garfinkle with something other than moralism. For a charge of moralism like Simon's to stick, morality must be seen as being restricted to less than the whole of an actor's life.

<sup>35</sup> Wolf, S. R. (1982). "Moral Saints." The Journal of Philosophy 79(8): 419-439. p.421

This idea that we don't want to be surrounded by too much moral goodness is at the heart of Bernard Williams's example of Gauguin<sup>36</sup>. Williams claims that if we enjoy Gauguin's paintings from his Tahiti period we have to admit that we must also be glad that he, Gauguin, deserted his family thereby allowing him the freedom to paint those paintings. This is thought to show that we are at times glad that morality is not the only or overriding motivation for everyone at all times: because we value much else apart from moral perfection. But, does the Gauguin example really show that we are glad others act badly or does it show a disconnect between the appreciation of works of art and the biographical details of the artist who produced the works?<sup>37</sup>

Clearly some immoral people are interesting and some communities that are good in themselves owe their survival to someone's evil actions. However, an acceptance of these facts does not necessarily lead to an acceptance that morality needs restraining. I might accept all of this but still maintain that I don't want anyone to do evil on my behalf, and that moral actors cannot be obliged to do evil or act immorally. The pacifist who values her life need not be seen as compromised if she is saved from being murdered by someone else's violent intervention. The two facts can be separated. Of course, all I will have to offer as a solution to the problems raised in this thesis about conflicting obligations is that we sometimes have to accept failure: the sincere and faithful pacifist may well be rewarded for her fidelity with death. The claim made by the thesis being that to be morally serious person is to accept moral constraints and to see moral demands, when necessary, as demands to fail. Being free to fail is an essential aspect of being sufficiently free to be thought of as a moral actor.

The next section will examine a particular example of conscience and freedom.

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<sup>36</sup> Williams, B. A. O. and T. Nagel (1976). "Moral Luck." Proceedings of the Aristotelian Society, Supplementary Volumes 50: 115-151.

<sup>37</sup> For a more comprehensive investigation of the problem of being too morally good, and in particular a critique of Wolf's argument see: Loudon, R. B. (1988). "Can We Be Too Moral?" Ethics 98(2): 361-378.

## **Accommodating Conscience**

A recent debate over changes to abortion laws in this state has focused attention on problems faced by doctors who have a conscientious objection to abortion, and who practice in a health system that sees access to abortions to be a patient's right. An obligation for these doctors to refer patients seeking an abortion, or seeking information about abortions, to another partitioner – one who does not have a conscientious objection to the procedure – has been codified in new legislation<sup>38</sup>.

The arguments that this change in law provoked are worth our consideration for the purposes of this chapter. Some believed doctors, with a conscientious objection to abortion, would be forced to act against their conscience by making referrals that will often end in a woman procuring an abortion. It was claimed that forcing these doctors into this level of participation with what they believe to be an evil practice, is a restriction of their moral freedom.

It may well be the case that a doctor finds herself, for personal moral reasons, unable to meet all requests that her patients or her employer might put to her. If the request is of an illegal nature, contractual agreements or the requirements of the doctors duty of care would not, it seems, make the request more compelling. However, if the request is legal and compatible with the type of activity a doctor could be expected to undertake for her patients, then the doctor will need either to rely on her patient or employer accommodating her personal moral position or refuse to perform the activity and risk suffering some consequence or other because of her stance.

The accommodation of a doctor's personal moral position will have its limits. At some point the patient may need to find an alternative doctor and the doctor's employer may need to find another employee. The point at which this limit is reached

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<sup>38</sup> Victoria (2008). Abortion Law Reform Act. Victoria.

will have to do with whether the patient or the employer finds the requests being refused by the doctor integral to her role as doctor.<sup>39</sup>

Likewise, the ability of the doctor to accommodate requests that conflict with her personal moral beliefs will also have its limits. Ultimately, these conflicts may have to be resolved by a severing of the relationships, but the acceptance of a level of diversity of moral opinion within the community, will favour initial resort at least, to attempts at accommodation. One particular quote from an anonymous doctor with experience in Catholic hospitals used by *The Age* newspaper<sup>40</sup>, is representative of an odd conception of what it calls “conscience”, but what I take to be fairly interchangeable with what has been called moral belief by this thesis:

Most doctors are decent and honourable, and work around (a conscientious objection) to find a way that the patients’ needs are met. But some allow their conscience to trample over the rights of women, and it can lead to horrible outcomes.<sup>41</sup>

Firstly, it is quite clear that a person following his conscience can bring about horrible outcomes; this is always a possibility for those making moral determinations. (Even those who make decisions on purely consequentialist grounds might suffer this possibility unless they have perfect knowledge of the outcome before they act.) But even more generally it is a possibility for any moral actor, as good intentions can never guarantee the avoidance of horrible outcomes. Horrible outcomes always remain a possibility whether we follow our conscience, tea leaves or astrological charts. Moral actors are not capable of avoiding all horrible outcomes as they are not omnipotent nor are they omniscient, shortfalls in both these areas prevent even the best of moral actors from achieving the perfect unfolding of the world they desire.

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<sup>39</sup> The role of doctor will be understood by those on different sides of an issue such as this very differently. So little will be achieved by demanding fidelity to the role without coming to a consensus on the what demands the role might make on the incumbent.

<sup>40</sup> Anonymous (2008). *The Age*. Melbourne, Fairfax. FIX (edition?)

<sup>41</sup> Miller, N. Ibid. Abortion Bills Right 'Breach'. p.1

However, this is not where this quote is most confused. Its greatest confusion lies in its presentation of conscience trampling on the rights of women. Such a claim suggests an odd relationship between a doctor's formation of a serious conscientious objection to abortion and the rights of women. The letter writer appears confident that the doctor recognises the existence of these rights but that the doctor prefers to allow her conscience free reign in trampling over them. But either something is recognised here as being of significance (by the doctor) or it is not, and if this thing, in this case the rights of women, is a significant consideration the place in which it will do its work is *within* the doctor's moral determinations and the impact of this work will manifest itself in the way in which the doctor's conscience or moral position is formed.

The rights of women have, if anything has, a rightful part to play in the formation of the doctor's conscientious objection, it will not trump her moral position it exists as a consideration within her moral position. It does not function as a limit to the doctor's reasonable exercise of her conscience; it helps to construct her conscience.

Even if the rights being called on here as a limit to conscience (or as this thesis would put it as a limit to morality), were to be understood as legal rather than moral rights, the claim remains confused. As was stated earlier in this section, a personal moral position is not without the ability to judge the level to which legal rights ought to be accommodated. It is therefore reasonable to expect that a serious conscientious objection to abortion held by a doctor also involved in its deliberations a consideration of the legal rights of women. Therefore, what this objection to intractability of conscience really amounts to is a disagreement over the premises which underpin the considerations and determinations that went to make up that particular doctor's conscientious objection and indeed her overall moral outlook. So rather than ask a doctor to let her moral guard down, to temporarily ignore her conscience and act on the rights of women instead; what might be more sensibly asked of the doctor is that she reconsider her objection and reform her conscience in light of these considerations. Put more simply it would be absurd to appeal to the doctor's conscience to override her conscience. The view of a moral position as



something on which moral considerations<sup>42</sup> can act on from outside without their being, through that action necessarily incorporated into that moral position, is mistaken. Either the doctor accepts that the rights of women is a significant enough moral point to lead her to change her position or she does not. The fact that someone else sees the matter differently, sees the rights of women as of paramount importance in determining the licitness of abortion is no more or less than another moral position. I have included this example because the confusion expressed here seems to be very similar to the type of confusion connected to the use of moralism discussed earlier.

What is being questioned in this thesis is the thought that excessive fidelity to morality ought to be discouraged because we require moral actors - if they are to be of any real use - to, at times, forget what is morally right and simply do what is needed in this or that situation; or to be free to pursue ends we value other than simply being morally perfect. The moral actor who refuses to do what is deemed necessary would, it is suggested, show herself to be to some extent impractical, she might be charged with being precious or self indulgent or moralistic or naïve. It is also claimed that the moral actor who is committed to the morally best outcome will neglect much else that we value – her single-minded determination to be morally perfect will make her dull and will stop her from developing normal relations with us; she will be unable to achieve greatness in pursuits that bring about a less than morally best outcome; we will never be someone special to her because she loves all humanity perfectly evenly, she has no preferences or allegiances to anyone but the moral truth. If she has some utility to her community it is perhaps as an idealist, we might tolerate the impractical idealist because we quite like her having high minded principles, in abstract at least: it reflects well on us to have *some* such people in our community – they raise the moral tone. However, we know that we cannot rely on people like that in certain types of crises because they are simply impractically virtuous. To put this another way: it is claimed that there are times when being overly concerned with what is morally right will mean a loss of focus and will distract the moral actor from what really matters. A

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<sup>42</sup> As was suggested earlier in the thesis in relation to torture, any consideration that impacts on our position regarding a significant moral issue is a morally significant consideration.

moral position that prevents the moral actor from doing what is necessary is therefore taken to be an indulgence or at the very least a dangerous diversion or impediment to her acting in the real world.

## **Conclusion**

Whenever platitudes such as *we will do whatever it takes to defeat these people or stop that happening or eliminate this problem* are traipsed out in response to some threat or other to the community's safety, those speaking in that way frame their view of morality in something like the way described above. Whenever in response to a sufficiently serious threat to the safety of our community we invoke a success at all costs position, we leave no room in which we as moral actors can function as moral actors; we ditch our autonomy in favour of our security; we make a Hobbesian bargain trading in the moral actor's freedom, because this freedom makes us vulnerable to failure. For example sending troops off by saying that *we will not fail* or that *we cannot afford to fail* is a rejection of our being bound by certain moral limits and robs the troops of their status as autonomous moral agents – we are using them as means to our ends.

Those who hold the view that there are times when failure is not an option are often prompted to investigate whether or not the demands of morality might not be got around in some way or other. The position put forward in this thesis is that there is no need for such people to concern themselves with these types of gymnastics, that they really are in fact wasting their energies. The reason they are wasting their energies in trying to find ways to sidestep their inopportune moral positions, is that what they think they are protecting in this way are in fact not their true moral positions. Rather, these are the types of moral positions they would ideally hold in a perfect world where moral positions would not be under too much pressure from real life problems.

The idea I am critiquing here goes something like this: While it's good to be 'moral' we also have to be realistic, we have lives to lead, we have projects that we wish to see completed, and we have responsibilities to fulfill. And if being absolutely faithful to a moral position stops us from achieving success in our lives, then we may well

need to question just when being faithful to a moral position is appropriate. Which is to say: at times we need to ask ourselves are we being too moral.

This chapter has been concerned with claims about morality's limits and has defended a position of morality being essentially limitless, conceding only that a type of limit does exist in that some aspects of life fail to provide sufficiently morally significant considerations to make the application of moral consideration superfluous. Some aspects of life fail to provide morality with the necessary traction, thereby limiting where and on what morality can work. Over the course of the thesis there will continue to be arguments offered against attempts to limit morality, because a limited morality is always due for replacement by a morality with a more inclusive view.

## CHAPTER TWO

# Private/Public

### Introduction

The first chapter established some of the significant themes of this thesis and has put forward a particular view of the moral actor's connection to her moral position. It was argued in the course of the first chapter that the one moral actor can be the holder of only the one moral position, and it is from this moral position that matters of moral significance must be decided.

As well, the claim was made that all considerations connected to morally significant situations are, through this connection, to be understood as being of moral significance; therefore, when an actor makes a determination concerning a morally significant situation, any factors that contribute to that determination are to be understood to also be morally significant. This discussion of moral significance was part of the chapter's broader exploration of moral limits. The chapter examined the way in which an actor's moral outlook is said, by some, to reach limits either in what it might consider as a morally significant factor, or, in what might override the authority or bindingness of her moral position.

This second chapter continues this critique of supposed moral limits, considering in particular distinctions made that suggest a split is possible between an actor's private and public moral positions. During this second chapter it will be argued that the moral actor, in taking on a particular role does not also take on an alternate moral persona linked to that role. Rather, the thesis will claim that a moral actor taking on a public role continues to make moral determinations from within her private or personal moral position, albeit determinations informed by any particular obligations she may have accepted in taking on the role.

Further, this chapter will propose that the demands made on a moral actor by a particular role she might fill, will not be legitimate demands for her unless they are

consistent with her personal moral position, and that an actor cannot, without being inconsistent, place herself in a role that conflicts in substantial ways with her personal moral position.

The thesis makes the claim that the one moral actor can hold only the one moral position. To this end, it rejects the claim that certain moral actors, due to their roles, function with both a public and private moral outlook. The thesis believes the promotion of a public private divide is based on a misconception of what constitutes a moral position, seeing it as something divisible. It also suggests a misunderstanding of the moral actor as a being capable of sustaining multiple moral positions simultaneously.

### **Synoptic Moral View**

A moral actor's position is capable of great complexity and able to accommodate the variety of obligations and demands that might be connected to the moral actor. Although this thesis rejects the division of a moral actor's moral position it does not reject the idea that individual moral actors experience differing obligations and demands at different times, often in view of the different roles they happen to inhabit. The thesis claims only that all of these differences can be accounted for within a single moral position, and there is no justification for the creation of separate moral positions dedicated to making determinations for the moral actor in different aspects of her life. This single moral position makes determinations on the suitability of any of the actor's actions with reference to all the roles she might fill and all the demands she understands to attach to those roles. For an actor to decide the moral suitability of her actions from a deliberately less informed position would be to indulge in an act of self deception.

The moral actor needs, in order to function adequately as a moral actor, a position from which he might take stock of his self in as broad a sense of himself as he possibly might have. He needs to be able to gain a synoptic view of his moral agency, a view that can incorporate all the roles he might fill, so that he might be positioned to critique himself not simply in relation to any part but in relation to himself as a whole.

Alasdair MacIntyre speaks of the moral actor's need in his life of milieus that support this type of overview:

Such milieus would provide agents with what they otherwise lack, an understanding of themselves as having a substantive identity independent of their roles and as having responsibilities that do not derive from those roles, so overcoming divisions within the self imposed by compartmentalization and so setting the scene for types of conflict that compartmentalization effectively suppresses.

This divided self has to be characterised negatively, by what it lacks. It is not only without any standpoint from which it can pass critical judgement on the standards governing its various roles, but it must also lack those virtues of integrity and constancy that are prerequisites for exercising the powers of moral agency.<sup>43</sup>

When we attempt to divide moral agency we do not effect the creation of multiple moral agencies, rather we destroy the possibility of even the one continuing to function properly. Attempts to create multiple moral personas or to compartmentalize the agency of the moral actor into a variety of roles, dissipates moral responsibility and leaves no one actor that might be called to account for his actions. The moral actor's actions are only to be understood from within the various contexts he is an actor in, his behaviour in role A is distinct from his behaviour in role B, so to demand of him consistency between the two is thought to be a ludicrous demand:

So individuals as they move between spheres of activity, exchanging one role for another and one set of standards for their practical reasoning for another, become to some important extent dissolved into their various roles, playing one part in the life of the family, quite another in the workplace, yet a third as a member of the sports club, and a fourth as a military reservist. Within each sphere such individuals conform to the requirements imposed on their role within that sphere and there is no milieu available to them in which they are able, together with others, to step back from those roles and those requirements and to scrutinise themselves and the structure of their society from some external standpoint with any practical effect.<sup>44</sup>

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<sup>43</sup> MacIntyre, A. (2006). *Ethics and Politics*. version 2. New York, Cambridge University Press: 7784. p. 199

<sup>44</sup> *Ibid.* p.197

In the last chapter we considered the requirement on the moral actor to be capable of predictive and imaginative anticipation of the possible or likely demands of any role she might choose to accept to fill. We will now continue with the analysis of this aspect of moral agency, with particular emphasis on public roles.

## **Prediction**

The ability of a moral actor to predict just what types of obligations and duties some role she might take on will demand of her, will differ between actors and between roles. Actors will at times be confident of anticipating the demands of certain roles while at other times precisely what will be demanded of the occupier of a role will be extremely difficult to predict. Some roles will be obviously ill-suited to a particular actor. For example, it is presumably a reasonable assumption that most people feel that a moral actor who holds pacifist principles would be ill-suited to the role of soldier. The common understanding of what it is to be a soldier appears to seriously conflict with what it means to be a dedicated pacifist. There would be possibly less universal agreement for the claim that being a pacifist is inconsistent with being Prime Minister of a nation like Australia. However, it might quite reasonably be argued that the pacifist is ill-suited to the role of leader of a nation if in that role she is expected to play the role of commander in chief of the nation's armed forces. Further still, it might be argued that the pacifist is ill-suited to being even a citizen in a nation that maintains its security by the use of force or the threat of force, a nation that maintains a standing army and or a police force.

This thesis accepts that being both a pacifist and a soldier is tenable, for the serious moral actor, only with greatest level of contortion of what we would hold to be typical behaviours of each, while being a pacifist leader of a non-pacifist state is, with some qualifications, very likely possible without necessitating the moral actor act inconsistently. And in the opinion of this thesis the position or role of pacifist citizen in a non-pacifist state is typically an unproblematic combination. What follows will discuss and lend support to these claims.

These three roles, all of which could be said to represent the public side of the moral actor's life<sup>45</sup>, appear to present the pacifist with three levels of predictable difficulties or possibilities of conflict with her pacifist principles. The role of soldier is the one that seems, *prima facie*, the most strikingly inconsistent with pacifism. The types of required actions typically connected with being a soldier are to be predicted as difficult to justify for a moral actor holding pacifist views. The level of predictability of conflict between pacifist principles and military demands is sufficiently high as to lead us to question the sincerity of the pacifist moral actor entering into soldiering as a career. It would seem that she is either not really a pacifist, or she does not really intend to go about the normal business of soldiering. While it is true that soldiers engage in many activities other than the meting out of violence, killing or threatening to kill, to be a soldier is to accept that the actions normally associated with the role are at times justifiable. The pacifist although she may avoid doing any actual violence herself by applying herself to specific non-combatant soldiering activities (she may join some particular branch of the military where one doesn't tend to become involved in actual violence), by becoming a soldier she cannot avoid being positioned on the legitimacy of soldiering

It ought to be acknowledged here that there is a great deal more complexity in the relationship between the pacifist and her community, particularly in times of war. Although she rejects the activity undertaken by her nation in going to war, she may be greatly concerned to alleviate the suffering caused by the war; to this end she might become involved in the nation's war effort supporting her compatriots through the provision of medical aide or organizing evacuations. Through these activities she may, incidentally, play some part in her nation's victory. However, it would seem odd for her to act deliberately to assist her nation in military success.

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<sup>45</sup> This points to an interesting question about whether the moral actor's pacifism is part of her public or private persona. In relation to these examples of her considering the roles of soldier, leader and citizen, she appears to be weighing a private moral principle against the expectations of public roles. However, being a pacifist is not necessarily wholly connected with a moral actor's private life. It is in fact possible to be an extremely public pacifist. The delineation of a moral actor's life along private public lines is not at all a simple matter. There is nothing wholly private, nor is there anything wholly public in the life of the moral actor.



Adding to her nation's chance of success in a project with which she has no sympathy could be a problematic side-effect for the pacifist actions, but perhaps even more problematic would be if she were to render assistance to the enemy that helped lead to her nation's downfall. The type of aid she might give to her compatriots, she might not stint in giving also to the enemy. Most obviously she might well see the provision of medical care of the civilians as moral requirements that would be done corruptly where they to be done in a partisan manner.

If the pacifist is 'tolerated' within her community, how should she regard her relationship to a community who, she believes, to be involved in acting morally badly by going to war? Should she be grateful to her community for suffering her queer beliefs? This question is the reason for the scare quotes around tolerated: the pacifist may object to the notion that she is being tolerated, she may take the opposite to be the case – that it is she who is exhibiting tolerance. If we consider what is being suggested in this quote from Tony Coady, who says this in relation to the appropriate demeanour for pacifists having their views accommodated by their community:

Given the possibility that their judgment is astray, objectors should be prepared to show their good faith and their readiness to shoulder burdens on behalf of the community by making sacrifices to serve their fellow citizens in ways that do not violate their conscientious convictions. Given the certainty that their judgment on the war will be *perceived* as mistaken by the bulk of their fellow citizens, they have powerful prudential reasons for undertaking such service.<sup>46</sup>

There may in fact be some "powerful prudential reasons" for the pacifist to "shoulder burdens", as there may be powerful prudential reasons for her to join in with the fighting, so why not simply do that! Surely, if the pacifist's objection is a serious one then she need not apologize for it and be grateful for her community's forbearance of her idiosyncratic ideas. The obsequious pacifist, described by Coady, dissents apologetically. Coady seems to believe that *given the possibility that their judgment is astray* that pacifists should act as though it almost certainly is; why this should apply so particularly to the pacifist when we all suffer under this possibility is puzzling.

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<sup>46</sup> Coady, C. A. J. (1997). "Objecting Morally." *The Journal of Ethics* 1(4): 375-397. p. 389

An ability to acknowledge the possibility that one is in error is a wonderful attribute in a moral actor. The pacifist ought to be mindful of her fallibility just as the General or the Prime Minister or President should be. If a moral actor truly believes his or her community is engaged in an immoral enterprise, he or she might think carefully before offering to even sweep the streets by way of support of that enterprise. It might not at times be prudent to speak out and refuse to contribute, but it might be morally required.<sup>47</sup>

My treatment, in this chapter, of the pacifist and her relation to her nation, cannot fully develop all of the subtleties and complexities inherent in being pacifist in a nation at war. However, it is not simply a trivial sideline to the main themes of this thesis, in a way it is emblematic of what is being argued for here: that moral actors must see their professed and sincerely held moral positions as limits to their ability to achieve specific outcomes. The pacifist holds a moral position that can be predicted to lead her, and those who depend on her for protection, into serious failures in certain circumstances and it would be an odd understanding of what it is to hold a moral position if the pacifist simply sidelined her pacifism when it became an obstacle to her nation's success at war. Or for that matter acted as though she was the recipient of a great privilege from her community in being allowed her beliefs. (The pacifist is reviled, by some, because she chooses to accept the destruction of her community for

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<sup>47</sup> The level of responsibility any moral actor has for evil done by others is a complicated matter. We should be careful not to be too quick to take too much responsibility for the actions of others, and at times we would act correctly if we simply allow others to act in ways they see fit even though we are in disagreement with them. To be sure, such tolerance and respect for different understandings of the world is essential if we hope to achieve harmony in communities made up of diverse cultures of beliefs. However, we must also be mindful of our complacency in the face of the evil done by others. Harmony ought not always to be preferred over conflict; at times we are obliged to object to the behavior of others, especially those we are in community with. Coady seems to lean heavily towards the goal of maintaining harmony, not only in his direction to the pacifist above, but also in this in another quote from the same paper: "People who fail to protest about their neighbours badly beating their children may be defective neighbours and citizens, but they are not child abusers themselves and do not bear the same guilt." Ibid. p. 381 Coady's definition of what amounts to child abuse, I suggest, is not one that would be accepted in Australian law or in the general Australian community in the 21<sup>st</sup> century. The distinction between those who physically carry out the abuse of children and those who fail to protect children has become blurred. The legal requirement of mandatory reporting of even *suspected* abuse demonstrates the level of responsibility the community believes all have for the safety of *our* (the community's) children. Coady's example appears to be one of more than suspicion and is all the more shocking for that. Both pacifists and neighbours cannot content themselves with simply critiquing their own behaviour, wider responsibilities exist to, at times, critique the behaviour of our fellows, although bound to cause conflict, these responsibilities must also be fulfilled.

the sake of a moral principle; she will be taken to be a traitor to the cause – even before the threat arrives; she will not be considered *one of us* because, being one of us is being prepared to shoulder the burden; dirty one's hands; do whatever needs to be done; do evil. This point will be further developed in chapter five.)

There is, however, not necessarily always a great difference, in moral terms, between firing bullets and loading guns; the precise action carried out by a moral actor is often of less importance in a moral sense than many other factors. Becoming a soldier yet rejecting that the use of force by soldiers can at times be legitimate, would be generally understood to be a rather queer idea. Only an extremely thin conception of being a moral actor could successfully accommodate such a move. It would appear to be the avoidance of doing an evil act by deliberately shifting the doing of the act to others. This does not seem to fit with having a sense of oneself as a pacifist nor does it seem typical of soldierly camaraderie.

If a moral actor is to be understood as ill-suited to soldiering when she holds to pacifist principles, is she also ill-suited to the role of leader of a non-pacifist nation? If we are to rule out soldiering as a legitimate role for the pacifist (and not just the type of soldiering involved in the meting out of force and threats of force, but also soldiering that achieves by some artful means to purposefully avoid the personal doing of violence), are we also obliged to extend the restriction on the pacifist to her becoming the leader of a non-pacifist nation? It seems clear that politically powerful non-combatants are at times responsible to a high degree for their nation's use of force, and there will be a general expectation amongst the citizens of the non-pacifist nation that the leader order the use of force when necessary. Such moments have the potential to create tension if the nation's leader holds pacifist views.

### **Public Office and the Pacifist**

For the purposes of this chapter, we might be a little more concrete in our example and make this leader an Australian Prime Minister. The nation of Australia is not constituted on pacifist principles; it has armed forces that have the task of maintaining the nation's security through the use of force or through the threat of the use of force. Under certain circumstances violent actions carried out by Australia's armed forces

will be considered by the people of Australia legitimate actions, even mandatory actions. Those who serve in Australia's armed forces can reasonably be expected to be familiar with the fact that the armed forces are tasked with maintaining national security through the use of force. Those who become soldiers in the Australian armed forces would need to assume that their taking on this role, will be read by their fellow soldiers, and the Australian community at large, as an acceptance, by them, of the legitimacy of the use of force by Australian armed forces under certain circumstances. Therefore, the acceptance of the legitimacy of using force in certain circumstances seems also to be a prerequisite for being the Australian Prime Minister.

The Prime Minister's direct connection to decisions that lead to the use of force would have the potential to leave a pacifist Prime Minister awkwardly placed with regards the expectations of her fellow Australians. A nation that is constituted in such a way as to allow for the use of force to be legitimated within specific parameters needs to be lead by an individual sympathetic to this form of constitution. It seems reasonable to assume that a pacifist taking on the role of Prime Minister would not be sympathetic to this form of constitution.

However, it is at least a possibility that a nation constituted in a similar way *might* elect a Prime Minister who professed pacifist views. If this is the case then there would seem to be no difficulty with a pacifist becoming Prime Minister of Australia. Under the proviso that the nation was fully aware that the candidate, aspiring to be Prime Minister, was in fact a pacifist, the pacifist might seek the role of Prime Minister. The candidate could simply make it clear that under her leadership the nation's armed forces will not use force or threaten the use of force<sup>48</sup>. The election of the pacifist candidate might bring into question the nation's own position on the use of force, it may be that the nation as originally constituted has over time transformed and might now be best described as holding a pacifist position. It might also be that a nation, enjoying a long period of peace and security, feels the possibility of being

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<sup>48</sup> Perhaps more problematic, for the pacifist leader, is the use of or threats of violence by the nation's police force – an altogether more common everyday challenge to her pacifist principles.

required to use force remote and need play no part in the choice of prime ministerial candidates.

So, although it does seem to be possible to construct a hypothetical set of circumstances in which a pacifist might lead a non-pacifist nation, in general this thesis would consider being both a pacifist and the Australian prime minister problematic for a moral actor. If then a pacifist is ordinarily excluded from leading the nation is she also excluded from full citizenship also?

The connection between the use of force and the soldier was shown to be a tight one and that between the leader and the use of force less so but still, failing certain unusual circumstances, also typically too problematic to allow the pacifist to enter into that particular role. In comparison the ordinary citizen of a nation does not appear to be required, by her role as citizen, to hold any particular views on the use of force and seems to be at liberty to avoid using force herself or supporting others involved in the use of force. She seems to be at liberty – in our example of Australia at least (and it is with the idea of a nation similar to Australia that the following claims are being made) to campaign against the use of violence and promote the adoption of pacifism. Such a nation appears to be constituted in a way as to both guarantee her these liberties, while maintaining for itself a non-pacifist stance.

While it is true that the pacifist citizen may at times have her security maintained by the use of force, this is done in disregard for her preferences. If she is sincere in her pacifism she will prefer it wasn't the case that others kept her safe through the use of force (she may also believe that force simply begets force and rather than keeping her safe, her nation's armed forces and threatening weaponry place her and everyone else in more danger).

Whatever way she might understand herself as a pacifist in a non-pacifist nation it does seem possible that there are consistent ways of being a pacifist citizen in a non-pacifist nation. The pacifist is able to be a citizen in the non-pacifist nation because being a citizen (in a nation like Australia) is a role that prescribes relatively little and leads to few assumptions by fellow citizens. A citizen's personal moral position need only coincide on a very few matters with the consensus position of her nation. Being a

citizen is also a role not generally sought by the individual but accidentally bestowed due to the place of one's birth. Even in the case of an adult choosing to become a citizen of a particular nation, the complexity of matching an individual's moral outlook with that of the prospective new nation means, on many levels, incompatibility is an inevitability.

While there may well be nations that particular moral actors, due to gross moral disagreement, might feel themselves to be excluded from becoming a citizen of, being a citizen of a particular nation should be understood to say something only very limited things about a moral actor's moral outlook. It could also be argued that a pacifist being part of a non-pacifist state might be seen to be desirable and correct from the pacifist's moral position in that she may have the potential to bring a dissenting voice to the table in that state's approach to the legitimacy of the use of state sanctioned force. Even non-pacifist fellow citizens may see the pacifist as capable of making a positive contribution to their nation; they might believe *someone* ought to be idealistic even if that idealism if universal would be detrimental to the security of their state<sup>49</sup>.

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<sup>49</sup> The pacifist is one voice that might be accommodated in a nation that allows a level of plurality, it may even be an essential voice and taken by many in the community to be providing an important counter to the dominate belief in the legitimacy of force. It may even be more formally recognized as a role one might play in the community, in the way that Alasdair MacIntyre speaks of the socially prescribed roles of "Indignant Protester" or "Angry Young Person" in the following quote: "For there are types of social order, including our own, in which those norms themselves not only legitimate but encourage questioning, criticism, and protest, so that the set of approved social roles includes such roles as those of the Indignant Protester and the Angry Young Person and activities of criticism and protest are themselves governed by prescribed routines." MacIntyre, A. (2006). *Ethics and Politics*. version 2. New York, Cambridge University Press: 7784. p.194. Presumably there would be limits to the type of socially approved roles that a community might accept as providing it with integral internal criticism. The Fanatical Terrorist or Anarchist would be doubtful of receiving social approval. At the time of writing this it is unclear just how the role of Julian Assange and WikiLeaks will be understood historically, will he be lauded for uncovering the lies of increasingly secretive and duplicitous governments, or damned for revelations that expose individuals or states to greater risk. The limits of tolerance within a community for those who hold very different views on the direction the community ought to take, are often exposed in the titles given to individuals. Someone can be described as a freedom fighter or terrorist, and someone can be described as a whistleblower or anarchist. When someone is seen to have gone too far, in these sorts of ways, fall out of the *we*; they stop being even a dissenting member of the community and become someone outside the community. The community that excludes the outsider at the level of the pacifist seems to set too high an expectation on conformity of ideals to be a community supportive of its citizens thriving as moral actors, yet the pacifist is seen at times to be placing herself beyond the pale.

As well it might be argued that a level of diversity of thought and tolerance of dissent are generally understood to be positive attributes in the type of community I am describing here, so a non-pacifist community that makes room for the pacifist is the stronger for making this accommodation.<sup>50</sup> The position of the pacifist citizen is then different from the position of both the pacifist soldier and the pacifist leader. It seems that it is not simply less problematic for the pacifist to become a citizen in a non-pacifist community but that the pacifist need not be at all compromised by joining the non-pacifist community. The pacifist, open about her views on the use of force, joins the non-pacifist community as a pacifist. If the community is accepting of the pacifist becoming a member, it would seem that the pacifist position is not inconsistent with the community's constitution but simply not consistent with the community's current practice. Therefore, while the pacifist might not be restricted from joining the community, she may be restricted in the roles she might carry out within that community. Current practice can change over time and it is reasonable for the sincere pacifist to harbour the hope that the community she joins will, in the future, disband its armed forces and embrace pacifism; thereby becoming a community a pacifist may indeed lead. However, a moral actor becoming a soldier or leader in the hope that her nation adopts a pacifist position in the future, is left with the problem of the demands the roles might make on her in the present while she awaits the community's change of mind.

We have therefore, considered just what it would mean for a moral actor with a pacifist outlook to take on the role of leader, soldier or citizen in a non-pacifist community, and have found the role of citizen the only one open to the serious moral

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<sup>50</sup> Coady points to the possibility of utility in the role of pacifist: "...the modern revival of just war theory, coupled with the specific horrors of modern technological warfare and the consequences of the ready conformity of German and Japanese to their leader's militarism in World War II, have made more plausible the idea that one might not only have a deep moral objection to particular wars waged by one's rulers, but that it might be good for the world if such objections were treated with respect." Coady, C. A. J. (1997). "Objecting Morally." *The Journal of Ethics* 1(4): 375-397. pp383-4 and, "Where it is in fact an unjust war, then it is good that citizens conscientiously refuse to fight in it; where it is a just war, there is still value in the fact that some citizens conscientiously object to it and that the state honour their integrity by treating their objection with respect." Coady, C. A. J. (1997). "Objecting Morally." *The Journal of Ethics* 1(4): 375-397. p384. Although I agree with Coady on this, it should be only a side issue, because if the community is so sure that there is nothing wrong with its use of violence, then the pacifist is tolerated like any other deluded soul: with respect, but without credibility.

actor with pacifist commitments. This chapter is concerned with the moral actor's personal moral position being maintained no matter what public role she might fill. This is a demand for consistency or constancy by the moral actor, without such a demand the pacifist might simply restrict her pacifism to her private life and get on with fulfilling the demands of the roles she filled. If she believed herself free to create an alternate moral position for her public roles she might be a soldier in one part of her life and a pacifist in another. If such a suggestion seems absurd then the basic premise of this chapter is to be accepted: that the sincere moral actor cannot separate her life into discrete public or private spheres (see p. 7). The private moral outlook of moral actors plays out in their private and public aspects of their lives. There is the possibility of great differences in how the particular moral position plays out, but unless the ways in which it does play out can be understood to be consistent – the moral actor is displaying an incoherent moral outlook. Being a pacifist in one's private life is always connected to how one believes those who hold public office ought to behave. The types of behaviour one believes to be appropriate or inappropriate will be in essence the same whether the public office is held by oneself or by any other moral actor.

One could be idealistically inclined towards pacifism but constrained from espousing pacifist views because of seemingly insurmountable practical difficulties; one might wish the world were so that one *could* be a pacifist. However, it would be wrong to claim that such an idealist has a personal pacifist outlook but has a more practical non-pacifist interaction with the world as it is.

## **Ideal World**

Such a view mistakenly takes morality to be, in part, an ideal position on which more practical consideration need to be allowed to function. Morality in such a view determines for an actor only how she ought to act in some ideal world. Moral actors faced with life in a less perfect version of that ideal world are then thought to require the assistance of a more practical template for deciding their actions; moral actors are required to be more realistic. This view is mistaken in several ways, one being that it discounts the fact that moral considerations, moral responses, are capable of being tempered by all types of practical, prudent considerations.



It would be foolish to argue against the claim that the world in which we as moral actors function is less than ideal. However, the difficulties of this world are not to be understood as preventing our functioning as moral actors, but rather the difficulties of this world make up the very stuff upon which we function as moral actors. If we know anything about what it is to function as moral actors, we know what it is like to function in *this* world as moral actors. Making the most of a bad situation is at times all that can be aspired to. This unhappy fact of our acting in a less than ideal world filled with imperfect characters and incommensurable demands, encourages some to suppose that even after deciding on what is the morally right action, how one ought to act, the moral actor is left with the further question: ought I to *do* the morally right action? This question is, as they say, one question too many: either the first ought was not an ought at all or the question is not a sensible one. The first question is pointless if it is not understood to contain the second.

Those who see morality as unworldly and impractical but continue to give some relevance to the moral outlook suggest, perhaps, by their actions the existence of an ideal world in which true moral decisions would be actionable. Or perhaps they might argue that ideals have a place even though they can never be fully realised; that aiming for perfection can raise standards: being too realistic too quickly might prevent us from pushing ourselves on to our best efforts. However, morality need not be seen as an unattainable ideal, it could also be seen as completely fulfilled in its application in an imperfect world. Doing what is morally right is always open to the moral actor because morality demands only the possible, so what can't be done can't be the morally right action. If an 'ought' implies a 'can' morality cannot be understood to be a set of unattainable ideals. Or perhaps more accurately, the moral actor may have ideals but not living up to them will not be a reasonable expectation: what is the morally right action is not to be equated with the action that brings about the consequences we would ideally desire. Morality is worldly and practical and is an activity concerned with how moral actors ought to act in this world.

Those who see morality in the way I have just criticised encourage a distinction between the *morally* right course of action and what might be called the *feet-on-the-ground* right course of action. The claim here is that the moral actor is at times

answerable to demands external to and overriding of the demands of her personal moral position. This thesis rejects there exists a category of demands that are compelling for a moral actor in morally significant situations, but which are not moral demands.

### **Splitting the Actor: Moral Fission**

The rationale for splitting the moral actor's life into separate public and private sectors is also seen as justified because of the different activities that take place in these different spheres. Thomas Nagel points to the collecting of taxes, the conscripting of soldiers and the incarceration of citizens as acts that have no place in the personal moral outlook of individuals as they are not actions possible for the individual.<sup>51</sup> When actions, of this sort, are performed by the individual they transform, they become theft or slavery etc...: individuals cannot collect taxes or conscript soldiers or incarcerate their fellows without authority conferred from an appropriate institution.

Nagel says of taxation that: "There is no way of analysing a system of redistributive taxation into the sum of a large number of individual acts all of which satisfy the requirements of private morality."<sup>52</sup>

Presumably, Nagel means that when looked at from *ground level*, collecting taxes calls on at least some individual moral actors to transgress some part of their personal moral outlook. This really only amount to his saying that when removed from context, some of the actions involved in the collecting of taxation, will appear to be inconsistent with *the requirements of private morality*. If this is the case, then what Nagel is asking of private morality here is surely against the grain for any form of moral reasoning. Moral reasoning requires context. The rightness or wrongness of acts performed by individuals in the collecting of taxes can be determined only with

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<sup>51</sup> Hampshire, S. (ed) (1978). *Public and Private Morality*. Cambridge, Cambridge University Press. pp. 87-88

<sup>52</sup> *Ibid.* p. 88

reference to the context of their being the acts of an individual collecting taxes, we cannot abstract them away from the ‘collecting taxes’ context nor the ‘act of this individual’ context and still have something sensible to say of their acceptability. Therefore, it is to be expected that beyond a certain level of reduction, these acts will become insensible, not only to private morality but to any type of morality.

So, although it might be true that individuals cannot collect taxes, as individuals, it is not the case that taxation is incomprehensible to private morality and therefore demands a separate *specialist morality*<sup>53</sup>. Moral reasoning from a private moral perspective if given suitable contextualising information is adequately equipped to make determinations on the moral status of any acts involved in the collection of taxation, conscription, incarceration, torture or in fact any act connected to either individuals or institutions. The individual cannot sub-let her morality, nor can morality be temporarily adapted or shaped to suit particular needs in particular circumstances.

There is a need to be clear on this last claim: that morality cannot be shaped to needs in particular circumstances. Clearly, any moral position is under continuous adaptive pressures from the particular situations a moral actor finds herself to be in. Moral positions must be responsive to particular situations a moral actor finds herself to be part of. This responsiveness to matters of moral significance in those situations *is* the individual’s moral position and as it is responsive it is in a constant act of adaptation. So, the claim is not to be taken as support for an idea of moral positions as fixed or uninterested in the unique circumstances of the moral actor. Rather, it is to be understood as a rejection of morality being adapted to the purposes and demands of any particular situation or set of circumstances; this can never be the case, as the relationship between morality and the demands of any particular situation is one of

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<sup>53</sup> Nagel refers to moral specialisation in this quote: “...and the moral specialisation that inevitably arises given the complexity of public actions, ...”Ibid. p. 90. Just what moral specialisation means here I am not sure. A generalist/non-specialist morality is an odd notion. All moral positions appear to be specific. Every moral actor is a specialist in being him or herself. The specialisation Nagel speaks of here seems connected to, in part at least, the weight given to consequentialist reasoning. However, some private moral outlooks are essentially consequentialist and how such outlooks would fit within Nagel’s idea of specialisation is not clear. As well as this, institutions need not be consequentialist, so are non-consequentialist institutions to be considered forms of moral specialisation?

morality remaining free to critique those demands in order for those demands to be found legitimate or illegitimate for the moral actor.

It is important to make clear at this point that there are two different approaches to moral limits being discussed in this chapter. The first is that the personal moral position is claimed to be limited to certain sectors of an actor's life (private life) and other aspects of her life (public life) fall under the domain of her public moral position. With this approach it is not claimed that the moral actor must step aside from morality and decide matters from a non-moral perspective, rather it is that the moral actor is claimed to have multiple moral outlooks, private and public. The thesis agrees with this position in as far as it shares its sense that morality cannot be side-stepped, but disagrees with the claim that the taking on of a role brings about the formation for the moral actor of an alternate moral outlook.

The second approach suggests that morality is required to give way, at times, to more practical feet-on-the-ground considerations. While the first approach questions from where moral decisions ought to be made, the second questions whether or not we ought to follow our moral decisions at all, in certain situations. To put this in another way, the first approach does not claim there to be areas unsuitable for the application of moral reasoning; rather it posits the existence of specialist moral outlooks and suggests that it is the application of a suitable morality that matters. The second approach however, insists that there are areas ill-suited to moral consideration, areas where moral reasoning is an inappropriate method for determining how one ought to act. The first approach attempts to make the demands of morality more amenable to particular needs, typically political or communal; whereas, to make the second claim would appear to seek to excise certain parts of life completely from the demands of morality.

Neither approach appears to see a personal moral outlook as an essential component of the moral actor, but rather as something which at times has to concede authority to a position a perspective external to the actor's moral outlook. In such a view a moral actor's moral position is seen, at times, as being divorced from her ability to effect change in the world: some of her actions are to be judged right or wrong from another perspective, either by a public moral position or by a position not based in moral

concerns at all. Any such separation leads to the insulation of the actor from the effects of her actions. It is the contention of this thesis that any separation between the actor's capacity to act in the world, her ability to create, change and impact upon the world she inhabits, and her moral position leads to the redundancy of the moral position as expressed. The moral position expressed is either to be seen as inaccurate, or meaningless – not really a moral position at all, as it neither describes the way in which the actor believes she ought to act nor does anything to connect to the effect the moral agent has by acting in the world. A moral position untethered from the actions of a particular moral actor is no moral position at all. There are no considerations that function by putting limits on a moral outlook, without at the same time effecting changes to that moral outlook.

### **Being Original or Being Insulated**

Yet again it seems worthwhile emphasising the point that this thesis is not blind to the way in which public office and the obligations of being a public official impact on the moral determinations of an individual. The thesis wishes only to make the claim that those differences are either containable within the same moral outlook that informed the individual prior to his becoming a public official or constitutive of the iteration of the moral actor's moral outlook effected by his experience in the public office. He remains an individual acting from within a public office; his identification with the office he holds is not so complete, not so thorough, as to see his identity as an individual moral actor disappear. Thomas Nagel reminds us that: "Public crimes are committed by individuals who play roles in political, military, and economic institutions."<sup>54</sup>

Nagel also suggests that some grand individuals are not contained by their public roles. Because of the size of their personalities, as it were, public roles provide them with insufficient cover and their actions appear quite plainly as the acts of an individual and not of a mere office holder under compunction to fulfil the demands of his role. To see a moral actor as so totally subsumed by his role as to not be

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<sup>54</sup> Ibid. p. 75

personally responsible for his actions is to accept that a moral actor's moral autonomy is a commodity that might be traded for success in certain activities. To become a public official in this way would be to sell one's moral self into slavery; an act at least as problematic as the selling of one's physical self into slavery. Those who make demands on the individual that compromise his moral autonomy might reflect on the bargain they attempt to strike and consider whether such a bargain could be legitimate. Is it possible to demand of a moral actor that he forfeit his moral or physical freedom in this way?

Nagel's view here is consistent with a claim made by this thesis that roles are best seen as simplified expressions of typical modes of behaviour and not entities waiting to be animated by the individual who fills them. In a shorthand way an actor can be called Prime Minister when she fulfils the duties of being a Prime Minister. Her "becoming" Prime Minister should be seen simply her fulfilling a need that is believed to exist for someone to act in the ways typical of a Prime Minister. It is less a matter of transformation and more a matter of being given a position description.

What Nagel calls the "cover" provided to those in public roles is undermined by originality. When we can no longer say this is typical of someone filling this role, the individual is exposed. Nagel refers to the "...originality of Hitler, Stalin, or Amin..."<sup>55</sup> When one acts inconsistently with one's role, the cover of a particular type of anonymity connected to being *in-role* is blown. The "slippery moral surface"<sup>56</sup>, what might be called the Teflon coating of the public official becomes scratched and the moral weight of his acts begin to attach directly to him and not simply to his role.

However, if the leader is sufficiently unoriginal and stays true to the script his actions may be seen by many to be subsumed by his role:

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<sup>55</sup> Ibid. p. 75

<sup>56</sup> Ibid. p. 75

“They act as office-holders or functionaries, and thereby as individuals they are insulated in a puzzling way from what they do: insulated both in their own view and in the view of most observers.”<sup>57</sup>

What Nagel says about the individual’s level of insulation<sup>58</sup> being connected to his relative size to that of the role he fills is well observed. But in addition to this, much depends on the viewer’s acceptance of the rightness of actions performed by the individual in the role. If the viewer agrees with how an individual acts in the role of Prime Minister, for example, they will be more inclined to view her actions as an expression of fidelity to the office of Prime Minister, rather than acts directly connected to her as an individual. My describing you as a good Prime Minister is equivalent to my agreeing with your actions: your version of Prime Minister. This is similar to the way that an individual is likely to be charged with moralism by those who disagree with his moral position and not by those who agree with his moral position (chapter one contained a discussion of the topic of moralism.). If, for instance, the observer agrees that in such and such a circumstance, the Prime Minister should sanction the use of torture, then the observer will be inclined to see the act not so much as an instance of individual moral choice but one of fidelity to their approved version of the role of Prime Minister. Actions will typically be seen to be owned by the role and not by the individual filling the role as far as they comply with the observers expectations of how one ought to act *in-the-role*.

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<sup>57</sup> Ibid. p. 75

<sup>58</sup> Alasdair MacIntyre also speaks of insulation *between* roles, in relation to the moral actor’s life being compartmentalized: "But compartmentalization involves more than this in two respects: the degree to which each sphere of activity is insulated from others, so that considerations that would carry weight in some other sphere are deprived of it in this; and the absence of any accessible sphere of activity in which practically effective reasoning might be used to evaluate the norms and values of each particular sphere from some external point of view.

Installation is provided by the prescribed standard responses to the introduction into the conversations within some particular sphere of considerations that are by its norms at best irrelevant, at worst distracting. So, if in a policy meeting of the Midwestern power executives one of them had proposed attempting to bring about an overall reduction in power consumption, or if at a social gathering someone were to insist that the standards of truthfulness required in scientific reports should also apply to party gossip, their remarks might be treated as a joke or ignored, but, if such a speaker persisted, they would find themselves deprived at least temporarily of their status in that sphere of activity, treated, that is, as a source of embarrassing background noise rather than a participant.”MacIntyre, A. (2006). *Ethics and Politics*. version 2. New York, Cambridge University Press: 7784. pp. 198-99

To reiterate, the moral actor's lack of originality and fidelity to a role along with our acceptance of the rightness of the actions demanded by that role, will tend to support our inclination to accept the moral actor as less than fully accountable for their actions connected to their being in that role. In this way actors become morally invisible when their actions do not stray from the prescribed script we understand to be connected to the roles they take on. Straying from the script connected to the role reveals to us the individual behind the role. Scripts for any role vary and clearly not all observers agree on how a Prime Minister, for example, ought to act. It is therefore impossible for any moral actor to be true to all the different versions of any role. Because of this the moral actor is more or less exposed to different observers at the one time. Decisions about whether an actor is acting consistently within a role, are as open to subjective interpretation as decisions about whether an actor is acting in a morally laudable way. However, constructing a universally accepted prescribed version of Prime Minister is as unlikely as constructing an universally acceptable absolute version of morality.

### **Latent Moral Significance**

It is a central premise of this thesis that a moral actor is mistaken when she believes her actions to be correct, but at the same time believes that the correctness of those actions would be insufficiently described through reference only to her moral position. Such an actor believes in the existence of considerations that provide her with reasons for acting rightly, but which do not figure in the formulation of her moral position. This is as though moral considerations were a particular type of entity and not simply considerations that in some way figure in the determinations of moral actors on matters of moral significance.

However, rather than being a particular type of entity, moral considerations can arise from any actions connected to moral actors or agents. While some actions of moral agents always contain moral significance, all actions of moral agents have the potential to be morally significant. Consider, again, the case of a seemingly morally innocuous act such as buying a coffee in a café. If we were to say that purchasing a coffee at a café is in general not a morally loaded moment, we would still then be free to name any particular instance of coffee buying, due to some special considerations



attendant to this particular coffee buying episode, as being morally significant. Consider my purchasing a coffee while someone lay unconscious at my feet, or purchasing a coffee with money intended for a more important purpose or with money that was not mine to spend; or, purchasing a coffee as an act of betrayal: buying someone a coffee in order to signal to an assassin who should be hit – *the one I hand the skinny decaf latte to: he is your target*. So, we have to accept that even buying a skinny decaf latte or giving a kiss can be done with the intent to betray. All of these acts have moral significance; I might also purchase a coffee as an act of kindness, compassion, forgiveness, gratitude or love. Both the intentions of the moral actor carrying out an action, and the consequences of the action on others have the ability to transform the most morally quotidian of our acts, into acts with considerable moral import.

It is the case that some actions are not morally significant in themselves but can be made so through association, while other actions are without exception morally significant. Moral significance is, as it were, always capable of being conducted to apparently morally neutral acts. All acts have this potential conductivity when they are the acts of a moral actor. The flow of moral significance is not dependent on any unique feature of any act; we need only to establish that it is the act of a moral actor to expose a potentiality in that act to conduct moral significance. Then we need only understand the act to be in some way connected to a morally significant situation in order for us to accept that, if I may be allowed to continue the analogy, a moral circuit has been created. Pushing our analogy a little further, in order to insulate the actor from the flow of moral current - if that is what is being attempted - this circuit will need to be broken. Some may attempt to break the circuit by claiming some acts to not be morally significant acts, others may attempt to remove the individual from the equation and see him become simply a filler of a role, as discussed above. This thesis rejects these attempts to sideline moral authority as even the most temporary suspension of moral authority in any part of a moral actor's life is destructive of moral authority in her life as a whole.

Before proceeding too much further, it is necessary to say a little more about what might motivate those who wish to promote the public private division. Motivation

cannot simply be the desire to achieve certain ends – ends that may at times be frustrated by moral prohibitions or proscriptions— if this were the case the proponent of the public private divide need do no more than rearrange what is morally demanded in line with his preferred action. Instead motivation seems to be connected with a desire to profess a morality more aspirational than real world experience recommends to us.

Not much has been said so far in this thesis against any particular moral stance, rather the thesis has argued only that moral positions connect to moral actors and only to moral actors and that moral positions are inseparable from the morally significant actions they perform as moral actors. It is not the work of this thesis to engage in critiques of particular moral stances. As mentioned earlier in this chapter the work of this thesis is to be confined to a critique of attempts to limit morality's scope or authority. It is in fact only after clarity is achieved on the way in which moral considerations function in the lives of moral actors, and just what constitutes moral considerations that it becomes possible to examine the credibility of any moral position. The first task is for us to be clear on what it means to be a moral actor whose moral position conflicts with the demands of some role he might fill.

### **Representative Morality**

In chapter one, we considered the question of the accommodation of the doctor's personal moral beliefs, specifically relating to abortions, when those beliefs come into conflict with the expectations of the broader community about the role of doctor. We will now return to the topic of abortion this time in relation to the moral actor directly involved in the formation of laws for her community. As we are dealing with the junction between personal beliefs and public communal responsibility, the topics of abortion and pacifism fit our needs quite well and make for useful examples.

If an actor were to hold, for example, the belief that abortion is equivalent to the murder of an innocent person and therefore an evil act, and further, if she were to believe there to be no circumstances that could justify the aborting of a foetus or embryo, abortion is for her to be understood as an unconditionally evil act. This expresses clearly the moral actor's position on abortion – a belief that it is

unconditionally evil. It is her personal moral position in that it attaches to her, to a particular individual, however unless this moral actor has a strictly subjectivist or relativist view of moral beliefs, her belief in the evil done in acts of abortion will say something about the wrongness of abortion for other moral actors as well as its wrongness for her.

Let us assume that this moral actor believes participating in the aborting of a foetus or embryo, to be an act of evil, independent of the moral beliefs of the participants involved; this is also a personal moral position, although it makes claims about the rightness or wrongness of the actions of other moral actors. For simplicity I will give this moral actor a name, I will call her Jan. It will also be useful for our purposes for her to hold a public office. Therefore, we will make Jan a member of parliament.

Jan, in her role as MP, is called upon to vote on changes to laws on abortion. Jan, as an independent, finds herself holding a casting vote on legislation that will decriminalise abortion in her state. If Jan rejects the proposed legislation because she believes that abortion is an evil, her decision will be based on her personal moral position. However, the ramifications of her decision are far from personal, they will have implications for a great many citizens of her state, and her ability to vote on the legislation is based on her being the holder of a public office: a representative of a certain proportion of those people. But still, Jan has decided to vote this way because of her personal moral position.

However, without changing her belief that abortion is evil, Jan may have voted in favour of its decriminalisation. She may have come to the view that criminalising women who seek an abortion is an inappropriate use of state law, or she may have found other reasons in relation to what might be classed as the public good that lead her to accept that the right course of action, for her, is to support the bill for decriminalisation.

Although it might be suggested that in voting *for* the bill Jan would be overriding her personal moral position (would be accepting the need to put the public good, and her obligation as a public official, ahead of her personal moral position), the decision to support the legislation would be no less Jan's personal decision than her decision to

reject the legislation. Attempts to interpret her supporting vote as necessarily distinct from her personal moral position are mistaken, they fail to appreciate the true nature of her moral outlook, by characterising it as something fixed, limited and ultimately answerable to more practical considerations. Jan's moral position is capable of more depth than this characterisation suggests.

Jan is of course able to act immorally. She may take a bribe or favours in exchange for her vote. She may put considerations of her career as an MP ahead of all other interests in choosing how she will vote. Therefore, it would be wrong to make the claim that Jan's vote necessarily accurately expresses her moral position. To understand more clearly the relationship between Jan's moral position and the way in which she votes on any particular piece of legislation, we would need to be privy to all considerations Jan weighed in coming to her decision and to know of any restrictions working to curtail her freedom to choose her actions based on moral discernment. Clearly Jan's actions do describe something about her, and that is they describe what Jan actually did. The connection between Jan's actions and her moral position is one of being compatible or not being compatible.

A grave disparity between Jan's personal position on abortion and act in voting, might suggest to some that Jan has acted immorally. To others it might suggest that she has made her determinations not as private Jan but as public Jan, and this in turn may be seen positively or negatively. It might be claimed that: Jan showed good judgement in not allowing her personal morality to cloud her judgement in her public role, or, that Jan showed a lack of commitment to her principles. Either way this suggests that her role as MP brought about the existence of an alternate position from which Jan, if she is to act rightly, has to decide matters connected with her role as MP. On either of these readings Jan's moral position in her private life is essentially unaltered: it has simply given way to a more appropriate position connected to her role as MP. If this alternate perspective Jan has developed in becoming a public official can direct Jan on matters of moral significance, it is reasonable to call it a moral perspective. If Jan retains her personal moral outlook, and it is unaltered by her becoming an MP, but she now has an alternate public moral outlook that directs her in her choices in her role as MP, Jan has become the holder of multiple moral outlooks. According to this

understanding of Jan as a moral actor divided along public and private lines, she acts correctly as an MP when she follows the moral outlook connected to that role, and she acts correctly as a private citizen by following her private moral outlook

The suggestion, from those who see things in this way, being that what is right for an MP is not the same as what is right for a private citizen, that when a moral actor fills a public role there is a correct method for moral decision making connected to being in that public role and her decision should reflect that fact. She no longer has the luxury of deciding matters on the basis of her personal morality. Broader (or perhaps narrower) considerations apply for the moral actor as MP than do for the moral actor as private citizen.

While it is true that considerations and obligations are affected by the roles we fill, the distinct obligations of a role such as MP, do not generate for the moral actor a new and additional moral persona; instead, they do whatever work they do on the existing persona of the moral actor filling the role. Moral actors contain their roles, their roles do not contain them. Moral personas within the moral actor do not reproduce slightly variant versions of themselves better suited to this or that role, rather they remain singular and incorporate into themselves, or reject, the demands of the role.

We need not assume that Jan's personal moral position has been changed through her becoming an MP. Some level of imaginative prediction forms part of the life of any moral actor. Moral actors typically have the facility to imaginatively project themselves into roles, and it is through just such a process that the moral actor decides that a role is or is not consistent with their moral outlook. Jan does not become an MP by accident of birth, her becoming an MP is a choice she makes as an autonomous moral actor, and it is to be expected that prior to her choosing to fill this role, she has some idea of the responsibilities connected with being an MP. Private Citizens are capable of having a position on how MPs ought to act. Jan prior to becoming an MP, may have had an identical position on the legalisation of abortion, she may have believed abortion evil but not a matter for criminal sanction. In order for her to make an informed decision on whether or not she was suited to the role of MP, her private moral outlook must have contained some conception of how MPs ought to act. Without these types of predictions a moral actor could find herself committed to roles

that are by their very nature seriously at odds with her personal moral outlook. A failure to predict the most expected demands of a role could see the pacifist take up soldiering or the Salvationist wine-tasting.

The type of prediction being asked of the moral actor here is no doubt open to error and will always lack precision. Moral actors are very often (perhaps always) in possession of less than all the information required to make predictions about all the possible demands of any role they might take on. This is no different to the moral actor's lack of perfect knowledge with regards the consequences and morally significant factors connected to her actions in general. However, the imperfection of her predictive abilities does not prevent the moral actor from choosing, what from her limited point of view, appears to be the morally correct way forward; so neither should the possibility of being mistaken prevent a moral actor from choosing or not choosing to take on some role or other.

Jan may have chosen not to become an MP; she may have believed that her stance on abortion was sufficiently at odds with the general opinion of voters in her electorate as to make it impossible for her to truly represent them. She may have felt that she could not be party to the formation of laws that led to the acceptance of abortion as a norm, but at the same time also have felt it improper for her to use her public office to promote her own personal beliefs about the wrongness of abortion. We need not go too deeply into the ways in which such a conflict might be resolved. To be sure, Jan could make her views on abortion clear to voters prior to being elected, and thereby allow them the opportunity to decide on her appropriateness from as informed a position as possible. In the same way as it was suggested earlier in the case of the pacifist, what is demanded of the moral actor is that she be transparent about her beliefs: that she does not pretend to be what she is not.

In the case of Jan and the abortion legislation, it might also be that she takes the issue to be of such gravity and importance that she believes it to be her obligation to do all she can to reduce the number of abortions in her state. She may simply accept that being out of step with one's community is what people of principle sometimes need to do.

It is not clear at all that Jan should not become an MP; all that I am suggesting is that she may decide that not becoming an MP is one way of avoiding the possibility of later being morally compromised. Another way is through transparency about and fidelity to a moral principle. What this shows, I hope, is that rather than being born again as a new moral actor when one takes on some new roles – in particular a role in public life, one incorporates the roles one takes on into one’s pre-existing moral persona; first of all imaginatively and then if one believes there not to be a fatal incompatibility between the demands of the role and one’s personal moral outlook one may go on to experience life as a... whatever.

Simply taking on any role redefines who we are to some degree. Therefore, once one become a whatever, one *becomes* a whatever, one is not a whatever on top of who one was before: who one was before one became a whatever no longer exists. As well, if new information comes to be known after some role has been taken on, it may come to change how one thinks, and if one comes to think differently in the role one will think differently in one’s personal life as well, nothing can prevent the flow of experience got inside a role from permeating one’s personal thoughts: such a divide would be a ridiculous conceit just as any divide that separates our moral position in and out of the role is ridiculous.

### **Looking at Reflections**

The uncomplicated fact that being effective in a particular role requires of the actor filling the role that she behave in a certain manner, says very little about the rightness or wrongness of the actor acting in that way. The public roles that help support unjust institutions make their demands on an actor in the same way as roles that function within *just* institutions. Discernment on the acceptability of any of these demands must be anchored to an external position: constraining discernment to within the role, within the institution, would be like anchoring a boat to itself. Michael Hardimon makes the demand that a role be in his terms “reflectively acceptable”:

This brings us to the ideal of a reflectively acceptable social role – an ideal which, I believe, must figure centrally in the theory of role obligations. Let me provide a brief sketch of the basic idea. To say that a social role is reflectively acceptable is to say that one would accept it upon reflection. Determining whether a given social role is reflectively acceptable involves stepping

back from that role in thought and asking whether it is a role people ought to occupy and play. Determining that a given social role can be reflectively acceptable involves judging that it is (in some sense) meaningful, rational, or good.<sup>59</sup>

Hardimon's idea of a "reflectively acceptable" role makes demands about the acceptance of certain benchmarks of rationality and reasonableness. However, there is much that can be discussed about an actor's acceptance of a role without demanding that we have consensus on whether or not the role is reasonable. If we choose to discuss these questions of reasonableness and the rationality implied by acceptance of the role, we can do so; but our first investigations should, I believe, confine themselves to our saying something far less ambitious: we should begin by questioning no more than the reasonableness of *this* actor taking *this* role.

What Hardimon calls "reflectively acceptable" roles is close to, but in a way far more demanding, to what I will call "minimally legitimate" roles. This minimal legitimacy has to do with the actor's belief that the role is not inconsistent with his moral position but does not go so far as claiming that a role is legitimate, in a broader sense: beyond the discernment of the individual taking on the role. This might be explained by my suggesting that for some moral agent the role of executioner might be regarded as fulfilling the criteria for minimal legitimacy; if he has the belief that capital punishment is an acceptable part of the criminal justice system then he will not have a moral objection to the role of executioner, and if he is consistent the role might as easily be filled by himself as anyone else. Whereas, for another moral agent the role of salesman in a shoe store might fail this test of minimal legitimacy because, for him, the fact that the shop store sells leather shoes makes the role of shoes store salesman incompatible with his vegan philosophy<sup>60</sup>.

In both these instances it seems we have been able to discuss something of interest concerning the actions of moral agents and the relationship between those actions and

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<sup>59</sup> Hardimon, M. O. (1994). "Role Obligations." *The Journal of Philosophy* **91**(7): 333-363. p 348

<sup>60</sup> Let us assume that what I have called his vegan philosophy is based in concerns about the ethics of exploiting animals.



the moral agent's moral position. Having put aside any questions concerning the rightness of capital punishment or the use of animals for food and clothing; we still appear to have discussed a matter of moral significance in relation to these moral agents and the roles they might fill. There seem to be questions here in these cases that are worthy of discussion and which do not rely on consensus in regards the licitness of the enterprises being entered into but simply consensus on the claim that a moral agent cannot, with consistency, engage in activities and take on roles that conflict in substantial ways with his moral outlook or his comprehensive conception of values.

By making this qualification on Hardimon's test of reflectively acceptable role is I wish to make clear that it is in itself an important question - how an individual acts when he is faced with the prospect of filling a role that conflicts with his personal moral outlook, and that any actor committing to a role that fails this less stringent far more easily proved test of minimal legitimacy is compromised simply through his acceptance of the role and can be ignored, in regards to the topic being considered here, simply on grounds of his inconsistency.

Where my minimally legitimate role differs from Hardimon's reflectively acceptable role is in its recognition that an actor's subjective judgements provide adequate grounds on which we might base our decision to dismiss his sincerity or question his claim to be suited to some particular role. This is not to say that all that matters in moral discernment is the actor's subjective judgements, rather that this is all that matters in deciding whether or not some role is consistent with some particular actor's professed moral position. At times what is of interest is whether or not an actor is acting because she believes in the legitimacy of the overall project and the acceptability of a particular role for an actor like her. Hardimon's reflectively acceptable role demands legitimacy beyond the subjective discernment of the actor:

Since the notion of reflective acceptability is subjective in various respects, it is crucial to point out the process of reflection must be reasonable. The mere fact that one does not feel like carrying out an obligation associated with a given role does not render the role reflectively unacceptable. It would be unreasonable to expect that the requirements of a role never conflicted

with one's wishes. On the other hand, the fact that a role required the systematic suppression of all personal feeling, thought, and conscience would provide a good reason for rejecting it.<sup>61</sup>

These are no doubt good reasons for rejecting a role, however at times what needs to be pointed out about a role is simply that it is at odds with the moral position of the individual entering into it, or the individual already ensconced in it. That type of inconsistency need only make reference to the individual's moral position and need make no claims about the *reasonableness* of that moral position. Only once a role has passed the less stringent test demanded by a consideration of its minimal legitimacy we can then take our examination forward and consider whether the reasons given by the actor pass a test of reasonableness.

Both minimal legitimacy and reflective acceptability concern themselves with the bindingness of obligations within any role they are used to interrogate. Hardimon writes:

“[T]he first question that needs to be settled is whether the role, considered as an abstract structure, is reflectively acceptable...If the answer at this first stage of reflection is no, the role in question is reflectively unacceptable, and the requirements flowing from it are not morally binding.”<sup>62</sup>

But even after passing this test, any particular instantiation of that role or institution might fail to live up to the structure that was taken as being reflectively acceptable. Or a role or institution may undergo changes after this test has been applied. This means that any particular instance of a role or institution may still lack moral bindingness; Hardimon gives the example of the filial obligations of child abuse victims: “*To consider an extreme case: child-abuse survivors may have no filial obligations to their parents, whatsoever.*”<sup>63</sup>

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<sup>61</sup> Hardimon, M. O. (1994). "Role Obligations." *The Journal of Philosophy* **91**(7): 333-363. p 348

<sup>62</sup> Ibid. p 350

<sup>63</sup> Ibid. p 350

## Minimally Legitimate

What I have said applies to the demands made on an actor by what might be called minimally legitimate roles. This minimal legitimacy has to do with the actor's belief that the role is not seriously inconsistent with his moral position and does not go as far as claiming that a role is legitimate, in a broader sense, beyond the discernment of the individual taking on the role. As has already been suggested, for some actor the role of public executioner might be regarded as minimally legitimate; if he had the belief that capital punishment was an acceptable part of the criminal justice system. However, any moral actor committing to a role that fails this test of minimal legitimacy is compromised simply through his acceptance of the role.

For some, or even most people, the role of mafia hit-man would fail this test of minimal legitimacy; while for others being a member of the armed forces would be sufficiently compromising to their moral position to have the same effect. To say that a role passes this test of minimal legitimacy, says only that its predictable demands are acceptable to the actor filling it. Of course given an actor with a suitably accommodating moral position any role is capable of passing such a test. However, for the purposes of much that this thesis is attempting to say, no more is required than that a role be minimally legitimate; as the types of conflicts being discussed here can affect any actor, including the mafia hit-man, who fills a role he believes to be inconsistent with his personal moral outlook.

The thesis also challenges the idea that a moral actor can be obliged to act against her moral position through the demands of non-moral obligations. It has already been argued and will be argued again in the course of this work, that such obligations, if they are inconsistent with an actor's moral position, cannot be said to truly oblige the moral actor. Further, those obligations that *are* consistent with an actor's moral position can be said to act on the moral actor from *within* her moral position. As well, the thesis does not accept that a moral actor cannot be obliged to act on the demands of a role he might fill without his prior acceptance of the legitimacy of those demands or the legitimacy of the role from which the demands originate. In the chapter on doing evil we will consider the position of the moral actor being asked to commit to doing evil as a prerequisite of being in certain roles. What needs saying at this point is

that a moral actor cannot consent to being compelled by a role, and the obligations of a role, unless he believes the role to be consistent with his personal moral outlook on morally significant matters. Unless this condition is met the obligations of that role will have, for him, no compelling weight.

When Jan becomes an MP the particular moral actor she adds to its conception of itself the new fact that she now fills the role of MP. In short she changes; she does not continue to be Jan the non MP as well as Jan the MP; she is not divided into discrete public and private selves and nor is her moral outlook; she is the one moral actor containing a private life and a public position or role within that life. Therefore, when Jan is required to make a determination on a situation of moral significance, her determination will be the determination of a single moral actor. It will not be the product of her public self or her public moral position; it will be the product of a moral actor who happens to hold a public position. Jan will make her determinations from her singular moral outlook, but with due reference to the fact that she is the holder of a role as a public official.

Moral actors highlight the difference between the public and the private not by shifting their basic moral position but by exposing the effect of those differences on their one moral position. To be able to chart the differences between the public and the private there needs to be a stationary point from which the two might be considered. Jan might say that in her private life she has no place even for questions concerning the rightness or wrongness of abortion, that she is sure that she could never entertain the possibility of having an abortion herself. She might also say that in her role as MP it is her duty to take seriously the fact that many of those she represents *do* ask such questions of themselves, and that she is duty bound to engage in a debate that is alien in its very existence, to her way of understanding the world in her private life.<sup>64</sup>

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<sup>64</sup> Jan might also, of course, find nothing personally compelling in the fact that even a majority of those in her electorate disagree with her position on abortion. Personal moral outlooks will not always be swayed by being out of step with majority opinion.

While roles cannot create in a moral actor who takes them on, an alternate moral persona, they are capable of changing the demands on an actor, and being in a role has the potential to change an actor's moral position. Giving the correct weight to being in a role is what is important here. Not allowing the complicating factor of a moral actor being a private individual and at the same time a public office holder to distort moral responsibility is the challenge.

In this chapter I have been primarily concerned with an approach to roles (in particular roles connected to holding public office) that attempt to create a sense of consistency through division. In this approach inconsistent public and private moral positions can be claimed to exist within the one moral actor because the moral actor is divided into public and private parts. Consistency is only achieved through segregation. If one part of a moral actor's life makes demands on her that clash with the demands in some other part of her life, she can fulfil all these demands only if the conflicting parts are kept separate from each other.<sup>65</sup>

### **Being Integrated**

The approach to filling a role critiqued in this chapter gives to being in a role far too much significance: in that it allows being in a role to create obligations that override the moral actor's personal moral position. As well, this approach fails to attempt to integrate an actor's roles into her life as a whole and by doing this it loses for us the concept of the actor as a particular site of moral agency; the moral actor is

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<sup>65</sup> This is akin to achieving racial harmony through the maintenance, by whatever means, of a racially homogenous citizenry. The White Australia Policy which was in place in this country up until 1973 was at times defended on these grounds. In *Ulysses*, James Joyce has Mr Deasy, the schoolmaster, make a cynical claim along these lines to Stephen Dedalus: "–I just wanted to say, he said. Ireland, they say, has the honour of being the only country which never persecuted the jews. Do you know that? No. And do you know why?"

He frowned sternly on the bright air.

–Why, sir? Stephen asked, beginning to smile.

–Because she never let them in, Mr Deasy said solemnly." Joyce, J. (1986). *Ulysses*. London, The Bodley Head, Penguin Books. p 30

disconnected from her actions and the point to which moral responsibility might attach is made indistinct.

Alasdair MacIntyre has this to say on the need the moral actor has in her life for the traits of integrity and constancy:

To have integrity is to refuse to be, to have educated oneself so that one is no longer able to be, one kind of person in one social context, while quite another in other contexts. It is to have set inflexible limits to one's adaptability to the roles that one may be called upon to play.

Constancy, like integrity, sets limits to flexibility of character. Where integrity requires of those who possess it, that they exhibit the same moral character in different social contexts, constancy requires that those who possess it pursue the same goods through extended periods of time, not allowing the requirements of changing social contexts to distract them from their commitments. So individuals with these two virtues will learn not only how to occupy some determinate set of roles within their social order, but also how to think of their goods and their character independently of the requirements of those roles.<sup>66</sup>

MacIntyre also points out that the moral actor has to negotiate conflicting demands while maintaining an integrated and constant self:

They will, that is to say, be the inhabitants of not just one, but of two moral systems, that of the established social order with its assignment of roles and responsibilities and that developed within those milieus in which that assignment has been put to the question. The degree to which these two systems are at odds with each other varies in different social and cultural orders. Those whose social and cultural order is such that the two systems present requirements that it is difficult to render compatible will be forced either to think their way through a series of more or less painful choices or to find some strategy for evading these choices.<sup>67</sup>

Although there are multiple and at times incompatible demands placed on the moral actor, her being a fully functioning moral actor would be lost were she to, through a dissolution of her single moral self into conflicting moral selves predicated only on their suitability for some role she might fill, dis-integrate herself in order to

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<sup>66</sup> MacIntyre, A. (2006). *Ethics and Politics*. version 2. New York, Cambridge University Press: 7784. p. 192

<sup>67</sup> *Ibid.* p. 192

accommodate these conflicts. To do so would be to destroy the integrity and constancy essential to the life of the functioning moral actor.

The quotes used earlier in this chapter from Thomas Nagel on the cover provided by roles suggests one place that moral responsibility might attach, and that (in the case of the unoriginal role holder) is to the role itself. If a role holder acts within the constraints of her role she may be seen to be sufficiently overshadowed by being an X so as to become invisible to any claims of moral responsibility. If we believe that moral responsibility ought not to attach to some particular moral actor but rather to some role she fills, we have overplayed the status of a role and we may find that moral responsibility floats right past the role as well, ultimately failing to attach to anything of substance:

In many premodern, traditional societies, it is through his or her membership of a variety of social groups that the individual identifies himself or herself and is identified by others. I am brother, cousin and grandson, member of this household, that village, this tribe. These are not characteristics that belong to human being accidentally, to be stripped away in order to discover 'the real me'. They are part of my substance, defining partially at least and sometimes wholly my obligations and duties. Individuals inherit a particular space within an interlocking set of social relationships; lacking that space, they are nobody, or at best a stranger or an outcast. To know oneself as such a social person is however not to occupy a static and fixed position. It is to find oneself placed at a certain point on a journey with set goals; to move through life is to make progress – or to fail to make progress – towards a given end. Thus a completed and fulfilled life is an achievement and death is the point someone can be judged happy or unhappy. Hence the ancient Greek proverb: "Call no man happy until he is dead."<sup>68</sup>

MacIntyre is pointing here to a far more integrated conception of who the moral actor is and the roles he or she fills. It would make no sense in the context of this quote from MacIntyre for moral responsibility to connect to the role and not the individual, because there is no distinction between the two. Nor would it make sense to dis-integrate the actor from the roles she fills; to divide for instance her life into private and public parts because it is the whole, the integration of the parts of the individual;

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<sup>68</sup> MacIntyre, A. (2008). After Virtue: A Study in Moral Theory. Indiana, University of Notre Dame. p. 33

the roles she takes on; the fact that it is she who is taking on the role, that makes her whole – a fully developed individual.

## **Roles and Needs**

It is important however, that I restate an earlier criticism of the way in which roles are at times given an existence independent of the individuals who fill them. There may be a need to resist the temptation to see individuals filling roles and to focus instead on the uniqueness of *this* individual doing *these* acts. Roles might then be seen as being no more than descriptions of typical ways in which individuals interact within their community.<sup>69</sup>

Individuals fill needs rather than roles; they sometimes thoroughly overflow the role we consign to them. Of course the needs of a community over time, and the needs of communities in general are rarely all that original. Communities need food and they need shelter and they need to try to understand themselves. There is someone whose job is to bake bread in most communities, because most communities need someone to bake their bread. The fact that individuals bake bread by performing a similar set of actions makes it sensible to institutionalize the role of baker. Her actions are then able to be describable by the shorthand term of baker. When we call someone a baker we make assumptions about what she will do, we might assume, for instance, that she is out of bed very early most mornings.

While saying that someone takes on the role of baker is fine as a way of describing a set of typical actions, it also suggests an alteration in the individual: the individual might be seen to become something different: a baker. The same applies to the difference between talking of someone becoming a soldier and talking of someone

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<sup>69</sup> Saying that India needed a Gandhi is very different to saying that India needed a leader. India had leaders and Gandhi's style of leadership was so different to theirs and unique as to make describing him simply as a leader as insufficiently detailed or inaccurate. If one was to describe Gandhi as a leader it would be necessary to qualify the many ways in which Gandhi's leadership differed from the usual styles of leadership in India at the time. Australia needed a Bradman in the body-line series; England needed a Churchill during The Second World War; some would have claimed Germany needed a Hitler. For better or worse these characters exceeded any role they might fill, and so they are insufficiently described by the typical role descriptor.



responding to a threat to her community, or someone becoming a politician as opposed to doing the work of running the community and being involved in debating issues significant to the community. Why this is important is because when we consider individuals to be becoming bakers and soldiers and politicians, we imagine, or at least create space in which it might be imagined, that we are seeing the coming into being of a new aspect of their selves; an entity connected to the individual who becomes the baker, the soldier but not identical with that particular actor. It is a belief in the creation of another moral actor or an alternate moral persona. The danger of this is that when this happens we may not be able to view the pre-role individual as still in existence as the responsible moral actor: still the one responsible for certain aspects of her life. This is in part what tempts some to see moral actors divided along public private lines.

However, when there are no roles to be taken on but rather needs to be filled, the individual who attempts to fill those needs remains himself and continues to choose how he ought to act in the world from his personal moral perspective. It is not that being a soldier is unimportant; rather it is that of being a soldier is an intelligible concept only if the individual maintains his personal perspective from which he might make sense of what it is to be a soldier. If, in taking on a role an individual was displaced from his personal moral position and was required to embrace the outlook of that role, he would be incapable of agreement with or rejection of that role; he would not take on the role, but the role would instead take on him.

Accepting that it would be unnatural not to use shorthanded ways of describing what people do, we might accept that saying you are a baker in response to a polite inquiry from a casual acquaintance is unquestionably the right response. Laying out in tedious detail the particularities of your job is probably more detail than most people are seeking by being polite and asking what you do. But, even if baker describes accurately your day-to-day employment, being a baker cannot be thought to exist independently of the community's need for bread. So the reason why bakers exist is because there is a need for someone to bake bread: there being bakers is rooted in the need people have for bread. Likewise internal justifications do not exist for being a soldier or a politician, but being in one of these roles is no more than responding to

the need the community has for someone to do the actions connected with being a soldier or a politician. No matter how deep and significant the history of a role or how grand any role is seen to be, the role does not exist independently of there being a need, so there are no roles that exist independently of needs.

My point being that stripped of their plumage roles no longer provide sanctuary for behaviour inconsistent with the individuals who fill them. Conversely, roles in becoming over-inflated obscure our view of the individuals who fill them. As quoted earlier in this chapter Thomas Nagel makes the point that when the leader acts with sufficient originality he exposes himself as an individual behind the role he fills. What I am suggesting is that rather than wait on the individual exposing himself we should be careful not to allow roles to provide even the most unoriginal leader sanctuary.

If roles are no more than typical ways in which the needs of a community might be fulfilled, then it is to be expected that roles can at times make wrongful demands on the individuals who fill them. The community making demands on the individual may be corrupt and this may lead to the demands it makes on individuals being wrongful. But even a community that is not corrupt can believe itself to need (and may be right in this belief in so far as its continued existence is concerned) certain actions to be done on its behalf that are evil, corrupt and immoral. A community can make immoral demands on its members. If what constitutes a role is no more than a response to a community's needs, then roles are as infinite as the needs of any community. Roles are also only as fixed as the needs they serve.

## **Part 2**

### **Collective Guilt**

This chapter has focused on the need for the moral actor to take responsibility for her actions over the whole of her life. It has argued against divisions in the life of the moral actor and questioned the significance of being in a role, in particular a public role, by suggesting a reduction of the significance of roles to no more than typical responses to community needs. However, demanding moral responsibility of the individual leads to the question of what sense we might make of collective guilt? Once responsibility has been firmly attached to the individual is there also a

“remainder” of guilt that is not able to be seen as the guilt of any particular individuals but connects to institution, community or nation?

This thesis is concerned with the dangers of roles and public offices creating cover for the moral responsibility of individual moral actors. Moral actors, individuals who hold personal moral positions and who have the ability to respond to needs of some other are, the only entities to which moral responsibility can rightly be attached. The type of moral responsibility that would attach to institutions or states, entities that have no capacity to respond to the other, would be of such a different sort as to be better named something else. Although we can do evil things collectively, we cannot have a collective moral response – just collections of individual moral responses.

What is significant from a moral point of view with a collective evil action is that it is an evil act carried out by a collection of moral actors. Consider this example: a group of young men beat and kill some outsider because he is either the wrong colour or he is gay or he supports the wrong football team or is simply in the wrong place at the wrong time. While it may be true that none of the men would have done the killing if he were not part of the group, and that none of the men were individually essential to the mob that did the killing, this takes nothing away from the personal guilt of each member, and there is little point in talking of the guilt of the group existing in a sense other than the group of guilty individuals.

That the guilt of the group is no more than the collective guilt burden of each individual, is clear if we consider the same act carried out by a group of non-moral actors, say a pack of dogs. The dogs are not individually morally responsible therefore there is no sense in talking of the moral responsibility of the group. Group responsibility is simply the total of individual responsibilities. If in another version a single moral actor did the killing with help from a pack of dogs, we would not talk of the responsibility of the group: responsibility would rest just with the one moral actor.

### **Working from a Subset**

The idea of collective guilt is an important one, and deserves more space than it can be given here; it has been introduced at this point as it is an important element in the

discussion of the division of the moral actor moral outlook into public and private aspects. The next section begins with a quote from Martha Nussbaum on the necessity for the public private division:

[T]his division between the institutional and the ethical corresponds to a familiar distinction, in liberal (and especially political-liberal) theory, between the political sphere and the spheres of people's own personal (or shared) comprehensive conceptions of value. Indeed, liberalism, understood as political liberalism committed to respect for a wide diversity of religious and other comprehensive conceptions of value, requires such a division. The principles that citizens endorse for the political sphere are but a subset of the ethical principles that they endorse in their lives as a whole.<sup>70</sup>

Nussbaum talks here of a “subset” of the “individual’s comprehensive conceptions of value”. This subset is said to decide on the moral status of matters in the political sphere. An analysis of the relationship between a moral agent’s comprehensive conception of value and the “subset” with which he or she makes moral determinations in the political sphere is the very stuff of this thesis. I would assume that a subset, of ethical principles, while not containing the whole of the set from which it is derived, must be made up of ethical principles consistent with those of the complete set. (Were the subset to be made up of principles not contained within the overall set, then it is difficult to see just what type of relationship exists between the subset and the whole.) The ethical principles that go to make up the moral actor’s comprehensive conception of value or (in the simpler, perhaps too simple, term employed in this thesis) moral outlook, continue to function in as much as they continue to be in a position of either vouching for the subset’s legitimacy as moral principles for guiding the actions of the moral agent, or deciding the subset of moral principles deficient in that task.

A subset of an individual’s comprehensive conception of value could therefore not make a determination on an issue of political or public concern that was not acceptable to the set as a whole. The question is, does Nussbaum really mean a subset of ethical principles or an alternate set of ethical principles? Is the notion of a subset

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<sup>70</sup> Nussbaum, M. C. (2006). Frontiers of Justice. Cambridge, The Belknap Press. p.310

sufficiently independent of its “mother” set to generate sufficiently novel moral determinations in order to make space for the type of diversity of thought Nussbaum is attempting to accommodate here? Or, are members of diverse pluralistic communities required to check their personal comprehensive conceptions of value at the door, when they join? If this were the case, it seems to be an odd way of preserving diversity in a community: by demanding moral actors forfeit their particular personal commitments on joining.

So, little seems to be gained by talk of public matters being the province of a subset of the individual’s comprehensive conceptions of value, and a second comprehensive set of conceptions of value seems to be excessive (it might also be suggested here that the excision of public matters from an individual’s comprehensive conceptions of value challenges the comprehensiveness of that system). Even if the subset fitted neatly within the set as a whole, the utilisation in the political sphere by a moral actor of only a subset of her comprehensive conception of value, suggests that moral determinations in the political sphere are simpler than those of one’s personal life where one has to apply one’s full complete and comprehensive conception of value.

It might be put thus, that those parts of a moral actor’s comprehensive conception of value that might be put aside out of respect for *diversity of religious and other comprehensive conceptions of value*, appear to have been shown, through this act, to be less than essential to the moral actor. If this is the case, then perhaps they might as easily be put aside permanently. In the pursuit of finding a way in which we might achieve a peaceable way of living together in a pluralistic community, Nussbaum seems to have overlooked an important fact: what you and I can agree on is important, but so too are those things on which we can’t agree on.

The way in which Nussbaum depicts the accommodation of diversity here is a misreading of the way in which moral actor’s actually achieve pluralistic community. In truth it is from within an individual’s comprehensive conception of value that respect for diversity comes (or does not come). Therefore, although it may be possible to indicate a subset of values on which diverse members of a community agree, it is not this subset which determines actions in the public aspects of their lives, determinations made from such a distorted incomplete position could never be an

authentic expression of the moral actors involved. To determine how I ought to act with only reference to those principles on which I agree with my compatriots and to ignore those that conflict with my compatriots would be a distorted form of moral decision making.

One reason why Nussbaum sees things in this way may be that she sees the moral obligations of the individual are best deferred to appropriate institutions: “It is far better to create a decent institutional structure and then to regard individuals as having delegated their personal ethical responsibility to that structure.”<sup>71</sup>

If this is so, then individuals need only be capable of deciding on the worthiness of the institutions to which they are considering deferring their moral responsibilities. Making such a decision from a stripped down subset of one’s comprehensive moral position no doubt adds to the possibility of making speedy decisions but whether such decisions can be seen as truly the product of a sincere moral actor is another question. (This idea of subsets also raises the question of just when an actor would need to apply a subset, and when she would need access to her full comprehensive system.) Moral decisions might be thought to be divisible along private/public lines, but they might also be teased apart in other ways. Are therefore situations connected with business, religion, art or family also to be determined by particular subsets? As well as this how is one to determine the contents of a political public subset, if such a decision is to be the work of the comprehensive system of the individual it suggests a hierarchical system, if not from where would one decide on inclusions or exclusions?

The motivation for Nussbaum in encouraging the delegating of ethical responsibilities appears to be the creation of an impersonal perspective and so hopefully a perspective from which the individual will have more success in the just distribution of resources and rights: some type of *veil of ignorance*.<sup>72</sup> What complicates matters most here is the requirement that the institution be “decent”, in other words a judgement must be

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<sup>71</sup> Ibid. p307-8

<sup>72</sup> For explanation of Veil of Ignorance: Rawls, J. (1999). A Theory of Justice. Cambridge, Harvard University Press. pp. 118-123

made on the moral suitability of the institution to which the individual intends to hand over her moral determinations. This lays ultimate moral responsibility back at the feet of the individual deciding on the decency of the institution, suggesting morality continues to be based in the personal, particular outlook. Therefore, the delegation of ethical responsibility does nothing to remove moral responsibility from the personal moral outlook of the individual. Moral actors cannot hand over their moral responsibilities to corrupt institutions, but neither can they hand them to legitimate institutions. Although we might delegate actions connected to our moral responsibilities to others, moral responsibility is non-transferable.

### **Divided Self(s)**

Moral actors use their private moral positions to make determinations on public matters. It is not, for example, only the leader faced with a concrete instance of an apparent necessity to use torture that can make a determination on torture's acceptability: if it were the case that making moral determinations relied on such a level of personal involvement – if there were no way to consider the morality of situations outside of our personal experience – moral decision making would be an entirely ad hoc affair; moral questions would be senseless in the abstract; nothing could be decided morally prior to the moment of experiencing the need to choose.

As well as this, just what is of public or private concern is often unclear. Being uninvolved in any public office does not restrict a moral actor from making a determination on actions that take place in the public arena. As has already been discussed while individuals do not go to war and nations do, individuals are able to make determinations on the licitness of their nation going to war. There will be great diversity in the personal responsibility of citizens for any war their country might engage in, but it is not the case that only those citizens who hold particular positions, particular public offices, are properly placed to decide on whether or not the nation ought to go to war.

The way in which responsibility fixes when actions go beyond the individual and take on a public dimension is key to a question at the centre of this chapter concerning the possibility of a moral actor being the locus of both distinct public and private moral

outlooks. (Of course if communal obligations remove all responsibility from the individual, as seems to be the case for Walzer's soldier responding to his ruler's call to arms – that we discussed in chapter one, there is no need for the individual who takes on the task of soldiering to form a separate public moral position, but rather he acts in a public arena, the arena of war, where individuals are freed from most moral responsibility. There is clearly still a major division being made between the private and the public but in this case the individual's moral outlook is not straddling the divide but kept fixed firmly on the private side.)

Considering again Walzer's point about where responsibility lies in going to war. If we remove ourselves from the realm of kings and absolute rulers it may be quite possible to transpose *politician* or *leader* for *soldier* in these understandings of personal moral responsibility in going to war. When leadership is shared or when leaders are both leaders and followers – when for instance they represent a voting public, and their choices are not simply matters of personal expression but attempt to comply with their reading of public sentiment – then responsibility for going to war becomes a rather circular affair. The leader may feel she has no choice but to go to war because that is what her citizens want her to do. The citizens may then go to war in response to the leader's call to arms feeling themselves free from any guilt attached to the war, believing any guilt simply attaches to their leader.

I am not suggesting that this evasion of guilt is always deliberate and cynical. Rather it could at times be simply as a result of the lack of precision created by having too many candidates for the position of responsible agent. To choose to do evil is perhaps far harder to justify, for most moral actors, than to accept one's duty to do evil. Public responsibilities might be taken to override the freedom of a moral actor and thereby they may be seen to convert choice to duty. But we will face these questions more directly in the chapter on doing evil.

## **Conclusion**

This thesis holds to the notion that without sufficient autonomy the moral actor ceases to be a moral actor at all, but not being a moral actor is not a position one might slip in and out of; the obligations of a moral actor are a product of her moral position and



as such describe her moral position not the moral position (or the needs) of another entity such as the community to which she belongs.

During the course of this chapter it has been argued that moral actors continue to make moral determinations from a singular moral position in all parts of their lives. The idea of there being distinct private and public aspects to an actor's moral outlook was rejected, as were claims that the responsibilities connecting to certain public offices mean that actor's are not always free to act on the determinations of their moral outlook. Some time was also spent on a discussion of the significance of a moral actor being in a role. The chapter put forward a rather stripped down conception of roles as being no more than typical ways in which actors fulfilled community needs. The thesis overall puts forward this conception of roles in an attempt to argue against roles overriding the personal morality of those who fill them. The next chapter will continue to examine the place of the personal moral outlook in public life by considering social contracts and co-operative arrangements, and the way in which they generate obligations for the moral agent.

## CHAPTER THREE

# Contracting Morality

### Introduction

The previous chapter looked at and rejected the possibility of an actor's morality being divided along private/public lines. It also argued that moral responsibility rightly adheres only to moral actors. This claim is made in response to those who believe that the moral responsibility, for actions done on behalf of institutions and communities, can be transferred away from the moral actor and said to attach more rightly to his or her role, or in some way absorbed into the community at large. Such a belief is implicit when the claim is made that a moral actor's personal moral position must necessarily give precedence to the demands of certain roles that that moral actor might occupy. The position just outlined might be broadly classified as supportive of the concept of role morality.

In this chapter there will be an examination of the moral importance of contracting with others, an examination of how contracting affects moral obligations and whether contracts can change the status of an act from being morally impermissible to morally permissible or even make an act obligatory. In order to investigate this, there will be an examination of the ways in which humans either set out to organise into community or find themselves connected to some community. The chapter will consider briefly the difference between choosing to be part of a community through some type of positive consenting; being taken into a relationship with others in community through no more than an accident of birth; through an assumed acceptance; or by the demands of rationality (the claim here is that under certain conditions a rational individual could only make the one choice, so her consent can be assumed).

A fuller analysis of this question will be undertaken in chapter four. At the core of this chapter will be a consideration of human nature and how differences in an

understanding of human nature has led to different proposals of the most suitable way in which to understand how human societies function. We will also consider the way in which the particular understanding of the individual and community's telos leads to views on how best human society might be arranged. This chapter will attempt to restrict itself as much as possible to questions of the suitability of various conceptions of community; questions of the legitimacy of the communities we create will be held over to the next chapter. During the next chapter we will deal with the concept of legitimate authority, in particular the legitimate state. That chapter will look at the nature of obligation and the relationship between the autonomous moral actor and, in particular but not exclusively, the state to which he or she in some way belongs. A central question faced in that chapter will be whether or not there can exist, for the individual, obligations that he recognises as having the ability to be demanding for him but which also conflict with his moral obligations.

For now however, our concerns are with the work to be done by this chapter. In order to be able to draw some worthwhile conclusions about the relationship between the individual and the state and how the individual is to be given sufficient freedom of choice to be able to be recognisably morally autonomous. There are some assumptions being made here in this thesis that might be worth flagging at this point. This thesis makes the assumption that there is a necessary connection between morality and the freedom of individuals, or the freewill of individuals. As well, the thesis takes morality to be more than a matter of simple convention or dependant only on the arbitrary decisions of an authority. This thesis deals with conflict between the individual's moral position and whatever demands might be made on that individual which are not consistent with the individual's moral position. Therefore, the thesis assumes there is in fact a discernable difference between these demands. If morality is understood as doing what the state demands, for instance, there can be no such conflict and this thesis would be attempting to resolve a problem that in fact does not exist. It is the position of this thesis that morality is not simply conventional nor is it identical or subservient to the demands and directives of the state, or community consensus, morality is instead an activity of rational autonomous beings (moral responsibility is a condition of autonomous moral actors), and as such it requires the freedom of choice consistent with it being an activity of autonomous beings.

This chapter will consider convention and contracting as ways in which obligations can be said to arise for moral actors. Following a brief discussion concerning the nature of contracts and covenants the chapter will move on to consider the social contract of political philosophy. It will also consider the moral implications of other types of contracting: contracting in the home; in business and whether it is possible for contracting to take place between humans and non-humans.

The chapter will also raise questions about the suitability of a model of contracting as a way of understanding the nature of various forms of social interaction. It is the position of this thesis that the obligations of contracts are always based in the moral actor's broader moral position; it then follows that for a moral actor to accept that she is obliged by a contract or agreement, she must also accept the legitimacy of that contract or agreement, and if the contract involves an institution the legitimacy of the institution and the legitimacy of her role within that institution. The thesis argues that for a moral actor to commit to acting co-operatively in shared projects or contracting with others, the actor's moral position and the demands created by the contract or agreement need be - on matters of moral significance - consistent with one another. For this reason, it is not possible for an individual to believe herself obliged, by the demands of a contract she is party to, to act immorally. After looking at social contracts, we will use an example from sport to further the discussion, following this we will consider an instance of co-operation between humans and non-humans and discuss how this fits within the framework of contracting.

### **Covenanting and Contracting**

The relationship between contractual obligations and morality is not a simple one. There are times when fulfilling the demands or obligations of a contract would be immoral, while in other instances the reverse would appear to be the case. At other times contracts do not seem to have any real moral significance, or, only moral significance to one or some of the contracting parties. In connection to this last point the chapter will consider the possibility of what would be a morally lopsided contract: one in which morality plays a part for only some of the parties involved. I have in mind here humans contracting with institutions and perhaps with non-human animals.

Before proceeding it is necessary for us to consider what might be, for the purposes of this chapter, a reasonable definition of contract and contracting. Contract does not seem to be itself an overly difficult term to define and as the philosophical use of contract in relation to the “social contract” is simply an appropriation of contract as understood in a legal sense, therefore it seems apt that we look to the law for a definition. The definition I will first offer comes from the American Restatement of the Law of Contracts, I will requote Jean Hampton’s use of this definition along with her positioning remarks:

... We should first be clear about what a contract really is. For this we should turn to legal theory, because the term ‘contract’ is used literally in this discourse, and an examination of its meaning in the law courts will shed light on what roles the term performs when it is used figuratively in philosophic discourse.

Legal theorists have isolated two essential features of contractual agreements. First, these agreements are distinguished by the fact that the parties involved in them give promises to one another. The action each agrees to undertake is therefore considered to be binding, unless the party to whom the promise is made in the agreement releases the other from his or her commitment; and the role of the law is to enforce these promises:

A contract is a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law recognises a duty.

Second, contracts involve an exchange; they are bargains:

... the typical contract is a two-sided affair, something being promised or done on the one side in return for something being promised or done on the other side.

What are exchanged in these situations are called in the law "considerations." As it is frequently denied, a consideration is just the "price" for a promise: it is that benefit which I promise to confer or that detriment which I promise to suffer, in order to get you to promise to confer a benefit on me or to promise to impose a detriment on yourself which I find desirable.<sup>73</sup>

Contracts can be distinguished from covenants. For Hobbes the distinguishing characteristic between a covenant and a contract appears only to be related to the

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<sup>73</sup> Hampton, J. (1980). "Contracts and Choices: Does Rawls Have a Social Contract Theory?" The Journal of Philosophy 77(6): 315-338. pp. 324-25

timeframe in which the parties are given to discharge their contracted duties. Hobbes states that:

The mutuall transferring of Right, is that which men call CONTRACT.<sup>74</sup>

However, if this transfer is not simultaneous the parties might be said to covenant rather than contract:

Again, one of the Contractors, may deliver the Thing contracted for on his part, and leave the other to perform his part at some determinate time after, and in the mean time be trusted; and then the Contract on his part, is called PACT, or COVENANT: Or both parts may contract now, to perform here after: in which cases, he that is to perform in time to come, be trusted, his performance is called Keeping of Promise, or Faith; and the fayling of performance (if it be voluntary) Violation of Faith.<sup>75</sup>

The distinction made here by Hobbes suggests that the promises involved in what is called the social contract are in fact covenantal by nature, in view of the fact that they create obligations on the parties involved which will be delivered over time rather than all at once.<sup>76</sup> But perhaps some who speak of a covenant do not wish to accept that a covenant is simply a contract that allows, as it were, time for delivery. Some may argue that what is meant by a covenant – a covenant between the God of Israel and his people for instance, – is not simply a contract with delays for delivery built into it, but rather an entirely different type of relationship.

This may or may not be the case, but suffice it to say that a certain interchangeability between the terms does exist, and although their uniqueness might, by some users in some situations, be taken as essential it is a uniqueness not universally understood or

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<sup>74</sup> Hobbes, T. (1970). Leviathan: or the matter, form, and power of a commonwealth, ecclesiastical and civil. London, Dent. p. 192

<sup>75</sup> Ibid. p. 193

<sup>76</sup> Russell Hardin says this of Hobbes use of covenant: "...because although he creates government by covenant (which is merely a contract that is not immediately fulfilled),... Hardin, R. (1991). "Hobbesian Political Order." Political Theory 19(2): 156-180. p. 159. Also John Rawls: "This is especially evident in the case of covenants, that is, in those instances where one person is to perform before the other." Rawls, J. (1999). A Theory of Justice. Cambridge, Harvard University Press. p. 304.

adhered to. Even in the type of usage already alluded to, that of the covenant between the God of Israel and his people, the distinctness between contract and covenant is not necessarily transparent:

Covenant" is an awkward and somewhat misleading term for the Hebrew word *berith* which refers to a formal, solemn, and binding agreement between parties in which there are obligations to do certain acts, or to refrain from doing them, and there are promises or threats of consequences that will follow on fulfillment or breach of the obligations. The English word "covenant" is now so archaic, or used in such specialized legal or sentimental contexts, as to be very inadequate. Yet no other term fully grasps the meaning, although aspects of *berith* are better captured by terms such as "agreement," "arrangement," "compact," "contract," "commitment," "treaty," "alliance," "obligation," "bond," and "relationship."<sup>77</sup>

The covenant between God and his chosen people in the Israelite tradition, appears to contain a good deal of what could also be called a contract, and relies to some extent on our experience of the notion of contracting in human society to make sense of humanity's obligation to the deity:

When humans and the deity are said to "covenant" a figure or metaphor from social life is used to explain and to mandate behavior conceived as divinely given and freely accepted by the community. As long as we understand "covenant" to mean an ordered relationship between God and people that is two-sided, though not necessarily evenhanded in the involvements and obligations of both parties, it is a useful term to employ.<sup>78</sup>

In *Leviathan* Thomas Hobbes rejects the possibility of direct covenants being instituted between humans and God, or for that matter between humans and animals; this is because in order for a covenant to be binding it is necessary that all parties understand all the promises made. In the case of our covenanting or contracting with animals it is not possible, according to Hobbes, for an animal to understand our promise to them, nor is it possible for the animal to communicate its promise to us. In the case of our covenanting with God, it is our inability to have the acceptance of our

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<sup>77</sup> Gottwald, N. K. (1985). The Hebrew Bible: A Socio-Literary Introduction. Philadelphia, Fortress Press. p. 202

<sup>78</sup> Ibid. p. 202

promises by God confirmed that prevents the creation of the covenant. However, Hobbes concedes the possibility of the intercession of those to whom God may have in some way revealed confirmation of the terms of the covenant:

To make covenant with bruit beasts, is impossible; because not understanding our speech, they understand not, nor accept of any translation of Right; nor can translate any right to another: and without mutuall acceptation, there is no Covenant.

To make Covenant with God, is impossible, but by Mediation of such as God speaketh to, either by Revelation supernaturall, or by his Lieutenants that govern under him, and in his Name: For otherwise we know not whether our Covenants be accepted, or not. And therefore they that Vow anything contrary to any law of Nature, Vow in vain; as being a thing unjust to pay such Vow. And if it be a thing commanded by the Law of Nature, it is not that Vow, but the Law that binds them.<sup>79</sup>

This suggests then, that at least some individuals can institute a covenant with God. Humans can covenant with God as long as some of them have the facility to interpret God's consent to the terms of the covenant. Covenant is not used here by Hobbes any differently to contract, apart from the fact that what is promised in a covenant can extend over time and that the terms of a covenant are maintained until such time that what has been promised is demanded or required. Contracts are fulfilled at the time of their instigation by both parties, covenants hold at least one party obliged to fulfil their side of the bargain at some future time.

This definition of covenant may be considered insufficient by many. No doubt there are some uses of covenant which are not intended as synonymous with the definition of contract given above. But for the purposes of this thesis, the Hobbesian distinction would seem to be adequate. If it is necessary during the course of the thesis for covenant to be used in some other sense, then a warning to that effect will suffice in order for us to avoid any confusion. This thesis will understand a contract or covenant to be: an exchange of promises and a commitment by the parties involved to

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<sup>79</sup> Hobbes, T. (1970). Leviathan: or the matter, form, and power of a commonwealth, ecclesiastical and civil. London, Dent. p. 197



endeavour to fulfil what they have promised. The thesis will also see a contract as an acceptance between parties of a convention.

Having said something about what it is to covenant or contract with others, we are now in the position to deal with some more substantial questions raised by certain social contract theories. As this thesis concerns itself with questions of moral autonomy and the extent to which membership of a state or community might impinge upon the individual's moral autonomy, it has an interest in questions relating to state legitimacy, political authority, and the sources of normativity. For this reason it is necessary for the thesis to consider the suitability of grounding political legitimacy within the notion of a social contract.

There will not be an attempt here to do more than to sketch briefly *some* ideas from *some* social contract theories. To do much more would, I fear, fatally distract our attention away from the main purposes of the thesis. It is essential for the thesis to touch on social contract theory, but it is equally essential that the thesis does not dwell overly on this significant but very separate field of enquiry. For these reasons the thesis will restrict itself, mostly, to a discussion of social contract theory in Hobbes. Hobbes provides us with what we require in that he has something to say on the natural condition of man, and provides an explanation of how and why this natural state, the state of nature, is transcended. The thesis is inclined to the opinion that the greatest mistake made by Hobbes or anyone else who might attempt to explain human society through a contractual model, is not in the detail but in the fundamental hypothesis. Therefore, those who have improved on Hobbes have improved on a project of questionable worth. A good social contract theory might be better than a bad one, but is still headed in the wrong direction.

Contracting is an unsuitable model on which to build any useful understanding of general social structures and institutions. Looking to understand the way humans interact with one another through the model of contracting can only result in an ill-

fitting explanation.<sup>80</sup> In what follows I will attempt to show the problems inherent in the contractual model.

## Social Contracts

Contracting with others is one way of fostering co-operation. Co-operation in turn is a way of achieving ends that are not normally achievable individually. As has already been noted although it is not within the scope of this thesis to make a full examination of the varieties of social contract theory, it is however necessary to at least outline what this thesis is referring to when it speaks of social contract theory. Starting with and focusing mostly on Hobbes, simply because he provides us with a particular conception of society that sets the relationship of each to his fellow man as one full of

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<sup>80</sup> It is instead more useful to look to the ways in which we interact with one another in order to understand the basis of contracting. As contracting formalises something that pre-exists the act of contracting – the obligation to keep promises – the source of obligation ought not to be seen as the creation of the contract or its legal underpinnings. A moral obligation is made up of both constitutive rules and moral principles; the former is no more than convention, and is essentially arbitrary; the latter is fixed. The constitutive rule signals an intention to make a promise, while the moral principle of promise keeping gives sense to being party to the pact or agreement. The following quote from Conrad Johnson draws out more fully the distinction between the two in a legal context: “Consider now the legal parallels. There are also, in a suitably loose sense, constitutive *rules* to determine what constitutes a promise. It is very easy, however, to be misled about the status of these rules. First, they are in general *not* the product of legislation. Courts rely first and foremost on common sense, business practice, community customs, and, in general, the same conventions anyone who wishes to determine whether there was an ordinary promise would use for purposes of interpretation... Secondly, it follows that, if the everyday constitutive rules undergo a change, that fact will ipso facto be relevant to the determination of people’s legal obligations. Legislation is not needed in order to recognize new ways of making legally binding promises. A third and related point is that, with some exceptions, the constitutive conventions are not to be regarded as *legal rules*. For the most part, they existed (or would exist) before (or without) the legal system; and they are for the most part not to be found written anywhere, either in pieces of legislation or in the opinions of courts. Finally, there would be as little prospect for successfully *formulating* the constitutive conventions here as for promises generally. It is important to emphasize these points because there is a danger of thinking that the law of contracts must consist of (i) a set of rules (ii) which are or can be formulated and (iii) which are a part of the legal system because enacted or pronounced to be valid by some legal authority, such as a legislature or court... Just as in the moral sphere constitutive conventions are to be distinguished from the principal requiring that promises be kept, so in the law a distinction can be made between constitutive rules and the principles that courts follow in enforcing contracts. These principles have much in common with the principles that govern what we do about ordinary promises in everyday life. In enforcing contracts, courts are, in an important sense, enforcing moral principles. There is certainly no *one* principle, moral or otherwise, that courts employ in dealing with the contractual disputes that come to them.” Conrad Johnson ‘Moral and Legal Obligation’ pp. 317-18

The formal legal contract helps to communicate more accurately the intention of promisor and promisee, but adds nothing to the weight of the promise. If promise keeping did not exist prior to the legal formality, legal formality would not be capable of bringing it into existence.

paranoia, competition and loneliness. Social cohesion, in Hobbes's view relies on little more than self-seeking individualism.

Hobbes's state of nature picture appears to leave man in a position where co-operation between individuals is fraught with danger, and has little chance of succeeding. The social contract, for Hobbes, is a necessity because of the nature of man. Rather than amplifying the signal from a weak or latent co-operative nature, Hobbes contends that an artificial environment – one in which conventions are enforced— is the only escape from a life of war and misery. For Hobbes, to rely on the goodwill of others is to misunderstand the nature of man. Mankind, according to Hobbes, is devoid of a natural inclination for community, and each person is chiefly or solely concerned only with his own profit or survival.

Some artificial structure is required then if men (and for Hobbes this is a question about men, or competent adult males) are to live at peace with one another. Men need to strike a contract or covenant with one another in order to create the conditions which will allow them to go about their lives without always looking over their shoulders. Much of what makes our lives seem worthwhile to us is, according to Hobbes, unachievable in the absence of our contracting with one another to live in some sort of co-operative and peaceful way. Also, he claims, it is foolish and naive to strike a bargain or contract with others unless there exists some power, some authority, capable of enforcing the terms of the contract.<sup>81</sup> The natural condition of

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<sup>81</sup> Does this then mean that we are not under an obligation until there exists an authority capable of enforcing that obligation's fulfillment? For Hobbes the lack of an entity capable of enforcing the obligation seems to render the obligation un compelling – that an agreement or contract is vulnerable to being defaulted on impacts upon its bindingness. This is an interesting point – is an action's moral obligatoriness connected to its chances of success? I am inclined to say yes and no. Saying yes seems to fit well with the claim of this thesis that morality should not to be seen as an ideal that has to be overridden by practicalities; because in this way, being cognisant of all factors, including likelihood of success, morality is well placed to decide upon the right action, rather than simply an ideal but not-in-this-particular-case right action. There is however something of a distinction to be made between an action's futility and an action's vulnerability to failure.

If a boatload of refugees are drowning, being thrown against rocks in a boiling sea, my diving in to save them might be a futile act, and therefore, very possibly not an obligatory act for me. The fact that if I try to save them we will all almost certainly die makes the act, if I choose to do it, either supererogatory or irresponsible and foolish. This type of reasoning, about an action's futility, seems to be completely appropriate for the moral actor to undertake, and is a necessary part of her choosing well.

man is in no way conducive to achieving the completion of complicated tasks. Nothing can be achieved by man in his natural state outside of desperate survival:

In such condition, there is no place for industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth, no navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.<sup>82</sup>

The condition Hobbes speaks of is the natural condition of man, each at war each with all others:

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However, there is another type of consideration, which is also an assessment of the most probable outcome, but is concerned with calculations about the trustworthiness of others, and the prudence of acting morally well – and the risk one is taking on by doing so.

In this case it is not a question of what is the morally right action, but rather of whether or not it is safe to do what is morally right. In the case of the drowning refugees it would be reasonable to decide that given the great certainty of the rescue failing, and with no real likelihood of the rescuer doing anything but adding her death to the deaths of the refugees, she is not morally compelled to attempt the rescue. Whereas, if one is obligated to fulfil a promise as part of a contract, but one has doubts about the likelihood of the other side of the contract being fulfilled, is this fact material in deciding on whether or not one is compelled to honour the contract? Can a moral actor be freed from an obligation because of the character of the one to whom he is obliged?

This is not at all straight forward, it seems some obligations will be vulnerable to facts about those to whom we are obliged; while others would lose their power entirely if they were taken to be vulnerable in this way. In the first category would be such things as contracts of sale. If there was evidence that you were highly likely to renege on a contract for the sale of your car I had with you, then I may well not be obliged to fulfil my part of the contract prior to your fulfilling yours. This example could be made more similar to the drowning refugees, in that it may be foolhardy in the extreme and very possible dangerous, due to the nature of the contract, for me to trust you.

Another type of example would be my being obliged to you in some more natural way, perhaps I am obliged to see you receive a fair trial. If we believe that there are no requirements to be of a certain character to have the right to a fair trial, then nothing you might do could remove my obligation to you – my obligation is independent of assessments of your character; or for that matter, assessments of the probability of desirable outcomes – I might be certain of your guilt but my facilitating your fair trial might make your release on a technicality highly likely.

Any claim that moral obligations require either enforcement or a good chance of achieving success are indicative of an odd conception of morality.

<sup>82</sup> Hobbes, T. (1970). Leviathan: or the matter, form, and power of a commonwealth, ecclesiastical and civil. London, Dent. pp 64-65

‘Hereby it is manifest, that during the time men live without a common power to keep them all in awe, they are in that condition that is called Warre; and such a warre, as is of every man against every man.’<sup>83</sup>

Hobbes provides both a bleak assessment of the nature of mankind and a remedy; to enable mankind to transcend its natural lot (of a life that is “solitary, poore, nasty, brutish, and short”), he proposes the creation of a supremely powerful central authority and the subjugation of each man’s rights to the discretion of that authority. Although Hobbes’s state of nature picture was not intended as a reference to a particular historical moment, but referred instead to a hypothetical pre-social human existence, he did believe that there did however exist, in his own times, groups living a life that in some way approached his state of nature picture. Hobbes believed something like his state of nature could be observed among certain peoples living at the time of his writing *Leviathan*:

For the savage people in many places of America, except the government of small families, the concord whereof dependeth on naturall lust, have no government at all; and live at this day in that brutish manner, as I said before.<sup>84</sup>

It appears Hobbes is exhibiting here a little cultural insensitivity – perhaps we could excuse this to some extent as an attitude prevalent in his own times. We should not expect Hobbes to speak of the indigenous peoples of the Americas in the same enlightened manner as a 21st-century Social Anthropologist; we could not reasonably expect of him the same level of understanding or appreciation of alien cultures, so we ought not to be surprised when he is, as he is here, highly dismissive of a culture so thoroughly foreign to his own. The quote is used here because of its reference to *the government of small families*. Here Hobbes briefly raises and quickly rejects what might be considered a counter argument to his assessment of man’s nature.

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<sup>83</sup> Ibid. p 64

<sup>84</sup> Ibid. p65

That Hobbes accepts that community might exist naturally in the family, seems to contradict the claim that man is not by nature social. It suggests rather that man's sociability is natural at least at the level of familial groupings. But Hobbes apparently dismisses this as being in any way indicative of man's nature. It seems odd that the ability of humans to live in some sort of co-operative community, at least at the level of family groups, should be so easily dismissed by Hobbes as a positive indication of the naturalness of human sociability and therefore a counter to his own conception of human nature. It would seem reasonable to suggest that the interactions between humans within family groups ought to be used as a resource for understanding human nature.<sup>85</sup> To dismiss man's behaviour in the setting of the family weakens further claims made on the nature of man by Hobbes.

This dismissal is perhaps best explained as related to a more general dismissal of the significance of that part of the lives of men in which they intersect with the lives of women and children. Hobbes appears to rely on a limited sample of the population for his study of human nature, as if all that one need study in order to decide on a theory of human nature, is the interaction between rational adult human males.

Hanna Pitkin points to the oddness of a picture of man created in this way:

If your picture of man in the abstract is of a fully grown, complete with his own private needs, interests, feelings, desires and values, and if you therefore never think about how he grew up and became the particular person he became, then he may well seem to you an ineluctably *separate* unit, his ties to other individuals may seem mysterious or illusory and will require explanation. Given man as such a separate, self-contained unit, it does indeed seem strange that he might have obligations not of his own choosing, perhaps even without being aware of them,

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<sup>85</sup> Russell Hardin suggests: "The nearest thing to a state of nature that we are likely to find in historical records or known experience is in brief periods of the breakdown of social order. Apart from such moments, the nearest thing may be analogous to life among the Yanomamo, an acephalous society along the Brazilian-Venezuelan border, ..."Hardin, R. (1991). "Hobbesian Political Order." Political Theory 19(2): 156-180. pp.167-8. But Hardin also acknowledges that the similarity become strained when one acknowledges that in Hobbes's picture of the state of nature the fighting takes place on an individual against individual level: "The chief difference is that the fighting is not randomly individual by individual but community by community hence there is substantial social organisation with genuine control over individuals."Hardin, R. (1991). "Hobbesian Political Order." Political Theory 19(2): 156-180. p.168. Or, to put it in the words more sympathetic with the claims of this thesis: war is nearly always a co-operative venture..

or even against his will. Furthermore, self-assumed obligations may then strike you as a way of overcoming this separateness. For it is easy to confuse the fact that promises and contracts are self-assumed, with the idea that the *obligation to keep* them is self-assumed as well. That is, the person who makes a promise seems to recognize and commit himself to the institution of promises; the person who makes a contract seems to acknowledge thereby the binding character of contracts, so that a later refusal to accept them as binding strikes one as a kind of self-contradiction. But of course this is a confusion. The making of particular promises or contracts presupposes the social institution of promising or contracts, and the obligation to keep promises cannot itself be founded on a promise.<sup>86</sup>

While Hobbes' lack of imagination, or prejudice against those who are non-adult non-male as being of interest to a picture of human nature, is not a prejudice that Hobbes can be held responsible for creating, I point to it here in order to flag it as creating a misleading picture of mankind, and inadequate in the view of this thesis. Proceeding with the arguments here without making reference to the oddness of Hobbes's sample group seems improper; I am aware that Hobbes wrote when he wrote, and should be understood in that context, but I am also aware of the times in which I write, and in the early part of the 21st century, a discussion of the nature of humans by drawing examples from such a weighted sample of the human population would generally be considered an endeavour of questionable merit. In fact, rather than a description of the nature of mankind, such a weighted sample can only really claim to be descriptive of that certain section of mankind that falls within the sample group.

The ability of man (man to be understood here as adult males), to live in some type of harmony with women and children does not seem to suggest a classic Hobbesian picture of human nature; it suggests that at least some part of man's nature can instead be described as co-operative and social. It may also be the case that what Hobbes saw in the relations of family members was not all that inconsistent with his view of human interaction in general. Where this thesis sees the family as typically social and co-operative, Hobbes may disagree. (His interpretation of relations within family are far more – *Hobbesian*.) Jean Hampton writes the following:

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<sup>86</sup> Pitkin, H. (1966). "Obligation and Consent--II." The American Political Science Review 60(1): 39-52. p. 46

Hobbes's critics were particularly fond of attacking his individualist analysis of the family. In *Leviathan*, Chapter 20, and in *De Cive*, Chapter 9, Hobbes maintains, true to his radical individualism, that family bonds are not natural to individuals but only artificially forged and coerced contracts between an inferior (e.g., the child, the wife) and a superior (e.g., the parent, the husband), the latter providing protection for the former in exchange for obedience.<sup>87</sup>

If Hobbes is to be understood to hold the view of family Hampton suggests, it is to be expected that nothing is really to be gained by an examination of familial relationships; families are just small states engaged in egoistic power struggles and as easily understood through contracts and covenants as any other human relations. We should however note that the relationships within the family being more unequal might negate any need for a covenant. One of the main reasons, according to Hobbes, that we need to covenant with one another is that our equality means we will be forever in competition with one another. However, the family seems blessed with a natural inequality that allows it to become stable without resort to covenanting. In the state of nature equality causes instability and necessitates the institution, through the social contract, of a disproportionately powerful entity - the Leviathan:

Nature hath made men so equall, in the faculties of body, and mind; as that though there'd bee found one man sometimes manifestly stronger in body, or of quick mind then another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himselfe any benefit, to which another may not pretend, as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himselfe.

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It is in part this equality between men that leads to the necessity, for Hobbes, of the creation of the Leviathan. Were it not for this natural equality of power between men, if some men stood in nature far superior to the majority, then the idea of covenanting each together in order to create a suitably powerful authority would not suggest itself

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<sup>87</sup> Hampton, J. (1986). *Hobbes and the Social Contract Tradition*. London, Cambridge University Press. p.10

<sup>88</sup> Hobbes, T. (1970). *Leviathan: or the matter, form, and power of a commonwealth, ecclesiastical and civil*. London, Dent. p. 183



as an appropriate remedy<sup>89</sup>. In a less equal state of nature, some, indeed most, would be unable to covenant and thereby relinquish the great portion of their rights, simply because they, being inferior, do not actually hold such rights. If the Hobbesian family is as described by Hampton, the discrepancy in powers between the child and parent and also between wife and husband, appear sufficient to make the creation of a substantially more powerful party capable of enforcing the law unnecessary, and the surrendering of rights by the already powerless a pointless exercise. Hobbes does see paternal dominion to come about through the consent of the child:

Dominion is acquired two wayes; By Generation, and by Conquest. The right of Dominion by Generation, is that, which the Parent have over his Children; and is called PATERNALL. And is not so derived from the Generation, as if therefore the Parent had Dominion over his Child because he begat him; but from the Childs Consent, either expresse, or by other sufficient arguments declared.<sup>90</sup>

As to whether dominion over the child belongs to the father or the mother, this for Hobbes, is to be decided either by contract between the parties, or could be said to fall either to the mother or the father depending on circumstances (for example in the state of nature dominion over the child is more naturally with the mother, because in the absence of matrimonial laws paternity, Hobbes believed, was more difficult to establish). For the child to be under the Dominion of both parents is impossible because: "... *no man can obey two Masters.*"<sup>91</sup> Hobbes also suggests that a level of equality exists between parents that ought to prevent the man from automatically assuming dominion over his children;

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<sup>89</sup> However, if this is the case, that a reasonably large discrepancy in power would negate the need for a covenant, then it seems difficult to understand why God would need to covenant with humans. There is no need (perhaps no possibility) for the creation of a more powerful authority to oversee the relationship, and without such a referee the more powerful party simply fulfills his or her part of the contract at his or her discretion, thereby, according to Hobbes, making covenanting a foolish act on the part of the weaker party.

<sup>90</sup> Hobbes, T. (1970). Leviathan: or the matter, form, and power of a commonwealth, ecclesiastical and civil. London, Dent. p. 253

<sup>91</sup> *Ibid.* p. 253

And whereas some have attributed the Dominion to the man onely, as being of the more excellent Sex; they misreckon in it. For there is not always that difference of strength or prudence between the man and the woman, as that the right can be determined without War. <sup>92</sup>

So according to Hobbes, even within the family the choice we must make is between being constantly at war or contracting our way out of the situation. Hobbes rejects any suggestion that the family presents us with a more co-operative less combative state of nature picture of man. Rather, for Hobbes, what the family presents us with is just another example of the need to establish absolute power in order to avoid continual war. I do not wish to be seen to be making a claim for the simple magnification of familial relationships as model for the constitution of the state. Even if we take the time to consider how humans interact within the family framework, we will not necessarily find modes of interaction that are precisely transferable to a broader political environment. However, in our contemplation of the machinations of the family we may find aspects of human nature that are not easily discoverable in those who made up Hobbes sample, his society's most independent cohort, adult males.<sup>93</sup> It

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<sup>92</sup> Ibid. p. 253

<sup>93</sup> Another question is whether or not Hobbes's sample group have an artificial independence in his society that they would not have in any accurate state of nature picture. To put this another way Hobbes may have failed to fully comprehend just how dependent on a particular social structure being "independent" actually is. Independence is a fiction when it springs from status within the society. The more sophisticated the social structure the more illusory any member's independence will be. So, the sources of our dependency may become more hidden less obvious through the way in which social structures make those we are dependent upon invisible and anonymous: dependencies become untraceable, but are no less real for that fact. In his novel *The Mezzanine*, Nicholson Baker celebrates in one particular passage, this dependency by enumerating the various tasks being done on the behalf of the first person narrator of the novel, mostly by individuals who he would never meet: "As I walked out of the office-supply store, I became aware of the power of all these individual, simultaneously pending transactions: all over the city, and at selected sites in other states, events were being set in motion on my behalf, services were being performed, simply because I had requested them and in some cases paid or agreed to pay later for them. ... Molten rubber was soon to be poured into backward metal letters that spelt my name and address; blind people were making clarinetists' finger motions over the holes of a half-caned chair, gauging distances and degrees of tautness; somewhere in the Midwest in rooms full of Tandem computers and codex statistical multiplexes the magnetic record of certain debts in my name was being overwritten with a new magnetic record that correspond to figure diminished to the penny by the amount that I had written about in hasty felt-tip pen on my checks ... the dry cleaner's would close soon, and in a sack somewhere in the darkened store, tied in a bundle to keep it separate from all other bundles, behind the faded posters in the window saying "For That Newly Tailored Look," my dirty clothing would rest for the night; I trusted them to take temporary possession of it, and they trusted me to return to their store and pay them for making it look like new. All of this and more I could get the world to do for me, and the same time all of it was going on, I could walk down the street, unburdened

seems quite reasonable for us to spend some time questioning the foundations of Hobbes's state of nature picture, and that in doing so, there seem to be good grounds for suggesting he may have benefited from the inclusion of a broader, more representative sample of humanity.

Hobbes is not entirely insensible to the existence of certain sentiments between the members of families. However, these sentiments can exist only after peace has been established within the family. In the same way as there will be the appearance of cooperation, loyalty and affection, between individuals in society, but that these sentiments also cannot flourish in the absence of a peace got through contracting with one another in order to create the conditions and social structures that make cooperation possible; or more to the point, rational. The creation of a suitable social structure can make it appear that members have a concern for the welfare of each other, but this is a somewhat different claim to the claim that the concerns that individuals exhibit for each other are in fact real and motivated by altruistic feelings.

The argument put forward by Hobbes, suggests that all our motivations can be reduced to a concern for our own good, and that the good we do for others is incidental to this our true focus. According to such an argument, any apparent motivation inconsistent with the motivations of the psychological egoist might be rendered consistent by the exposition that lying behind ostensibly altruistic motivations an individual's actions in relation to his family, or within society, are actually motivated by no more than a concern for self. An individual can act in what appears to be a very generous manner, but will do this only when what benefits her coincides with her being generous. For example, the owner of a valuable racehorse might appear to an onlooker to care greatly about the horse's comfort, but may in reality care only for the horse as an investment. Lavishing care on one's property, whether that property be a horse, slave or even wife or child, simply because it is one's property, is being prudent rather than altruistic.

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with the niceties of the individual tasks, living my life!" Baker, N. (1990). The Mezzanine. New York, Vintage Books. pp. 21-22

If a man's wife and children are thought to be his property, then he will care for them out of prudence: what appear to be generous actions will be explicable as being motivated by nothing other than a possessive protectiveness. On this view a man might lavish attention on his wife and children for the same reason he takes care of his horse or his slave - simply because it benefits *him* to have a healthy horse or slave, he need have no concerns about the well being of his slave or horse: he acts simply in pursuit of his own benefit by keeping them healthy. Likewise, his wife or child need not be cared for, for their sake, but for his own sake.<sup>94</sup>

### **Co-operation: Being at War**

Putting these concerns about Hobbes' method for gathering data on human nature to one side, we might now focus on the plausibility of his account of human nature. While warring is a not an atypical behaviour of humans, what is not typical of humans is that amongst them everyone should be at war with everyone else. This picture is not in any way supported by even the most cursory study of human behaviour; in fact if an individual exhibits this type of behaviour – seeing all others as the enemy – that individual, we might be inclined to say, is suffering from some type of paranoia: such a person would be exhibiting some sort of pathological human behaviour. The paranoid individual, if sufficiently paranoid, cuts herself off from any ability of

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<sup>94</sup> There is a danger that we will spend or have indeed spent too much time on this singular point. So I shall finish this discussion with a footnote. The claim that all our motivations are ultimately based in self care and that where they appear otherwise we have simply settled on superficial reasons for the motivation to fail to follow them back to their roots. This claim relies for any credibility on the fact that what motivates individuals is often a complex of reasons rather than something singular. I believe of myself that when contemplating a dangerous activity I would choose my being endangered over my son being endangered. This appears to be due to my concern, for his safety. However, some may wish to reduce my concern for my son's safety to my concern for my own peace of mind -- the true motivation for my keeping my son safe is that if my son were to fall I would feel like a wretched coward and I do not wish to feel like wretched coward. That there is some truth in the fact that I will not want to feel like a wretched coward, may contribute to my choosing to risk my own life over my son's life. But, I also believe that I would prefer my feeling like a wretched coward over my son feeling like a wretched coward. Whatever terrible outcome I might wish to avoid for myself I would wish more strongly that the same outcome did not befall my son. This seems to suggest, at the very least, that an argument against altruism based on the undermining of ostensive motivations is vulnerable to the charge that it does no more than set up a chain of an infinite regress. And risks what would be, for his argument, a fatal conclusion that my interests and my interests in the interests of my son are inseparable.

forming alliances, and by doing so makes herself relatively impotent.<sup>95</sup> Unless we are to take this extremely odd form of the solitary warrior against the world as our paradigm, warring should really be understood to be a highly co-operative behaviour. Success in war as in any other complicated human activity is reliant to a great extent on the abilities of those involved to work co-operatively with one another. The fact that the full extent of that co-operation typically only extends as far as those on the same side<sup>96</sup> is really no different to other co-operative ventures that are competitive such as sport or business.

War is also not necessarily incompatible, as Hobbes suggests, with achievements in engineering, construction, scientific advancement or creativity in the arts. Apart from in the highly specialised and possibility never realised conception of war being each against each, all other types of warring have played their part in many of mankind's most significant achievements. Man has stood on the moon in no small part because of the tensions between the Americans and the Soviets. Military spin-offs have played their part in the creation of everything from advances in medicine to the creation of the Internet. Of course, if war is to be understood as a particular type of activity where group A go to war against B, then it is not possible for everyone to be at war with everyone else. Hobbes appears to mean by war something far less formalised, and he defines war as the absence of peace:

Hereby it is manifest, that during that time men live without a common Power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man,

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<sup>95</sup> This impotency is relative; I fully understand that individuals without any ability to form alliances have caused terrible suffering. Some of the most obvious and recent examples being the number of school shootings or, closer to home, the carnage caused by a single gunman at Port Arthur in Tasmania. With access to guns and bombs and a desire only for destruction individuals can, quite clearly, achieve their ends alone.

<sup>96</sup> If there are agreed rules of engagement between the warring parties it seems that co-operation extends even beyond those on the same side to there being something of an overall co-operative 'project' between the different sides engaged in a war. The rules of medieval warfare – no fighting on certain feastdays etc...is a good example. Another example would be a recent rule change in Horse Racing in Victoria which saw Jockeys, normally a highly competitive group of individuals, withdraw their labour as a collective; the ability for those in direct competition to see themselves as a group in one sense and individual competitors in another sense shows the complicated nature of co-operation and competition.

against every man. For WARRE, consisteth not in Battall onely, or the act of fighting; but in a tract of time, wherein the will to contend by Battall is sufficiently known: and therefore the notion of *Time*, is to be considered in the nature of Warre; as it is in the nature of Weather. For as the nature of Foule weather, lyeth not in the showre or two of rain; but in an inclination thereto of many dayes together: So the nature of War, consisteth not in actuall fighting; but in the known disposition thereto, during all that time there is no assurance to the contrary. All other time is PEACE.<sup>97</sup>

It would in fact be a great achievement of social cohesion, for us to advance from war in the state of nature, the Hobbesian war of each against each, to a more formalised war between different communities and states. Because in order for *us* to go to war collectively against *them*, we must have formed an *us* and they must have formed a *them*. In fact it is difficult to understand how anyone can avoid war from what Hobbes says here. We cannot, according to Hobbes, avoid war by threatening others with superior weaponry or armed forces. To do this would be to show our *will to contend by battall*, and this itself is being in a state of war. This is problematic for Hobbes because we are told by him that the way in which we might escape the continual war, which is our lot in the state of nature, is by installing a sufficiently powerful ruler who through his dominance is able to keep the peace. But supposedly our powerful leader holds us to our covenant with one another by threatening to subdue any insurrection. It is therefore not clear on the Hobbesian account that we have actually escaped the condition of war by installing the Leviathan: living under the threats of the Leviathan is not living under Hobbes's own description of peace. I wish to make the point that unless war is to be understood as only each against each, it is an essentially co-operative venture. The way humans interact with each other in times of war, supports the theory that humans are by nature co-operative beings. And not much can be said about the nature of mankind without an acknowledgment that humans have a propensity for co-operative behaviour. How they co-operate, with whom they co-operate and to what ends that co-operation is put, are open questions; but, that the default human inclination is to be co-operative seems beyond question. Humans are

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<sup>97</sup> Hobbes, T. (1970). Leviathan: or the matter, form, and power of a commonwealth, ecclesiastical and civil. London, Dent. pp. 185-6

social beings and, according to Aristotle, those who are unfit for society must be either subhuman or superhuman:

It follows that the state belongs to the class of objects which exist by nature, and that man is by nature a political animal. Any one who by his nature and not simply by ill-luck has no state is either too bad or too good, either subhuman or superhuman -- he is like the war-mad man condemned in Homers words as 'having no family, no law, no home'; for he who is such by nature of man war: he is a non-cooperator like an isolated piece of game of draughts.<sup>98</sup>

An isolated draught piece has a minimal effect on the outcome of the game; the non-cooperator finds it hard to accomplish much in his life, while he might manage to feud with other individuals, he will certainly be incapable of engaging in war.

### **Co-operation: Getting Things Done**

The security gained from having shared ends in mind for our projects allows us to raise our expectations as to what we might achieve. Co-operation may need to extend in a number of ways in order to make a project viable. For instance, a project may be of such scope that it will require the co-operation of future generations in order for it to come to completion. Projects can be impossible for an individual for a number of reasons: they may overtax her physical strength and abilities or they may require a commitment of time that exceeds that individual's lifespan. The variety of different tasks involved in the successful completion of certain complicated projects often means that it is only with the sharing of the discrete abilities of a great number of individuals that a sensible attempt at achieving success in these projects becomes feasible. Sophisticated projects such as manned space travel, or the construction of bridges and buildings that break new ground in engineering, are made up of innumerable small technical contributions. Any one individual may have time in her life to master only one single discipline out of the many required in attempting such projects. She may choose to dedicate her life to achieving a skill that can only be practised in a community of individuals with a range of complementary skills. By this I mean that studying to be an anaesthetist suggests a confidence that someone else

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<sup>98</sup> Aristotle (1992). The Politics. London, Penguin Books. Book 1, part 2 1253a1 p. 59

will study to be a surgeon, and vice versa. Actors taking part in co-operative efforts typically act within an individual speciality and may lack the abilities to complete more than a small part of a small number of the tasks required overall by the project. Success often depends on a combination of skills – you hunt while I gather - or, I calculate the amount of thrust needed to get the spacecraft into orbit while you make sure the astronauts have enough food for the journey or that their space suits are comfortable.

Accepting the need for co-operative behaviour in order to achieve success in certain types of projects still leaves open questions about how a co-operative body might come into being. As already proposed by this thesis, humans have a natural tendency towards co-operative behaviour, but even accepting this it remains important to examine the ways in which co-operative agreements are made. Co-operation need not be based on anything other than a joint involvement in an activity. To co-operate with others is to be in a particular relationship to them, but it is a relationship that allows for a variety of motivations and is capable of incorporating a variety of different pre-existing relationships.

We can co-operate with a friend, but we can also co-operate with an enemy. We can co-operate to achieve good, or to achieve evil ends. Although it may seem odd to describe some types of joint efforts as co-operative, it does not seem to stretch the idea of co-operation too far to say that the slaves and their masters, who together constructed the Pyramids, were involved in a form of co-operation. In fact putting forward an instance of slavery as co-operation is not so very odd when we consider the great achievements of mankind, all of which would seem to rely, to some extent at least, on the assistance of coerced if not enslaved individuals. The builders working on the Pyramids may have been slaves, and so clearly forced into participation in that joint project, but those who work at any dangerous employment simply in order to feed their families, are similarly, it could be argued, coerced to some degree into acting co-operatively.

For Hobbes co-operation is only possible for man once he has escaped the predicament of his natural state, and created an authority capable of enforcing agreements. This, he suggests, we might do through our covenanting with one



another. But the example of coerced co-operation seems to be an example of co-operation got without covenant. For Hobbes it would perhaps be an example of simply another way in which dominance is to be employed to create order; as it is our relative equality that in part makes it essential that we covenant with one another, covenanting may well be unnecessary if a natural dominance already exists or can be created artificially through, for example, an institutionally entrenched class system or through racism. An imbalance of power sufficient to negate the need for covenanting seemed to be the case in the earlier example of the family, and also here in the example of the master and slave (though in the case of the master and slave, the superiority of the one over the other is itself due to the existence of a social structure that supports slavery).

The next section of this chapter considers a more benevolent example of co-operation but one that also does not seem explicable through the notion of contract or covenant. Following a description of some forms of co-operative behaviour, we will examine a case of co-operation that does not appear at all amenable to description through the model of contracting.

### **Co-operation: Calum MacLeod**

Let us now consider co-operation at its simplest level. If one man can lift one hundred kilograms he may also be able to move one thousand kilograms of bricks if he breaks the task down by accomplishing it in ten trips; however, not all tasks are divisible in this way. Large tasks that allow for sufficient division can often be completed over time by a single individual. If a task is too large for an individual to carry out alone, and if it cannot be divided into what would be for the individual manageable portions, then the task will remain unfeasible unless it is undertaken by the individual in concert with others. So although it may not be possible for one man to carry out some indivisible act, such as lifting an elephant, it may be possible for a hundred men working in together to lift the elephant.

Some projects, like lifting elephants, are not simply more difficult to achieve without the co-operation of others, they may be inconceivable without a co-operative approach. Also, it is worth noting that, as Hobbes makes clear, it is not always just a

matter of getting direct assistance in the projects we undertake: at times what we need is the assurance that the work we do will not be as quickly undone. Perhaps we can move the bricks one hundred kilograms at a time, but in order for us to succeed in moving *all* of the bricks, we need a level of confidence that the first hundred kilos will still be secure in its place when we go to collect the second load, and so on.

A project may also overwhelm an individual because it stretches over too great a time period for it to be completed in any one individual's life-span. Consider Antoni Gaudi's design of the *Sagrada Familia* in Barcelona, the construction of which began 1882 and it is not expected to be completed until 2026. Parts of a project may need to be left for those who will come after us. So it may be of importance to an individual, in deciding whether or not to embark on a particular project, that she has confidence that the project will have some value to others, including future generations. Although there may be instances of a life spent in the construction of a personal folly with no thought being given to the value of the project to others, often the desire to continue with lifelong projects (and projects that require more than one lifetime), is connected to a belief that the value of what is being achieved will be appreciated by others, and those others may well include future generations:

On a spring morning in the middle of the 1960s a man in his fifties placed into his homemade wooden wheelbarrow a pick, an axe, a shovel and a lunchbox. He trundled this cargo south from his croft-house door, down a familiar, narrow, rutted bridle path, up and down rough Hebridean hillsides, along the edge of hazardous cliff-faces, through patches of bent and stunted hazel and birch and over quaking peat bogs.

After almost two miles he stopped and turned to face homewards. Before him and to his left were steep banks of bracken, turf, birch and hazel. To his right, green pastureland rolled down to the sea...Then, alone in an empty landscape, he began to build a road.

He started by widening his workspace. He cleared the scattered clumps of wind-blasted native woodland which lay on either side of the old track. He chopped the dwarf trees down, and then he dug up their roots. He gathered the detritus carefully into piles at the edge of his planned route. He worked a long day. He was accustomed to working long days.

At the end of that first long day, when he reassembled his equipment in the wheelbarrow and began his walk home, he had denuded several yards of ground. He had, in fact, accomplished slightly more than one thousandth of a task which would take him twenty years to complete,

which would pay him not a material penny and would cost him little more, but which would leave his manifesto marked in stone upon his people's land.

His name was Calum MacLeod. He belonged to the township of South Arnish in the north of the island of Raasay.<sup>99</sup>

Calum MacLeod was a farmer on the island of Raasay who took on the Herculean task of building a road by hand to replace a particularly difficult but important pathway on his island. The responsible authorities had failed to take this task on, and rather than continue to wait for those responsible to act, MacLeod decided to commit a considerable portion of his life to the completion of the road by hand. By the time he had finished the road he was in his mid seventies, so his personal need for a finished road was obviously not his most important motivation: his personal need for a road was coming to an end and his efforts in building the road would far outweigh the benefit it would bring him. Rather, building the road would seem to be best described as an act of altruism: a gift from MacLeod to his island community, to both his contemporaries and to those who would live on the island in the future. It may also have been motivated in part by a desire for some sort of restorative justice in response to the ill treatment meted out to earlier inhabitants of the island, and therefore an act done on behalf of previous generations.

If there existed an obligation on someone to build this road, the obligation would not have settled on MacLeod. The party most clearly linked to the obligation would have been the island's authorities. Those living on Raasay had suffered from the neglect of the authorities and the exploitation of landlords over several generations. Failure to build an adequate road to link the two ends of the island was perhaps not the most significant of the injustices suffered by the people of Raasay. Over the previous hundred years, islanders had been driven from their crofts so that their landlords might have the opportunity to enjoy their preferred recreational activity of hunting. During the "Highlands Clearings", the population of Raasay was halved. In the forced removals the islanders were put aboard ships and sent to, among other places

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<sup>99</sup> Hutchinson, R. (2007). Calum's Road. Kent Town, Wakefield Press. pp 1-2

Australia and Canada, they were forced to move to the less productive land at the north of the island – so that the south end might be made available for hunting when the desire to hunt prompted the absentee landlord to visit his dominions.

In comparison to all of these injustices, governmental inaction over the construction of a single road seems a somewhat less drastic type of mistreatment. However, there did seem to be an important symbolic element to the fact that the last man on Raasay could at least right one of the wrongs his people had suffered. As a road, what MacLeod built had utility only for himself his wife and for the future inhabitants of the island. The road's having value to future residents of the island relied of course on there being future inhabitants of the island; at the time MacLeod was engaged in building the road it was not altogether clear that he and his wife would not be the island's last residents. Even so, MacLeod continued to build the road; this suggests perhaps that he saw a purpose for building the road that went beyond any future utility. The purpose, I speculate, that he saw was as connected to the needs of those who preceded him on the island as it was to the needs of those who might live there in the future. Whether MacLeod's actions were directed mostly towards the future or the past, it was not possible for either group benefiting from his actions to be in a position to repay him or reciprocate for what he was doing for them.

The actions of Calum MacLeod are not easily explained by reference to contractual duties. We create contracts with one another to set the boundaries of our responsibilities. If we do less than is demanded of us by the contract we are in breach of our promises. If we knowingly do more than the contract demands of us, our actions, beyond those demanded by the terms of the contract, are no longer done as part of the contract; they are not explicable by reference to the contract; they will require, if we wish to explain them, some different explanation. We cannot contract to exceed the demands of a contract, just as we cannot be obliged to do actions that are supererogatory. If we wish to explain interactions between humans through a model of contracting, we need to apply strict accounting principles and be able to present, at the end of an exchange, a resolved balance sheet. If the sheet is not balanced we might first surmise that an error has been made by one of the parties in their calculation of the duties they were responsible for, if neither are in error – if all parties acted as they

did knowing the limits of the duties prescribed for them under the terms of the contract, then we will have to attempt a reconciliation of the account in some other way.

Actions like those of Calum MacLeod do not conform to the contracting model. They are the type of actions which leave the balance sheet thoroughly out of kilter. Unless we dismiss his miscalculation as a mistake we are unable to understand his actions as his fulfilling his part of a bargain or consider him to be doing no more than meeting the conditions of a contract. We are therefore required to look for more credible ways in which actions like these can be understood. We might start by considering whether or not the idea of gifting captures better the way in which actions like those of MacLeod are to be understood.

Something cannot be described as an act of gifting and also be described as the fulfilment of a contracted obligation. It would be possible to include acts that *appeared* like gifting into a contract, but their obligatory nature would conflict with the description of them as true acts of gifting. The fact that something is described as a gift not only makes a careful calculation and balancing of the actions of the parties involved unnecessary, it makes it essential that such calculation *does not* take place: to calculate the relative benefits expected to be received by the giver and the receiver, is to misunderstand the act of gifting.

That an action is not calculated does not in itself make it a gift, the action has to be primarily meant to benefit some other. One cannot make a gift to oneself, for the reason that gifting to oneself can be calculated to be a perfectly reciprocal arrangement – one receives precisely what one gives. A gift may of course be reciprocated and this need not lead to the revocation of its status as a gift. Most gifters are also incidental receivers, as long as the gift was made without the expectation or condition that it be reciprocated, it remains a gift. Being involved in the transfer of gifts does seem to be strictly possible; however, being given a gift often prompts the receiver to give another gift in return. This seems unavoidable unless we were to restrict our gift giving to only those who we knew were not themselves gift givers. Or, we might make our entire gift giving anonymous so that those who we gift to have no opportunity or means of undermining our generosity through reciprocation.

However, these approaches do seem a little artificial. Sometimes we receive gifts ourselves and wish to reciprocate, a ban on giving to gift givers would rule out for us what we may feel to be the most natural response in such circumstances (although the intrusion here of duty and obligation will be difficult to avoid for many of us: not giving a gift in return may seem to some as a dereliction of duty, but gifting out of duty appears also to be contradictory).

It is fairly typical for people to feel obliged to give gifts to others, the exchanging of gifts as part of an assumed or perhaps even formally stated social practice is commonplace. If the practice obligates the actors involved to give, it is probably not gifting that is happening but some other type of social practice. If I buy my mother flowers and chocolates on her birthday because I feel obligated to do so, I have not really gifted her anything, especially if my gift giving was in response to my concern about my appearing to others as the dutiful son. This is not to say that it is necessarily the case that the formal exchange of "gifts" is not in itself good and constructive and worthwhile; there is little doubt that much good *can* come of social practices like this. That these are not incidences of true gifting does not preclude them from having an importance and value of their own.

Calum MacLeod's actions in building his road seem to fit with this particular understanding of gifting as I have described above. We accept that the benefits of his actions were a gift to future road users and future residents of the island, because it seems obvious that MacLeod stood very little chance of receiving anything in return from the recipients of his gift. Therefore, his motivation appears free of the type of expectation of reciprocation that might raise the question that a gift is not in fact truly a gift. If as suggested earlier, his actions could also be understood to be directed towards those who came before him and struggled under injustices as residents of Raasay, then, in that case there is no real possibility of his receiving anything in return for his gifting. So, this example seems to be one that fits quite comfortably within the concept of gifting and rather poorly with that of contracting.

In one sense spending twenty years building a public road is a heroic and extraordinary act of generosity. Most of us fall well short of practising altruism on anything like this level. However, it is perhaps only the scale of this project that is

unusual; its motivations - at least the ones I have ascribed to MacLeod, are not in themselves all that unusual. We see MacLeod's actions are laudable, if indeed we do see his actions as laudable, because they exhibit certain qualities to a very high degree, qualities that we tend to identify with what is best in our fellow humans. His behaviour is not alien to our conception of human nature, it is simply exemplary.

We have already made mention of the fact that MacLeod was not the party formally responsible for constructing the road, so he does not seem to have been fulfilling an obligation through his building the road. If he had been acting out of obligation, that obligation would have provided sufficient explanation of his motivations in taking on this task.

Earlier in this chapter we discussed the claim of psychological egoism that ostensibly altruistic motivations can be always reduced to self interest. During that discussion I put forward certain arguments against such a claim. I will not revisit that argument here; it will by now be clear to the reader that this thesis accepts that human beings are capable of being motivated by altruistic considerations.

Acting for the benefit of future generations and initiating projects that extend beyond an individual's life span, and initiating projects which require the assistance of future generations to bring them to completion, requires a level of trust or hope that those who follow will find the work we have started worth continuing or completing. It is difficult to see how actions undertaken for the sake of future generations can be described by the notion of a contract. Without any possibility of reciprocity the idea of a contract is strained. Peter Singer has this to say of contract based models of morality:

Most striking of all is the impact of the contract model on our attitude to future generations. 'Why should I do anything for posterity? What has posterity ever done for me?' would be the view we ought to take if only those who can reciprocate are within the bounds of ethics. There is no way in which those who will be alive in the year 2100 can do anything to make our lives better or worse. Hence if obligations only exist where there can be reciprocity, we need have no worries about problems like the disposal of nuclear waste. True, some nuclear wastes will still

be deadly for a quarter of a million years; but as long as we put it in containers that will keep it away from us for 100 years, we have done all that ethics demands of us.<sup>100</sup>

We might sum up the preceding section by saying that: attempting to explain actions like those of Calum MacLeod by way of contractual agreement proves problematic on two counts. Firstly, it is as Singer points out, impossible for us to receive anything in return for the actions we do on behalf of those who will come after us. This undermines the contractarian's reliance on the possibility of reciprocation as a driver of our actions. Secondly, MacLeod was not the one responsible for building the road: no one could have reasonably expected that he should spend a large part of his life on this project. His building the road in fact makes no sense when viewed as part of a contract. So, either there is some other explanation that does make sense of MacLeod's actions or they should be seen as no more than a folly.

## **Belt and Braces**

The notion of intergenerational contracting has not necessarily been seen by all who have considered it as overly problematic. Edmund Burke takes contracting to be essential in order for man to achieve his purpose:

Society is indeed a contract. Subordinate contracts for objects of mere occasional interest may be dissolved at pleasure – but the state could not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties. It is to be looked on with other reverence; because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born. Each contract of each particular state is but a clause in the great primeval contract of eternal society, linking the lower with the higher natures,

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<sup>100</sup> Singer, P. (1997). *Practical Ethics*. Cambridge, Cambridge University Press. pp 80-81



connecting the visible and invisible world, according to a fixed compact sanctioned by the inviolable oath which holds all physical and all moral natures, each in their appointed place.<sup>101</sup>

In this Burke both perpetuates the contractual analogy while pointing to the substantive differences between the contracts of commerce, concerned with the trading of pepper and coffee, calico and tobacco, and something more like a social contract. The first type of contract is dissoluble on the whim of the parties involved. The second is not. (Here Burke does appear to undermine his own usage of the analogy of contract, because he notes that the bands of the social contract are fixed and not open to dissolution.) For Burke at least the metaphor of contract appears to be capable of capturing the type of social bonds and obligations that he wishes to champion.

The more natural and pre-existing the contract or the more natural the terms of the contract are, the less there seems to be an opportunity for any sort of individual choice in the matter. If the demands of the contract are seen to be entirely natural, a question arises as to why, in such a case, there is any need for the instigation of a contractual framework. In Hobbes, the covenant we strike with each other is a way of overcoming the natural attitude of man to man; which Hobbes took to be warlike and incapable of natural co-operation. There is nothing natural about the covenant Hobbes's man in the state of nature strikes with his fellows because the very conditions of it impose an artificial structure under which people can live, contrary to their nature, in some degree of safety and security.

Hobbes's covenant is an artificial, anti-natural agreement, necessary because the nature of man is not conducive to harmonious relations, and without harmonious relations man cannot get on with the job of building great architecture, progressing in the arts or carrying on commerce (Why activities such as these should be important to the type of being Hobbes describes man to be in the state of nature, is unclear: but that is a separate question.)

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<sup>101</sup> Burke, E. (1961). Reflections on the Revolution in France. Reflections on the Revolution in France and The Rights of Man. New York, Dolphin Books: 15-266. p 110

When we act naturally we have no need for the creation of artificial forms of constraint to our behaviour. However, it might be argued that the creation of a social contract works to buttress an already existing human co-operativeness. The structure imposed in the creation of a social contract is, as it were, on top of what we accept to be reasonably universal human inclinations to form social and co-operative alliances. Rather than it being a case of overcoming human nature, as Hobbes claims, it might in fact be closer to the idea of augmenting humans' faint sociability and facilitating humans to be more social, more co-operative and more reliable.

This seems a reasonable suggestion, as there *are* times when a “belt and braces” approach to a problem is a prudent one. Consider the safety conscious car buyer who chooses a model of car that has both a highly advanced braking system and airbags. He chooses the car with the advanced braking system in order to give himself the best chance of avoiding having an accident; but no matter how good the braking system is, it cannot be guaranteed to always keep this safety conscious motorist from being involved in a collision. So, he quite prudently takes the added precaution of making sure his car is fitted with airbags. Therefore, in the event of his being involved in an accident his risk of serious injury or death is lessened. The airbags adds an extra layer of security and in doing so do nothing to interfere with the function of the primary safety system: the highly advanced braking system.

But at other times adding an extra layer of security *can* undermine rather than increase our overall safety. By installing airbags in his car the safety conscious motorist does not run the risk of offending the highly advanced braking system: his brakes are not taken aback by his lack of confidence in them. However, in other situations it is possible for the addition of an extra layer of protection to be problematic and to undermine the very safety we wish to increase.

When we are engaged in certain trust based relationships, putting in place a safety net can have the effect of destroying the trust necessary in order for the relationship to work. This is because trust can be fragile and unstable and requires the acceptance of a certain level of risk by the party who takes on the part of trustee.

If, for example, we believe that marriage ought to be a relationship based on trust, the insistence by one or both of the parties on a formalised and binding prenuptial agreement, might have the undesired effect of destroying the true nature of marriage; creating in its stead an agreement that has the form of a marriage, but which is really something quite different. The nervous bridegroom who insists on securing his ongoing ownership of his model railway collection in the event of his marriage failing may unwittingly, through this display of a lack of faith in his bride and their union, add to the possibility of the marriage being unsuccessful. This is not to say that it would be an impossibility for any marriage to survive a prenuptial agreement. It might be that because marrying is such an inherently risky business, and that all that can be really contracted away through a prenuptial agreement is some small part of the financial concerns, that it would be too harsh to suggest that entering into a prenuptial agreement is necessarily destructive of the possibility of the subsequent marriage being authentic and successful.

Marriage is an interesting example for our purposes here even without the addition of a separate prenuptial agreement. Simply by having their union ratified by the state, couples may go some way towards creating something like a safety net. Many states will enforce certain aspects of wedding vows even after the parties themselves have dissolved all of their emotional or affectionate bonds. The state might demand the support of children or the sharing of the couple's assets on dissolution of the union. Therefore, it might be claimed that prenuptial agreements just slightly extend a condition that exists, in any case, in most marriages. If this is so then we should perhaps not differentiate between marriages with and marriages without specific prenuptial agreements, if the one is inconsistent with true marriage then the other must be also.

However the point still stands: that it is possible to undermine trust through being too risk averse. Of the examples above – the safety conscious motorist and the nervous bridegroom, it is the latter that best captures the problem of creating a contract when what is actually required is trust. Of course when we contract with one another, there may be trust involved, but the very fact of the contract is to some extent an admission of a lack of perfect trust or confidence.

## Contracting Insufficient

Undoubtable, it is the ability to work in concert with others that allows individuals to succeed in projects that aim higher than simply surviving another day. Planting a tree can be an act of faith by an individual; a belief that those who follow, future generations, will value the tree. Of course the tree planter will never know what becomes of the tree, and whether or not it *is* valued in the future. She has no prospect of being thanked by those who benefit from her planting the tree, just as we have no way of expressing our gratitude to those who planted (or refrained from cutting down) the trees that we value and enjoy in their full maturity.

Perhaps life is better if we have the hope that what we do now will be appreciated in the future; it may help us to accept our mortality – whether that hope is a justified one or not. Perhaps we are inclined to indulge in a little wishful thinking about how what we do for future generation gives us a small measure of immortality through our actions continuing to have an effect after we are no longer here, but there does seem to be some reasonableness in this belief, if we consider the continuing effects of those now long dead. When we enjoy tree lined streets or architecture or art or music, we are encouraged to believe that an individual's contributions can transcend her death. We are also encouraged to consider our debt to individuals who did something on our behalf prior to our existence, and without the expectation that we – those who would benefit in the future could repay them for their efforts.

We can of course pass a gift forward. I can plant another tree or look after the one given to me, but, can I be *obliged* to perform these intermediary actions which link successive generations? Can we be under an obligation to make a gift to party Y because of a gift given by party X? While our gratitude to party X might prompt to give to party Y, could we find ourselves obliged in this way? Perhaps such obligations exist, but would it be possible to consider the three generations to be contractually obliged to each other?

The idea of a contract between such disconnected individuals seems to strain the contractual model. If obligations such as these can be said to exist, and if a person can be said to be negligent in not fulfilling them, it suggests that attempts to explain our

social interactions and obligations through a contractual model are always going to be incomplete: much human interaction is poorly described as based in contracting.

The earlier example of moving an elephant showed individuals co-operating in a shared space at a single moment in order to achieve what for any one of them would have been an impossibility. This is clearly an important and typical form of human co-operation (apart from it being an elephant that is being moved), and one that *could* be described fairly successfully through the notion of the individuals contracting to one another in order to succeed in the project.

The contract may not be formally stated but as a group we understand that today we move your elephant, and tomorrow we move my elephant; then the day after tomorrow we help a mutual friend build a pergola. Understanding our relationships with others in the form of contracts works reasonably well when all parties to the contract have a direct spatiotemporal connection and are of roughly equal abilities. As Hobbes is acutely aware, this level of co-operation is vital if life is to be more than a fight for daily survival. I reiterate that the contract model is however quickly strained when the opportunity for reciprocity between individuals is made more difficult, or even impossible, because of a lack of connection with one another by space or time or by an imbalance in tradable talents and abilities.

The complicated way in which individuals need to co-operate in order to achieve success in projects requiring a far higher level of individual specialisation than moving an elephant, demands explanation by more than a crude concept of contracts. The usual motivations for contracting with others are absent when we do something which will benefit those who can never return the favour or who fall so far outside our immediate local community, those who do not even share with us a single shared moment of time on this earth.

Although it would be fair to say that some form of contracting with one another may enable us to make our lives a little less *nasty brutish and short*, simply understanding the connection between individuals in the form of a contract will leave much that we consider worthwhile in human achievements well beyond our reach. Life in a contracted community *may* be a little safer and so may no longer be so short and

perhaps a little less nasty and brutish, but it would still be a long way short of what many have in mind when they think of true community. True community would seem too vulnerable to the same problems suggested above in relation to marriage. Communities, like marriages, require the equitable distribution of the acceptance of risk between members, and so are vulnerable in the same way to distortion through the belt and braces approach. Our understanding of ourselves as a community through obligation based in contractual agreement with one another is very different to our understanding ourselves connected to one another in a more intrinsic natural fashion.

This chapter puts forward the uncontentious idea that many sophisticated and complex projects are possible only when individuals work in concert. It also makes the claim that a model of contracting falls short of explaining many of the ways in which individuals co-operate or their motivations for doing so. The significance of this discussion in relation to the themes of this thesis should be made even clearer as we now consider the moral implications of contracts and agreements and how we might understand what is being done by the moral agent in making contracts with others.

## Part 2

### **Contracting Morality: the Incredible Shrinking Moral Actor**

When we contract with one another, we strike a particular type of bargain. Contracts make demands on all parties involved in them. These demands do not need to be equal with regards both effort expended and benefits received. For instance, a parent could formalise an agreement with a child whereby the child was required to brush her teeth daily, in return for a trip to the Pyramid of Giza. The benefits in this example seem to all flow in the direction of the child: if she complies she receives a lifetime of healthy teeth and an educational holiday. The parent might be said to benefit by avoiding dental bills, or may take some pleasure from the fact that she has been able to instil in her child good dental hygiene practices. However, overwhelmingly the benefits appear to flow in the child's direction. The effort required by the contract also seems fairly one sided, the child's few minutes a day of brushing seem insignificant in comparison to the parent's commitment especially if the visit to Giza will involve a good deal of travel and expense.

Neither of these considerations, unequal effort and unequal profit, appear to prevent our thinking of this interaction between parent and child as a form of contract. Had it been the case that the parent obliged herself to taking the child to Giza without making any demands on the child, no contract would have been entered into; rather it would have been an instance of a promise being made: perhaps an instance of gifting – an act absolutely typical of the great majority of human parents. While contracts do not require equal effort or outcomes from and for the parties involved, they do require some level of reciprocity. Take away the reciprocal element of contracting and you are left simply with promises or demands.

As to why it matters whether some interaction is best described as contractual or not, it matters because contracting can be seen as a neat self-contained package of actions and motivations, whereas promising or the acceptance of obligations not connected to a contractual agreement leads us rather more naturally into questions about what the relevant motivations might be. The motivation for those involved in a contract need

look to nothing other than self interest, they are purely endogenous; and while self interest can feature as a motivation in many non-contractual arrangements, it is not a sufficient explanation for all non-contractual arrangements.

Having now spent some time, over the course of this chapter, considering how a model of contracting fits (or fails to fit) with our understanding of the types of social interactions humans tend to have with one another; the chapter will now move on to a consideration of the effect contracting with others has on the moral actor. As most moral actors, if not all, enter into contractual agreements or find themselves affected by contractual agreements or the demands of contracts, then even if we reject the contractual model as the way by which we attempt to explain the functioning of our social and communal lives, there is still much to be said about how individual moral actors are impacted upon by being party to contracts.

If the source of moral obligation were nothing more than the freely given promises we make, then there is no possibility of conflict between what we promise to do and what we are morally obliged to do – that is if we were prepared to set aside the problem of finding an anchor point for our promise keeping obligations.

But if we believe that moral actors can be obligated in ways other than by promising or through contracting, and that these obligations can continue to be active even after the moral actor has struck a contract or made promises which create for her conflicting obligations, then we must also believe that the possibility for conflict between promises, contracted obligations and morality also exists. To put this another way: if a moral actor is under a particular moral obligation he or she cannot simply, by accepting an alternative obligation, assume themselves freed from the necessity to fulfil the earlier obligation. Therefore, in the next section of this chapter we will consider just what occurs when moral actors make promises or create contracts with others, and how this impacts on the morally based obligations they accept they have.



## **Demands, Obligations and Conventions**

It is clear that there are qualified non-moral obligations<sup>102</sup>, however, their demanding nature is always open to moral scrutiny. The moral actor is obliged to choose to fulfil the obligations of X, or not fulfil the obligations of X in light of his interpretation of the legitimacy of X as a generator of obligations. Although contracts and agreements between individuals and between individuals and institutions can generate novel demands on the individual, those demands, in the view of this thesis, ought not to be fulfilled at the expense of broader obligations the individual accepts continue to exist in his life.<sup>103</sup>

Convention might provide a moral actor with reasons for or against his acting in certain ways. The requirement exists for moral actors to consider the relevance of conventions, and this applies not only to those who understand morality to be by nature simply conventional. Even if morality is understood as being founded in other than convention, moral actors would be negligent were they to fail to consider the significance of certain conventions in relation to their moral deliberations.

An aspect of our lives ruled by convention is language. At its core, the successful use of a language depends upon the user's knowledge of a set of conventions for the expression of thoughts, ideas, directives and sentiments. Language is substantially conventional, but if language were nothing more than convention it would not be possible for a majority of users to misuse their language.

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<sup>102</sup> In case it is not clear that there are non-moral obligations I will suggest an example of one. I have an obligation to carry my license whenever I am in control of a motor vehicle. I accept that this obligation exists and that I had agreed to it, that it is part of an agreement that exists between myself and the authority that has granted me permission to drive. However, there are times when I have driven my car whilst leaving my license at home. I accept I failed to fulfil a legal obligation at these times, but I would not find myself morally culpable through the actions. Although it does not seem to me an impossible task to draw some moral significance from these actions, I believe that calling my failing to carry my license morally wrong would distort my normal sense of what it means to act in a morally wrong way. We make sense of our lives in part by seeing this distinction, between moral obligations and obligations without any real moral significance.

<sup>103</sup> This is not to suggest that what might be called the broader obligations of an actor's life are unaffected by the actor taking on novel obligations. What I suggest here is that it is precisely in the actor's response to these types of demands that his moral positioning is revealed. In other words, what it means to be a moral actor is that one is forced to respond to the demands connected to *this* particular life. One's moral position is defined by one's responses to demands in all parts of one's life.

When the pedant complains that nearly everyone fails to use some element of the language correctly, she is challenging the conventional nature of language. An understanding of language as convention precludes us from bemoaning the direction a language is taking or from criticizing the language practices of the majority. Conventionalists, in language, are bound to accept that best practice is nothing but common usage.

The correct use of an apostrophe is then to be decided by how the apostrophe is typically used. By a sufficient number of users not following a convention, we do not simply see the destruction of a convention but also the instigation of a new convention. This might be a little problematic in the period of transition from one convention to the other, but if language is based in convention then we should allow it to move between conventions without hindrance, and not be overly attached to conventions that have fallen from majority favour. It is not that language conventions can never shift (in fact they can never really stand still), rather it is that there can be no right or wrong direction for this movement.

But does this stop the conventionalist from being as well as a conventionalist also someone with certain personal preferences? Can the conventionalist accept that he is not in the driver's seat but still have some personal preferences about the direction the vehicle in which he is a passenger is headed?<sup>104</sup> Can the language conventionalist be nostalgic about the way the language was used without committing himself to saying that the current usage is wrong? If language is nothing but convention, the ability to be absolutely wrong is lost; it is replaced by the idea of *wrong at present* or *wrong here* or any other qualified sort of expression of wrongness.

So it is with the moral conventionalist, she is committed to accepting what is morally right is equivalent to what is the agreed best practice, and it makes no sense for her to talk about what she sees to be a decline in moral standards; a decline in moral

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<sup>104</sup> There are some oddities about preference that seem to complicate matters here. I might have grown out of a preference but be nostalgic for the time when doing X gave me pleasure. I might, for example, no longer enjoy reading Dick Francis thrillers but bemoan the passing of this innocent enjoyment. This places me in the odd position of preferring I had different preferences.

standards is no more than the resetting of best moral practice at some different point: there is no *better* or *worse* just difference. The moral conventionalist is free to be nostalgic about moral practices that have gone into decline, but she must accept that what she is nostalgic about is now considered not to be consistent with best practice: she prefers a morality that has been rejected and replaced by that infallible decider of moral standards: the accepted convention.

However, something is driving the change in convention; if it were not then it could be expected to remain static and unchanging. Returning to language briefly, expressions often become corrupted over time, and because of the largely conventional nature of language, errors, if made often enough, create new standards of usage. At certain stages in the transformation of an expression correct usage is difficult to confirm. Should I use ‘wriggle room’ instead of ‘wiggle room’? When I attempted to search in Google for wriggle room I was given the message: “Showing results for *wiggle* room. Search instead for *wriggle* room”. I had been corrected by Google (with a message showing, in its construction, scant regard for convention). What I was encountering was convention being pushed in a definite direction. Based on search results Google has decided that wiggle is to be the dominant of the pair: wriggle has become wrong. At no other time in the history of the language could a more definitive response as to the convention have been provided. My question had been answered in a fraction of a second and has been decided on the basis of millions of instances of use.

Having been told by Google that I am simply wrong in using wriggle room, is it my duty to accept the change to my practice and in the future use only wiggle room? Is there any sense in me looking for more authoritative sources to see if they support my insertion of the disputed r? If language is simply conventional: Google has the numbers. However, if language is not entirely democratic some users may have more authority: instances of use by them being worth multiples of the uses of the average person. If, for example, the Oxford Dictionary has a particular usage, could this, through authoritative weight, rival Google answer as definitive?

When morality is claimed to be conventional, is it entirely egalitarian, or are there moral experts who have the authority (and perhaps duty) to lead popular opinion?

Could one be obliged to lead morality in certain directions in spite of that direction being rejected by popular opinion? If this is the case then the idea that morality as entirely a matter of convention collapses; it suggests the existence of factors of importance in deciding what is morally right that are not connected or decided entirely on the force of numbers. This suggests something like the idea that morality is a matter of convention *plus*, what that plus is, and, what sort of authority it has, are questions pertinent to this thesis.

To return to an earlier example from this chapter, leaving the *state of nature* would be, in one sense, to leave a convention; but in another sense the *state of nature* is the absence of any convention. Unless we name as a convention having no convention then this does not seem to be an instance of changing conventions but rather one of the instigation of initial conventions. In any case, the same question lies at the bottom of the transition from no convention to convention and the transition from one connection to another: how is the inertia to be overcome? If it is as the result of a push we might reasonably inquire into the origin of that push. In the case of the *state of nature* does the push come from the natural inclinations of humans to be sociable, and if it does this suggests that society is modeled to some extent on humans' natural sociability and not something forced and unnatural as was being argued by Hobbes. Sociability is not for mankind an artificial imposition that stops us from being our own true selves: war-loving non-co-operative egoists. Our push to create social structures that promote co-operation comes from a rational choice made by humans who understand the potential humans have for creating co-operative communities; have a desire to be co-operative; realize that in order to achieve a co-operative relationship with their fellows they require a largely artificial social structure, but which is enhancing rather than subjugating of human nature.

### **Cadel and the Tour**

At this point it might be useful to consider a more concrete example. The rules of sports and games are able to create novel obligations and demands on participants. These rules are typically capable of creating obligations only for those who freely choose to join the particular game or sport to which the rules apply. The rules are conventions and their ability to compel individuals to act in accordance with their

demands is based in the individual's recognition that the rules are generally accepted within the game or sport, and that individual's acceptance – that her compliance with these rules – is consistent with what might be called her broader moral outlook.

As there are no real limits to what might be demanded of a participant of a sport or game, deciding to become a participant and thereby leading others to believe that one is accepting an obligation to fulfil what is expected or required of participants is something relevant and worthy of inclusion in the deliberations of the serious moral actor.<sup>105</sup>

We will now, in order to move this discussion forward, flesh out an example constructed around a rider in the *Tour de France* whom we will call Cadel. Firstly, let me say that the Cadel, in my example has freely chosen to join the *Tour*. He is not under any external obligation to be a *Tour* rider; he is joining the *Tour* simply because he wishes to join the *Tour*. ( I make this clarification because it is important that his joining the *Tour* is not complicated by any pre-existing contracts or agreements he might have with his team or sponsor, or (more exotically that he is not being blackmailed or under hypnosis.)

If Cadel wishes to ride in the *Tour de France* he places himself in a certain relationship to the governing body of that event. To participate in the *Tour* Cadel will be obliged to start his day's riding in a certain place at a certain time and ride to a designated finish. He will also be required to use only accredited equipment and follow the governing body's rules on the use of medications, and he will be expected to comply with any reasonable requirements they may have in relation to drug testing or promotion. There is no doubt that in entering into a contract with the *Tour* organizes Cadel has had to accept a number of novel obligations: obligations that apply only to riders in the *Tour* and to no one else. If he wishes to take part in the co-operative project or venture that is the *Tour de France*, he is obliged to comply with

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<sup>105</sup> There is no real difference between feeding Christians to lions or bear baiting or cockfighting and tennis, golf and soccer. The difference is simply in what it would mean for a moral actor to follow the rules prescribed by each. Some (or all) of these sports and games may be inconsistent with a moral actor's moral outlook and therefore inappropriate activities for her to participate in.

the requirements of the administrators or governing body who oversee the organisation of the race.

However, being a rider in the *Tour* does not fully capture what it is to be Cadel; in the same way that no individual is ever fully captured by reference only to her identification with a role he or she might fill. Being a rider in the *Tour* is something Cadel agrees to be in addition to the responsibilities and duties he already has in all the other roles and relationships that make up his life and which precede and exist concurrently with his role as a *Tour* rider. If, for example, Cadel fills the role of husband or father prior to and concurrent with his being a *Tour* rider he does not cease to be responsible for the obligations connected to these roles simply by his acceptance of the additional role of *Tour* rider.

To be sure, being a participant in the *Tour* may impinge upon Cadel's pre-existing obligations as father or husband, and a decision on whether or not the demands of being a *Tour* rider will make it impossible for Cadel to fulfil these other obligations is essential to his making a determination on whether or not to join the *Tour*. If, for instance, Cadel supports his family financially through being a professional bike rider, his obligations as father and husband may happily coincide with his obligations as a *Tour* rider. In that case to not join the tour may possibly be for Cadel an irresponsible act (we will return to questions connected to external obligations to become a rider in the tour presently, but first let us go somewhat further in a discussion of external obligations *restricting* Cadel's joining the tour). The point here being that there may well be reasons why Cadel ought not join the *Tour* that are connected to his pre-existing roles and the obligations he owes to others by his being in these roles. So, when a moral actor takes on some new role it must always be done with an appreciation of how that new role and its obligations will impact upon the moral actor's ability to fulfil pre-existing obligations he or she might have.

For the purposes of this example, let us accept that the decision to join the *Tour* was made by Cadel as an individual who, having a reasonable understanding of the requirements of riding in the *Tour* – the demands a rider in the *Tour* typically faces, made the decision to sign-up and become a participant; thereby, committing himself to all of the relevant requirements of being a rider in the *Tour*.

Cadel's obligations in relation to being a rider in the *Tour* are, most likely, not seen by him or the majority of those connected with the *Tour* as trivial or unimportant. It is likely that being a good rider in the *Tour* – following the rules of the race as well as the spirit of those rules; competing seriously and winning or losing well, are all important ways in which Cadel can express not only the type of rider he is but also have a significance for Cadel more broadly. Because he chose to accept the obligations of being a *Tour* rider, not fulfilling them, without good reason, might be an occasion for some self-doubt or guilt.

Without this type of connection to the Cadel that chose to follow the rules of the *Tour*, the rules of the *Tour* might be no more than a set of arbitrary or formal directives<sup>106</sup>, it is Cadel who has the power to give them authority (for himself), and accept that they are (for him) binding. This is clear from the fact that most of us so easily avoid being in any way obligated by the rules of the *Tour de France* simply by our avoiding becoming participants in the event.

This is very different to the typical relationship between state and citizen in that it takes some considerable effort for an individual, born into citizenship in a particular state, to avoid the expectation that they will fulfil the obligations of that state. We might put it this way: that our joining the *Tour* is set to make necessary we opt-in, while being a citizen is typically assumed to be set to the opt-out position.

The rules of the *Tour* can exist independently of there being any individual with an obligation to fulfil them. It is open to anyone to create a set of rules and to name themselves the ruling body of a sport or game or event even though there are no participants for them to rule or for whom the rules to apply. What is needed in order

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<sup>106</sup> This is not to say that once it has been decided that a rule is arbitrary that it is no longer compelling. Arbitrary rules can be highly compelling. A classic example of a rule that is arbitrary but compelling is the rule or social convention of driving on a particular side of the road. A community might decide to drive on the left or on the right, but once that decision has been made there is a significant reason for the individual to comply with the rule. It is also true that a non-arbitrary directive may be seen by an individual as un compelling. For example, if one were ordered to participate in the “ethnic cleansing” of a particular region, this is a command that one would hopefully refuse to obey. If this command is not an arbitrary – but is in fact a necessary and logical part of the government's plan to rid itself of a particular ethnic minority – but it ought to be considered not compelling due to its being morally corrupt.

for rules of this sort to compel the actions of actual individuals is that there be individuals who are willing to accept, as compelling to themselves, the set of rules and obligations that have been created.

Once accepted the way in which the individual chooses to either live up to or fail to live up to the freely accepted obligations will express something significant about him or her as an individual. Accepting to be bound by a set of obligations expresses something of an individual's moral position.

Of course even after deciding to accept obligations the individual is still required to continue to monitor whether it continues to be right for her to comply with any or all of the obligations; it always remains an important question for the individual whether her initial choice to take part in the project was and continues to be something that she remains committed to. (It is important for it to be understood that what I say here assumes it has been put aside that the individual decide on a whim or for trivial reasons that she no longer has to fulfil her obligations as a separate problem.) In order to believe herself to be compelled to fulfil an obligation, an individual must first accept the legitimacy of whatever is generating the obligation to generate those types of obligations, and in order for the obligation to continue to be obliging for her, she must continue to accept the generating authority's legitimacy.

Cadel is obliged to follow the rules of the *Tour* as a *Tour* rider, his acceptance of his specific role within the *Tour* is what generates for him *Tour* related obligations. If he had never become a *Tour* rider, or if he were to stop being a *Tour* rider, certain obligations connected to being a *Tour* rider would lose their hold on him; as they would also lose their hold if he were to stop considering the *Tour* to be a legitimate generator of obligations for him. If, for instance, he discovered after signing on to the *Tour* practices or attitudes ingrained in the *Tour* organisers and participants that he found grossly incompatible with what he believed to be the practices and attitudes an institution such as the *Tour* ought to promote and engage in; then the force of *Tour* derived obligations may well be weakened or may completely disappear for him.

It was mentioned earlier that Cadel might be in some way obliged to become a rider in the tour if being a rider in the tour was necessary for him to be able to fulfil his



obligations to his family. We said then that if Cadel supported his family through being a professional bike rider, it might well be necessary for him to join the *Tour* in order to continue to support his family. However, it should be noted that there are limits to what can be required of Cadel in any role he might fill: including that of provider for his family. Cadel's moral obligations outside of the role of family provider and Cadel's autonomy are not made redundant or overridden by the needs of his family; so he is still responsible for deciding how he ought to act, what he ought to become, even in face of the needs of his family. Therefore, whether or not Cadel ought to join the *Tour* ought not be decided simply on the basis of the financial necessities of his family – as it is possible that what is required to secure his family's financial security might be too morally compromising to be obligatory.

There are limits to the serious moral actor's ability to simply fulfil a need or follow a convention, because deciding to fulfil a need or comply with a convention will often be of moral significance. In the next section we will continue our investigation into the basis of obligation by returning to Hobbes and considering the nature of law under the Leviathan, whether or not it is a matter of arbitrary decree (in the manner of the rules of the *Tour*), or if it must comply with more fundamental principles.

### **Artificial Natural Law**

According to Hobbes, there is however more to the creation of a social covenant than the creation of an entirely arbitrary set of rules; in covenanting with each other in order to achieve peace we are in fact honoring the laws of nature:

A LAW Of NATURE, (*Lex Naturalis*,) is a Precept, or generall Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving that same; and to omit, that, by which he thinketh it may be best preserved.<sup>107</sup>

Hobbes tells us that the laws of nature dictate that peace is to be preferred by humans; what is odd in this is that Hobbes also believes that these laws of nature only become

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<sup>107</sup> Hobbes, T. (1970). Leviathan: or the matter, form, and power of a commonwealth, ecclesiastical and civil. London, Dent. p.189

compelling, or reasonable as directives for the individual, once a suitable social structure has been created: one that gives the individual confidence that his fellows also have reason to follow these laws. Those who, in the *state of nature*, might take advantage of the vulnerability we are placed under by our being obedient to these laws need to be made to obey also. Russell Hardin puts Hobbes's position thus:

The laws of nature are all derivable, Hobbes thinks, from the ground principle that nature tends to its own well-being. Hence the laws of nature are such as, if they were universally followed, would conduce to the well-being of all. They are generally laws governing interactions to enable all to prosper individually by leading each other free from fear or attack on person or property.<sup>108</sup>

This is an odd understanding of nature as being especially concerned with the personal liberty and individual fulfillment of each human being. Why should we derive such mealy-mouthed individualism from our experience of the natural world? That is the first oddity: in claiming that a Hobbesian state is in some way underpinned by the laws of nature, there seems to be a poor fit between Hobbes's *state of nature* human and these natural laws. Hobbes believes man in the *state of nature* is either incapable of fulfilling the demands of the laws of nature, or, that it would be a foolish action for an individual in the *state of nature*, even if (and this seems a queer supposition considering man's supposed *state of nature* outlook) he desired to act in accordance with these natural laws. In order for there to be good reason for individuals to act in accordance with the laws of nature, it is first necessary that a contrivance - an artificial state be developed in which the laws of nature might become compelling: "One can be obliged to follow the dictates of the laws of nature only in the context of a political society ruled firmly by a sovereign who will enforce them as *legal* laws."<sup>109</sup>

This leads us to a very odd conclusion: that the laws of nature require, in order for them to have even the force of good counsel, the creation of an artificial social

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<sup>108</sup> Hardin, R. (1991). "Hobbesian Political Order." *Political Theory* 19(2): 156-180. p. 162

<sup>109</sup> Ibid. p. 162

framework. Following the laws of nature outside of such a framework would not, in all likelihood, lead to that singular purpose to which these laws are meant to give guidance.<sup>110</sup>

In other words, the laws of nature appear to presuppose the existence of the artificial state, and as laws are only compelling when they are transformed from laws of nature and imbued with the authority of being *legal* laws: laws enforced by the state. This supposedly leaves the individual in the *state of nature* either entirely undirected (it being in that state irrational for him to follow the laws of nature), or with but one directive: that he ought to get about the job of creating a state capable of enforcing the laws of nature — laws that, although supposedly natural, will, until that time, have no weight for him.

Put in this way the argument seems to suffer from a degree of circularity. All that is being done here is the rendering of these so called natural laws redundant: the only laws we ought to follow being the *legal* laws of a sufficiently authoritarian state. The state must be sufficiently authoritarian so as to give us confidence in our fellow citizens also being compliant. If this is being put accurately, then the position put forward by Hobbes is in fact reversed, and it is the legal laws of the artificial state which give authority to the so-called natural laws; it is therefore not the case that the legitimacy of the state is being underpinned by the laws of nature.

It might be argued that too much is being made of the artificial supporting the natural. That there is nothing odd in the fact that a convention, and Hobbes is promoting conventions, only begins to function when it has become – conventional. However, conventions typically evolve through practice, they are typically underpinned by a confidence based on the way in which others *have* acted rather than a confidence in

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<sup>110</sup> Hanna Pitkin tells us that: “The classical contract theorists provide a law of nature to take care of this difficulty [the bindingness of past promises]: it is a law of nature that promises oblige.” Pitkin, H. (1965). "Obligation and Consent--I." *The American Political Science Review* 59(4): 990-999. p. 993 If however it is a law of nature that promises oblige, my promises must then oblige me whether or not it is of utility to me to fulfill them. Therefore I really would be obliged, even in the state of nature, to fulfill my promises: I cannot claim immunity from obligation on the grounds that probably no one else intends to comply.

non-conformity being punished – although that also may factor in our confidence in the likelihood of others complying with the convention.

To strike a convention instantaneously would be like creating a tradition of an activity in advance of a single instance of performance of the activity: possible only in a very unnatural sense.<sup>111</sup>

The central idea of this section has been the need for the buttressing of supposedly natural laws. The next section speaks of the ease by which moral actors become obliged – in Hobbes's state is there no claim on me that is not demanding until I have confidence in reciprocity?

### **The Easily Obligated**

That obligations can come about simply and naturally, as part of our interactions with one another, is illustrated in the following example from Margaret Gilbert:

Suppose that you and I are out on a walk. We are walking in the direction of Central Park. Now imagine that without warning you suddenly turn away from me, without a word, and cross to the other side, disappearing down East 49<sup>th</sup> Street. Perhaps I will not be disappointed. But I will surely be surprised, and I will, more strongly, feel that you have done something “quite untoward.” You have in some way made a mistake. We were out on a walk, and you suddenly disappeared without any “by your leave”.<sup>112</sup>

Of course it may be that there are good reasons that make breaking away from a walking companion permissible or even obligatory. What Gilbert is pointing to here is the ease with which expectations and obligations are created between individuals; just how obligatory any obligation is, is a different question. Just what type of demands and obligations arise from being out on a walk with someone else will vary

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<sup>111</sup> If Vladimir and Estragon were in the habit of meeting in Dublin every Bloomsday, they could, quite naturally, speak of their habit or custom – or of their traditional Bloomsday rendezvous. If however they had never yet met in Dublin on Bloomsday, their deciding to do so for the first time next year would not be (until sufficient instances of Bloomsday had been celebrated in this way) a tradition, custom or habit.

<sup>112</sup> Gilbert, M. (1993). "Group Membership and Political Obligation." *Monist* 76(1): 119-32.

enormously. One's walking companion may be a child in which case leaving the joint walk, as in the example from Gilbert, may be an act of gross irresponsibility; whereas, in other situations to not break off the walk may itself be to act badly or irresponsibly. If for instance one of the walkers happened to notice a child wander out into the traffic, she would, I hope, feel obliged to go to the child's aid and it would seem inappropriate for her to ask permission of her fellow walker before doing so.

She would, or we hope she would, act first and waste no time weighing up the conflicting obligations of being a walking companion against her general responsibility to protect children in peril. Asking permission, under certain circumstances, seems redundant; this is in part because of an assumption that the one to whom I have the small duty would never expect me to neglect a far more important duty on her behalf. Were I to ask her permission before going to the child's aid, as in the example above, she may well be highly offended. She might ask: *Why did you bother to get permission from me before saving the child? How could you possibly have thought that I would not have wanted you to save the child!*

However, assumptions about what the other party might consider reasonable grounds for breaking our promises or duties ought go only so far in deciding our actions. There is always the possibility that some other party, to whom we are under obligation in some small way, may place far greater importance on our duty to them than we do. It is at least possible to imagine a walking companion sufficiently devoid of compassion, and with a sufficiently warped perspective of their own importance, that they would claim our obligation to them as a walking companion "outweighed" the demands of a child in danger of being run down by the traffic. If we were to find ourselves walking in the company of such a person, and we understood the character of our walking companion, we could not break away from them assuming that that is what they would prefer we did.

We would be knowingly going against what we understood to be the wishes of our walking companion. Our walking companion may even call after us demanding us to come back; reminding us that we have certain obligations, in our role as walking partner, and insisting that the duties we have as a walking companion are not

extinguished by the demands made by a somebody else's child. Thus, making it explicit just what was expected of us – in their opinion.

Saving the child in these circumstances is a rejection of the legitimacy of the demands expressed by our fellow walker. We will ignore our companion and save the child if we believe that we have an obligation to come to the aid of children in danger, and that this obligation stands unaltered by any relatively trivial obligation created out of the joint-venture of being on a walk. We therefore would reject the legitimacy of the demands made by our fellow walker. More importantly had these demands been made explicit prior to our joining the walking party we may not have consented to them as reasonable conditions and may have refused to go walking with them; because we reject the very idea that such fundamental obligations, as aiding children, are negotiable points of any contract or promise we might make.

The example I put forward here of the fellow walker with a warped perspective seems to be at odds with Gilbert's claim that: "When two people are on a walk together, each is understood to be under a certain constraint. This constraint can only be removed by mutual accord."<sup>113</sup>

It is not the case that the walking partner with the warped perspective gave their accord to the breaking off of the walk in order that we might go to the aid of the child. So, in our abandoning the walk without the consent of our companion, without mutual accord, we seem to have wronged someone we were in a joint agreement with. Because according to Gilbert's definition a "joint agreement" was in existence here:

As I understand it, all that is necessary to establish what I call a "joint commitment" is that the relevant parties mutually express their readiness to be so committed, in conditions of common knowledge. The common knowledge condition means that the existence of these expressions must be "out in the open" between the parties. For instance, it is not enough for me to mutter my proposal so softly that you can't possibly hear.<sup>114</sup>

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

### **Obligation: Warped Perspective Walker**

There does not seem to be anything lacking from my example of the warped perspective walker that would prevent us from accepting that, following Gilbert, a “joint commitment” was created in this case. It is not possible for us to prepare for every eventuality before entering into a joint commitment, so we cannot be thought negligent in failing to incorporate the possibility of our need to save a child into our pre-walk agreements. The demand that the proposal - “let’s go for a walk” - be out in the open can easily be satisfied. The demand that we discuss all potential eventualities prior to agreeing to walk together is incapable of being satisfied.

As well as this, it would seem odd to claim that joint commitments do not apply in cases where one of the parties is of morally dubious character: binding obligations arise in our dealings with individuals with the most serious character flaws. The acceptance of obligation is not always based in reciprocity. Unless we believe we have no duties or responsibilities to those who treat us badly we will accept obligations to others in spite of our being convinced we have no hope of our actions being reciprocated. If there *are* natural obligations for moral actors, their authority will not be contingent on the agreement of others, or on our confidence in others being forcibly compelled to comply with them; as was suggested above in Hobbes’s account of natural laws in the *state of nature* being inapplicable prior to the creation of a sufficiently powerful authority to enforce compliance.

Those who believed there was a duty to give Adolf Eichmann a fair trial, did so not because they believed Eichmann could be relied upon to do the same for them in return; nor did they see any reason, based on Eichmann’s previous behaviour, which would make sense of their accepting that they had obligations towards him: based simply on his behaviour there was every reason not to bother giving him a fair trial. What I am suggesting is that we cannot choose how we act towards others, or decide the extent of our obligations towards them, on the basis of our expectation that they would reciprocate. The generation of obligation is not confined to our interactions

with individuals who see things as we see them. Obligations may be very lopsided in life and within joint commitments.<sup>115</sup>

## **Reciprocity**

Little is to be gained by our thinking of our obligations as being based in reciprocity. We cannot sensibly expect to calculate what we owe by focusing on what we have received or hope to receive. What we have received can decide the level of our gratitude (or resentment), but not the level of our obligation to give to others. Considering obligation as the product of a calculation of give and take within a relationship; of an expectation of what we expect to receive, ignores the complicated nature of a great number of human interactions; it is to fail to see ourselves as being connected to one another in what Alasdair MacIntyre has called: "a network of relationships of giving and receiving".<sup>116</sup> MacIntyre reminds us that although our being in a position to give is necessarily connected to our having received we are rarely in a position to repay directly our benefactors:

Sometimes those others who rely on us are the same individuals from whom we ourselves received. But often enough it is from one set of individuals that we receive and to and by another that we are called on to give. So understood, the relationships from which the independent practical reasoner emerges and through which she or he continues to be sustained are such that from the outset she or he is in debt. Moreover the repayment of debts in question is not and cannot be a matter of strict reciprocity, and not only because those to whom one is called upon to give are very often not the same individuals as those from whom one received. Even when what we receive is the same kind of care or assistance as that which we are called upon to give, it may be that one of these is far greater and more demanding than the other. And

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<sup>115</sup> The treatment of Eichmann's trial is discussed here by Raimond Gaita: "We have accorded even the most terrible evildoers legal rights, but that should not be taken as a sign that we found such evil and what is owed to those who do it sufficiently tractable even to make law from our understanding of it. On the contrary, it is a sign that law may express a conception of justice that is sublime. This was well brought out in the trial of Adolf Eichmann in Jerusalem. Hannah Arendt reports that the presiding judge, Justice Landau, said that the trial had only one purpose, which was to do justice. He was moved to say that in protest against those who wished to make a show trial of it and who thought that the only justice that could be done at the trial was to Eichmann's victims. Landau's point was, I think, that if justice were to be done to Eichmann's victims then justice had to be done to Eichmann because it was owed to him." Gaita, R. (1991). Good and Evil: An Absolute Conception. Houndmills, MacMillan. pp. 6-7

<sup>116</sup> MacIntyre, A. (1999). Dependent Rational Animals. Chicago, Open Court. p. 99



often enough what we receive and what we give are incommensurable: there is generally, for example, no relevant way of comparing what our parents gave us by way of care and education with what we are called upon to give to the same parents by way of care in illness or old age.<sup>117</sup>

Only once we have accepted just what a complicated web of giving and receiving, of obligation and dependency we live in, can we start to make sense of the obligation that we might, for example, have to an Eichmann. Because it is only when we have accepted that there is such a disconnect between what one gets, or could reasonably expect to get, and what one is obliged to give that obligations like those in the case of Eichmann or the earlier example of Calum Macloud start to make sense – if indeed we believe they do make sense. Only through accepting that repaying our debts is not a matter of discovering the precise level of our indebtedness or its precise location, can we make sense of our obligations to those who may well dismiss the idea that *they* have even the most rudimentary obligations to us or to anyone. Then we might see an Eichmann as the true object of obligation for us, as demanding and as affronting to standards of reciprocity as those who might benefit in 100 years time from some action we take now, like building a road.

We also need to be aware that we cannot always be expected to fulfil all the demands others make on us. When, in the earlier example, the warped perspective walker believed we should continue on our walk with her rather than save the child, she made a demand we could not accept as legitimate, so, without mutual accord we unilaterally revoked any obligation connected to being on a walk together. This does not necessarily mean that we were never actually under the types of obligation Gilbert suggests: it seems only fair to accept that we *were* obliged to some extent. Obligations did exist, even though each party to the joint commitment had its own unique understanding of the correct limits of those obligations.

No doubt, under certain circumstances, just taking part in a joint commitment with someone with a particularly warped perspective would be problematic. There are activities and joint commitments that one ought not to become party to. When taking

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<sup>117</sup> Ibid. pp 99-100

part in joint commitments a moral actor, if she wishes to avoid misunderstandings, must keep in mind the types of assumptions other parties might reasonably infer from her being a participant in the activity. Becoming party to a joint commitment with an individual who misunderstands us; who has a very different understanding of the types of obligations that will be created by our joint commitment may mean that, in particular circumstances, that individual would be justified in making assumptions about us that may be erroneous; and that we would be responsible for leading them into that error.

The individual who routinely goes to football games in order to provoke fights with opposition supporters, may be justified in her assumption that my suggesting we go to a match together, means that I have no real objection to her acting as she typically does at the football: that I condone her inter-club punch-ups. Therefore, unless we make it clear to her that we are coming along *in spite* of this behaviour, or, in an attempt to keep her out of trouble, it might be best if we avoid becoming jointly committed with her at football games. If we do become part of a joint commitment to go to a game together, and fail to make our position on her predilection for inter-club physical violence clear, then we risk misleading her into believing that we might be someone she can rely on as an ally in any fights that arise at the game.

The previous section has shown that a moral actor is responsible for deciding whether or not his or her becoming party to a particular endeavour or joint-venture or contracts is consistent with a his or her overall moral outlook, and those responsibilities and obligations that flow from the actor's overall moral position. The next section continues our exploration of the moral implications of co-operation and furthers our investigation into human nature partly through an examination of the nature of some non-humans.

# Part 3

## Society and the Tasmanian Devil

Hobbes makes the claim that, in the *state of nature*, human beings are incapable of acting co-operatively, and that they live under either the conditions of actual war or the threat of attack from each other; that due to their natural proclivities humans have scant hope, if left to their own devices,<sup>118</sup> of achieving anything much beyond their own survival. When life is *solitary, nasty brutish and short*, there is no real possibility of technological or artistic progress, grim survival is the best that can be hoped for. However, if it is in the nature of humans to be utterly asocial, why should we, as humans, consider achievements such as civil engineering and the creation and sharing of the arts or the lessening of suffering necessarily of great importance or worthwhile? If mankind's life is, by nature, *solitary, nasty brutish and short* a successful life for an individual need achieve no more than that an individual survive for as long as possible. Hobbes appears to begin here with the assumption that there is something worthwhile in human beings not wasting their energies fighting with one another and in their being able, through co-operative work, to complete sophisticated projects; the picture of human nature created by Hobbes, in his description of man in his natural state, does not seem to provide good reason why such an assumption ought to be made: if humans are by nature savage cut-throats and philistines, *why* is it better they act like genteel, industrious, artisans, town-planners and engineers?

The framework, on which Hobbes's theory is built, his picture of man in his *state of nature*, seems to be at odds with the assumption that the good life for man is success in sophisticated co-operative ventures and peaceful harmonious social intercourse.

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<sup>118</sup> This is problematic. Just what happens when humans are left to their own devices? I would say that they tend towards constructing social, co-operative ties; whereas Hobbes suggests they dissipate all their energies in being constantly at one another's throats. Hobbes seems to suggest that they need to not be left at their own devices, but rather separated and forced into co-operation through the creation of an appropriately authoritarian institution. However, if they institute the means by which they can co-operate, then we might say that if left to their own devices humans co-operate – the interim step, of the creation of an appropriate institution, does not discount the fact that they eventually get about being co-operative!

Why, if we are to accept Hobbes's version of human nature, human beings should be more fulfilled by acting co-operatively than being their naturally warlike selves, is not at all obvious. According to Hobbes's picture, in order to create conditions conducive to co-operative behaviour among human beings an artificial unnatural social order must be imposed on to a being whose nature couldn't be more ill-suited to life in community. Even if we are to accept that in order to live harmoniously and act co-operatively humans require the institution of an artificial social framework; we still have no good reason provided, in Hobbes's account, of why a harmonious and co-operative life is necessarily a life that is most fulfilling for a naturally asocial being.

If we are not, as Hobbes claims, naturally sociable then why ought we to go against the grain of our nature and bother with arranging our affairs in such way as to make social life the norm? And if, conversely, we *are* social by nature we have no need of an artificially restrictive social order constituted by our covenanting with one another in order to make our lives together tolerably peaceable. It could only be due to our infelicitous nature that we require the assistance of an artificial contract, a point made here by David Gauthier:

It would be compatible with the claim that the individual is prior to society, to suppose nonetheless that human sociability is itself a natural and fundamental characteristic of individuals, which expresses itself directly in social relations among human beings. And this is denied by contract theory in its insistence upon the essentially conventional character of society. Men who were naturally sociable would not need to contract together in order to form society and would not rationalize society in contractarian terms. Although contract might be the foundation of government, as in Locke, society would not be a purely artificial creation. Contract as the foundation of all society is required only by men who are not inherently sociable.<sup>119</sup>

The contractual explanation of human society *might* be necessary, might provide a solution to how humans come to live relatively peacefully with (at least selected) others; if it were not in the nature of human beings to act in concert with one another and to value their success for its own sake; if it were not in the nature of human beings to be prompted, at times, by altruistic and selfless motivations. However, if we do not dismiss entirely the altruistic and selfless aspects of human nature, we should

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<sup>119</sup> Gauthier, D. (1990). Moral Dealing Contract, Ethics, and Reason. Ithaca, Cornell University Press. p. 332

see contracting as contained within human sociability rather than its necessary foundation.

It might be useful here to consider the example of a creature that truly is asocial by nature. The Tasmanian devil is a small omnivorous marsupial that lives on the Australian island state of Tasmania, it lives a basically solitary life and guards its territory from the encroachment of other Tasmanian devils by shows of aggression and where necessary physical attacks. The Tasmanian devil is by nature truly solitary, nasty, brutish – and short – as is its life.

Were we to claim that it would be better for devils to temper their aggression and look into ways they might co-operate more with one another, we might be accused of imposing some sort of artificial behaviour onto them, and we might need reminding that devils have no society, and do not need to measure up to a set of external standards, imposed by us, that value co-operative behaviour over being nasty and brutish. However, if we can see no sense in Tasmanian devils accepting the imposition of a set of standards for behaviour so alien to their nature then this seems also to apply to the human who is shoehorned into Hobbes's society.

Along with a charge against us of our being guilty of some form of anthropomorphising<sup>120</sup> of devils, it might also be pointed out to us that devils lack any natural ability to live harmoniously and co-operatively; it might be pointed out that devils are not equipped to live in extended social groups and that were we to place a group of devils together and expect them to get along that this would, in all probability, result in a bloodbath.

It is worth noting that if humans do live under an entirely artificial and alien structure when they live in society with one another, then they do so, on the whole, with remarkable success. If nothing in human nature predisposes us to be able to live in

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<sup>120</sup> It is worth noting here that if humans are not by nature social and co-operative then we are not truly anthropomorphising as we are not imposing human nature onto the devils but an artificial set of standards that are equally unnatural for humans as they are for devils. A community of devils would be an artificial community but so would a community of humans according to Hobbes. (At least in they would be removed from the state of nature picture.)

harmonious society, the adaptability shown by the great majority of humans by apparently thriving within intricate social networks is a puzzling phenomenon. On Hobbes's view, humans ought to experience being in society as being made forcibly to act contrary to their nature. Habituation may be thought capable of adapting a creature's nature to some extent, but habituation will have its limits.

The instincts of the Tasmanian devil have developed in an environment that has favoured the survival of highly territorial, basically solitary individuals. In this way the instincts of the devil are very different to those of say, the honey-bee. The ability of honey-bees to live in large groups, and to co-operate in the shared project of the survival of the hive, is in direct contrast to the behaviour of devils. It seems reasonable to suggest that it would not be possible through habituation to achieve anything like a society or community of Tasmanian devils; just as it would be equally impossible for an individual honey bee to live a successful and fulfilling solitary life.

The honey bee is only one species of animal amongst many that live in complicated co-operative systems with members of their own species. As well as this type of co-operation between animals within the same species, there are also animals that live co-operatively with or other species, and also some that live co-operatively with humans. In some instances mutual advantage appears to be the motivation for animals and humans to work together – domestic cats being one example – in other cases, such as the “battery hen”, it is simply the domination of the animal by the human. One striking example of human and animal co-operation is that offered by human whalers and killer whales during the first half of the 20th century off the coast of New South Wales: discussion of which will now follow.

### **Contracting with Killers**

The former whaling township of Eden on the east coast of New South Wales was home to a particular form of human animal co-operation. It is claimed that killer whales assisted the human whalers in finding and killing the Baleen whales that pass through the area on their annual migration to their northern calving grounds.

Killer whales are known to hunt co-operatively as members of a pod; in Eden this extended to their co-operation with humans. Typically, human whalers see killer whales as competition and expend a great amount of effort in keeping their catch safe from them<sup>121</sup>. However, in Eden competition was changed to co-operation for the mutual advantage of the killer whales and the whalers. According to Eden locals, the killer whales would enter the bay at Eden in order to let the whalers know there were whales about; they would then lead the whaler's boats in pursuit of their shared quarry, and play their part in the capture by preventing the whales from exiting the bay, leaving the whalers to successfully complete the hunt by harpooning the victim:

One row stood out to sea, cutting off the escape route should the whale free itself from its pursuers. Another group of killers harried the whale from beneath, ensuring that it couldn't dive into deeper water while a third group attacked the whale.<sup>122</sup>

One particular killer whale known as Old Tom<sup>123</sup> was said to go to the lengths of soliciting the assistance of the whalers once a whale had been cornered by the pod:

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<sup>121</sup> 'Fishermen and whalers commonly regard killer whales as competitors for their catch, and retaliate with bullets, harpoons and spears.' Clode, D. (2002). Killers in Eden. Crows Nest, Allen &Unwin. p. 94

<sup>122</sup> Ibid. p. 107

<sup>123</sup> Old Tom was the most celebrated of the Eden killer whale pod. His fame was such that his death in 1930 was reported by The Sydney Morning Herald. The article is worth quoting here as it provides an overview of killer whale human co-operation: "The reported death of the great killer-whale, known for many years past at Eden as "Old Tom," comes as a very special surprise and is worthy of special note. It would be of great interest to know just what were the causes of death, as it is a most extraordinary thing for such a happening to occur in these seas. Only once before, according to my records, has there been such a happening, when one of the pack, in driving a small pike whale (known locally as a grampus) ashore at Haslem's Beach, also became stranded, and died. Both hunter and quarry in this case were about 30 feet long. These large air-breathing mammals, whether whale or killer or dolphin soon give up the ghost when they are stranded; their struggles rapidly weakening them.

The great killer or killer-whale is a giant dolphin or a small toothed-whale (according to one's viewpoint). It grows to a length of about 30 feet, and is probably one of the most powerful of sea beasts. It is of a ferocious disposition where the larger whales are concerned, and has a horrific chevaux-de-frise of teeth in each jaw, to assist in its savage attacks. One can hardly discuss whaling on this coast without considering the remarkable co-operation between killers and whalers in the small whaling operations which have in the past been carried out at Eden in Twofold Bay. Although much has been written in regard to this the average reader has a suspicion that the whole thing is a "fish story." While there has, undoubtedly, been some exaggeration at times as to the part played by the killers, their role is so very extraordinary as to merit more than passing attention.

"Former whalers reported that Old Tom would often head into the whaling station at Kiah Inlet opposite Eden to alert them to their quarry's presence...Lifting himself bodily out of the water, Tom would crash down on the water's surface near the whaling station in action known as floptailing. With a cry of 'Rush-oo' the whalers would head out to the Bay with a killer whale guide alongside.<sup>124</sup>

Assuming these stories are accurate, they suggest quite a high level of interspecies co-operativeness. They fit well the notion of co-operating with others in order to achieve some ends not achievable alone. Instead of fighting off the killer whales as competitors, the human whalers found it to be more efficient and more profitable to share the spoils of the hunt in order to foster a co-operative relationship; the whalers would reward the killer whales with first pick of their favourite parts of the carcass – apparently the lips and tongue. By this arrangement the killer whales gained a chance to feed on what they considered to be a delicacy, and the whalers were able to become

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#### **AN EXTRAORDINARY PARTNERSHIP**

On the New South Wales coast the killer usually hunts the larger whalebone whales only. The great sperm whales are not common visitants here, but in any case, they are more than a match for the killers: because of their strength, their power to "sound" so deep and to stay down so long. Now the physical configuration of the littoral at Twofold Bay, and the adjacent coastline, is such as to make it a particularly suitable place into which to drive stray whales making either north or south. The killers station themselves in suitable positions for the easy cutting off of the whales retreat, and then begin to harry them from all sides meanwhile working them into the shallow water.

The principal object of their attack is the great mobile tongue mass, which occupies the whole of the interior of the enormous lower jaws of the whalebone whales. When the hunted whale is exhausted it lies at the ocean surface with the mouth gaping, with the tongue is an easy mark. Should the whales evade the killers immediately surrounding it, others stationed in suitable positions beyond further intercept it. The whole chase is arranged most intelligently and systematically and is indicative of a very high order of reasoning ability. The same intelligence is manifested in the killer's conscious co-operation with the whalers. I have satisfied myself that this is so, and that the ferocious killers have learned by experience that they do well to co-operate with a the human hunters. For many years now this interesting combination of effort of mammals so far removed in the scale of evolution has gone on in a spasmodic sort of way, but, at the same time, it is certainly a poor testimony to the alertness and enterprise of the Australian people when I say that without the killers the whaling at Twofold Bay would have been non-existent. It is a bad thing indeed when whalers wait for the whale to knock at the door and wait to be taken in, as has frequently happened.

At times the excitement of the whale hunt at Eden has been reminiscent of the old whaling days, as the assault has been made on the hemmed-in whale from a small oar-propelled boat. Occasionally a man has fallen overboard, or has been dragged in by one of the lines went fast to a whale, but never has the unfortunate been interfered with by the killers. This is of particular interest in view of the numerous records by Antarctic explorers of attempts on their lives by the killers, which are extremely numerous in the regions far south."Stead, D. G. (1930). *The Killers. Whales Deadliest Enemy. The Sydney Morning Herald*. Sydney, Fairfax.

<sup>124</sup> Clode, D. (2002). *Killers in Eden*. Crows Nest, Allen &Unwin. p. 7



more successful in finding and harpooning whales. As well as this, the whalers by forging an alliance with the killer whales, no longer needed to waste energies protecting their kill.

Self-interest appears a sufficient explanation here of the motivations of all parties involved. The co-operation between the humans and the killers would appear to be entirely explicable as being entered into by each party for their own benefit. However, while humans and killer whales can co-operate that co-operation cannot be facilitated by their covenanting or contracting with one another. The contracting model does not fit here. The contracting model is of no use as an explanation of how and why the human whalers and the killers came to create a co-operative, mutually beneficial hunting arrangement.

Clearly it is an odd notion to speak of humans contracting with non-human animals (or in the words of Thomas Hobbes "*Bruit Beasts*"), due to the lack of a common language and the lack of a sufficient level of rationality – primarily but not exclusively on the part of the non-human<sup>125</sup>; still, if we accept that there was a co-operative relationship between the whalers and the killer whales in Eden at this time, and that it is not possible to describe this relationship as contractual, then we are led to accept that this co-operative venture came about quite naturally, and is indicative of the co-operative natures of the two species involved. By the evidence of this example: man and killer whales, being co-operative and social by nature, appear to have been capable of initiating and maintaining a peaceful and co-operative relationship, without the need for it to be underpinned and enforced by their covenanting with one another, or their reliance on an authority to make co-operation rational.

The level of co-operative behaviour with humans exhibited by the killer whales in Eden is in one sense extraordinary, however, it is extraordinary, I suggest, because it involves non-humans co-operating with humans. We are amazed by it because the killer whales and humans appear to have discovered a mutually beneficial way in

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<sup>125</sup> This remark is not meant to be entirely flippant. It is obvious that some humans lack the same qualities that appear to prevent the majority, or possibly the totality, of non-human animals from entering into contracts.

which to co-exist. Of course, were we to encounter the same level of co-operation between humans it would not likely astonish us; we take for granted the ability most humans have to work co-operatively in far more complicated ways than that exhibited here.

The fact that a high level of co-operative behaviour between humans appears natural to us, suggests that we think of humans as essentially co-operative by nature. This does not mean of course that we do not find some forms of co-operation between humans extraordinary, surely we do; and it is in large part these types of co-operation that this thesis presents as an argument against those who would attempt to construct an explanation of human society and moral obligation on a foundation of contractual obligations: too much, of our lives together, is left inexplicable when understood contractually.

### **MacIntyre's Shoehorn**

Whereas in the case of the humans whalers and killer whales it is a relatively straightforward exercise to posit a reasonably convincing interpretation of what motivates either side, and to show how the co-operation is beneficial to all involved; it is not always so simple to unearth straightforward motivations, or demonstrate the benefit to all parties involved, in many forms of co-operation between humans. Some forms of co-operation are based not on mutual benefit but rather bring benefits to one party or require of only one party great personal sacrifice. The behaviour of the parent who dedicates his life to creating the richest and most fulfilling life for a child with disabilities so severe that they will prevent the child from living independently cannot be explained through the model of a contract.<sup>126</sup> If it true that self-sacrifice exists it is not explicable by a model of contracting.<sup>127</sup>

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<sup>126</sup> It may be objected here that by extending the types of goods that might be traded, the contracting model could be seen as relevant for a variety of different inter-personal relationships. It might be argued that what is being traded is not necessarily practical actions: the parent is not trading what we might call *practical caring units* expended on the child while the child is young, for *practical caring units* received from the child when the child grows to independence and the parent grows old. It might be argued that there is a trade but the currency of this trading is one of feeling or emotion, one of giving and taking of love between the parties. However, such a move, I believe, leads the contracting model down a very odd passing indeed. Contracting requires mutual understanding of the terms and

Should we attempt to "shoehorn" many forms of co-operative behaviour into the form of contracting, we will be required to accept a highly reductive description of what motivates humans to act as they do. Alasdair MacIntyre points out that we are at times required to set aside a calculus of actions, and accept that at times a disproportionate response is what is required of us:

For to participate in this network of relationships of giving and receiving as the virtues require, I have to understand that what I am called upon to give may be quite disproportionate to what I have received and those to whom I am called upon to give may well be those from whom I shall receive nothing. And I also have to understand that the care that I give to others has to be in an important way unconditional, since the measure of what is required of me is determined in key part, even if not only, by their needs.

When a network of such familial, neighbourhood, and craft relationships is in a flourishing state, when, that is, there is a flourishing local community, it will always be because those activities of the members of that community that aim at their common good are informed by their practical rationality. But those who benefit from that communal flourishing will include those least capable of independent practical reasoning, the very young and the very old, the sick, injured, and the otherwise disabled, and their individual flourishing will be an important index of the flourishing of the whole community, for it is insofar as it is need that provides reasons to action for the members of some particular community that that community flourishes.<sup>128</sup>

For MacIntyre, were we to attempt to find the limits of our responsibilities and duties by calculating what we have either received or hope to receive, we would expose a great deficiency in our response to the other:

So each of us achieves our good only if and insofar as others make outward the good by helping us through periods of disability to become ourselves the kind of human being - through

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conditions of the contract, it also requires that there is an ability for both parties to be clear about whether or not the goods promised were in fact delivered. A contract based on intangibles is therefore not possible.

<sup>127</sup> What appears to be self sacrifice is not always free from motivations connected to personal gain. We may act in ways that appear to be altruistic and benevolent but which are not. However, unless we believe that all altruistic acts are so tainted, we might accept that although corrupt and false forms of self-sacrifice do exist, unless all self-sacrifice is bogus this does not diminish the need for an explanation of self-sacrifice in its true form.

<sup>128</sup> MacIntyre, A. (1999). Dependent Rational Animals. Chicago, Open Court. p. 108

acquisition and exercise of the virtues - who makes the good of others her or his good, and this is not because we have calculated that, only if we help others, will they help us, in some trading of advantage for advantage. That would be the kind of human being who consults the good of others, only because and insofar as it is to her or his good to do so, a very different kind of human being, one deficient in the virtues, as I have characterized them.<sup>129</sup>

Unless we believe that we owe nothing to those who do not have the ability to provide us, in return, with some service or benefit, then a description of our responsibilities and social relationships based on contractually generated obligations will leave a great deal unclear. If the world in which we live and the communities we live in contain individuals from whom we do not receive direct benefits then we are in need of some other way of explaining what it is that brings about our obligations and what it means for the dependency of one to be capable of generating an obligation for another.

By removing the possibility of reciprocity being involved in a great many of the interchanges between humans that go to make up our social existence, we fatally undermine any understanding of society through the contractual model; by insisting on retaining reciprocity as being part of our explanations, we are forced to accept the inexplicable nature of much human social interaction.

In the contract model those who have no ability to bring a valuable contribution might be tolerated, but are not full players; we might accept a certain number of “freeloaders” but we do not act towards them out of obligation – we act towards them only out of charity. Under a contractual model we can only be truly obliged to those to whom we have contracted.

### **Moral Tightrope Walker**

It might be suggested that one way forward here is to employ something like Rawls’ *veil of ignorance*, we might set up the conditions of our social contract not knowing which part we will play within the society we create. There then is good reason to take care of all members of the society because, in that way, we protect ourselves

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<sup>129</sup> Ibid. p. 108

from suffering in any position we might fill. If we think that it might be us who falls, then we have good reason to install a safety net. The tightrope walker would not bother to install a safety net *after* he had successfully completed his act; nobody buys insurance unless they feel themselves to be at risk in some way.

Once we know what place in society we will fill, we know the result of our personal high-wire walk. If we have completed it successfully we have no need for the safety net; it becomes a rational choice for us to not bother with the effort and expense of installing a net we know *we* will never need. To avoid this situation, whereby we choose the constitution of our society on the basis of personal needs, Rawls's veil of ignorance requires us to feign ignorance and pretend that we do not know the outcome of our personal social tightrope walk.

Although we may create a reasonably fair society in this way what we create will be far from true community. We cannot create true community simply by going through the motions of being supportive of one another. Following Rawls we would be committed to support one another, but only because we allowed ourselves to be the victim of a sort of trick: had we known that we would be at the top of the heap we would not have agreed to help those at the bottom; being obliged as a result of having been tricked makes for an odd foundation to any relationship; some relationships although literally *possible* without the correct motivation are vulnerable to becoming hollow or meaningless.

Consider the effect on the future relationship of mother and child if, after giving birth, the mother were to accept the imposition of a temporary veil of ignorance which meant that instead of taking *her* child home from the hospital, she took *a* child home. There seems to be an important difference, for a parent, between *my* child and *a* child. The difference might, over time, become less important: a biological connection between children and their parents<sup>130</sup> is significant it is not essential. If the hospital simply allocated babies born on a certain day to randomly chosen parents, and if the

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<sup>130</sup> If the relationship is successful, parent would seem the most appropriate term. Primary carer is not an emotionally redolent term. If a child was unable to bring itself to use a term more personal than primary carer, the chances are that the relationship with the parent is in some way less than ideal.

parents' ignorance was maintained, the relationship between parent and child might possibly be unaffected by the swap; whereas, if we were to carry out the same process but with parents who knew that they had been deliberately sent home with possibly the wrong child and who knew that their biological child was now with some other couple, there would seem to be a difference: between parents holding this piece of information (that they had been estranged from their biological child, and were raising someone else's child instead) and parents not holding this information – it is not trivial.<sup>131</sup>

In the case of constructing a set of social rules, if there is the possibility that we might find ourselves at the bottom of a heap, we would be wise to take care that there were at least some comforts put in place there. Like the tightrope act, it is the possibility that we might ourselves need the safety-net that motivates us to ensure a net is constructed. This is a very different motivation to one that is based in our concern for others; that the outcome of the two is in one sense identical (a literal or figurative safety-net is constructed), should not lead us to believe that there are no significant differences between the two; my building a safety-net for myself, that just happens to be useful to others, is very different to my building a safety-net *because* of my concern for the safety of others. While we may be able to achieve some of the practical elements of social institutions or community by keeping ourselves temporarily ignorant of what part we will play in that society, we cannot, in this way, achieve a society identical to a society built on motivations other than self-interest.

### **Gilbert, Obligation and Snooker**

We will return now to the actions of moral actors, and the propensity those actions have for attracting moral significance to themselves simply through their being the

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<sup>131</sup> The Common Cuckoo (*Cuculus canorus*) which is a brood parasite (it lays eggs in the nests of other species) goes to great length to ensure that the host who mistakenly incubates and rears her offspring, does not understand that she has been duped. The Cuckoo lays eggs of a similar pattern to the hosts eggs and on laying the alien egg removes one egg of the host so that she does not suspect she has been preyed upon in this way. In order for the host to act like a mother to the foreign egg it is necessary that she believes herself to be the egg's mother. I would suggest that whatever elements of human child rearing, mother child relationships, are natural would also be disturbed by the discovery by the parent that they had been cuckolded.

actions of moral actors. Earlier in this chapter we met with the claim, by Margaret Gilbert, that simply taking a walk with someone is sufficient to generate a set of moral obligations. Here is a slightly more extended version of one of the earlier quotes:

When two people are out on a walk together, each is understood to be under a certain constraint. This constraint can only be removed by mutual accord. Without attempting a precise definition of ‘obligation’, it is surely plausible that the concept of obligation applies here. If I am out on a walk with you, I have certain obligations.<sup>132</sup>

That obligations might be generated by such a simple co-operative venture as walking together, illustrates that the content of an agreement need not achieve any particular benchmark in order to be able to create obligations for the moral actors involved. It is also significant that the obligations connected with this “walk based relationship” tend to pre-exist the agreement: there is usually no need for walkers to formulate a set of walking rules, the convention of walking and its obligations is normally sufficient. Unless it is explicitly stated by one of the walkers that the normal conventions for walking do not apply, on this particular occasion, it will normally be accepted that these conventions are functioning.

These are not like the arbitrary rules faced by the participant in a sport or game. The rules of walking are ingrained into a culture; they also play their own small part in constituting that culture. Some rules are not constitutive of a culture<sup>133</sup> in this way, they may still be compelling under certain circumstances but their arbitrariness reverses the onus on us to follow them; they require of the moral actor that she opt-in rather than assume her to be automatically under obligation simply through their being in place.

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<sup>132</sup> Gilbert, M. (1993). "Group Membership and Political Obligation." *Monist* 76(1): 119-32.

<sup>133</sup> There is more that could be said here about the relationship between rules that begin as arbitrary, but in time come to have significance in the culture. The game of cricket, it might be claimed, has a deep connection with being English – or at least with being a particular type of Englishman. This is just one example of how when an activity is shared over time it becomes ingrained in a culture. I wish only to say that the connection between sports and games and culture, is not as simple as my remarks above might be taken to suggest.

In the game of snooker the balls are assigned a point value ranging from one to seven. All the balls are the same weight and size; and are (essentially) equally difficult to pot – their value within the game is entirely arbitrary. The snooker player will, if he wishes to play within the rules of snooker, accept that the pink ball is worth more than the blue ball. His reasons for accepting that the pink is worth more than the blue are exhaustible through a review of the laws of snooker, and he cannot sensibly argue against the pink having a higher value than the blue with arguments based in anything other than the laws of snooker. The rules of snooker are self-contained rules, they do not reference natural law or take their authority from anything other than convention.

Whereas, for the walker it is not that walking has a special set of internally generated rules, including a rule against leaving your companion abruptly without giving a suitable excuse. Rather, the rules of engagement<sup>134</sup> for walkers – although conventional to a large degree – are also based in much that lies outside of the field of walking. Our attitude to the other pre-exists the walking agreements to which we become party. To be sure, while playing snooker a moral actor is not immune from the demands of ordinary morality, what he ought to do is not always derivable from the laws of snooker. The snooker player is subject to the same types of constraints or obligations as the walker. He is obliged, out of deference to his opponent, to complete a game he has started to play or give reasons for his stopping play. This obligation has the same basis as that under which the walker operates. He also continues to have obligations connected to his life away from the snooker table: as well as a snooker player he may also be a husband, father, citizen, prime minister...

Human intelligence gives us the ability to contract with one another in order to achieve some level of peace and productivity, but it does not create a reason for doing so. Human intelligence also gives humans the ability to subjugate one another; to

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<sup>134</sup> There is an important interplay here between morality and manners and it is possible that the two cannot be successfully disconnected. Assumptions about how others will behave in certain situations are to a very large extent relative to the manners of the particular cultural group to which one belongs. Formalities connected to meeting and leaving acquaintances vary tremendously between cultures generations and situations. Being out on a walk with someone is always being out on a walk in a particular cultural environment. So we should not assume too much about the general rules of engagement for walkers.



enslave one another; to exterminate one another. Humans have the ability to contract to co-operate but also to choose not to co-operate, not to contract. If the need to contract with one another is based on the achievement of peace, then co-operation and contracting is just one way in which we achieve peace, one tool humans possess.

In order to achieve peace we might decide to eliminate the threat the other might pose to us, either by collaborating with her and working with her towards some shared end, or, we might achieve our ends by simply eliminating the other if she poses a potential threat. The two approaches can run very closely together at times, they can be for us a real instance of choice. As has been noted earlier in the example of the killer whales in Eden, whalers typically consider killer whales a threat to their enterprise and endeavour to eliminate them from their hunting grounds, but a different choice was made by the whalers in Eden; they chose collaboration with their potential rivals as a way of achieving success.

### **Co-operation as an End**

The story of the killer whales of Eden was used here to illustrate the naturalness of co-operative behaviour for humans and, to some extent, certain species of non-human animals. Humans have a capacity to act in a co-operative manner with each other as well as with some non-humans. Co-operation can be seen as a way to achieve certain ends or it can be seen as an end in itself.

A fulfilling human life can be seen as one that achieved a level of success in valuable<sup>135</sup> projects, but a life spent in co-operation with others regardless of the outcomes of one's valuable projects<sup>136</sup> and endeavours could also be seen as a

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<sup>135</sup> The project need not have universally recognised value, but it does need to have value to someone. Success in a project that was universally believed to be valueless could not at the same time be seen as a reason for judging a life fulfilling, but leading to a fulfilling life may be the project's sole value.

<sup>136</sup> My use here of project perhaps will be seen by some readers as odd. To call something integral to a life a project may be seen to trivialize it, in the way that calling the trumpet a hobby for Miles Davis would be a trivializing and inappropriate categorization. While I accept that hobby stands to profession or vocation in this way and that Miles Davis ought not to be said to play the trumpet as a hobby, it is not clear to me that describing some endeavour as a project necessarily lessens its importance. I feel it would be reasonable to say that many morally serious people are involved in the project of eliminating

worthwhile life. Dedicating one's life to helping the most disadvantaged members of one's society could be seen as a worthwhile way in which to spend a life, even if in the process poverty is not eliminated. Dedicating one's life to caring for a severely disabled child can be thought to be worthwhile even though the child never learns to speak or walk or never achieves many of the milestones considered to be normal in a child's development. If we accept that these types of endeavours are fruits of a successful life, then we accept that a successful life need not be based on the ends it achieves.

### **The Nature of Straw Man**

This chapter has put forward a criticism of attempts to explain obligations and the demands of roles as contractual or able to be thought of as conforming to a contractual structure. It is the position of this thesis that an explanation of morality that is based in contracting will fail to capture anything like a reason for acting morally. Hardimon puts the point this way:

... the wish for a wholly contractual social world reflects a failure to accept our social nature, the fact that an important component of our ethical identity is shaped by the social arrangements into which we are born. It also reflects a failure to appreciate the existence of the substantial dimension of human ethical life.<sup>137</sup>

The important question here appears to be does anyone wish to establish a "wholly contractual social world", or is anyone trying to explain the social world of humans in a wholly contractual way? Michael Lessnoff suggests that social contract theorists typically attempt something far less ambitious than trying to fit human society into a contractual structure:

Unfortunately, however, this terminology may give the impression that the theory (or theories) in question maintain that 'society' is the result of a contract made by (non-social or pre-social) individuals. Such a conception can easily be ridiculed, not just as historically inaccurate, but on

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poverty worldwide, or, my current project is completing a thesis for submission. I see no reason why describing raising children as a project should be felt to diminish its importance.

<sup>137</sup> Hardimon, M. O. (1994). "Role Obligations." *The Journal of Philosophy* 91(7): 333-363. pp 353-54

the more fundamental ground that it is incoherent. Not only has man been always by nature a social animal, the concept of contract is itself a social concept, which presupposes social life among men. Pre-social men, if they could exist, could not even have the concept of a contract (or pact or covenant), and hence could not make one (they could not even have a language). True. But this not infrequent criticism of social contract theory is largely aimed at a straw man. Very few, if any, of the major contract theorists have actually argued in this way. Rather they have been concerned with the origin and justification of specific sorts of social institutions, and indeed, above all, institutions of political authority, centralised government and positive law. Thus, for example, the state of 'war' posited by Hobbes as natural to men is clearly one of recognizable social interaction, though marked by intermittent fighting and constant fear of fighting. (Admittedly, Hobbes did in one very famous sentence, describe men's natural condition as solitary; but it is obvious from his overall account that he meant this only in a relative sense.) Locke's 'state of nature' is even more obviously a social state, 'with a law of nature to govern it'. Rousseau himself did indeed (in the Discourse on the Origin of Inequality) depict man's original state as solitary and genuinely non-social – but society is there described as resulting from a spontaneous process, not from a contract. In his Social Contract, despite the name, he is concerned, like Hobbes and Locke before him, with the establishment of political (or civil) society.<sup>138</sup>

The less ambitious the claims made on behalf of social contract theories are, the more easily criticisms like Hardimon's and the ones made by this thesis can be dismissed. However, the less that is claimed on behalf of social contract theories, with regards their being able to present an explanation of the foundations of social life, the more social contract theories will be seen to rely on other types of foundational accounts of why and how humans organise their societies in the way they do.

If a *state of nature* picture makes no real claims about the nature of man, it will need to make use of some other account that does (that is if it intends to speak about the foundations of social institutions and does not make the claim that theories concerning the nature of man to be totally irrelevant in understanding the constitution of social institutions). If the claim is not really being made that man is by nature solitary and always at war with all other men, then there is no real refutation of a description of man as social and altruistic. The point being that as far as the organisation of society

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<sup>138</sup> Lessnoff, M. (1990). *Social Contract Theory*. Oxford, Basil Blackwell. pp 2-3

is concerned it does matter which account is closer the mark; it is not possible to move on to an explanation of why man lives how he lives, and to put forward ways of designing better society, without first acknowledging that the nature of man will be a significant factor in determinations about the structure of a suitable, or even just preferable, society for him to live in.

On a far simpler level it is fair to say that without an understanding of the nature of the Tasmanian Devil, it would be almost impossible to create in a zoo or nature park a suitable environment and a social structure in which Devils qua Devils might be expected to flourish. (Or, drawing on the Hobbesian analogy of man as machine we might say that we cannot design a better clock without first understanding how clocks function.) In the same way, reasonable and useful discussion of human society must require of participants, that they have at least made some attempt to understand fundamental aspects of human nature.

## **Conclusion**

This chapter has spent a good deal time considering contracting in the life of the moral actor. The definition of contracting has been broad, and our view has strayed far wider than but included the social contract – with a concentration mostly on Hobbes. The interest of the thesis in contracts and agreements was due to the potential for the moral actor to become involved in conflicting obligations through contracting and making agreements with others. The chapter, in line with the overall thesis, has argued that while conflicts might arise for the moral actor, he or she is not at liberty to simply cite these conflicts as indicative of fissures within his or her moral outlook, but rather the moral actor is responsible for attempting the integration of conflicting obligations into his or her singular moral position.

The chapter has taken an interest in the ways in which humans become communities; it has put forward a particular conception of humans as essentially co-operative, and because it has accepted human co-operativeness as intrinsic in this way, it has rejected attempts to frame human society as contractual. Instead the thesis maintains that a contractual model while suited to describing one form of co-operative behaviour – namely contracting, it is strained when applied to broader explanations of human

society. The example of human/non-human co-operation was intended to illustrate co-operation independent of contracting: to show the natural co-operative nature of humans and to show how functioning co-operatively is not reliant on contractually generated obligations.

As well as this, during the chapter, we considered other ways in which the moral actor can come to find herself committed to the fulfilment of duties, and to what extent those duties are binding for her. As well as this, here we considered the moral actor's limits in accepting duties as binding, and the authority of others to generate binding duties for her. It was argued that in order for a moral actor to accept an institution's capacity to generate binding obligations for him or her, it is necessary for the institution to be constituted in ways compatible with his or her moral outlook. Through the example of sports and games we examined arbitrary and non-arbitrary rules, laws and directives.

The claim was made that the moral actor needs to be a careful chooser of alliances in order to avoid becoming committed to act in ways inconsistent with her moral outlook. This chapter has laid the groundwork for a claim that will come to the fore later in the thesis that the primary responsibility of the moral actor is at times lost sight of: the moral actor having her opportunity to choose in this way rescinded or made redundant by the magnitude of some need – often a need connected to her community's survival. That at times a certain seriousness of outcomes is taken, by some, to indicate a need to limit the moral actor's autonomy, and that even a temporary limitation and localised limitation to the moral actor's autonomy can be destructive of his or her moral agency as a whole.

## CHAPTER FOUR

# Much Obligated

### Introduction

In the last chapter we considered whether or not it was useful to consider human society as though it were contractually based. The position put forward in that chapter was that our understanding of society as essentially contractual was so crude a reduction of the relations between humans as to be positively harmful when used as a method of explication. There was, in the last chapter, a clarification of terms including contract and covenant. It was argued that although covenant has forms of usage that differ substantially from contract, there is a degree of interchangeability between the terms and that this thesis would use covenant as a contract that extends over time. The chapter also examined the establishment of obligation by convention and this it did, in part, through the use of examples in sports and games.

This present chapter will develop some of these themes; it will draw on some examples introduced in the last chapter, but its focus will be on the legitimacy of social institutions rather than on their nature. Having said something in the last chapter on the relationship between individuals and types of institutions, we will now consider more closely the way in which individuals might decide they ought to interact with these institutions. To what extent, after having created or inherited some set of institutional obligations, moral actors will take themselves to be compelled by those obligations. This question is of importance because of the high degree of probability for conflict between an individual and the institutions to which she is connected. At the heart of this question is a determination on the extent of the autonomy of the former and the authority of the latter.

As well as the potential conflict between the individual and what might impinge upon her moral autonomy, this chapter will also investigate, by way of a continuation of some of the ideas we began to explore in chapter two, including the legitimacy of the

moral actor consenting to demands that seriously conflict with her moral outlook. In this chapter the investigation will take the form of a critique of institutions designed, or believed to be designed, to override the moral autonomy of their members.

However, in the course of this chapter our first concern will be with the legitimacy of institutions that might make demands on an individual that conflict with that individual's moral position. There are two questions that require consideration here, the first: that it has to be established that there exist legitimate institutions; second, that some particular individual is obliged to follow the directions of such an institution even when those directions causes the moral actor to act contrary to her personal moral outlook.

As was the case with our earlier discussion about minimal legitimacy, what is of most interest here is how the moral actor stands to the institution, rather than how the institution stands to some ideal of legitimacy. As was noted earlier there are interesting and worthwhile questions connected to the behaviour of moral actors that require no more than an understanding of *that* moral actor's position in relation to the demands and moral implications of *that* actor's particular circumstances. We can ask sensible questions that limit themselves to what it means for that particular moral actor to act in that particular way, without being committed to a subjectivist view of morality. The individual's understanding of the moral implications of her actions need not settle the matter of what is right and wrong, but it is still an important line of enquiry in our investigations into morality. We do not need to wait until a universally accepted standard of morality has been agreed upon, before beginning to consider any other question in moral philosophy. If we were to hold ourselves silent until all questions were in this way answered definitively, we would be silent all our lives. And we would be silent about many things, which are worthwhile topics of discussion.

For those satisfied with an understanding of morality as being based in no more than convention, or on subjectivist grounds, all moral questions may be exhausted through an examination of certain elements of the relationship between an individual and her moral beliefs, or of an individual and her relationship to her community. The suggestion being put forward in this thesis, is that we ought to follow the subjectivist

and the conventionalist this far at least: we should follow them in an understanding of the moral position of moral actors as something that can be observed through their actions rather than something that might exist independently of the way in which they act. We should not follow the subjectivist or the conventionalist so far as to agree with them that there is nothing else to be said once a moral position has been expressed through the institution of a convention or the choice of action. This thesis holds to the position that actions can be wrong; conventions can be wrong, and that what is of interest in questions of morality is not exhausted through a consideration of either convention or personal preference. We will return to this theme shortly, but first let us flag another significant aspect of obligation and that is the question of consent.

## **Consent**

In our discussion of consent and obligation we will revisit, for a time, the main theme of the last chapter of contracts and contracting. Any discussion concerning contracting or agreeing to obligations, needs to consider the part played by consent in the creation of obligations for the moral actor. We must therefore consider here whether or not a moral actor can be under *obligation* to consent to a contract, and just how it is possible – if a moral actor *is* obliged to accept the conditions of a contract – that he or she is under a set of identical obligations before and after consenting to the contract? To put this another way: being obliged to consent to a contract includes being obliged to fulfil the terms of the contract to which we are consenting (as it is the necessity to fulfil these obligations that created the necessity to accept to consent to the contract); given that the obligation precedes the consent, then the act of consenting appears to be irrelevant.

An example of this irrelevancy of actually consenting is given here in what Hanna Pitkin has to say about Locke's view of the social contract. Pitkin argues that the obligation that precedes the consent to the contract makes the giving of consent irrelevant.<sup>139</sup> we cannot fail to consent to the right type of government, and we cannot

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<sup>139</sup> As many have pointed out and Michael Walzer reminds us here in this quote, contracting also presupposes the *opportunity* for consent: "The metaphor, I suppose, is inappropriate, since it is



succeed in consenting to the wrong type of government. Our consent is redundant; we remain equally obliged (positively or negatively) before and after giving our consent:

If the terms of the original contract are, as I am arguing, “self evident” truths to Locke, which could not be or have been otherwise, then the historical veracity of the contract theory becomes in a new and more profound sense irrelevant. For now the Lockean doctrine becomes this: your personal consent is essentially irrelevant to your obligation to obey, or its absence. Your obligation to obey depends on the character of the government - whether it is acting within the bounds of *the* (only possible) contract . If it is, and you are in its territory, you must obey. If it is not, then no amount of personal consent from you, no matter how explicit, can create an obligation to obey it. No matter how often you pledge allegiance to a tyranny, those pledges *cannot* constitute a valid obligation, because they violate the law of nature. So, not only is your personal consent irrelevant, but it actually no longer matters whether this government or any government was really founded by a group of men deciding to leave the *state of nature* by means of a contract. As long as a government's actions are within the bounds of what such a contract hypothetically *would have* provided, would have *had* to provide, those living within its territory must obey. This is the true significance of what we have all learned to say in political theory: that the historical accuracy of the contract doctrine is basically irrelevant - that the contract is a logical construct. The only “consent” that is relevant is the hypothetical consent imputed to hypothetical, timeless, abstract, rational men.<sup>140</sup>

We can then be, on this account of Locke, compelled to consent to a contract – for not to do so would be for us to act irrationally. If the character of the government is such that it would be, for the rational man, superior to remaining in the *state of nature* then the requirement that he agree to consent is compelling for him: purely on the strength of his rationality. A social contract that helps man achieve a better life is not optional for the rational man, it is demanding of his acceptance of its conditions, because the first obligation of the rational being is to not act against the demands of rationality.

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impossible to imagine the occasion on which such a contract could have been agreed to.”Walzer, M. (2004). *Emergency Ethics. Arguing about War*. New Haven, Yale University Press: 33-50. p. 43

This concern could be answered, to some extent, by the notion of a hypothetical agreement. It is not necessarily any more inappropriate, to make predictions about what future participants in the contract would agree to than it is to make the sort of predictions on which much is based in social contract. These reasonable man assumptions are necessary in the construction of any hypothetical contract.

<sup>140</sup> Pitkin, H. (1965). "Obligation and Consent--I." *The American Political Science Review* 59(4): 990-999. pp. 996-7

In other words once I know all the circumstances of some actor's situation and can decide on what is best for her, because as a rational being, and committed to the pursuit of the best outcome from a rational perspective, there is in fact only one choice open to her. I will be in an equally good if not better position to exercise her ability to choose as she is – in fact I may even be in a better position – if I have superior ability to her, for discovering what is in fact in her best interest.<sup>141</sup> One could in this way be an expert chooser.

## Expert Choosers

The idea of there being expert choosers is not all that unusual, many stand in just such a relationship to their children – at least up to the point that their children reach a certain age of independence, at which time the child will be accepted as now being either more expert in choosing for themselves or at least sufficiently expert that they might be given licence to make their own mistakes. Typically this is what happens in the lives of moral actors: a dependency on some other expert chooser until such time that they attain sufficient choosing proficiency. But there are also those whom the

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<sup>141</sup> The community therefore might be said to be in a better position than the individual in deciding whether or not the individual ought to consent to the government. This of course would make consent an oddly compulsory activity, so the contribution of the majority decision might better be thought of as adding weight to individual decision making. Hanna Pitkin puts the problem thus:

“Besides an individual's personal consent, traditional consent theory offers as an alternative criterion the "consent of the governed," the consent of all, or a majority of one's fellow citizens. Of such consent, too, we would have to say that it can not simply be dismissed as irrelevant... But again, the consent or dissent of the majority cannot by itself be decisive for defining your obligation. Majorities are sometimes wrong, and have been known to do evil. Resistance might be justified in Athens under the Thirty Tyrants or in Nazi Germany despite the majority.

But majority consent does enter the argument at another level, in a way quite different from the relevance of personal consent. Majority consent may be relevant as a *way* of assessing, as *evidence about* the nature of the government, given that the nature of the government bears on political obligation. In fact, a variety of considerations each of which we might want to call "consent of the governed" can be used in the process, evaluating a government. They may come into conflict with each other, and their relative weight and importance will be a matter of one's political values, of what kind of government he thinks desirable or even tolerable."Pitkin, H. (1966). "Obligation and Consent--II." The American Political Science Review 60(1): 39-52. p. 43

community deems insufficiently rational to become their own expert chooser, and who continue to function under the directions of a guardian of some sort.

Also there are those who for some reason or other lose their status as expert or self choosers and find themselves perhaps under the direction of either a medical professional, family member or court appointed guardian: someone considered to be more expert in choosing for them than they are themselves. Continuing to be accepted as the most expert chooser in one's own life is never guaranteed, most of us at some time or other have this privilege taken from us for at least brief periods of our lives.

The idea that a person must at times have her freedom to choose for her own self suspended or rescinded is consistent with an acceptance that a certain level of rationality must be demonstrated by the chooser in order for a choice to be considered valid. Falling beneath a certain threshold of rationality prevents one from the freedom to choose badly. The idea being that we cannot accept that anyone in their right mind would choose *that*, or no one in their right mind would fail to choose *this*. We know this because *we* are rational and *we* can recognize certain choices, ones that we would never make, as being irrational. In this way an individual might come to discover a limit to her own autonomy.

Some individuals, for example, are considered incapable of the management of their own finances; it is deemed necessary and in their best interests that they have appointed to their affairs a financial trustee who is tasked with making final decisions on how the individual's monies are spent. The expert has to decide how much of the individual's money should be spent on clothes or a holiday, or how much he might be allowed to give away and to whom that money might be given.

The oddity here is that many of these are matters over which the community at large could never be expected to reach consensus. Just how much one person spends on clothes or fine dining, for example, is generally accepted as an expression of personal preference, or as indicative of certain aspects of their personality, more than there being an absolutely right amount that ought to be spent in each category. These are highly subjective choices; typically we allow rational adults great discretion in how they choose to spend their money.

There may well be some instances of excess that the community would collectively frown upon but there is within the space delineated by these extremes great latitude available to most of us on matters of personal consumption. This is even true when the individual's money is being provided by the state as some type of social security.<sup>142</sup> When the community accepts us as sufficiently rational we might choose to spend our money in almost any way we see fit. Our actions may be generally seen as foolish or irresponsible but we will normally be allowed the freedom to choose badly. We will be permitted to fail in our financial stewardship, because allowing others to fail in ways such as this is a necessary component of respecting their autonomy.

The same theory applies in all of these cases: if the individual was sufficiently rational they would always choose X; therefore, in the event of them not being capable of seeing that X is indeed the right choice for themselves to make, they will then have exhibited that they are in some way defective in their rationality; so we will then have the right or obligation to choose X for them. The difference between the way in which consent becomes superfluous in the case of the person who is not sufficiently rational and the person who is, is that those who are not sufficiently rational are not permitted to choose badly; while those who are, are permitted to choose badly. One benefit of being accepted as a rational autonomous being is that we are granted the right to choose badly: to choose the wrong way forward.

### **Being Free to Fail**

Our being permitted to fail in ways like this is an essential aspect of our being accepted as truly autonomous beings. If this is taken from us, the freedom to "mess things up", to make the less perfect choice, then we are being treated as one who has fallen below the standard deemed necessary in order to be considered an individual

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<sup>142</sup> Of course I am not ignoring the fact that at times we do just that: take control of the individual's spending of his welfare payments. The recent intervention by the Australian government in certain Aboriginal communities, where welfare payments were quarantined and extraordinary restriction were imposed, being an example of this. See the special conditions imposed on these communities at: Institute, A. L. I. Retrieved 03/05/2011, 2011, from [http://www.austlii.edu.au/au/legis/cth/num\\_act/ntnera2007531/](http://www.austlii.edu.au/au/legis/cth/num_act/ntnera2007531/).

responsible for their own actions. This takes place in many parts of our lives<sup>143</sup> not simply in financial matters, and of particular interest to this thesis is when this occurs in the making of choices as part of morally significant concerns.

This thesis takes great interest in how being permitted to choose requires that the one doing the choosing has the potential to choose badly or less than ideally. Without allowing others this opportunity, and accepting this level of risk, we cannot claim to be allowing them to choose for themselves. Choice, when sufficiently constrained becomes quite hollow and meaningless. With our opportunity to choose sufficiently curtailed, we cease to function as full moral actors.

Our permitting others true choice, giving others the opportunity to make wrong or less perfect choices will mean that there will be the possibility that those choices will cause suffering or loss not simply to the one who chooses but to all those affected by her choices. We will, by our allowing true choice, put at risk those susceptible to harm or loss when the choice made is less than what we consider to be optimal. As to how much risk we might reasonably accept on behalf of others – these are questions connected to how we understand freedom and autonomy should be balanced against security and the common good. Again our rationality might be brought into question in the choices we make in the realm of the moral. As the place of rationality or reason in our choices was famously questioned by David Hume:

It is not contrary to reason to prefer the destruction of the whole world to the scratching of my finger. It is 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. It is as little contrary to reason to prefer even my

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<sup>143</sup> It is good to remember that as rational agents we do not always choose, in every aspect of our lives, as a result of rational analysis; when an individual has been deemed incapable of choosing in many of the important decisions of his life he may lose not only the opportunity to make rational choices but also choices that are more connected with spontaneity – or whim; or risk-taking; or passion. The rational individual is allowed to take risks; be extravagant with his money; get married dressed as Elvis during a weekend in Vegas: because he is accepted as rational. When a pair of dementia patients fall in love, the level of rationality involved need not be lower than that they might have employed in choosing a partner in their twenties. This is a great difficulty for those charged with being expert choosers for them.

own acknowledged lesser good to my greater, and have a more ardent affection for the former than the latter.<sup>144</sup>

Therefore, taking some caution on board about the relationship between rationality and morality, what type of freedom to fail, to choose badly, is consistent with being an autonomous moral agent? The point being that consent requires freedom, and freedom means, in part at least, the freedom to fail. We are obliged to accept certain risks in order to fully acknowledge the autonomy of others; we require certain indulgences from others if we are to function as full moral agents.

The ways in which a moral actor might fail requires some further elucidation at this point. A moral actor might fail to act in accord with what he or she take to be morally right; or he or she might fail to prevent disaster or loss to themselves or to others due to being constrained by, what they believe to be, morally right; or he or she might fail to act in accordance with his or her personal moral position due to the demands of a role he or she fills.

In the first mode of failing, the moral actor is simply not living up to his or her own expectations: he or she is falling short of doing what is morally expected. In the second, he or she is accepting a limitation to his or her agency, created by his or her moral beliefs. In the third, he or she is accepting a limit to his or her moral freedom, created by his or her obligations under his or her role. The first two ways of failing are consistent with the moral actor acknowledging his or her responsibilities as a moral actor – the third way is not.

For the moral actor to make the third type of failure consistent with a true understanding of himself or herself as an autonomous moral actor, it would be necessary for him or her to take responsibility for being in that role. If he or she does not do this, but instead takes the demands and obligations of the role as external to his

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<sup>144</sup>Hume, D. (2008). A Treatise of Human Nature, NuVision Publications. p. 298

or her responsibilities as a moral actor, he or she will be exhibiting, for whatever reason, an incomplete moral agency.

As these are different ways in which a moral actor might fail, it might seem reasonable for us now to consider the ways in which these failures might be avoided. However, it should be clear by now that this thesis maintains that for the moral actor failure in the first two ways must continue to be a possibility, if the moral actor is to function as a full moral actor. To remove the possibility of the first two types of failure would be the destruction of real moral agency.

Our freedom to fail and our freedom to choose the option that is perhaps less than ideal are connected. The individual might be given a choice, but in such a restricted way that whichever option they choose they are choosing against their will. If all the choices are unpalatable, choosing may not express anything like a true preference.

### **Obligated to Consent**

If choice is simply to be understood as finding the best of the available options, choosing the most rational option, it is a less active individualist process than it might at first be understood to be. In the case of our choice to consent to being subject to a political authority, this would suggest that we must simply accept the best option being offered to us. However, if none of the options offered to us are in any way attractive, are we still required to accept the best of what might be a very bad lot? Are we then simply victims of bad luck? Or, does our freedom extend to the rejection of all options on offer?

If we are required to give consent to our being governed by a government that we do not believe ought to be made legitimate, we may be restricted to a choice between a bad government and no government at all; if when faced with even an extremely flawed government we are obliged to accept its authority over a state of anarchy, then it is not the case that we are in a position to express our choice freely. Our freedom to choose and how we actually chose are interdependent. For us to choose with sufficient irrationality is for us to expose ourselves as irrational, and thereby relinquish our possession of our right to choose.

Perhaps it is not the case that we are obliged to consent to any government which can be shown to be, in some way, an improvement on the *state of nature*; as we are not required to buy from any business that provides a useful service – a point made here by A John Simmons:

In opposition to such a suggestion, the Lockean, I take it, wants to say the following: the general quality or virtues of a state (i.e., those features of it appealed to in its justification) are one thing; the nature of its rights over any particular subject (i.e., that in which it is legitimate with respect to that subject consists) are quite another thing. The legitimacy of the state with respect to you and the state's other moral qualities are simply independent variables, in the same way that the rights of some business to provide services to you and to bill you for them is independent of that business's efficiency or generosity or usefulness. It can be on balance a good thing such a business was created and continues to exist, and its relationship with willing clients can be morally exemplary, without the business thereby coming to have a right to have *you* as a client. The fact that a state or a business has virtues that can be appealed to in order to justify its existence cannot by itself argue for its having special rights over particular individuals. Only interacting with you - and in a way that we only suppose gives one party a moral right to expect something of another - will seem to "legitimate" its imposition and/or enforcement of duties on you.<sup>145</sup>

Simmons does acknowledge that there is some dis-analogy here: there are significant differences in the functions performed by a state, and the interactions a state has with its citizens, and the ways in which businesses interact with their customers. As well as this it is typically a far more simple matter to opt-out of a relationship with the business than it is to opt-out of the relationship with the state in which we live, whether or not that particular state provides "good" governance.

Being the patron of a business is not normally something that happens in a passive way, or at least it seems fair to say that we typically find ourselves as citizens of a state in spite of our having not necessarily made any great positive choice to be in that relationship. David Hume makes this point here:

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<sup>145</sup> Simmons, A. J. (1999). "Justification and Legitimacy." *Ethics* 109(4): 739-771. p. 752



Should it be said, that, by living under the dominion of Prince, which one might leave, every individual has given a *tacit* consent to his authority, and promised him obedience; it may be answered, that such an implied consent can only have place, where a man imagines, that the matter depends on its choice. But where he thinks (as all mankind do who are born under established governments) that by his birth he owes allegiance to a certain prince or certain of government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims.

Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day-to-day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her.<sup>146</sup>

It is an unsupportable assumption that all citizens of the country can be taken to consent to that country's government simply by their remaining in that country. Before any assumption is made we would need to be satisfied that, for the citizen, sufficient freedoms had or did exist to have made his remaining in the country a matter of choice. Being born into a particular country is no less a matter of chance than being born into a particular family or with particular abilities or disabilities. Choosing not to be a citizen of one's country of birth may be like choosing to have been born with the ability to sing or walk: not something one has any real control over. Some parts of a moral actor's life are more amenable to alteration in line with his preferences and choices than others.

In the example of the patronage of a particular business, it is normally an expression, to some degree, of a personal choice. However, under certain circumstances an individual might be charged with being irrational were she to refuse to patronise some particular business; it might be considered irrational for a parent living in a small

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<sup>146</sup> Hume, D. *Essays Moral, Political, and Literary*, InterLex. Para. 25/49 mp. 475 gp. 451

town to boycott, for no good reason<sup>147</sup>, the sole provider of a necessity – thereby greatly inconveniencing her family.

We might ask ourselves would the business in this case have a claim on her patronage simply because of the fact that it provided an important service and had no competitor? Putting aside essential services, what of non-essential services that could be said to add to her family's quality of life: I have in mind here cinemas or newsagents or cafes? Could the boycotting of the only newsagent accessible to the family be an irrational act, and is this the same as saying that that business has a right to the woman's patronage: that she is obliged to use its services?

If this were the case it would seem to create legitimacy for any necessary business that has through whatever means either accidental or deliberate, become or made for itself a monopoly. Having removed all competitors would then be sufficient in order to claim a legitimate status as provider of a service; the complaints of the customer that she is less well served now that the monopoly has been created, would be countered by the claim that given the present set of circumstances; i.e., the lack of any other provider of the service, it would be irrational for her to choose *not* to become a customer of this business.

If success in politics is, to some extent, connected to the ability of the politician or the political party to destroy, undermine or remove in some way those in competition for the preselection or the election, then an analogy with the creation of a monopolist business is not all that inaccurate. Also, once matters have been decided by even the most open and freely contested democratic election, the winner is then installed in, and will exercise, something like a monopoly on governing the state until the next election. Once the election has been decided the individual citizen's choice as to who they wish to be governed by becomes irrelevant: the population, by weight of numbers, has decided for her. The government's "monopoly" will of course be more

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<sup>147</sup> Just what should constitute a "good reason" in a case like this is of course open to various interpretations. I mean no more than that the level of inconvenience to the family and the reason for boycotting the shop could lead us to accept that the woman was being unfair or causing unnecessary difficulties for her family by boycotting the shop: that her reasons for the boycott could be said to be trivial or selfish.

or less unfettered depending on the strength of the opposition, but the same is true of the business that enjoys a monopoly: it may be untroubled by attacks on its position from its would-be competitors, or it may be subject to constant undermining, either through challenges in the courts against its monopolistic behaviour or through attempts by competitors to overcome the monopoly through product development or service provision.

However, Simmons also suggests that even the most illegitimate of governments can be justified in certain actions and supposedly everyone is, in some way, obliged to accept their exercise of authority:

In my view even the government of the Third Reich was justified in prohibiting rape and punishing rapists, however illegitimate that government may have been with respect to its subjects and however unjustified was its existence (i.e., however much of an improvement over its rule even the state of nature would have been). It is important to see that justification for particular actions or policies are not in any simple way related to or derivable from justifications for existing or from position of the right to be the one who acts or enable is policies.<sup>148</sup>

Just what this means as far as our being obliged to consent to a government like the Third Reich is not clear. If we agree with Simmons we seem to be accepting at least some level of necessity can exist in our acceptance of a/any government's legitimacy. We would need to be clear here about what exactly we are accepting.

We seem to be agreeing that the Third Reich can punish rapists, but is this authority – should we choose to grant it – anything like the authority, of a legitimate government? Or is it more like the acceptance of a vigilante group? If our acceptance that the Third Reich can punish rapists is more akin our acceptance of the actions of a vigilante group, then it ought to be seen to add very little to their legitimacy. Even the

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<sup>148</sup> Simmons, A. J. (1999). "Justification and Legitimacy." *Ethics* 109(4): 739-771. p. 770

illegitimate government is capable of bringing about better or worse outcomes, in just the same way as a vigilante group.<sup>149</sup>

Or, to consider another example, we would acknowledge that the de-registered doctor has special expertise in an emergency, and so we might allow her to act *as a doctor* in spite of the fact they we no longer recognize her right to practice. This all points to the fact that under certain circumstances we might find it preferable to choose to co-operate, but that our co-operation ought *not* be taken as an indication of any broader legitimisation of those we chose to co-operate with.

If then, the requirements of rationality are ever able to demand of us the acceptance of a contractual relationship, it would not be through the act of contracting that we become obligated to fulfil the demands of the contract, our obligation to fulfil the demands of a contract appears to pre-exist our consenting to the contract. Also my not recognising the legitimacy of the authority of someone or some group, does not preclude the possibility of my coming to an identical conclusion about how I ought to act. I might find myself acting in accord with the directions of someone whose authority I have rejected: this is a matter of coincidence only.

It is possible even to reject that there can exist, or have ever existed an instance of legitimate government, yet still find oneself making the decision that one is obliged, under the circumstances, to act as though some particular command or direction ought to be followed. Robert Wolff in *In Defense of Anarchism* defends a position that rejects the possibility of the instigation of a legitimate state. No state, according to Wolff, can claim an authority over an individual that enables it to direct her or him to act contrary to the outcome of her or his moral discernment:

Even under the most unjust of governments there are frequently good reasons for obedience rather than defiance. It may be that the government has commanded its subjects to do what in

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<sup>149</sup> Of course we might reverse what has been said here to support the idea of the legitimacy of vigilante groups. I have no problem with the idea that vigilante groups will at times be the most appropriate enforcers of justice. Though once their legitimacy has been established, it becomes problematic to continue to refer to them as vigilante groups. The highly organized and systematized vigilante group must at some stage morph into the country's police force and justice system.

fact they already have independent obligation to do; or it may be that the evil consequences of defiance far outweigh the indignity of submission. A government's commands may promise beneficent effects, either intentionally or not. For these reasons, and for reasons of prudence as well, a man may be right to comply with the commands of the government under whose *de facto* authority he finds himself. But none of this settles the question of legitimate authority. That is a matter of the *right* to command, and of the correlative obligation *to obey the person who issues the command*.

The point of the last paragraph cannot be too strongly stressed. Obedience is not a matter of doing what someone tells you to do. It is a matter of doing what he tells you to do *because he tells you to do it*. Legitimate, or *de jure*, authority thus concerns the grounds and sources of moral obligation.<sup>150</sup>

Choosing how to act solely because of a directive; or in obedience to a role; or out of fidelity of the terms of a contract, is inconsistent with being a fully accountable moral actor. In this thesis this point has been made negatively: that the moral actor must be allowed scope to fail. Roles, contracts and institutions can, in order to achieve ends to which they are aimed, attempt to deprive the moral actor of her right to fail.

It is at the heart of this thesis the claim that moral actors, if they are to fulfil the requirements of being a morally autonomous individual, need the freedom to fail in projects and endeavours; including projects and endeavours they share with others; and including projects and endeavours in which failure will bring about the most serious of consequences. In the absence of this freedom to fail, moral actors cease to be able to function with a level of autonomy sufficient to maintain direct connection between themselves and their actions, and therefore become less obviously morally responsible for those actions.

While as we concluded in the last chapter, the contract model is an inadequate explanation of social interaction, obligation and morality, contracting to others is a human activity that is often morally significant. So, it is important for us to now consider some other moral implications involved in contracting.

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<sup>150</sup> Wolff, R. P. (1998). In Defence of Anarchism. Berkeley, University of California Press. p. 9

## Co-operation with Evil

As was suggested in the last chapter, individuals contract with one another as a means to some end. If we believe it is of moral significance how we achieve our ends, what types of means might legitimately be employed, then we will also believe that the contracts we strike (as means to those ends) must themselves be answerable to moral scrutiny. If we are concerned only with ends we achieve and believe that good ends always justify the means required for their achievement, then our contracts need only be useful and aimed at some good ends in order to gain justification.

But as it is clearly possible to contract with others to achieve evil ends, then in such cases means appear to stand condemned simply in relation to their being the means to evil ends. For example: if Sting were to enter into a contract with Prince with the intention of killing Elvis, then assuming we accept that the killing of Elvis is an evil end<sup>151</sup>, the means by which Sting and Prince do the killing are evil simply by their connection to the evil of murdering Elvis. Perhaps it is the case that the means they employ may be more or less evil: it may be that we will condemn one method of killing Elvis more than another; killing Elvis in a way that endangers the lives of innocent bystanders may be more evil than a more targeted assassination technique such as a sniper's bullet, simply because of the potential for greater harmful side-effects: the deaths of innocent bystanders for example. An individual's actions connected with the bringing about of evil ends are themselves evil; contracting with others to achieve evil ends is a means towards achieving evil ends. Therefore, contracting with others in order to achieve some evil end is in itself an evil action.

In the example above, Sting and Prince institute a contract with one another for the purpose of doing something evil. In doing so they will have made certain promises to one another, and they will have created the expectation in each other that they will be attempting to fulfil the obligations connected to their contract. These obligations might or might not be fulfilled. If they both do fulfil the obligations of this contract it

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<sup>151</sup> For example, it might be the case that killing Elvis will lead, on balance, to a positive outcome. So if this were to be looked at from a purely consequentialist standpoint then killing Elvis might not be seen as evil – unfortunate for Elvis, but on the whole a good action.

is to be expected that they might succeed in their purpose and Elvis will die. If they do not fulfil the obligations Elvis might live, but in that case, Sting and/or Prince may be guilty of breaking their promises to one another.

Unless we reject the original agreement or contract's validity, and see it as incapable of creating for the parties involved demands and obligations, we appear to be committed to a position from which we can recognise that even within what we accept to be an unjustifiable project, there exists an opportunity for the parties involved to either demonstrate loyalty and fidelity to the terms of the contract, or for them to renege on their commitments and obligations to each other. If we wish both that Elvis not die and that people take seriously the demands of contracts and agreements, we appear to be committed to an inconsistent position of condemning the purposes of this project but also demanding that the parties involved honour their promises.

How best we might overcome this apparent inconsistency is unclear. It is unclear that the actions of moral actors ought not to be discussed in terms of their being better or worse actions, once it has been established that the moral actor is involved in a project that we take to be unjustifiable or morally condemnable. Were we to make a move in this direction we would be excising from moral scrutiny the actions of moral actors involved in any activity, enterprise or project with which we had moral disagreement.

The actions of the soldier fighting in an unjust war would then be considered uniformly morally wrong. This seems to be an unsatisfactory way forward, for a number of reasons. Firstly, because all those involved in an unjust war are not equally responsible for the war's existence; nor are all participants equally free to choose whether or not to participate. Secondly, not all actions performed by soldiers in an unjust war are equally wrong; and thirdly there is a difference between fighting in an unjust war that you know to be unjust, and fighting in an unjust war that you believe, however mistakenly, to be just and worthwhile.

The legitimacy of a war or the legitimacy of a particular government is a significant moral factor in the reasoning of those who choose to join or collaborate in either. The moral actor who decides, with full or practically full knowledge of the facts, to take part in a project or enterprise that she accepts as seriously morally compromising for

her, makes a choice that is very different to the choice made by the moral actor who mistakenly believes a project or enterprise to be consistent with her moral position.

Here the idea of minimal legitimacy discussed earlier is worth revisiting. We are interested, and rightly so, in how moral actors act not only in morally worthwhile projects, just wars and in legitimate governments, but also how they act when they find themselves party to the unjust war or under (perhaps even part of) an illegitimate government.

Even within the context of some morally wrong project or enterprise there is scope for the moral actor to act in a way that is morally better or worse. The guard in the concentration camp can be more or less cruel – that is a morally significant fact about the guard as an individual. The citizen under an illegitimate and corrupt government can lead morally better or worse life – that is a morally significant fact about the citizen as an individual. While others may be responsible in a far more direct way for the creation of the concentration camp or the instigation of an illegitimate government, these institutions are peopled by moral actors, and they are peopled by moral actors whose freedom to choose to be part of these institutions varies widely.

What is also of moral significance in cases such as those described above, where moral actors find themselves inextricably linked to morally problematic institutions or projects, is a question of just how obliging the obligations we get through being a party to such institutions and projects are. Taken as a whole, we may see very little that can justify the continuation of this institution or that project. Moral actors however, can find themselves in the middle of a moral mess that is not of their making; no matter how much she would prefer not to be part of this institution or project – she is, and because she is she has the opportunity to bring about better or worse outcomes (to act in better or worse ways) and although she may not have the freedom to extricate herself from the project or institution she may still have enough freedom to allow for opportunities to act in morally better or worse ways.

One way in which she might behave better or worse as part of a corrupt institution or project, is that she might act to either undermine the purposes of institutional project



or act as an efficient functionary.<sup>152</sup> She might, through small acts of sabotage, weaken the institution or frustrate the goals of the project. This seems a clear illustration of the way in which moral actor's actions continue to have moral significance even when they are the actions of moral actors caught within the context of a morally condemnable institution or project. The actor may simply feign compliance, or comply as minimally as possible with the institution of those who force him take part in the project. The example of prisoners of war forced to construct

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<sup>152</sup> In Bernard Schilink's *The Reader* Hanna, who has been guarding a group of prisoners being marched from one location to another, is asked by the judge at her trial why when her prisoners were burning to death in a church they had been sheltering in, she did not open the doors and let them out. Hanna's fellow guards when asked this question made excuses for themselves, saying they were, for one reason or another, not able to free the prisoners: that it had not been a matter of choice on their part. But Hanna puts forward duty as the reason she had not freed the prisoners:

“‘ What did you do?’

‘ We didn't know what to do. It all happened so fast, with the priest's house burning and the church spire, and the men and the cart were there one minute and gone the next, and suddenly we were all alone with the women in the church. They left behind some weapons, but we didn't know how to use them, and even if we had, what good would have done, since we were only a handful of women? How could we have guarded all those women? A line like that is very long, even if you keep it as tight together as possible, and to guard such a long column, you need far more people than we had.’ Hanna paused. ‘ Then the screaming began and got worse and worse. If we had open the doors and they all came rushing out...’

The judge waited a moment. ‘ Were you afraid? Were you afraid that prisoners would overpower you?’

‘ That they would... no, but how could we have restored order? There would have been chaos, and we had no way to handle that. And if they tried to escape...’

Once again the judge waited, but Hanna didn't finish the sentence. ‘Were you afraid that if they escaped, he would be arrested, convicted, shot?’

‘We couldn't just let them escape! We were responsible for them... I mean, we had guarded them the whole time, in the camp and on the march, that was the point, that we had to guard them and not let them escape...’ Schlink, B. (1997). *The Reader*. London, Phoenix House. pp.126-7.

Hanna's loyalty to her duty to not let the women escape is a grotesque perversion in the cool rationality of the courtroom, It suggests the potential dangers inherent in being overly identified with the roles one fills. Hanna is the efficient functionary and what is needed in order for her to succeed in her role of guard is clearly in conflict with a broader sense of herself and her prisoners as fellow human beings. I say *clearly*, but the conflict is clear only to someone with a view that is not constrained by the necessity to satisfy the demands of a role like Hanna's. If one is too deeply embedded within a role, one is at risk of having one's understanding of one's duties become warped.

bridges or roads for their captors, but who surreptitiously undermine the work they do comes to mind.

There is an interesting question here as to what type of actions might be considered morally wrong in such situations. For instance, can the individual kept captive in the concentration camp betray the comparatively kind guard? Can promises made under duress in any way create obligations for an individual? To be consistent with what has been claimed here, we must accept that it is possible to betray, whatever the context. If we believe that we have obligations to others, obligations that pre-exist our striking particular contracts or agreements with those others, we would have to accept the existence of obligations we have to even those who will employ illegitimate force against us.

### **Moral Monogamy**

Next we next will consider the position of the moral actor who finds herself obliged under this type of contract or agreement. We will consider the question of how compelling the obligations of illegitimate institutions and immoral projects might be. If a moral actor acknowledges that the agreement or contract she is about to enter into, is the means to some evil end or requires evil means in order to achieve its ends (putting aside, for the moment, a valuation for those ends) is it still open to the actor to commit herself?

Typically it makes no sense to enter a new agreement when the demands of that agreement conflict with a previous commitment that is still acknowledged by the person entering into the agreement as still being in place. The example of getting married under Australian law will make this point clearer. If an individual accepts that he is currently married, it presumably makes no sense his marrying again whilst the previous marriage is still functioning: although he might go through the process of marrying, it will be ineffectual, invalid.

Before remarrying he will need to, in some way, extricate himself from his earlier promises and commitments. The obligations connected to an earlier and still active commitment create a barrier to the creation of subsequent commitments in those areas

where conflict would arise between the two. If an individual is understood as necessarily confined to one concurrent set of marriage promises, that individual is either currently married or not currently married. If at present he is unmarried he is free to marry, however, if he is at present married he is not free to commit himself to another marriage; were he to attempt do so, his actions would be nullified as a result of its present marital status.

Likewise, if a moral actor holds certain moral commitments he is restricted from becoming party to agreements that create for him demands and obligations that conflict with those moral commitments. The moral actor who names the ends or the means of a project, endeavour or contractual agreement as evil is, by doing so, acknowledging that they conflict with his moral obligations (it being irrational for an individual to understand the existence of his moral obligations but deny that their existence in any way impacts upon his moral agency).

Therefore, where the purpose of contracting is the achieving of some evil ends, moral actors are not capable of binding themselves to the demands of such an agreement. A moral actor would act inconsistently were he to knowingly accept for himself as compelling the demands and obligations of an agreement or promise or contract that would require of him that he act contrary, in some morally serious matter, to his overall moral outlook.

To argue that a moral actor is free to accept obligations for himself to act in what he believes to be an immoral way, is to make the claim that it is simply the decision of the moral actor as to which of his actions need conform to his moral principles. Or indeed, when he is obliged to accept his moral principles are compelling for him and when they might simply be ignored.

It is important to make clear at this point, the difference between, accepting that some roles drastically alter the holder's responsibilities and claiming that the responsibilities of the role can be substituted for the actor's personal moral responsibilities. It is not the intention of this thesis, to argue against the fact that certain roles create, for the actor who fills them, novel and unique demands and obligations. Rather, what this thesis does argue for is the requirement, for the moral

actor, to be as clear-sighted as possible about the nature of those novel demands before and also during that time in which he fills such a role. The question of how occupying a role should be understood to impact upon the moral actor has been dealt with in detail in the second chapter of this thesis, so I do not intend to say much more about it here. Instead we will now look at the question raised here through a consideration of preferences.

### **Stating Preferences**

This point is perhaps made clearest by way of example. The example need not be one that concerns the doing of evil, because the type of inconsistency that is being suggesting here could occur also in situations of no real moral significance.

It is reasonable to suggest that moral pronouncements are meant to convey, at the least, something about the beliefs of the one who utters them. As such, they have some things in common with other pronouncements and statements, such as statements about preferences, and it is this: that when an individual makes a statement of preference, that statement of preference, while it remains active, restricts what other statements of preference that individual might make.

A statement about a favourite colour is, like the earlier example of marriage, an exclusive declaration; it restricts the one who utters it from expressing contradictory opinions about their favourite colour during that time in which it stands. Of course it can be rescinded at any point, and typically all that is required in order for it to be rescinded is that the individual makes a contradictory preference statement. Here it differs from marriage as the dissolution of a marriage is not so easily affected, and requires the following of certain formalities.<sup>153</sup>

Normally we act on the speaker's most recent statement and assume that if it conflicts with earlier statements of preference it does not exist in tension with them but rather the newer overrides the old. On being told of a preference for X, when formerly the

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<sup>153</sup> Perhaps it is more like a change of a de facto relationship. Although the state may recognize a de facto relationship as equivalent to marriage in many respects, it differs in this respect: one cannot be a de facto bigamist.

individual was known to prefer Y, we might make the statement that the individual did prefer Y but has changed his preference to X. We do not typically assume that now the individual prefers X and still prefers Y; or that the individual is suffering from some type of internal conflict, and does not know her own mind.

However, if the individual stated that he has not given up his preference for Y but has now come to prefer X as well, we might suggest to him that he is putting his preferences in a confusing way: that we do not understand what he means by this. Perhaps we could take him to mean that he prefers X and Y over Z, that would be perfectly understandable. But, if this is what he *is* saying he has not then registered a preference in the case of X and Y. If we understand him to be doing just this, stating his preference in the question X or Y, then we might quite understandably view him as contradicting himself.

If an individual expresses a preference for X over Y and also a preference for Y over X, we might take him to be saying something that is at base unintelligible, and we might profess ourselves to be confused by his statement. If the statement is meant to clarify his preference in this case it will have failed to do so. Were someone to make such contradictory claims we could quite rightly protest that they really have no idea of their preference, or perhaps that they have no understanding of the concept of preference stating.

By stating contradictory preferences an individual is simply not making herself clear, and there would be no point in her making such statements if it was her desire to express clearly which she preferred – X or Y. The same applies if I say I have decided I ought to do X and not do X. Were I to say this I would not be presenting my decision clearly, you might reasonably suggest that I have in fact not yet decided whether or not I would do X.

Nothing about a claimed preference prevents the person, making the claim, from changing her preference or adding qualifications to her claimed preference that allows she may, at times, prefer X and at other times she may prefer Y. If for example, you were to ask me whether I prefer tea or coffee, I might say I prefer coffee. My reasons for answering that way being that, that seems to me to be the most truthful answer I

can give. But, there are times when I actually prefer to drink tea. Coffee, as it were, is my overall preference (this can be decided by different criteria, i.e. number of cups of each drunk per day etc.), but in some situations tea is my particular preference; typically, first thing in the morning I prefer to drink tea; typically in the middle of the morning I prefer to drink coffee. Through the use of these qualifications, I can sensibly claim to prefer X over Y and Y over X.

If this is the case does it suggest that, in reference to moral discernment, might I similarly, name X wrong and also name X right? By the same method of qualification can I say doing X is normally wrong, but when I fill the role M doing X is morally right. In other words, as my preference for tea or coffee depended on a consideration of particularities about the circumstances in which the choice was being made, might also the moral status of my actions?

Qualifications, in the case of my choice of tea or coffee, tease out a distinction between my preference in some particular situation and my overall preference. My overall preference incorporates my qualified situational preferences, and is really no more than the product of all my qualified situational preferences. I can speak sensibly about my overall preference but in order to do so I must choose how that overall preference is to be decided. In order for me to choose my overall preference it is necessary for me to decide on some criteria by which such judgement can be made.

I have already given an example of one way in which my overall preference could be decided in the case of tea and coffee: a simple calculation could decide the matter on the basis of the number of cups of each beverage I consume in any typical day. My overall preference will then be decided by whether I drink more tea or more coffee over the course of a normal day. I might of course use some other criteria; my overall preference might be decided by which beverage I would *prefer* to drink, and this may give a different result.

I may prefer to drink coffee but need to restrict my intake of coffee for health reasons. I may prefer to drink tea but there may be a shortage of tea, making tea prohibitively expensive; this means I might not be free to indulge in my preferred beverage, and this lack of freedom has the potential to distort the raw data collected concerning my

actual drinking habits. This suggests that deciding overall preference through calculation of the number of cups drunk could be misleading, as my preference seems to stand independently of my actual beverage consumption – the two need not correlate.

In the same way there may be some discord between my moral position and the way in which I have acted, I might believe some action to be morally right but fail each time I try to act in that way. There are then at least these similarities between a moral actor's statements about her preferences and her statements about her moral principles. Although I am not attempting to reduce morality to the expression of a preference, statements about moral beliefs have some commonality with statements about preferences.<sup>154</sup>

### **Cadel and the Legitimate Tour**

Let us now return to an example first used in the last chapter, that of the rider in the *Tour de France* we named Cadel. If the point concerning Cadel's relationship to his obligation as a *Tour* rider paints a credible picture of one form of contracting or taking part in joint commitments with others, and if the description of obligations got in this way (as having an ongoing dependence on some sort of agent-based legitimisation) is right, then the obligations generated by this type of agreement or contract must be limited in their ability to make demands on an actor: their authority being based in the actor's consent being vulnerable to the retraction of that consent.

Consent even given freely must remain vulnerable to retraction given sufficient provocation. Even promises and oaths freely given do not settle for all time where a moral actor's duty lies. This point is made here by Hanna Pitkin:

Sometimes a man who cites even an express oath to obedience, is being not admirable but hypocritical, refusing to recognise where his real duty lies. We would not want to say that past oaths and promises count for nothing, that they can be ignored at will. We all feel the power of

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<sup>154</sup> For a discussion of the differences between conflicting desires, beliefs and obligations, see: Williams, B. A. O. and W. F. Atkinson (1965). "Symposium: Ethical Consistency." Proceedings of the Aristotelian Society, Supplementary Volumes **39**: 103-138. and Weber, T. B. (2000). "Tragic Dilemmas and the Priority of the Moral." The Journal of Ethics **4**(3): 191-209.

the argument that you ought to be consistent, that it is unfair to pick up your marbles and go home just because it's your turn to lose under the rules you have accepted so far. But that is partly because such a partisan assessment of the rules is likely to be biased. If you can in fact show that the rules are really unfair, then any time is a good time to change them. Again, normally rules and authorities are to be obeyed; when occasions for questioning this obligation arise, what is ultimately needed is an assessment of the rules or authorities. Mere reference to your "going along with them" in the past is not enough.<sup>155</sup>

Our past compliance is a factor in how we ought to act at present, but it is just one factor – if it were decide unquestionably our present actions, and not allow for dissent, it would be destructive of the ongoingness of our autonomous moral agency.

As has already been argued earlier, the rules of sports and games are typically not compelling to non-participates; nor are they necessarily rational or sensible to those outside the sport or game. We know that it is only because Cadel has committed himself to be part of the *Tour* that he is under *Tour* participant specific obligations. We who have not consented to follow the rules of the *Tour* are not under the same obligations. This is not to say that all our obligations are equally freely chosen, the default position for moral obligation is not always based on an “opt-in” format. The example of the obligations connected to being part of a sport or event like the *Tour de France* was chosen not because it provides a typical picture of how obligations are generated, but rather because it provides an illustration of one of the extremes in the ways in which we become obligated.

Cadel by holding the position that he is able, with consistency, to become a rider in the *Tour* expresses a view about the legitimacy of the project of the *Tour de France*, and the legitimacy of the *Tour's* governing body. If we take it to be the case that he has reached this position because, as far as he can predict, being a rider in the *Tour* is not inconsistent with his broader commitments to projects and endeavours – his being, as it were, Cadel. We might say that being a *Tour* rider is a role that *fits* for Cadel.

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<sup>155</sup> Pitkin, H. (1966). "Obligation and Consent--II." The American Political Science Review 60(1): 39-52. p. 41



The obligations of being a *Tour* rider, although specific and novel, always remain obligations based in Cadel's overall moral outlook, this outlook was and continues to be accepted as a legitimate position by Cadel and brings about, for him, an obligation to fulfil the duties of a *Tour* rider. In other words Cadel would not be capable of accepting, with consistency, these *Tour* based obligations were he to believe the authority generating them to be incapable of generating such obligations.<sup>156</sup> Cadel cannot accept obligations simply because they arise from co-operative ventures or joint commitments that he is party to; Cadel is not free to relinquish his commission as a moral actor, to forfeit his moral agency, therefore he remains, no matter what new obligations he may be faced with, charged with the responsibility of being the keeper of his own moral position.

As in another example used in the last chapter – that of the warped perspective walker, there can exist, in the relationship between Cadel and the *Tour* organisers, obligations without there also being unanimity between the parties on just where the limits of those obligations are set.

### **Forced to Take Sides**

This illustration of the way in which obligations function in co-operative projects like sport also applies in other projects and endeavours that individuals contract to and take part in. However, the transition from an understanding of the obligations that exist within sports and games to an understanding of the obligations that exist within activities that have an ability to create more grave demands on moral actors may prove in some ways difficult. The main complicating factor being, it seems, the seriousness of the consequences involved in some activities (such as politics), and

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<sup>156</sup> There are two main reasons why an authority might be believed to be incapable of generating specific obligations. One has to do with those obligations being seriously morally problematic; this may be at the level of the individual finding them too morally compromising – like our example of Cadel. Or, the authority might simply be the wrong authority – the World Snooker Association has no authority to set rules for *Tour de France* riders. This may seem too obvious to mention but for the fact that there is a clear connection between what happens in the case of the inappropriate authority – the authority that has overstepped the mark (World Snooker Association setting the rules for the *Tour*), and any authority that attempts to override the moral actor's personal moral determinations. In both it is a matter of exceeding jurisdiction.

also the difficulty for the actor, at times, to stand aside or remove himself from certain situations.<sup>157</sup>

Although these differences are important they do not change the way in which obligations are generated for the moral actor, it is always the case no matter how significant the project to which the moral actor is deciding on becoming a participant in – or deciding whether or not to remain a participant in, that it is the moral actor who decides, who must decide, whether the project is a legitimate one for her. The fact that the moral actor's actions within the project are liable to bring about serious consequences does not change this fact.

Nor does it create a set of demands on the moral actor that rival the demands of her moral outlook, because it is through her moral outlook that she is able to comprehend the seriousness of outcomes within the project! Finding a project morally serious and the actions it requires of participants morally significant, establishes the importance for the moral actor of her making determinations, within the project, from her broader moral perspective.

This is of particular relevance in a situation where legitimacy of authority is being brought under serious question, as in the case of revolution. The complication of such matters is brought out here by Hanna Pitkin:

But if normally law and authority oblige and resistance requires justification, and if normally judgement is to some extent subordinated to that of the authorities, and if revolutionary situations are precisely the ones that are not normal in these respects, then the crucial question

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<sup>157</sup> By this I mean that while it is a relatively simple matter for most of us to avoid being riders in the *Tour de France* it is not always so simple to avoid participation in some other parts of our lives. At times we cannot escape some role in a situation, even if that role is put upon us by our attempts not to be participants. By way of example we might consider the case of being a conscientious objector. Perhaps someone being drafted into the armed forces has neither a desire to become a soldier nor any great desire to take a particular stand on conscription or war in general. He may prefer to simply be left out of this argument altogether. However, this may be quite difficult. If the conscientious objector objects to being called up he will be taking one particular public position; if he allows himself to be drafted he seems to be taking quite a different public position on the rightness of the cause in which he is being asked to fight. This inescapable dichotomy creates for the individual, being drafted, a situation in which it is impossible for him to avoid taking one of two public positions.

seems to be: *who is to say?* Who is to say what times are normal and what times are not, when resistance is justified or even obligatory? If we say "each individual must decide for himself," we seem to deny the normally binding character of law and authority. If we say "society" or "the majority" or "the duly constituted authorities decide," then we seem to deny the right to resist, since it may be the majority or the authorities themselves that need to be challenged. Yet these seem to be the only two alternatives.<sup>158</sup>

Moral actors require a certain distance from demands and obligations in order to decide on the appropriateness of them. That distance can be difficult to achieve when the seriousness of consequences is taken by the moral actor to be undermining of her opportunity to make choices.

In the example of the *Tour* rider we considered the obligations that accrue to an actor involved in a co-operative project. However, the consequences of failure for the *Tour* rider, and for those who join in the project of the *Tour* with him, are mostly confined to the success or failure of the project of the *Tour*; they are connected to matters such as his and other riders personal success or failure in the *Tour*. For example, the rider might be found to be using performance enhancing substances, and so might bring the *Tour* into disrepute. Or in some other way, the rider might act in such a way as to undermine the credibility of the project of the *Tour*. He may cheat; he may cause an accident which puts other riders out of the race; or he may fail to treat the competition with sufficient seriousness. Apart from the possibility that some gross recklessness on his part causes serious injury or death to others, the rider's behaviour within the *Tour* is unlikely to have terribly serious implications beyond the *Tour* project.

If he fails to fulfil his obligations as a *Tour* rider the consequences will, in the large part, be confined to the *Tour*. If however, we shift our gaze from a consideration of being a *Tour* rider towards the obligations and demands connected to being a political leader, we will be confronted with a moral actor in a role where the consequences

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<sup>158</sup> Pitkin, H. (1966). "Obligation and Consent--II." The American Political Science Review 60(1): 39-52. p. 51

connected to the role based obligations are almost always of a more morally serious nature, and often connected to very serious consequences.<sup>159</sup>

### **Obligation and Political Seriousness**

While not every action of the political leader is capable of bringing about serious consequences, the possibility of actions having serious ramifications is more often the lot of the politician than that of the sportsperson. So, obligations connected to the role of political leader tend to differ from most of the obligations connected to being a sportsperson in that the politician's actions are not so easily containable within a discrete field of influence. Being a bad *Tour* rider only matters inasmuch as the *Tour* matters and in general the *Tour* matters only to those personally connected in some way to the *Tour*. Whereas being a bad political leader is of concern to a far broader group, and the problems created by being a bad politician tend to be more serious ones; causing more significant and far-reaching damage.

This difference means that as a moral actor filling a political role I need to be especially mindful of the harm I might cause by being a bad politician. I should recognise that my being a bad politician is not like being bad at a sport or game. This, it might be objected, is a breathtakingly obvious claim. However, it is important to recognise that being a bad politician is far more open to interpretation than being bad at a sport or game.<sup>160</sup>

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<sup>159</sup> Although I am drawing a line here between the serious and the trivial – between sport and politics, it should be noted that, in Australia in 2011 at least, sport provides a great deal of the roughage for public moral conversation; perhaps more than politics. How footballers or cricketers behave off the field; discussion of salaries and salary caps; appropriate and inappropriate sponsorships are, for better or worse, the stuff of the public conversation on morality.

<sup>160</sup> There is of course no single concept of good politician. What it means to be a good politician will vary enormously. Consider Machiavelli's directives on the conduct of a prince: "The fact is that a man who wants to act virtuously in every way necessarily comes to grief among so many who are not virtuous. Therefore if a prince wants to maintain his rule he must be prepared not to be virtuous, and to make use of this or not according to need...So a prince has of necessity to be so prudent that he knows how to escape the evil reputation attached to those vices which could lose him his state, and how to avoid those vices which are not so dangerous, if he possibly can; but, if he cannot, he need not worry so much about the latter. And then he must not flinch from being blamed for vices which are necessary for safeguarding the state."Machiavelli, N. (1999). The Prince. London, Penguin. pp. 49-50 A good

Rather than their seriousness meaning that the demands within these projects are to be taken far more seriously than in the example of sport, it is the seriousness of these projects that restricts the way in which an actor can be led in his actions by a set of rules internal to the project. In some situations practically every step an actor makes will be a morally loaded one; whereas in other situations moral considerations are often not at the forefront of the reasons underpinning an actor's decision making.

The rules of a sport are normally essentially arbitrary. As mentioned earlier in the thesis, in the game of snooker there are fifteen red balls on the table and series of "coloured" balls. Each red ball is worth one point the coloured balls range in value from four points for the brown to seven points for the black. The apportioning of a certain value to each ball is explicable only within the game of snooker; there is very little that can be said about why the pink is worth six points in relation to the blue's five points apart from it being the way snooker is played: it is customary.

The arbitrary nature of rules of a sport or game and their dependence only on internal consistency within the sport or for their validation puts these rules outside of the domain of the actor's morality. The rules in sports and games are very frequently matters about which one cannot make determinations about or critique from outside of the particular sport or game to which they belong.

The freedom to create rules of this type and demand that others, who are participants in the sport, accept them and moderate their behaviour in line with them, only exists because of the possibility to delineate the arena of applicability for the rules, and essentially trivial nature of the outcomes of these types of projects. A player in snooker can simply accept that the blue is worth five points, and it is indeed difficult to see that any argument against the blue being worth five points could be mounted. The blue being worth five points could not, in itself, be an issue on which he might

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politician, in the style of Machiavelli's prince, would be restrained in his behaviour only through fear of *unnecessarily* diminishing his own reputation.

consider to conflict with his moral outlook. The rules of snooker are simply conventional, and therefore convention in snooker provides unassailable truths.

In contrast with this, very little a moral actor does in certain political contexts can be viewed as morally unimportant. Therefore, the framing of rules in the arena of politics is an activity that is far more constrained than the framing of rules in sport.<sup>161</sup> In politics making blue people worth less than pink people *would* be a rule open to moral scrutiny, because attributing worth to people is significant to those people; and can lead to those people being harmed in a way that would make no sense were we to say that the ball was harmed by being considered worth less than another ball.

In certain contexts, such as politics, there is little room for the formulation of rules and the attribution of obligations to actors without the possibility for those rules and obligations leading to morally serious consequences. When those involved in political life are involved in the creation of new legislation, or negotiations with other powers, the decisions they make and the actions those decisions provoke typically hold a high degree of moral significance. When rules and laws are framed with reference to their moral suitability there is the possibility of constructing a critique of them. Whereas, when laws and rules are basically arbitrary, like the rule in snooker that make pink balls worth two times green balls, there is no moral base to the rule which might be criticised.

While the seriousness of being a moral actor in certain political situations is generally accepted, this does not necessarily lead all those who accept this point to also accept the importance and central role of morality in the political sphere. Instead there are those who believe that it is this very seriousness that means politics exists separately from morality and can make demands on moral actors that at times trump the actor's own moral determinations in deciding how he ought to act.

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<sup>161</sup> It should be noted here that the level of constraint is a complicated matter to determine. If what is morally right is what is decreed by the political power, as is the case in Hobbes's *Leviathan*, then the constraint seems to be very minimal or perhaps not even applicable. But if it is accepted that what is morally right is not identical to what is politically necessary, then the tension which exists between the demands of the two will be what creates the possibility of moral constraint on political decisions.

In the next chapter there will be a more thoroughgoing account of this way of understanding morality's place in the political life, when we will consider, amongst other questions, how the politician ought to act in a situation of supreme emergency; we will also consider the claim that there are times when politically responsible actors need to dirty their hands – looking directly at how both dirty hands theorist and supporters of supreme emergency justify the suspension of morality for what is deemed to be politically necessary; how it is claimed that there is a category of action for the moral actor that is morally wrong but obligatory nonetheless . We will also examine the position of those who while attempting to disassociate themselves from dirty hands theorists still maintain that there can be an obligation for moral actors to, at times, act against their moral determinations and do what is politically necessary.

The thesis will take the position that in which ever guise it presents itself, any attempt at quarantining morality sends the same message: that the moral system a moral actor professes to hold is incapable of being applied in that moral actor's real life. It is the contention of this thesis that a moral position that cannot be applied to the real life of the moral actor to which it belongs is simply a set of aspirations and therefore no more worth mentioning than wishes and dreams

### **Accepting Obligations**

This thesis maintains the position that moral actors cannot make what is morally wrong morally right simply by signing to a contract or accepting a position of power, or by committing to a community. If, to take as an example, the citizens of Australia have moral obligations to offer support and protection to refugees and asylum seekers it is not possible to simply legislate those obligations away. We might institute policies for the handling of refugee cases and requests for asylum, but that leaves open the question of whether or not those policies are morally defensible ones. If the rules we put in place are not morally defensible then no-one is under any obligation to comply with them: acting in accord with immoral laws cannot be seen as an alternative to fulfilling moral obligations.

Laws controlling the processing of refugees, if they are made in response to a more natural moral obligation, will either fulfil the natural moral obligation or not, they will not simply provide an alternative to the natural moral obligation.

The thesis also rejects the possibility of a moral actor relinquishing her moral autonomy to some other authority. This previous chapter began by considering the way in which Hobbes sought to overcome war (which he believed to be man's natural state) by covenanting in order to create an omnipotent authority; this authority, the Leviathan, would then be capable of instituting and maintaining a social structure sufficient to give men confidence in the promises of each other.

Hobbes's Leviathan becomes the final word in political and moral discussion. Those who live under his rule must defer in not only matters of law but also they must defer to the Leviathan on matters of morality. What is morally right under the Leviathan is what the Leviathan declares to be morally right. This thesis does not accept that such a deferral of moral authority is a move open to moral actors, notwithstanding Hobbes's claim that we might in this way build a more peaceable and successful community by our covenanting with one another and our agreeing to abide by the moral pronouncements of the Leviathan.

When the actions of the moral actor are morally significant actions, they are precisely the type of actions that must agree with that moral actor's moral outlook. Their significance does not signify that they have the ability to create alternate and overriding non-moral obligations, nor does it mean that they create a truly alternate set of moral obligations. What does the work of deciding how the moral actor ought to act, in such situations, is the acceptance by the moral actor that these are serious and morally significant projects; without this acceptance they might be regarded by the actor as being no more important, from a moral perspective, than the rules of snooker. With this acceptance the moral actor is obliged to consider the demands within the project from her own moral position. The demands of morally significant projects are, simply because they are the demands of morally significant projects, answerable to external criticism.



## **Conclusion**

Our interests in this chapter have been primarily with claims of legitimacy. It was argued that the legitimacy of institutions or agreements must be established if they are to create binding demands for the moral actor. This legitimacy might be decided on the minimal level of the moral actor's own opinion, or at a broader more objective level. The thesis argues that both forms of deciding legitimacy are important; that the moral actor must at the least accept an institution or agreement is legitimate in the more minimal sense in order to comply with its demands; that the moral actor may be right or wrong in believing an institution or agreement as a legitimate generator of obligation for himself, and that that belief in itself is a significant fact in our understanding of his actions.

To be sure, the thesis does not assume questions concerning the legitimacy of the institutions and agreements that make demands on the moral actor to be the only questions of importance in such matters. The moral actor is still prone to suffer conflicts between legitimately generated demands, and questions of legitimacy and of the moral actor's estimations of the legitimacy of a demand provide only a partial answer to the problem of conflicting putative obligations.

The chapter has explored the way in which the autonomy of the moral actor and the authority of institutions interact; how the moral actor stands to institutions to which he is in some way connected. It was argued that moral actors are not free to simply relinquish their moral responsibilities to some thing I believe to be an appropriate authority, and that the moral actor must have, in order to function as a moral actor, the freedom to give and remove his or her consent to be directed by authorities. It was also argued that the moral actor is not free to give that consent in an unrestrained manner – she cannot, for example, legitimise, in this way, what she believes to be a corrupt institution.

## CHAPTER FIVE

# Doing Evil

### Introduction

The previous two chapters dealt with finding the most appropriate basis on which an understanding of society might be constructed, one that takes consideration of the nature of humans (often man) and with how institutions might come to get whatever legitimacy that they might have. Having put forward the argument that we do not have the freedom to simply establish any convention we might feel an inclination for, it was claimed that some types of social conventions are more suitable, considering the nature of man, and also that if we do no more than institute a social arrangement such invention, of itself, can have very limited normative powers. This followed from the thesis rejecting a simply conventional picture of morality, and making the claim that morality can be discovered to have a basis at some level deeper than this.

These are important questions because they address the need to strengthen the structures that underpin our social relations. We might take ourselves to be either completely anti-social egoists by nature; believing that in order to function co-operatively and to avoid a constant state of war, we require the imposition of an artificial social structure capable of keeping the worst of human nature, the dominant side of our natures, in check; or we might believe, that the more moderate position is true, but that we cannot rely solely on what might be said to be the “better” side of human nature: this is consistent with an acceptance of some degree of sociability among human beings (humans may even be said to have some altruist motivations for their behaviour), but what is there is too weak to be relied upon as a reliable foundation for our social relations. Therefore, we need to create social structures that in some way amplify the weak signal of the recessive non-egoist aspect of human nature (the dangers inherent in the avoidance of necessary levels of risk, were covered in our discussion of what was called a *belt and braces* approach to social interaction.)

It will be the work of this chapter to argue that the moral actor is never under obligation to do evil; that the moral actor cannot identify an action as truly obligatory, but simultaneously find it inconsistent with her acting moral well.

What is being argued here is that if the moral actor appears to be both obliged to do some action and finds the action morally impermissible then; her primary obligation is to achieve a more coherent understanding of just where her duties lie. This is not to say that finding clarity will be simple or that deciding where one's duties lie is always an easy task: one will at times be uncertain of one's true duties. However, there is a great difference between not knowing what is morally right and being unsure as to whether one ought to follow the course of doing what one believes to be morally right.

Over the course of the chapter we will consider the ways in which the moral actor might come to see himself at the centre of conflicting obligations; it will be argued that some of these conflicts are the products of mistaken ideas about what it is to be a moral actor.

Also, in this chapter, we will question what is meant, or what meaning can be gleaned from, a moral actor stating she will do evil, when that statement is made in the absence of an agreed conception of what would constitute an evil act. For one to claim that one is prepared to do evil is meaningless unless it is also specified just what an evil action is, or what one means by doing evil. The predictive pledge to do evil, it will be argued, is a thoroughly odd idea which diminishes the worth of our attempts to make sense of our lives from a moral perspective. We begin the chapter with a return to questions about human nature and the doing of evil.

### **Incongruous Faggots**

Much depends; it seems, on the way in which the nature of mankind is to be understood. If it is taken to be almost irredeemably self-serving, it will be thought that in order to live in society with one another constraints must be created to stifle the natural tendencies of humans and substitute them, through forms of reward or punishment, with a more co-operative, gentler version of human nature – the idea that

the socialization of humans is effective when it replaces natural tendencies of humans – the stark depiction of Hobbes that we dealt with in chapter three fits with this conception of human nature. Or perhaps we see socialization to be the fostering of our natural tendencies: the example of Calum MacLeod’s altruism and the naturalness of co-operation between humans and killer whales in whaling at Eden fit here.

I will now take an example of a more radical interpretation of the problem of man being socialized against his nature, from the character of Dr Henry Jekyll in *The Strange case of Dr Jekyll and Mr Hyde*. Here human nature is presented as being at war within the individual; with nothing short of the dissolution of the warring parts being capable of effecting a restoration of peace to the whole:

I for my part, from the nature of my life, advanced infallibly in one direction and in one direction only. It was on the moral side, and in my own person, that I learned to recognize the thorough and primitive duality of man; I saw that, of the two natures that contended in the field of my consciousness, even if I could rightly be said to be either, it was only because I was radically both; and from an early date, even before the course of my scientific discoveries had begun to suggest the most naked possibility of such a miracle, I had learned to dwell with pleasure, as a beloved daydream, on the thought of the separation of these elements. If each, I told myself, could but be housed in separate identities, life would be relieved of all that was unbearable; the unjust might go his way, delivered from the aspirations and remorse of his more upright twin; and the just could walk steadfastly and securely on his upward path, doing the good things in which he found his pleasure, and no longer exposed to the disgrace and penitence by the hands of this extraneous evil. It was the curse of mankind that these incongruous faggots were thus bound together – that in the agonized womb of consciousness, these polar twins should be continuously struggling.<sup>162</sup>

Stevenson has Henry Jekyll see himself as a composite of good and evil. He sees the conflict between these two parts of himself not as a struggle for supremacy so much as a struggle for individual and conflicting freedoms. Jekyll’s dark twin, Edward Hyde, seeks the gratification of his own desires and is indifferent to the plight of others. It is in the freedom to act on his impulses that the dark twin is frustrated by his “more upright twin”, and Jekyll proposes that what morality demands might best be

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<sup>162</sup> Stevenson, R. L. (2003). *The Strange Case of Dr Jekyll and Mr Hyde and other Tales of Terror*. London, Penguin Books.p 56

got around by making, for the one individual, two distinct personas: both responsible only for their own actions.

The claim seems to be premised on the belief that the doing of evil is problematic for the moral actor on account of the remorse it occasions, rather than because of its impact on others. The separation of Jekyll and Hyde does nothing to prevent the evil acts of Hyde, in fact it creates the conditions under which Hyde will be at liberty to act on his evil impulses unencumbered by Jekyll's more delicate sensibilities. This is a view of moral demands similar to that we faced in relation to the individual being divided along public/private lines in chapter two; an ultimate form of role based morality.

Stevenson acknowledges that while Hyde is singularly evil, Jekyll is composite. Of the "polar twins" of which Jekyll is composed, Hyde has been identified as one aspect of Jekyll's true nature, but there is no character in the novel that represents the other wholly good aspect of Jekyll. The comparison then between Hyde and Jekyll is not between Hyde and his polar opposite, but between Hyde and the whole from which he has sprung. Hyde remains a part of Jekyll in a way that Jekyll cannot be said to be a part of Hyde. In light of our earlier discussions we might say that: Hyde functions with a subset of Jekyll's complete comprehensive conception of values.

A more complete dissociation would supposedly see Jekyll's perfectly good persona (an unnamed and unimagined character in the book) to one side and his perfectly evil persona (Edward Hyde) to the other side. The perfectly good aspect of Jekyll would have no desire to act evilly, so Hyde's desire to do evil would supposedly be to him incomprehensible. Whereas to Jekyll, Hyde's evil actions are connected to his own unrealised desires; so his feelings of guilt are prompted by his knowledge that, were he free from moral constraints, he would choose, at times, to act as Hyde acts.

In the case of Stevenson's novel the separation of the individual into separate components so as to enable him to be free, in at least part of his self, to do evil is effected by means of a mysterious chemical draught. We might also attempt this type of separation by way of the creation of social institutions and the roles attached to them that create, for the individual, the illusion of being dissolved as a whole moral

agent, and thereby having a dissolution of her obligations to act as a moral agent responsible for all of her actions. An approach argued against in the course of earlier chapters of this thesis.

However, as individuals what is best in us, as well as what is worst in us, while capable of being nurtured by the types of institutions we inhabit, remains descriptive of us as the individuals we are; when we act well we can be spoken of as an individual who has acted well, and when we act badly we similarly expose ourselves as an individual who has acted badly. Our actions are our own: albeit fostered, for good and ill, by the social situations in which we exist.<sup>163</sup>

### **Social Settings**

The idea that social structures amplify pre-existing naturally occurring aspects of human nature has a reasonableness to it; humans are adaptive and their natural tendencies are just that, tendencies, and are not immutable elements of their personalities. Under a social structure that provides no support for generosity or co-operative behaviour, it will be less likely that generous and co-operative acts will occur: generosity and co-operation will be less common than they would be in a social setting that encourages them.

Moral actors are at times constrained from living the most virtuous life they are capable of because of the social setting in which they live. This is not to say that bad social settings make it impossible for moral actors to act morally well, or that moral actors are to be excused any evil actions on account of their social setting, rather it is saying no more than it is easier for us to act well if we are acting in an environment conducive to acting well. In chapter four, in the section on co-operation with evil, we considered Hanna the concentration guard from the novel *The Reader*, who so

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<sup>163</sup> Consider here the experiments of Stanley Milgram testing the obedience of individuals to an authority which they believe to be legitimate. Milgram, S. (1974). Obedience to Authority: an experimental view. London, Tavistock. Milgram's work suggest that when moral actors have a confidence in an authority, it requires extraordinary personal strength in order to defy even the most morally confronting commands.

thoroughly identifies with the role she plays that she has lost sight of the humanity of her prisoners – and herself.

Children develop into the adults they become in no small part because of the social environment in which they develop, and even after this development there is still much adaptation that continues when those children become adults; it is only possible to lead certain lives under certain social conditions. We are not so much moral actors living in particular social structures, but rather particular moral agents because of the social structures in which we live. A quote from Alasdair MacIntyre which I used in Chapter Two speaks of the folly of trying to find the “real me” by stripping back the accretions of my social situation:

I am brother, cousin and grandson, member of this household, that village, this tribe. These are not characteristics that belong to human beings accidentally, to be stripped away in order to discover ‘the real me’. They are part of my substance, defining partially at least and sometimes wholly my obligations and my duties. Individuals inherit a particular space within an interlocking set of social relationships; lacking that space, they are nobody, or at best a stranger or an outcast. <sup>164</sup>

This of course complicates matters when it comes to the ascription of moral responsibility. The claim that the right conditions must be in place for the moral actor to be in a position to act as a fully functioning moral agent, gives good reason for us to be cautious in ascribing responsibility to the moral actor if he happens to be in a social situation that fails to provide him with what is needed in this way. Some of this will be dealt with, according to MacIntyre, through a consideration of the choices that have placed the moral actor in the particular social situation: we can be guilty of an acceptance of a toxic status quo and we can be guilty of choosing to play certain parts in such a society.

The ability of the moral agent to act out fully her moral agency shares something with the practicalities of being able to perform properly in some particular role one might

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<sup>164</sup>MacIntyre, A. (2008). After Virtue: A Study in Moral Theory. Indiana, University of Notre Dame. p33

fill; we require a certain setting in which to function as a moral actor in the same way as we require a certain setting to function as a carpenter or airline pilot:

... so many of our goods, individual as well as common, are shared goods that generally my decisions about what parts certain goods are to play in my life will not be and cannot be independent of our decisions about what part those goods are to play in the life of our community. I will not be able to find a place, whether a larger or smaller place, for dramatic art in my own life – as amateur or professional actor, as director or stagehand, as a member of the orchestra or the audience – in a community in which the goods of theatre are not given a certain priority in the allocation of communal resources. It is in and through political decisions about these priorities that we determine the range of possibilities open for the shaping of our individual lives and, if we exclude ourselves or are excluded by others from contributing to such political decision-making, we diminish the scope and effectiveness of our decision-making.<sup>165</sup>

In Chapter Two we looked in detail at the divided self, here we need to consider the way claims of division within the life of the moral agent, or to follow MacIntyre the “compartmentalization” of the moral agent’s life into distinct roles, brings about a situation that either supports the doing of evil or in some way diminishes the responsibility of particular moral agents when they do, do evil.

The apportioning of blame and a consideration of whether or not guilt is an appropriate reaction by the moral actor is an essential aspect of our taking morality seriously. Unless we are clear on just who it is that is responsible for some action or other, we create an opportunity for certain actions to float free of their connection with any particular moral actor. Then, with no-one seen to be in a position of responsibility the action appears to lose its moral significance.

The moral significance of an action is dependent upon it being the action that involves moral actors – beings with moral agency. For this reason it is necessary for us to consider of an action whether or not it is the action of a moral actor, and whether or not, given the particular circumstances surrounding the action, this moral actor is

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<sup>165</sup>MacIntyre, A. (1999). Dependent Rational Animals. Chicago, Open Court.: pp140-141



responsible for the choice to perform the action; whether or not it would be appropriate for this moral agent to feel guilt over this action.<sup>166</sup>

MacIntyre, writing of the moral agent who has divided her life into separate compartments in order to be able to do what is necessary in each part, without taking the whole as her personal responsibility, says that guilt rightly flows to her for those of her actions that were deliberate and designed to achieve this end of having a compartmentalized life:

They may indeed inhabit a type of social and cultural order whose structures to some large degree inhibit the exercise of the powers of moral agency. But they share in responsibility for having made themselves into the kind of diminished agent that they are. Their responsibility is that of co-conspirators, engaged together in a conspiracy that functions so that they can lead blamelessly compliant lives, able plausibly to plead lack of knowledge of as well as lack of control over outcomes for which they might otherwise be held jointly responsible.<sup>167</sup>

To be sure, there can be a level of responsibility here, for the moral agent, but in order to be a co-conspirator it is necessary for the moral agent to be in a position of being able to critique her involvement; the sufficiently toxic social setting would leave no room for this, in which case it would be odd to blame the moral agent for conspiring to do evil as he does not really see or understand her actions as being evil.

Given a poor enough foundation by which she might decide which of her actions are right and which wrong, the moral agent or moral actor would be free from a personal responsibility for her actions: her social situation having rendered her insufficiently free to choose well. Only if a moral actor is in the position to name an action evil is

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<sup>166</sup> This is not to say that a serious moral actor will simply follow the morally right course of actions and walk away contented with no feelings of guilt or remorse for the unfortunate or tragic consequences that he was unable to prevent. Serious moral actors will feel guilt about many things they are not responsible for. It would be odd for a parent not to feel guilt when her child is diagnosed with a terminal illness: the guilt is both appropriate and inappropriate as a response. Appropriate in that expresses a deep solidarity and desire that things might have been different, but inappropriate in that there is no basis for the guilt in the parent causing the illness.

<sup>167</sup> MacIntyre, A. (2006). *Ethics and Politics*. version 2. New York, Cambridge University Press: 7784. p. 202

she in a position to be held responsible for carrying it out. Having the ability to predict which action would be evil requires some ability to make informed moral choices. This is not the case when one is so thoroughly indoctrinated into the attitudes of a social setting that one is unable to see the evil it demands of one.

Moral responsibility relies, in part, on a certain level of knowledge about oneself as a being with moral agency. It is possible that that knowledge may be lacking in the individual through no personal fault, but as a result of a particularly deprived upbringing and through the individual's social circumstances. In such a case the individual would lack sufficient freedom to choose the morally right course of action and may not be an appropriate recipient of moral blame.

### **The Need to Do Evil**

If we now consider a more particular case, that of a leader faced with an apparently overwhelming necessity to do evil in order to protect the community; a leader who facing a supreme emergency has to decide whether or not to dirty her hands. These types of considerations will necessarily come after the individual, who is leader, has decided the matter on moral grounds; in order to contemplate doing evil one has to have decided what evil is and know how to do it.

Once the matter is decided on moral grounds, and it is decided by the leader that the 'necessary' action would be an evil act; then if the leader believes she still has to decide how she ought to act, she exhibits a particular conception of morality as being abstracted away, at times at least, from questions of how a moral actor ought to act. She shows herself to believe that there is a choice to be made after the moral actor comes to a decision about the moral status of an act. This type of choice, this way of thinking would suggest, that leaders, if they are good leaders, have a certain relationship to moral constraints: that there are times when good leaders are permitted or required to override them. Michael Walzer:

There are moments in human history that are not governed by moral rules; the human world is a world of limitation, and moral limits are never suspended - the way we might, for example, suspend *habeas corpus* in a time of civil war. But there are moments when the rules can be and perhaps have to be overridden. They have to be overridden precisely because they have not been

suspended. And overriding the rules leaves guilt behind, as a recognition of the enormity of what we have done and a commitment not to make our actions into an easy precedent for the future.<sup>168</sup>

For Walzer "overriding the rules leaves guilt behind", and this guilt is intended to provide some type of check to future actions so that what has been done now out of absolute necessity is not in the future done for less demanding reasons. The difficulty here is squaring Walzer's demand on the moral agent to override moral rules, but also for the moral agent, who complies with this demand, to feel guilt for his actions.

Someone acting in what Walzer believes to be the right way is, according to Walzer, someone who acts rightly but also rightly feels guilt for his actions. While I do not wish to spend too long on the idea of appropriateness of the guilt of Walzer's leader – moral actors feel guilt for all sorts of reasons, some we might see as appropriate;<sup>169</sup> some as understandable but unnecessary; and some as pathological – I do question the effectiveness of the type of guilt Walzer's leader is feeling as a deterrent to his doing evil in the future.

Walzer's leader's guilt is, it seems to me, being presented as a by-product of doing one's duty. It may be unpleasant, but it is not something one should avoid because avoidance of this type of guilt would be to shirk one's duty, to be cowardly. This is heroic guilt.

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<sup>168</sup>Walzer, M. (2004). Arguing about War. New Haven CT and London, Yale University Press.: p. 34

<sup>169</sup> In *Broadway, Danny Rose*, Woody Allen has the main character, Danny Rose, exhibit a perhaps unhealthy attachment to guilt: "Danny: What are you talking about? Guilt is important. It's important to feel guilty. Otherwise, you know, you're capable of terrible things...I – I'm guilty all the time an I—I never did anything. You know? My, my, my rabbi, Rabbi Perlstein, used to say we're all guilty in the eyes of God.

Tina: ...You believe in God?

Danny: ...No, no. But uh, I'm guilty over it. Allen, W. (1990). Three Films of Woody Allen. London, Faber and Faber. p. 224. Guilt is of no use if it is not correctly directed: it ought to be connected for the moral actor to a belief in his having acted wrongly, not with his having fulfilled some irrefutable obligation.

Hopefully it is quite clear that this thesis rejects the type of duty which is a duty to do evil being – championed here by Walzer. The idea of heroic guilt is perverse. If there is direction being given here on how the leader might decide how she ought to act, it does not issue from morality but from political necessity. If nothing more helpful than this can be provided there is then good reason for anyone in just such a position to dismiss the advice of the moral philosopher by confidently asserting that morality is understood to have found a limit here. Gone mute.

Our actions create precedents; therefore, if we are to influence others, how we act can be expected to impact on how those who follow us will choose to act. Whereas our personal guilt will, in the first place, be taken by others to be either appropriate or inappropriate. If others believe our guilt is appropriate, they do so because they believe our actions were not justified. However, if others believe that our actions were justified they will discount the significance of our feeling guilty: they will rate the action and then decide on the appropriateness of the guilt.

Of course there may be some who, like Walzer, believe that our actions may be justified and our guilt appropriate, but even here there would seem little chance of our guilt overly influencing such a person (someone, that is, who believes that we are sometimes justified in acting immorally – such a person will not likely shrink from doing what they “ought to do” simply because they wish to avoid later feelings of guilt).<sup>170</sup>

Doing what is morally impermissible in the supreme emergency is what a good leader must sometimes do, according to Walzer. What will show him to be a good leader is not how he acts (as his actions will often coincide with those of the simply criminal leader), but rather we will know him to be a good leader because of the tortured and

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<sup>170</sup> I take this to be very different to the idea of a justification of her actions the moral actor might reach by a comparison of the level of evilness of the actions she is faced with. Doing the lesser of two evils is a choice made from within a moral system that accepts that there are times when such calculations are appropriate. It is not a matter of overriding morality then but one of making a determination that, although it does not avoid doing any evil, my acting thus is on balance the morally right thing for me to do. There will often be feelings of guilt and remorse by the moral actor even though she has chosen the course of action most consistent with her moral outlook. And the appropriateness of the guilt and remorse she feels will rightly be open to critique from her and from others also.

circuitous route he bothers to navigate on his way to acknowledging the one right action for someone in his position:

And what it requires of its leaders is that they impose risks and sometimes, in rare and terrible moments, take on the guilt of killing the innocent. We may doubt that moral strength is really required in this last instance; after all, many, perhaps most, of the political leaders who figure in the history books or in our own memories of twentieth-century history seem to have had no difficulty killing innocent people. They had no sense of guilt involved; they were simply criminals. A morally strong leader is someone who understands why it is wrong to kill the innocent and refuses to do so, refuses again and again until the heavens are about to fall. And then he becomes a moral criminal (like Albert Camus's "just assassin") who knows that he can't do what he has to do -- and finally does.<sup>171</sup>

This must mean that, supposedly, a morally weak leader is one who *doesn't* in the end do what is politically necessary or perhaps one who does do what is politically necessary too easily, too confidently and does so without later being racked by guilt.<sup>172</sup>

On top of these conflicting requirements, the good leader, as described by Walzer, must also possess a certain naiveté; presumably it would not be possible to fully comprehend one's requirements as leader - that in the end one must do whatever must be done - but still go through the type of tortured self doubt described here with any level of sincerity. To be sincere the leader must truly question that he *will* kill the

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<sup>171</sup>Walzer, M. (2004). Arguing about War. New Haven CT and London, Yale University Press. p. 45.

<sup>172</sup> The question is though, just what this guilt is connected to – whether or not it is guilt over what one has done, or guilt more like the regret pointed to here by Bernard Williams in connection to moral conflict: “ Perhaps, however, it might be conceded that a fully admirable moral agent would, on occasion, have such regrets: but nevertheless (it may be said) this is not to be connected directly with the structure of the moral conflict. The man may have regrets because he has had to do something distressing or appalling or which in some way goes against the grain, but this is not the same as having regrets because he thinks that he has done something that he ought not to have done, or not done something that he ought to have done: but it is only the latter that can be relevant to the interpretation of the moral conflict.” Williams, B. A. O. and W. F. Atkinson (1965). "Symposium: Ethical Consistency." Proceedings of the Aristotelian Society, Supplementary Volumes 39: 103-138. p. 111

innocent, but to be a *good* leader he must be sure, in advance, that he *will not* fail to kill the innocent ,when necessary.<sup>173</sup>

Guilt, we are encouraged to believe, will reset the moral compass for those who come after the good leader has acted immorally. The good leader will be exemplary, not through his actions, but through his distaste for the actions which proved him to be a good leader. What it is that the good leader cannot do, according to Walzer, is put moral absolutes ahead of the survival of his or her community (which in itself sounds very like a moral absolute). The impending disaster, according to Walzer, "devalues morality itself and leaves us free to do whatever is militarily necessary to avoid the disaster".<sup>174</sup> The question this claim of Walzer's raises is - what is the value of moral discernment? Is its value simply limited to its utility?

Being a realist<sup>175</sup> is also a quality of the good leader, no rejection on moral grounds of a militarily necessary action could possibly be justified on rational grounds. Walzer believes that if one were to stop short of performing an action, no matter how immoral, that has the possibility of staving off the destruction of one's community,

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<sup>173</sup> If the question is not asked sincerely it starts to sound a little like the Mills and Boon heroine, who establishes her virtue by saying no the requisite number of times before succumbing inevitably to her hero's advances. If we are already committed to the yes, the nos – no matter how numerous – express no sincere thought; no real depth of character; but simply rhetoric.

<sup>174</sup> Walzer, M. (2004). Arguing about War. New Haven CT and London, Yale University Press. p. 40.

<sup>175</sup> Realists of course come in a variety of weights, from those who reject any consideration of the moral implications of their actions to those whose realism tempers, what they see to be, excessive moral scrupulosity. This quote from Stephen Nathanson, appears to see realism as an antidote to hypocrisy: "Realism is generally seen as a tough-minded, no-nonsense perspective. By contrast, people who think that morality is relevant to war and international relations are often portrayed as naïve idealists. Since no one wants to be seen as naïve or unrealistic, there is a certain appeal to accepting the realist view. Realism gains added appeal because it cuts through the hypocritical moralizing that is so common in politics. Political leaders often invoke high moral values even while they ruthlessly pursue their own nation's interests or, perhaps, their own personal interests. Realists dispel the moralistic fog and expose what is actually happening. They may not offer an uplifting vision, but at least it seems free of hypocrisy." Nathanson, S. *Terrorism and the Ethics of War*, Cambridge University Press. pp. 114-15. I wish to note here that someone who thought *that morality is relevant to war and international relations*, but acted and spoke as a realist in order to avoid hypocrisy – would be being a hypocrite, and that setting moral standards low *just* so you will not fail to live up to them also smacks of hypocrisy.

then one has exposed oneself as incapable of imagining the full horror of the consequences of one's failing to act:

At that point absolutism represents, it seems to me, a refusal to think about what it means for the heavens to fall. And the history of the twentieth century makes that refusal very hard to justify. How can we, with our principles and prohibitions, stand by and watch the destruction of the moral world in which those principles and prohibitions have their hold? How can we, the opponents of murder, fail to resist the practice of mass murder – even if resistance requires us, as the phrase goes, to get our hands dirty (that is, to become murderers ourselves)?<sup>176</sup>

### **The Good Doing Evil**

Again, our actions seem disconnected from us. We are confident that we are the opponents of murder even though we murder. We know ourselves to be certain types of moral actors but not through our actions. We know ourselves to be constrained by moral prohibitions, but these should not *always* determine which actions we perform. The morally right action then exists as some type of impractical ideal, a guide to our actions but in a world that is presumably very different to this one.

Perhaps to be a good moral actor in this world requires one to be conscious of the realist demands of this world. However, being too eager to accept a reduction in ideals is to give a great deal away. I take this quote from Tony Coady in *Messy Morality*, to capture something of what we risk in being too quick to bring ideals in line with more pessimistic forecasts:

The world of current reality and practice is interpreted conservatively and taken as canonical for determining what is possible and achievable, and hence narrow and often unimaginative limits are put upon what should be striven for. This is one of the defects of the realist opposition to ideals and the restriction of normative action to the pursuit of national interest. This is related to my earlier point about the dynamism of ideals: dedicated idealists can discover possibilities and unleash potentialities that the worldly wise and weary cannot perceive. Idealistic visionaries in Britain who brought about the abolition of the slave trade had a better grasp of the realities of

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<sup>176</sup>Walzer, M. (2004). *Arguing about War*. New Haven CT and London, Yale University Press. P. 37

power and politics than the many who believed that slavery was an entrenched part of the natural order.<sup>177</sup>

If we simply accept our actions as being appropriate because they are what we have always done in the past, we cut ourselves off from attaining a future that is in any way improved upon our present; we are bound to continue to live in a world that even the “worldly wise and weary” accept to be a less than perfect one. If we accept that our actions are evil but defend them on the grounds that they are what we have always done we fail to understand the freedoms we can exercise as moral actors. In the earlier quote from Walzer, the absolutist was accused of lacking the ability to imagine just “what it means for the heavens to fall”, however the charge of a failure of imagination might be more appropriately leveled at the world weary realist who has lost his ability to see past how things have always been, and who takes his failure to see a way out of our being forced to rely on doing evil as a justification for his/our actions. It is on this question of the possibility of the moral actor being under an obligation to do evil that we will now concentrate.

There are it seems, two distinct ways in which this question might be addressed. The first is the approach that suggests that overriding an individual's moral position or the autonomy of a moral agent is something that ought not to be done lightly or outside of a situation in which we are faced with the likelihood of the most severe and terrible consequences, and only when there is a great likelihood that the overriding will enable some extraordinarily important outcome, perhaps say helping one's community to escape certain destruction.

This approach suggests that what we need to be vigilant about is the tendency for evil to be done; too quickly; too easily; too freely. The assumption here appears to be not that doing evil or being obliged to do evil is a not unreasonable position for the moral actor, but rather, that its use should be constrained by the most stringent criteria; that doing evil should be something that sits in the legitimate ‘toolbox’ of the moral actor, but to which she will go in only the most dire of circumstances.

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<sup>177</sup>Coady, C. A. J. (2008). Messy Morality. Oxford Clarendon press P 62



This position assumes that there is nothing inconsistent or illogical in a moral actor being obliged to do evil; rather it demands of the moral actor that she only do evil when necessary, not flippantly or easily.<sup>178</sup> This position sees no real problem with the construction of the moral actor's outlook incorporating and legitimating either the doing of evil when necessary or the suspension, for the moral agent, of the necessity

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<sup>178</sup> However, being serious about the evil we do, taking no pleasure in the doing does nothing to lessen the nature of our actions and their consequences. The following quote from Hannah Arendt presents a picture of men acting on duty, acting in what they think are the best interests of their community: "The member of the Nazi hierarchy most gifted at solving problems of conscience was Himmler. He coined slogans, like the famous watchword of the S.S., Taken from a Hitler speech before the S.S. in 1931, "My honour is my loyalty" – catch phrases which Eichmann called "winged words" and the judges "empty talk" – and issued them, as Eichmann recalled, "around the turn of the year," presumably along with a Christmas bonus. Eichmann remembered only one of them and keep repeating it: "these are battles which future generations will not have to fight again," alluding to the "battles" against women, children, old people, and other "useless mouths." Other such phrases, taken from speeches Himmler made to the commanders of the *Einsatzgruppen* and the Higher S.S. and Police Leaders, were: "to have stuck it out and, apart from exceptions caused by human weakness, to have remained decent, that is what has made us hard. This is a page of glory in our history which has never been written and is never to be written." Or: "The order to solve the Jewish question, this was the most frightening order and organization could ever receive." Or: "We that what we are expecting from you is "superhuman," to be "superhumanly inhuman." All one can say is that their expectations were not disappointed. It is noteworthy, however, that Himmler hardly ever attempted to justify in ideological terms, and if he did, it was apparently quickly forgotten. What stuck in the minds of these men who had become murderers were simply the notion of being involved in something historic, grandiose, unique ("a great task occurs once in 2000 years"), which must therefore be difficult to bear. This was important, because the murderers were not sadists or killers by nature; on the contrary, a systematic effort was made to weed out all those who derived physical pleasure from what they did. The troops of the *Einsatzgruppen* had been drafted from the armed S.S., a military unit with hardly more times in its record than any ordinary unit of the German army, and their commanders had been chosen by Heydrich from the S.S. élite with academic degrees. Hence the problem was how to overcome not so much their conscience as the animal pity by which all normal men are affected in the presence of physical suffering. The trick used by Himmler – was very simple and probably very effective; it consisted in turning these instincts around, as it were, in directing them toward the self. So that instead of saying: "What horrible things I did to people!, the murderers would be able to say: what horrible things I had to watch in the pursuance of my duties, how heavily the task weighed upon my shoulders!" Arendt, H. (2006). *Eichmann in Jerusalem A Report on the Banality of Evil*. New York, Penguin Books: 6662. Location 2149 of 6662. We mentioned earlier Stanley Milgram and his experiments on obedience to authority, Milgram has this to say of Arendt's understanding Eichmann: "Arendt contended that the prosecution's efforts to depict Eichmann as a sadistic monster was fundamentally wrong, that he came closer to being an uninspired bureaucrat who simply sat at his desk and did his job. For asserting these views, Arendt became the object of considerable scorn, even calumny. Somehow, it was felt that the monstrous deeds carried out by Eichmann required a brutal, twisted, and sadistic personality, evil incarnate. After witnessing hundreds of ordinary people submit to the authority in our experiments, I must conclude that Arendt's conception of the banality of evil comes closer to the truth than one might dare imagine." Milgram, S. (1974). *Obedience to Authority: an experimental view*. London, Tavistock. pp. 5-6

to decide on decisions of moral importance at times of great necessity - times of supreme emergency – from a moral perspective.

It is the contention of this thesis that supreme emergency and dirty hands arguments can be countered only by those who accept that moral actors must at times accept the most terrible defeats and failures if victory and success depend on terrible moral transgressions. If this is not accepted then there is an admission that supreme emergencies and that hands do have to be, at times, dirtied.

Any criticism of the supreme emergency or dirty hands positions that begins a discussion of doing evil by considering what would be insufficient grounds for doing evil, simply argues for the application of great rigour in our choice of situations in which we might sanction doing evil . The position argues then, not that we can never get our hands dirty, but rather that we ought to be very careful in choosing the correct occasions on which we might dirty hands; it is in essence an argument *for* the dirty hands position, not against it. The dirty hands theorist will take great encouragement when argument descends to the level of quibbling over particular hypothetical instances in which there appears to be, for this or that reason, a requirement that someone or other get their hands dirty. Any position that entertains an argument of this sort can be taken, by the dirty hands theorist, as an endorsement of their core claim: that there are times when we need to dirty hands.

The dirty hands theorist would typically find the demands of such an argument no great burden, because the same (in principle) arguments already exist within arguments in support of dirty hands: specifically the requirement that we do not do evil on a whim, but that we do evil only for extremely good and compelling reasons.

The dirty hands supporter has no reticence in acknowledging that what is being done, when hands get dirtied, is dreadful: that is why he speaks of dirty hands. Also the dirty hands supporter is not suggesting that there are no actions that ought to be avoided with the greatest diligence; this is why they speak of supreme emergencies and actions of last resort. It is difficult to pinpoint what dirty hands or supreme emergency supporters might object to in these claims. The dirty hands or supreme emergency supporter would not object to the demand that they take serious care to

only use evil means or to dirty their hands in the most extreme of circumstances. As I have said this is precisely what is being claimed by those who support some type of supreme emergency or dirty hands position. We might say that there will be a difference in the level of rigour being exercised in decisions about whether or not this particular case is one in which it is appropriate to enact supreme emergency measures, but if this is all we are in fact saying we are not positioning ourselves as being in opposition to the dirty hands supporter, we simply position ourselves as extremely scrupulous dirty hands supporters. A lack of confidence in the utility of torture seems all Tony Coady is confident in offering as a criticism of dirty hands here:

...the 'ticking bomb' scenario that is invoked by theorists to justify torture is a highly idealized story that has little relation to real life. The story has it that the 'authorities' *know* that a bomb is set to go off and do massive damage, they *know* that the captive they have in custody *knows* the whereabouts of the bomb and that torture is an efficient way to get the information from him or her, and that with the information they are very likely to be able to defuse the bomb and save innocent lives. In fact, the patchy record of intelligence services around the world should alert us to the disutility of these informational elements in the ticking bomb story. This record has been dramatically on view during the Iraq episode, but it has a long history. And the problem remains even if we can replace knowledge with reasonable belief, though we do not want to lower the standard too much if we are concerned with the horrible degradation and suffering that is torture.<sup>179</sup>

This is in no way a rejection of the supreme emergency, rather, a more demanding version of it. Arguments such as Coady's, that suggest only that the tipping point has not been reached rather than that there is no tipping point. This may in fact be just what Coady does wish to suggest. But if this is the case, he agrees with Walzer's main claim that ultimately the supreme emergency overrides moral concerns, but quibbles about the point at which this overriding should happen.

These are then no more than differences of opinion, between dirty hands theorists over when the tipping point has been reached and the time has come for us to dirty our hands. It should not be expected that there exists more than one understanding amongst dirty hands and supreme emergency supporters about what constitutes a

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<sup>179</sup> Coady, C. A. J. (2008). Messy Morality Oxford Clarendon press p 88-89

sufficiently demanding set of circumstances for initiating dirty hands actions; or unanimity on what constitutes a supreme emergency. What I am suggesting is that it makes no sense to adopt this intermediate position between the dirty hands theorists and those who reject that doing evil, in the sense in which dirty hands theorists understand it, can ever be acceptable or obligatory for a moral agent. The moderate intermediate position is in fact not intermediate at all, but simply another iteration, albeit perhaps a more restrictive version, of the dirty hands or supreme emergency position.

If we wish to take up a position against the supporter of dirty hands or the supreme emergency theorist, the only position worth taking, is that of rejecting the possibility of a moral agent being obliged to do what that moral agent believes to seriously conflict with her moral outlook. However, even if we are to take the position that evil can never become obligatory for the moral agent, such a position means very little in the absence of any clear statement about just what would constitute an act of evil. To say no more than that a moral actor ought never to do evil even in the most serious of circumstances, does not make clear at all just what types of actions we mean to discuss. This claim requires, if it is to be meaningful, some direction on what might be being referred to by evil. Without this clarification it is a claim about only one thing: that moral actors can name an action evil and that, at the same time, it can also be an action which they are obliged to do.

## **Evil**

Evil is such a flexible concept that it is best avoided whenever possible. This claim might seem a little disingenuous considering the title of this chapter – anyone who wished to avoid talking directly about evil would first of all refrain from using evil in all chapter headings. The fact is that there is no possibility of saying what needs to be said in this thesis without directly addressing the various ways in which evil is understood amongst the works that this thesis discusses. Talk of evil is not as helpful as more specific talk concerning particular actions; this is one of the problems faced here.

Just what is meant by my complaint that evil is a term used more often than defined might be made clear by this example from Raimond Gaita. Gaita appears to occupy that portion of the territory which I have criticised earlier in this chapter; it is a territory between the supreme emergency/dirty hands position, and a position such as the one held by this thesis which rejects the very idea that we can be confronted with circumstances that lie outside of the scope of morality or that demand of us that we do evil to achieve particular ends.

Gaita, perhaps, would not take himself to be a supporter of either the supreme emergency or be dirty hands positions, but neither does he seem to be in sympathy with the type of position adopted by this thesis: that moral actors can never be obliged to do evil. Gaita, without being specific about how we are to understand the evil we pledge to do, or what we might name an evil act, makes the claim that we must acknowledge that we will do evil in circumstances where doing evil is necessary for the protection of the community to which we belong, and that without that acknowledgement the moral actor is revealed as lacking the necessary understanding of what it means to be part of a political community. I will repeat this quote first used also in chapter one:

The acknowledgement that we must do evil is not merely a condition of the survival of this or that community under these or those contingent circumstances. The acknowledgement, *in advance*, that we will do evil is a condition of political communality as such. It is a condition of the sober acknowledgement of one's political *persona*.<sup>180</sup>

But can we actually pledge to do evil in this way? Alistair MacIntyre following Aquinas suggests that certain promises betray a mistake by the promisors:

Aquinas considers the example of someone who has sworn an oath to commit adultery or homicide and enquires if it is the case, as it might seem to be, that such a person either sins by committing adultery or homicide, or else sins by violating his or her oath, so that whatever he or she does he or she sins. Such a person would be indeed *perplexus*. But in fact, according to Aquinas, *this* should not be an occasion for perplexity. For an oath to commit an impermissible act does not bind and no wrong is done in violating it. We can easily generalize this solution to

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<sup>180</sup> Gaita, R. (1991). Good and Evil: An Absolute Conception. Houndmills, MacMillan. p. 261.

all cases of promising. Both someone who promises and someone to whom a promise is made have misunderstood the moral force of promise-making, if they do not realise that a promise to do that which is what turns out to be a wrong action is thereby void, something already presupposed in the giving and receiving of promises. So not to keep such a promise is to wrong nobody. No perplexity of any kind is involved.<sup>181</sup>

If someone believes that we might quite reasonably promise to murder or torture or rape, then that person would be obliged to say what type of moral force a transgression against such promises would have. These problems connect to our discussions, particularly in chapter four, concerning the obligation to fulfil an evil contract or agreement. If a moral agent can be under a promise to commit murder, it would supposedly be morally wrong for him to decide not to commit the murder. This could be claimed to be some sort of moral dilemma that he is facing, we might be tempted, perhaps, to accept this but we would need to overlook the artificiality of the dilemma; we would need to overlook the fact that the promise to which he is supposedly bound did not come out a moral demand, but a demand that the actor himself accepts to be morally compromising<sup>182</sup>: he has accepted a requirement to do evil in advance, (precisely what we noted Gaita claiming to be a fundamental requirement for the politically serious actor).<sup>183</sup>

One who fails Gaita's test of political seriousness is the pacifist<sup>184</sup>, and because of this the pacifist is not truly one of us:

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<sup>181</sup> MacIntyre, A. (2006). *Ethics and Politics*. version 2. New York, Cambridge University Press: 7784. p. 98

<sup>182</sup> Just what will be compromising for one actor may have no relation to what is compromising for another. As was discussed earlier in chapter two in our discussion of a minimally legitimate position, the only commonality we can at times find in various interpretations of evil is contained within the subjective responses of the actors who name something as evil.

<sup>183</sup> This raises the question about whether or not in order to be a serious political actor one has to be a serious moral actor. Does politics require a moral base? Or, is it an activity that might be undertaken in the complete absence of morality?

<sup>184</sup> Elizabeth Anscombe criticizes the pacifist not for failing to do evil but for fudging the distinction between morally legitimate killing and killing the innocent: "Now pacifism teaches people to make no distinction between the shedding of innocent blood and the shedding of any human blood. And in this way pacifism has corrupted enormous numbers of people who will not act according to its tenets. They become convinced that a number of things are wicked which are not: hence seeing no way of

And if we ask what marks that sense of community from which they [pacifist] are, partly, excluded – what kind of ‘we’ is it? – then, I think, the answer is that it is a community constituted by the fact that we will do evil when it is necessary in the defence of the conditions of political communality and by the fact that we know that we will do it.<sup>185</sup>

But for the pacifist doing evil might be no more than fighting by the rules in a just war.<sup>186</sup> When Gaita says the pacifist will not agree, in advance, surely this is not what he has in mind, because presumably that is not Gaita’s definition of evil? A pledge to do evil – a covenant with our fellows to do evil – is impossible for two reasons. Firstly, it is my promise to deliver an undefined service (contractually problematic), and secondly, it suffers from the problems pointed to in the quote from MacIntyre above – it betrays of the promisor a misunderstanding of the reasons why promises bind.<sup>187</sup>

No matter how troubled I am after the fact, if I chosen to do the evil action knowing that it was an evil action I have distanced myself from the applicability of my moral principles. For me to be racked by guilt and to have a troubled conscience, after I have acted, *may* have some importance to my future development as a seriously reflective

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avoiding wickedness, they set no limits to it...Pacifism and the respect for pacifism is not the only thing that has led to a universal forgetfulness of the law against killing the innocent: but it has had a share in it.” Anscombe, G. E. M. (1981). The Collected Philosophical Papers of G.E.M. Anscombe. Oxford, Basil Blackwell. pp. 57-58. While I find this charge against the pacifist a little extreme to say the least, I think the sentiment sits better as a criticism of those who fail to distinguish between innocent and morally legitimate targets by killing the innocent when ‘necessary’. Failing to kill the guilty seems far less damaging than killing the innocent.

<sup>185</sup> Gaita, R. (1991). Good and Evil: An Absolute Conception. Houndmills, MacMillan. pp. 259-60

<sup>186</sup> It should also be remarked here that not only the pacifist but also the just warrior must be removed from Gaita’s ‘we’, as the just warrior accepts that the protection of her community ought not to be achieved through any means available – so could not be expected to sign up for doing evil. Stanley Hauerwas reminds us of the commonality of pacifism and just war constraints: “Of course living a life of nonviolence may be harsh. Certainly you have to imagine, and perhaps even face, that you will have to watch the innocent suffer and even die for your convictions. But that is no different from those that claim they would fight a just war. After all, the just warrior is committed to avoiding any direct attacks on noncombatants, which might well mean that more people will die because the just warrior refuses to do evil that a good may come.” Hauerwas, S. (2002). "September 11, 2001: A Pacifist Response." South Atlantic Quarterly **101**(2): 425. p. 429

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moral agent, but what must always be of more importance is how I acted. My guilt, my remorse, comes out of my acknowledgement of just this fact.

To fail to understand this is to fail to understand what makes an appropriate motivation for a moral actor to consider his actions from a moral perspective. Morality requires a connection to the harm we are capable of inflicting on others that is more substantial than the thought that I should avoid acting in this way because acting in this way makes me feel afterwards a terrible sense of guilt or discomfort. As though it is simply my feelings of guilt and discomfort that I wish to avoid, not the harm done to others.

Moral philosophy that has less interest in how we act than how our actions make us feel is the pursuit of a terribly self-indulgent occupation. If there is anything of importance in moral questions, it is in the connection between actor and action rather than between actor and his feelings. To do moral philosophy and accept that there are times when morality is of little assistance to us in our deciding how we ought to act seems to reduce moral philosophy to a trivial pursuit. If, for example, there are to be moments when the requirements of political necessity must be taken as the final arbiter of how a moral agent ought to act, the moral agent would do well to put aside moral questions and concentrate simply on political ones.

### **Necessary For**

The supporter of the Supreme Emergency position maintains that a legitimate political community can be justified in doing whatever actions might secure its survival; that those who are entrusted with the security of their community, are obliged to use whatever means necessary to keep their community from destruction. They attempt to support this position by the use of arguments that are based in political necessity. They argue that it is sometimes necessary to act immorally to ensure the survival of a political community that finds itself facing the possibility of its own extinction. This claim is far from contentious, if by it all they mean to establish is that the survival of some political community might depend upon the performance of actions that might



be described as immoral<sup>188</sup>. However, the claim that an action or actions are necessary in order to achieve a particular end says nothing about whether or not the actions ought to be performed, or whether or not the actions are permissible.

If after securing the non-contentious point connected to the actions being *necessary for*, the supporter of supreme emergency then wishes to make the further claim that these actions are therefore obligatory or at least permissible; she will need to present arguments to show that it is obligatory or permissible for an actor to do whatever is necessary to secure the survival of his political community; she will need to go beyond the practical considerations of ensuring the survival of a political community, and say something about obligation, means and ends, autonomy and necessity; she will need to enter into the discussion from the perspective of the moral. No matter how convincing her arguments about political necessity might be, political necessity, in and of itself, is insufficient as a basis on which to build a compelling argument about how a moral agent ought to act. Political necessity can only be sufficient for questions concerning the demands and obligations of political roles, it is not sufficient as a basis for determining how any particular moral agent ought to act, even when that moral agent happens to fill a political role.

To decide how the moral agent should act based solely on the demands of political necessity, would be to reduce the individual moral actor to no more than the present place-keeper<sup>189</sup> of that role: someone who has no depth as an individual, merely an

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<sup>188</sup> This point is important and I wish to be very clear about just what is being said here. Our success in certain pursuits can depend on our readiness to act immorally. Some projects will only succeed if we lie, cheat, betray, murder or abandon others. If I were to argue this was not so I would be talking absolute nonsense. The slave-trader needs to keep his slaves chained-up at night in order to be a successful slave-trader. When an action is politically necessary it is necessary for political success.

<sup>189</sup> The place keeper is someone so subsumed by his or her role, so comfortable with the authority of those around him or her, that in an oddly modest way they to some extent fade away as a chooser of their own actions. Consider this episode of conscience lightening and tragic modesty, as described by Arendt, experienced by Eichmann after the Wannsee Conference: "There was another reason that made today of this conference unforgettable for Eichmann. Although he had been doing his best right along to help with the Final Solution, he had still harbored some doubts about "such a bloody solution through violence," and these doubts had now been dispelled. "Here now, during this conference, the most prominent people had spoken, the Popes of the Third Reich." Now he could see with his own eyes and hear with his own ears that not only Hitler, not only Heydrich or the "sphinx Müller, not just the S.S. or the party, but the elite of the good old Civil Service were vying and fighting with each other for the honor of taking the lead in these "bloody" matters. " At that moment, I sensed a kind of Pontius

entity whose entire importance is to animate our shared communal understanding of what it is to be in that role.<sup>190</sup>

What is being said by the supporter of supreme emergency about the nature of politics and what is required at times in order to protect the community under threat of extinction can, as has already been said, be accepted as having a certain restricted practical or mechanical truth. But, accepting what is being said about the demands of a certain form of political life need in no way change the way in which we understand the nature of morality. No matter how strongly the case for political necessity is put, the question still remains as to whether or not those in positions of responsibility are always under an obligation to meet any demands made under this form of necessity.

As has already been suggested in this chapter the most unproductive way to approach this problem, appears to be, to engage in a discussion about the necessity of this or that action under these or those circumstances. To dissipate our energy quibbling over each specific example of supreme emergency and the type of evil act that might assist us in averting the destruction of some community is an essentially pointless exercise.

It is a mistake to argue against the supporter of supreme emergency position by trying to show her that for example, torture is inefficient or produces poor quality intelligence. Such an approach can never be effective in *closing the door* to actions such as torture, at best it provides more reasons to try other options first, a not altogether pointless activity, but at its worse it adds credibility to the very idea of

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Pilate feeling, for I felt free of all guilt.” *Who was he to judge?* Who was he “to have [his] own thoughts in this matter”? Well, he was neither the first nor the last to be ruined by modesty.” Arendt, H. (2006). Eichmann in Jerusalem *A Report on the Banality of Evil*. New York, Penguin Books: 6662. Location 2290 of 6662

<sup>190</sup> This is not meant to be taken as an argument for the complete dissociation of the political and the moral. That is not the position of this thesis. When there is talk here of political necessity, it is to be understood as a narrowing of perspective that we are dealing with. In the same way as the perspective might be narrowed to include only the direct concerns of the slave-trader or the economist or the *Tour* rider or the parent. So that we might speak of necessities in all these cases without being committed to a particular position on how these necessities obligate the moral actor engaged in these activities: it is possible to treat the two as separate questions.

discussing torture as an option we might consider. Its target is no more than that of *ineffective* evil means, thereby leaving open any question concerning the legitimate use of *effective* evil means.

Rather than approach the topic from this angle it is far better to simply concede that the actions that may be required, by the lights of political necessity, in order to protect our community from annihilation may at times be ones that are terrible and against what we take to be serious moral principles. This statement of fact, because it confines itself to practical political necessity and makes no further claim about what ought to be done under such necessity, and can easily be accepted by even those who reject the doctrine of supreme emergency. Having thus accepted that at times the survival of our political community can rest on our being prepared to act immorally, to do evil, it is then open to us to decide whether or not we have a right or obligation to always do what is in our power to protect our political community from destruction.

All attempts to refute the supreme emergency doctrine will be unsuccessful if they attempt to do so by arguing that immoral actions are *not* at times necessary for the political community's survival. To claim this would be like claiming that cheating can never help a student to achieve a higher mark: neither claim is supported by the evidence. Although we might argue against the long term benefits of cheating for the student, or against the morality of cheating, we cannot argue that as a strategy for passing exams it is entirely devoid of utility.

The utility of cheating or torture is not the real point of our disagreement - or should not be the real point of our disagreement. Rather, it is only in the rejection of the idea that the necessities of success in some field or endeavour or project can alter the demands of morality for the moral actor where real disagreement exists. In relation to political necessity, discussing the nature of politics can be an activity separate to discussing the nature of morality and how the moral stands to the political.

Because they attempt to resolve the problem of the conflicting demands of morality and politics by separating the political from the moral, the supporters of supreme emergency restrict themselves to developing a conception of morality that makes

insufficient room for political necessity as though it were an entirely exotic and unexpected eventuality (by so doing they themselves betray the type of lack of imagination Walzer accused those unwilling to do militarily necessary evil of earlier in this chapter). They are then forced into the position of constructing a comprehensive moral system that sidesteps questions such as political necessity. By excising situations of supreme emergency from the province of the moral, they are committed to attempt to make sense of the world from a moral perspective without fully engaging with their understanding of the nature of politics.

### **Political Necessity**

Of course the supporter of supreme emergency doctrine does not deny the importance of politics. In fact they make it *a* if not *the* supremely important human endeavour. But placing some political crises outside of the sphere of morality will inevitably be corrupting of the resultant conception of morality: our account of morality (and of politics) will be diminished. No truly comprehensive moral system could be coherent were it to leave aside a treatment of its political implications, especially those of a community facing annihilation. So there is something queer in skiving off the situation of the extreme political emergency as though it were either an unimportant consideration from a moral perspective or, perhaps *too* important for morality to be allowed to trouble itself over. (Earlier in the thesis we spent a good deal of time discussing moral significance, so we will say no more on that subject here.)

This problem is caused, in part, by the conflation of two questions. The first concerns how someone who seriously engages with a political community would need to act, at a time of supreme emergency, in order to ensure the survival of that community: this is a question about politics. The second concerns whether or not certain actions connected with achieving the survival of a political community are morally permissible: this is a question about morality. If we attempt to answer these two questions in one, we set ourselves an impossible task.

The first is a simple practical question that concerns the achievement of a clear goal: the survival of the political community. The second is more complicated because the

goal of doing what is morally right in this case also contains questions of one's obligation to one's community.

It is the first question that we have spent most time on here. This question, I have suggested, can be answered in the same way by both the supporter of supreme emergency/dirty hands, and by those who reject the conclusions of the supreme emergency/dirty hands theorists. Restricted to a question about what is necessary for the survival of the political community, there seems to be no great difficulty in answering that what is required is that we do anything and everything in our power; that is if all that we are attempting to do is secure the protection of our community.

However, this is no different to our saying that in order to eliminate a certain race of people from the face of the earth, one needs to eliminate every member of that race. Or, in order to succeed at armed robbery, one needs to be believed to be armed and to convince others that unless they comply with the demands one makes, they will be killed. All that is established in any of these examples is that we have a grasp of the practicalities of the tasks we propose to undertake.

Were the armed robber to ask us whether or not he *ought* to shoot the teller we would need to clarify with him just what type of ought he is speaking about: whether it is in fact a moral ought or an ought confined to the success of his bank robbing project. If it is in fact simply a practical question about the utility of a demonstrative shooting for the overall success of the robbery, then we may in fact reject the invitation to speculate on the technicalities of armed robbery and we may instead substitute his practical question with a moral question.

We might do this because we believe that being drawn into discussing more or less successful approaches to armed robbery, and our considering the treatment of victims (no matter how hypothetical), is either wrong in itself or at the very least may be taken by others as some form of legitimisation of the questions being asked or the activity being considered.

We might believe, as was suggested earlier in the case of discussing the utility of torture, that in some cases there is a requirement not to engage at the level of

practicalities because doing so makes what it is that is being discussed seem to be more reasonable or something worth entertaining as an option.

Already in this chapter we have accepted that the survival of our political community might at times rely on the commission of evil actions. We have been at pains to separate this statement of a fact of practical necessity from the moral question of whether or not a moral agent should commit evil actions to achieve the survival of his community (this also is not really the best question, as doing evil is an unhelpful phrase). This thesis has consistently pointed to the fact that if we are to be serious about our moral positions we must accept the very real possibility of our serious adherence to moral principles is capable of causing us to fail even in endeavours and projects to which we have a high level of commitment.

However, when the political question has been answered in this way some may believe that the moral question becomes redundant. Or, even if the moral question is still to be asked, and answered, that we are obliged to override its conclusions. Perhaps it will be argued that the moral and political are simply distinct spheres within the life of a moral actor, and that it is inevitable that we should find they provide us with different answers, based in different demands, to questions concerning our obligations. That it is not a matter of one overriding the other, but rather, we have a political persona and a moral persona and that the two can suffer incompatible demands is to be expected.

Perhaps this is nothing more than the attempt to create within the one moral actor a division along private public lines. Or as was suggested in the quote from Martha Nussbaum in chapter one: a limiting of oneself to a subset of one's comprehensive conceptions of value. It is not altogether clear to me that there is any more substance to any call to do evil than the claim that the demands of acting in, in particular, a public capacity have the potential to enact the overriding of the moral actor's personal moral position (I am inclined to read the earlier quote from Gaita, on doing evil, in this way). So, having spent considerable time on this issue in the second chapter, I will not simply repeat myself here, apart from adding this brief quote from Alasdair MacIntyre:

So insofar as that self recognises and aspires to conform to what it takes to be moral requirements, within each particular sphere of activity, it will be a morality from which the elements of potential and actual conflict are missing, a diminished morality that matches the diminished powers of agency.<sup>191</sup>

A truly fully functioning moral actor is one who has the capacity to take an overview of the requirements of the multitude of roles she might fill; one for whom there exists a set of criteria that transcend the demands of any particular role. This must be a coherent set (and certainly not a subset) if she is to be taken to be capable of coherent judgements pertaining to her life as a whole.

If it were possible to reduce the life of the moral actor to separate non-communicating spheres, it would simply amount to us having the ability to discount the demands of different spheres when conflict arose. For example: wanting to achieve success politically might require silencing morality's prohibitions.

If the demands of morality and politics become incompatible or there is some other schism created between the two, it is not the job of politics to engineer their rapprochement; unless there is a political advantage in reuniting the two. It is instead, the job of politics to put the incompatible demands of morality aside so that they do not interfere with political demands. It is the task of politics to take authority from those who would frustrate political success; morality is one possible avenue from which this type of frustration might come. This sidelining of morality is something that can be claimed to be politically necessary. And politics, in the moral actor's compartmentalised world, need only be concerned with what is politically necessary.

If a reunion is to be effected, motivation to bring it about it will need to come from the side of morality. Whereas, we can sensibly talk of politics without considering the demands of morality, we cannot sensibly talk about the place of morality within our lives and dismiss anything and everything political; there is a difficulty in the claim

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<sup>191</sup>MacIntyre, A. (2006). *Ethics and Politics. version 2*. New York, Cambridge University Press: 7784. p. 200

that politics is not a morally significant activity that does not exist in the same way in the claim that morality is not politically significant.

If this is true, it exposes an insufficiency in simply cordoning off separate areas, in the life of the moral actor, for the political and the moral to inhabit. It exposes the mistake in the idea that the two categories as existing side by side. The fact is that the moral has a stake in the political, but that the concern morality has with the political (and must have with the political because the political is morally significant), need not be reciprocated by the political; because the moral need not be politically significant, and is in fact often politically inconvenient.

### **Other Supreme Emergencies**

When faced with a supreme emergency like the imminent destruction of our community, we may be in a position to do some evil act in self defence. Supreme emergency arguments tend to assume this is the case. Supreme emergency arguments also tend to assume that we will be stronger than our opponent; because once we no longer have means at our disposal to avert our destruction, fair or foul, we can do nothing but accept defeat. We have reached a practical limit to our powers. So the question of what might be permissible only rises in a situation where we are more powerful than our enemy.

However, if we believe ourselves to have some reserve of illicit powers, but that we cannot press our advantage without some terrible moral transgression (for example torturing or murdering the innocent), we may simply have, in the same way, found another of our limits: a limit that exists because of our moral outlook. Perhaps we believe we can overpower our enemy only if we are prepared to betray all we believe in, and because it is not reasonable for a community to betray all it believes in, we have reached a limit and must now be prepared to accept that we will fail. Of course those who see moral limits as nothing like practical limits will say that we have not reached a limit at all but rather given in, and our failure has been one that we chose for ourselves for an irresponsible reason.



The other point that might be made here is that there is an assumption inherent in this idea that the enemy has no such qualms about using their illicit powers on us. We seem to be assuming that they will, and have indeed done, everything they can to try to defeat us. They have employed whatever means they had at their disposal, and in this they have the advantage over us because they are not constrained, as we are, because they have no moral principles. However, this need not be the case. We may be fighting against a more powerful foe, an enemy which has neither used nor would consider using evil means to defeat us. In short our enemy may be fighting fairly.

### **A Scarcity of Resources**

There does seem to be something odd in this claim considering that the enemy threatens our total destruction and such an evil end must render all their actions connected with achieving that end illicit. When in chapter four we considered a confederacy to commit murder we pointed to the fact that the means connected to achieving evil ends are, simply through this connection – evil. However, perhaps the complete destruction of my community is not my enemies aim, but rather a side-effect of actions that were simply necessary for *their* survival. The fact remains that my community might face obliteration not through an encounter with evil, but simply by the fact that the survival of my community and the survival of my enemy's community are in some way incompatible.

Resources may be short: two communities might face a choice of their survival and the destruction of their neighbour, or acceptance of their own starvation. Or in another example of supreme emergency, a community might face a choice of the destruction of a neighbour because that neighbour poses a risk through its being the carrier of some terrible infectious disease. If we can face a supreme emergency when threatened with violent attacks of an evil enemy, we can also be in the same position due to no fault of those we are faced with choosing to visit evil upon. After all, it should be remembered that the innocent can be just as dangerous as the guilty.<sup>192</sup>

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<sup>192</sup> The fair distribution of risk, an idea introduced here in chapter one, was concerned with risks created through our relationship to others guilty or innocent. It was argued there that we are required to accept reasonable levels of risk from both our fellows and our enemies.

In these types of cases does the supreme emergency still function to allow the normally impermissible when our destruction is due to a scarcity of resources? I have in mind here some type of tragic balance where two communities each faced their own destruction simply because each is prepared to do anything to guarantee their own survival. Both are therefore, according to the doctrine of supreme emergency, simply doing what is necessary: doing whatever is necessary to ensure their own survival.

This is no more than the extension of self defence to allow for pre-emptive strikes – if we have to be prepared to do whatever is in our power to do to ensure the survival of our community, pre-emptive strikes seem to be just another type of action in our arsenal. If our community is under threat, from the scarcity of water for example, it may well be said to be facing a supreme emergency. So while it accepts that destroying the neighbouring community is immoral, as, let us hypothesise that they are now directly competing for such a precious resource so that their destruction becomes a necessity. If doing evil is acceptable or obligatory in order to avert the destruction of our community at the hands of an evil enemy, it might also be necessary to overcome a threat from an innocent competitor.<sup>193</sup>

## **People Like Us**

Although supreme emergency doctrine is typically presented as how we are to deal with a threat by an evil enemy, an enemy which aims in its actions for this evil end – the destruction of our community, the trigger for the supreme emergency could instead be our having to decide how we might respond to a threat not from an evil adversary but instead an adversary who themselves is faced with their own supreme emergency. Or, we find ourselves facing a supreme emergency that is entirely the result of some natural threat which threatens our continued existence.

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<sup>193</sup> The individual soldier faces just this same difficulty, it is necessary for him in his project of soldiering to kill enemy soldiers who pose a threat to him, with very little knowledge of the history of the individual he kills. The particular soldier he is faced with killing may be a conscript; may disagree with the policies of the government who has put him there; may in fact be very much an innocent, but a dangerous innocent nonetheless.

As has been argued above it is not that we are facing an evil adversary that has the supreme emergency theorist readying himself to jettison the usual constraints of our behaviour; rather it is the emergence of a sufficiently serious threat that provides this motivation, a situation that can arise independently of there existing someone with evil intentions towards us. As well as this, if we face a choice between doing evil and surviving or not doing evil and perishing, it may not be the case that in our destruction the world is left bereft of all moral goodness, a loss that is at times put forward as a further justification of supreme emergency measures:

When our community is threatened, not just in its present territorial extension or governmental structure or prestige or honor, but in what we might think of as its *ongoingness*, then we face a loss that is greater than any we can imagine, except for the destruction of humanity itself. We face moral as well as physical extinction, the end of a way of life as well as of a set of particular lives, the disappearance of people like us. And it is then that we may be driven to break through the moral limits that people like us normally attend to and respect.<sup>194</sup>

However, it might be suggested that this claim contains just a touch of hubris; that it is not the case that anyone's contribution to morality is as unique as Walzer presupposes here. And if this is true then on what grounds can we defend the necessity of *our* survival? Is it, in the end that we simply would prefer that we survived? If these precious characteristics we have are not really unique to us but rather are characteristic of humans or human life, then they are also characteristics our enemy possesses – if our enemy is human.

When we wish for the survival of *people like us* are we suggesting that *they* are not like us? Not just superficially but in their very essence. Of course they are acting badly at present, but do we doubt their sharing in a common humanity with us? Perhaps a particular community has been brought to a fever pitch by their leaders, and made to believe their aggressive actions are justified (perhaps they have been told that they face a supreme emergency and that good people must, regrettably, dirty their hands). They are people like us, and like us, they are vulnerable to being badly lead.

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<sup>194</sup> Walzer, M. (2004). *Arguing about War*. New Haven CT and London, Yale University Press. p. 42

The claim that people like us must survive, is, in an odd sense, more supportable when it is our culture that is being preserved rather than something deeper, something fundamentally human. However, that we have a preference for our culture is not something unusual or special about us, so cultural preference seems terribly insecure as a basis for saying we must survive at all costs. *They* probably feel pretty much the same way about themselves. Other more sustainable justifications will have to be proposed. The significance of offering justifications for our actions will be explored in this next section.

## **Justification**

There is a question to be asked any time a moral actor takes herself to be under an obligation to do something, but is unable to account for that obligation within her moral outlook. The question being: why some obligations are, for the moral actor, unable to be made to conform or be incorporated into the best articulation of her moral outlook.

When a moral actor believes herself obliged to act in a certain way, she will normally be taken as saying that there exists justifications for her to act in that way. When a moral actor refuses to offer justification for her actions, it may be because she does not wish to be excused for them – she accepts her guilt for acting so, and has no desire for her guilt to be lessened through her offering a more qualified apology.

She may believe that the type of action she has performed is unconditionally wrong and ought never to be lessened through excuses. Or, she may not offer reasons for her actions because she has none to offer. Those who believe that actions that would normally be impermissible are justifiable in times of supreme emergency are putting forward reasons and justifications for their actions; they are saying that doing evil can be justified.

This justification does not however, according to Walzer, make any feelings of guilt they may have inappropriate. Doing what is obligatory, doing what is justifiable, might still leave the moral actor guilt ridden, and this guilt is believed to be the correct response. The necessary evil act is taken to be, for the moral actor, both

obligatory and the proper object for her feelings of guilt. Presumably, this level of guilt is less severe than that rightly suffered by the moral actor who carries out *unnecessary* evil acts.

Raimond Gaita, who also believes, along with Walzer, that the moral actor can be both obliged to do evil and that when he does he ought to suffer guilt over his actions, is clear on the point that when we do evil in this way we ought not to use the evil's necessity as its justification:

Now I come to a fundamental point that will seem to many people strange, or even self contradictory. The qualification 'when necessary' is not meant as a *justification* for doing evil. It does not even signal the possibility of a justification. It functions negatively to condemn the use of evil means when they are not necessary, but it does not work positively to justify their use.<sup>195</sup>

I must admit to being one of the many who Gaita predicts will find this claim strange. We should be clear on the point that whether or not I as a moral actor wish to offer justification for my actions, this does not alter the status of my actions. My refusal to give a justification is simply my refusal to enter into a conversation with others concerning the reasoning behind my actions; it means only that I will not join others in the critique of my actions. This is a choice that I am free to make: I might be free not to contribute to this conversation, but I am not free to stifle the conversation.

However, putting forward a justification for my actions might be the very least I can do; I may well owe at least this much to those to whom my actions have caused harm. My refusal to put forward an account of my reasoning, the *workings out* that led me to believe that my actions were the right actions, may be a contemptuous act: a rejection of any right others might have to question my decision. MacIntyre quite reasonably suggests in the following quote that being called to account is essential for the moral agent for a number of reasons:

When others put us to the question and call us to account, it is generally in situations in which they are unclear either about just what it is that we take ourselves to be doing or about why we

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<sup>195</sup>Gaita, R. (1991). Good and Evil: An Absolute Conception. Houndmills, MacMillan., p. 260.

take it to be reasonable to act in this particular way or perhaps both. They therefore invite us to make ourselves intelligible to them, so that they may know how to respond to our actions. And what we find when we attempt to make ourselves intelligible to such questioning others is that sometimes we also need to make ourselves intelligible to ourselves.<sup>196</sup>

Consider this in relation to Gaita refusing to give justification for the evil done. It is to some extent through our attempts at justification, our being called to account by others for our actions, that we come to an understanding of what we have done or what we intend to do. Also is there not an ongoing internal argument that provides a level of disquiet to the one who has made the choice to do the evil, could she therefore be questioned as to why she feels remorse or guilt, and can we feel remorse if we have not considered whether or not our actions were justified?

### **Politics and Morality**

If we accept the choice as one of being either a serious moral actor or a politically serious actor, (if the *when necessary* in the quote above from Gaita, is to be read as when politically necessary) then we are simply throwing up our hands and giving up any hope of creating a coherent moral outlook. It is perplexing to me that any would find this position satisfactory, it seems to undermine the significance of what might be achieved through doing moral philosophy. It is an acceptance that morality's inadequacies and limitations (or inconveniences) relegate moral decisions to a subservient deferential role, which must concede the final say to political necessity. An inability to accommodate the demands of politics within a moral framework makes the framework created under this qualified and limited picture of our lives together a questionable achievement. The claim that we can and must do evil when it is necessary in one particular part of our lives creates a fragmented picture of morality, and suggests that our efforts to consider our lives from a moral perspective are in the end futile, or at least of only limited importance.

So, either we accept that there exist for moral actors the necessity to do evil from time to time, or we accept that at times being a serious moral actor requires of us that we

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<sup>196</sup>MacIntyre, A. (1999). Dependent Rational Animals. Chicago, Open Court. Page 148

accept the failure of some of our most important and treasured achievements and projects. The decision-making of those who are politically serious will not be informed by their moral outlook, if it is impossible to be both a serious moral actor and politically serious. Those who have accepted politics as their particular walk of life will have a calling that is outside of the purview of morality.

But that which is politically necessary is necessary because of the way in which we have chosen to arrange our political affairs, and the way in which we have chosen to see the political sphere. Because this is so, we are responsible for not just how we respond to political necessities, but also for the arrangements that bring these necessities into being. No one can ignore the part his choices have played in creating a demand and no one can point to a contingent necessity that has come about through, at times, highly partisan and discriminatory choice making, and then claim to be bound to do whatever is demanded by the claimed necessity to act.

Before we reach the point of being under any political necessity to do evil, we must acknowledge that the actions and arrangements that make up our day-to-day life, within our political community, have the potential to create for us internal necessities inconsistent with our professed moral position. This is what it is to know in advance that our living in the way we do might, if we believe that what is of the greatest importance to us is that we continue to live as we do, create a demand of us that is inconsistent with our professed moral beliefs.

If what is driving our behaviour in politics is political necessity and political necessity can render our moral voice mute, then it is difficult to see that our actions in the political realm can be expected to be in any way constrained – their only constraint being, the question of an action's necessity. (But then we might ask why does this restriction function? Why would the unnecessary evil necessarily be rejected if it had even some utility, brought about some slightly better outcome?)

It would then be a question of how the moral actor who takes her part in the world as a politically serious actor straddles the two realms she now inhabits. Is it the case that a private public divide will be needed, as we discussed in chapter two, or is there some other way in which she can sensibly be the inhabitant of both a moral world and

a non-moral political world? What is striking about this idea is that it is her actions in the supposed non-moral world of politics that have the greatest potential to cause morally significant outcomes: it is as a political actor that she is given an opportunity to do good and evil to an extent that could not be dreamed of as a private moral actor.

It is an odd conclusion to come to that an aspect of a moral actor's life which has such potential for causing good and harm, ought to be seen as excised from considerations of good and evil. (And this leads us to another important point.) If politics is a sphere of life outside of moral it is then an oddity that, when we talk about the actions necessary in politics, we continue to speak of doing evil. Surely, if we are in a sphere of life that is not constrained by moral sense we are in a sphere of life in which talk of good and evil make no sense.

It would seem to be implicit in the argument that politics is a realm of life outside of the moral that the role of politics has no place for a conception of good and evil, or if it does it has its own conception of good and evil one that is not identical or reliant upon the way good and evil as understood within morality. If politics is outside of morality one cannot describe the actions of its players in moral terms. Actions inside politics can be described as right or wrong; necessary or unnecessary; perhaps even good or bad – but here we would need to refrain from using these terms in a morally evaluative way; we would need to use these terms in a political sense and having established that politics is a realm separate to morality we would not now be able to smuggle in, as it were, moral evaluations or the language of morality into our prescription of actions and behaviours within politics.

There is a difference between the claim that politics and morality are separate spheres of human life and the claim that at times the demands of being politically serious overrides moral judgements. There is a difference between the claims of the supporter of supreme emergency or the supporter of a dirty hands doctrine and someone who sees the political separate to the moral. Those who support either supreme emergency or dirty hands make no claim other than that there are times when adherence to moral position will make impotent those charged with maintaining the security of their political community. This claim does not equate to saying that morality has no place in politics, rather it points to the consequences of being restricted by a moral position



and suggests that such restrictions prevent those charged with maintaining political community and its security incapable of discharging their duties.

It may not even be problematic for the one who makes this claim that where they point to duties they do so using the force of moral demands. It is not that supporter of either of these positions finds politics to be an activity that is peculiarly ill-suited to moral scrutiny; they may well find that much in political life ought to be morally scrutinised, it is just that they admit to the incommensurability of maintaining absolute moral principles and maintaining the security of a political community. They point, not to a natural tension between morality and politics, but rather to a natural tension between morality and their preferred political outcomes.

The supporter of supreme emergency or dirty hands position is at pains to maintain moral scrutiny of as much of the political landscape as possible. They focus their efforts on clarifying what creates a supreme emergency situation or what would give legitimacy to an actor dirtying his hands, they believe there are restrictions on morality within politics, but they attempt to keep them as minimal as possible. Although this thesis rejects entirely the aims of these positions on the grounds that the suspension of a supposed moral position is simply an expression of another moral position, there is in these positions an acknowledgement that it is right that the actions of the political actor be contemplated as morally significant actions.

This is very different to the position of those who would have the moral and political as different spheres of life. Those who hold this position do not attempt to minimise the area within politics demarcated as a morality free zone, rather the supporter of this position takes the moral and political to be an entirely separate fields of human activity.

## **Conclusion**

In this final chapter we have looked at doing evil. Our main focus has been on the position of the moral actor who believes herself to be obliged to do evil. We have argued that such a position is a confused position. It has been argued here that the moral actor who claims to predict that he or she will and must do evil makes a claim

without any real sense: that such a claim means nothing without his specifying what it is to do evil, and that her audience will rightly be confused by any such claim.

As well as this the chapter questioned political necessity as something incapable of being viewed from within morality: attempts to separate the domain of politics from moral scrutiny was criticised here as it has been elsewhere in the thesis.

There was also an examination of the difference between those we consider ‘good’ doing evil and those who do not consider good doing evil. It was argued that too much can be made of *who* acts badly, and this can lead to the good being licensed to do what ought never to be done. Also the chapter dealt with claims of supreme emergency and in what circumstances they might be said to come about. We noted in relation to supreme emergency that the initiation of supreme emergency conditions might be triggered by more than just the typically described instance of a community under attack from an terrible and evil enemy, and that if we accept the idea of a loosening of restrictions during a supreme emergency, we will be loosening moral restrictions in a very broad range of circumstances. In particular the chapter argued that if supreme emergency conditions licence immoral actions against an evil enemy, they must also licence immoral actions when we are faced not with evil but simple competition for survival.

Finally the chapter dealt with what it means to be committed to do whatever it takes to ensure the survival of people like us. It is the contention of the thesis that no group can justify the use of evil means on the grounds of the necessity of *their* survival. That under certain circumstances being people like us, if it is to mean anything, will mean we will fail to survive, and that the acceptance of failure, even on this level, is not outside of what can be demanded of us by morality.

# Conclusion

Over the previous chapters our work has been to provide support for an argument against a limiting of morality's scope and the dissolution of the moral actor's singular moral view. The thesis has been provided with this support through an exploration of a number of different – related but independent – aspects of moral agency and moral obligation; it is to be hoped that the support has been sufficient to highlight the significant problems inherent in the excision of morally significant areas of the moral actor's life from his or her moral scrutiny, and the attendant problems associated with any disruption to the moral actor's singular moral view.

The task of the thesis has been to examine that part played by failure in the life of the moral actor. The course we have taken has not been a direct one, because there was no direct course available. Failure and its deliberate acceptance by the moral actor is essential if the moral actor is to be able to function as moral actor, but failure is not something that will be sought directly by the moral actor. Just as the moral actor does not directly aim at being morally good, but rather is actively involved in living a life and it is in the living of that life that he or she can be said to have acted morally well or morally badly. The entirety of the moral actor's life provides at least the potential opportunity for him or her to choose well or to choose badly from a moral perspective.

It has been argued over the course of the thesis that the moral actor who believes her life insufficiently integrated so that it might not be assessed, by her, from a synoptic moral viewpoint, and who believes that there are areas of her life that fall outside of her responsibility for moral decision making, fails to understand the true nature of her moral responsibilities. The moral actor must accept her responsibility to decide matters of moral significance from a moral perspective as being a permanent and continuous feature of her life – albeit one open to change and adaptation.

Continuity, consistency and integrity are all compatible with change and adaptation in the life of the moral actor, but not with the creation of silos for different spheres and

different roles within her life. Different roles do not create within the moral actor alternate moral personas capable of functioning simultaneously. However, they create the possibility of tensions within the one moral agent, and it is the ways in which these tensions are relieved that is at the heart of questions dealt with in this thesis. Relieving the tension through a dis-integration of the moral actor was rejected by the thesis as a justifiable method.

It was also argued that the moral actor has the responsibility to choose for herself how she ought to act on matters of moral significance. The moral actor who fails to understand this betrays a lack of appreciation of the scope of her moral agency. Of course the moral actor will at times act on the advice or direction of others, however, even when the moral actor acts under advice or orders from others her responsibility is not displaced but takes on the guise of being a decider on the legitimacy of those she follows.

In order to support these claims the thesis presented discussions on agreement, contracting, political necessity, roles and the legitimacy of institutions. The topic of contracting was further divided into an examination of the effect making contracts or agreements have on the obligations of the moral actor, but as well as this we considered and rejected the possibility of understanding human society through a contractual model. In the case of political necessity, it was the position of the thesis that any approach to view political necessity as capable of creating an obligation for the moral actor to act immorally was not a reasonable way out of situations of conflict between the demands of political necessity and morality.

On roles and the legitimacy of institutions the thesis sought to encourage the downplaying of roles in order to lessen the possibility of them overwhelming the individuals who fill them, emphasizing that we ought not to lose sight of the individuals behind the roles they fill. It was argued that under the pressure of his or her roles to act in ways that create for the moral actor conflict, that there is a temptation to effect a dis-integrate rather than integrate the moral actor.

The thesis presented a view of human nature and of our social interactions and communal lives as being motivated by more than each individual's own personal

benefit; a picture of human society that is too complex to be captured by a model of contracting; a view of social institutions and the roles connected to those institutions as not capable of overriding the moral actor's autonomy; a view of roles as no more than typical ways of doing tasks connected with the needs of the community.

An important question raised during the thesis concerns the project of those who wish to sidestep inopportune moral positions. The sidestepping of moral positions, the thesis claims, is a totally self defeating exercise: if a moral position is inconsistent with how we believe we ought to act, then that moral position is due for replacement or alteration – if a moral limit does not have the ability to limit its holder then it has no purpose. It would in fact not be a moral limit at all but rather something like a piece of idealistic posturing and its continuance will serve no great purpose.

Of course moral positions may be seen as no more than idealistic posturing, and this is a probable inference to be taken from those who see morality as overridden by matters such as the protection of our community; by those who claim that we need, at times, to be realistic over being morally worthy. Against this the thesis has put forward the claim that morality is never limited by seriousness; that moral significance is infectious; that all that is achieved by splitting the moral actor into separate public and private aspects is the destruction of his or her capacity to function, in either realm, as a an actor with moral agency; that too great an accommodation of conflicting demands results, for the moral actor, in an inconsistency that is fatal to his or her moral agency.

Also we considered the problem of consent as something demanded by rationality, and suggested that to be presented with just one choice is to be in reality deprived of any real choice.

The thesis put forward arguments against the dissolution of the moral actor's singular moral outlook, and argued for the maintenance of an option to accept failure on moral grounds. Claims that, oddly enough, appear to require bolstering even in the realm of moral philosophy. A continuation of the work of this thesis would include a more thorough consideration of the imperative for action in support of communal survival. It is a hazard encountered by all who resist the demands of dirty hands or supreme

emergency or the need to do evil in the support of their community's survival, that they are dismissed as naïve and incapable of really imagining the horrors they are not prepared to resist in the name of moral constancy: the charge that they lack a realistic understanding of how the world turns. No doubt this thesis is open to just these sorts of criticisms; I accept that fact but reject the characterisation.

Further work in the vein of this thesis would also include a fuller examination of the place played by roles in the life and choices of the moral actor, and how personal responsibility might best survive the influence of taking oneself to have lost one's autonomy in face of the endogenous demands of some role one might fill. The freedom to fail is a freedom essential to moral agency.

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