

Washington and Lee University

The Mudd Journal of Ethics

Volume 7

Fall 2022



MUDD CENTER
for ETHICS

The Mudd Journal Editing Team

Tyler Bernard '23 (Editor-in-Chief)

Ben Hess '23 (Editor-in-Chief)

Tyler Bernard '23 (Assistant Editor)

Chad Thomas '21 (Editor)

Anna Hurst '22 (Editor)

James Torbert '23 (Editor)

J.C. Ward '23 (Editor)

Watson Deacon '24 (Editor)

The Mudd Journal of Ethics **Editing Team**

Tyler Bernard '23 is from Short Hills, New Jersey. He is majoring in Philosophy and Environmental Studies with a concentration in Conservation Biology. He plays varsity soccer and serves on the Campus Kitchen leadership team. He recently completed a term abroad in Costa Rica, studying the phylogeny of sloths in a biology lab. This upcoming summer, he plans to research wetland ecology at the Rochester Institute of Technology while also working on his honors thesis in philosophy. Tyler was selected as a 2022 Udall Scholar and hopes to pursue graduate study at the intersection of philosophy and environmental issues. He also enjoys playing the guitar and can often be found on hiking trails around campus.

Maximilian Gebauer '22 is from Farmville, Virginia. He is majoring in Philosophy and minoring in Poverty and Human Capability Studies. During his undergraduate career, he devoted his time to the Ethics Bowl Team, Amnesty International Club, summer research, and the Mudd Journal. He spent his junior year at Oxford University where he studied various topics in philosophy and climate science. This fall, Maximilian will be attending the University of Pennsylvania's philosophy Ph.D. program where he plans to research and write on the normative dimensions of climate change, intergenerational justice, and the ethics of emerging technology with a focus on geo-engineering.

Sam Griffiths '24 is from Aiken, South Carolina. He is majoring in Religion. Sam is a dedicated member to the Phi Gamma Delta fraternity and a seasoned outdoorsman, loving to hike, ski, and find new swimming holes around Lexington. He intends to attend law school in hopes of studying the intersections of and interactions between religion and law. Sam's favorite book is *The Death of Ivan Ilyich* by Leo Tolstoy.

Ben Hess '23 is from Pittsburgh, Pennsylvania. He is majoring in Classics with Modern Languages, as well as minoring in both Art History and Archaeology. He has studied at the International Center for Hellenic and Mediterranean Studies (Athens, Greece), New College at the University of Oxford, and the Intercollegiate Center for Classical Studies (Rome, Italy). He serves as a Bonner Leader on campus, working primarily with Rockbridge Historical Society. Ben intends to pursue graduate coursework in Classical Philology, hoping to also discover more experimental music, continue on running, and find more books like Renault's *The Charioteer*.

Anna Hurst '22 is from Louisville, Kentucky. She is majoring in English and minoring in Women's, Gender, and Sexuality Studies. She is also a member of the Women's Track and Field team. Following graduation, Anna will be interning at a nonprofit in Washington, D.C.

Kushali Kumar '22 is from Lucknow, India. She is majoring in Economics and minoring in Philosophy as well as Poverty and Human Capability Studies. Beyond academic and extracurricular interests, Kushali enjoys kayaking, playing badminton, Bollywood dancing and volunteering in the community. She has a passion for music and can play eight instruments and sing in fourteen languages. She studied at the London School of Economics her junior year. Kushali loves to travel and has studied and

lived in thirteen different cities in her life, including Pune, Copenhagen, Freiburg im Breisgau, and Amsterdam.

Rebecca Nason '24 is from Columbia, Maryland. She is majoring in Politics and Mandarin Chinese. At W&L, Rebecca works as a University Ambassador, serves on the Library Student Advisory Board, and is a member of the Intercollegiate Mock Trial Team. She enjoys reading, baking, and travelling. Rebecca is passionate about international affairs and is working as an English teacher in Taiwan over the summer.

Margaret Thompson '24 is from Dallas, Texas. She is majoring in Cognitive and Behavioral Science and minoring in Philosophy as well as Law, Justice, and Society. She is currently involved with the Hearing Advisor Program, the First Year Orientation Committee, Chi Omega fraternity, and Kathekon. After graduation, she plans to attend law school. In her free time, Margaret loves to read, particularly historical fiction.

James Torbert '23 is from Montgomery, Alabama. He is majoring in Philosophy and minoring in Law, Justice, and Society. He is the President of the Executive Committee and hopes to attend law school after graduation. James was also a member of the Men's Varsity Tennis team for two years.

John Coleman Ward, Jr. '23 is from Chapin, South Carolina. He is majoring in Philosophy and Mathematics and minoring in Classics. As a Bonner Leader, he is a member of the Campus Kitchen Leadership Team, having previously served at Project Horizon as a shelter manager. He also is a Resident Advisor on campus to a first-year hall. John Coleman plays cello in the University Orchestra and has served on both the Constitutional and White Book Review Committees at Washington and Lee. He plans to continue his study of philosophy into graduate school.

Supervising Faculty

Omar Quiñonez, Ph.D. was born in Texas but grew up across the border in Mexico. He is the Postdoctoral Fellow at the Mudd Center for Ethics. He received his Ph.D. in philosophy from Emory University in 2021 and BA's in Philosophy, History, and Political Science from the University of Colorado Denver. His areas of specialization are nineteenth-century philosophy, social and political philosophy, and continental philosophy. Omar's current research project focuses on the meaning of decadence and decay as cultural, political, and natural phenomena. At W&L, he has taught classes on the philosophy of social trust and decadence and decay. He will be teaching on the meaning of care in 2022-3.

About the Roger Mudd Center for Ethics

The Roger Mudd Center for Ethics was established in 2010 through a gift to the University from award-winning journalist Roger Mudd. When he made his gift, Mudd said that "given the state of ethics in our current culture, this seems a fitting time to endow a center for the study of ethics, and my university is its fitting home."

Today, the Mudd Center furthers that study of ethics by organizing rigorous, interdisciplinary programming. In addition to welcoming distinguished lecturers throughout the year to speak on ethical issues, the Mudd Center also sponsors and organizes ethics-based conferences, professional ethics institutes, and other public events that further discussion and thought about ethics among students, faculty, and staff at Washington and Lee and beyond.

About Roger Mudd

Roger Mudd (1928 – 2021) graduated from Washington and Lee University with a degree in History in 1950. Mudd's distinguished career in television journalism includes positions at CBS, NBC, PBS, and the History Channel. He has won five Emmy Awards, two George Foster Peabody Awards, and the Joan S. Barone Award for Distinguished Washington Reporting. Mudd served on the board of the Virginia Foundation for Independent Colleges (VFIC) and helped establish the VFIC Ethics Bowl, an annual competition in which teams from Virginia's private colleges and universities debate ethical issues. He was also a member of the advisory committee for Washington and Lee's department of Journalism and Mass Communications and was an honored benefactor of Washington and Lee.

Letter from the Editors-in-Chief

Tyler Bernard and Ben Hess, Washington and Lee University '23

On March 4, 2022, five undergraduate students from around the world joined members of the Washington and Lee community virtually to share their writings and thoughts on a wide array of issues in contemporary ethics. They addressed topics ranging from moral error theory to the treatment of indigenous human remains. This conference once again enjoyed the thoughtful conversation upon which it has prided itself in the past. The student presenters eloquently put forth their ideas, and the Mudd Center's undergraduate respondents offered thoughtful support and feedback; we editors regretfully had to cut short enthusiastic conversation to move on to our next topic more than once.

This edition of the Mudd Journal hopes to stoke the same breadth of thought and interest. In a time where thought is increasingly relegated to 160 – and 320 – character limits, we hope that readers find themselves spending more time considering these pages—and beyond that, that they begin to question some of the foundational assumptions that have become dogmatic in the present moral landscape. Essays consider the nature of harm, in what instances we might be able to say that genuine harm has occurred, and whether we might still be able to find reasons for moral acts even in a world indifferent to morality. Although her remarks are not published in this volume, Professor Catherine Fullarton also offered a gripping presentation on Philoctetes, drawing out some of the more understated moral issues presented within it: the conflicts that arise between our ethical obligations, the difficulty of finding satisfactory resolutions to settle them, and the strength that it might take to endure that long-lasting tension. Also, illuminating the realities of graduate coursework in the fields of philosophy and ethics, Rowan Bell, Sumeet Patwardhan, and Corbin Covington—student panelists from Minorities and Philosophy (MAP) working groups across the country—are most deserving of our thanks for their frankness and generosity of spirit.

The Mudd Journal of Ethics is the product of the extraordinary efforts of numerous people who we would be remiss not to thank. Our editing team of Max Gebauer, Sam Griffiths, Anna Hurst, Kushali Kumar, Rebecca Nason, Margaret Thomson, James Torbert, and John Coleman Ward was a vital resource in deciding and shaping the contents of the following pages. This conference would not have been possible without their efforts nor the tireless work of the Mudd Center faculty and staff: Karla Murdock, Omar Quiñonez, and Kate Saacke. The W&L ITS department's guidance also permitted our second virtual conference to run without a hitch.

We hope that readers will enjoy this collection of ethics-based papers, that they find it stimulating as well as challenging, and that they come to think more critically about the dilemmas that confront us in everyday life. These ideas are of a greater and more pressing significance than ever, and it is our great honor to present them here.

Table of Contents

**The Preemption Problem: What is a Harm
and What Shall We Blame?**
Evelyn Wang, *The College of William and Mary* 1

**NAGPRA Should Not Require Cultural
Affiliation of Human Remains**
Jonah Katzman, *Emory University*. 8

Error Theory – Where Next?
Jack Walker, *University of Cambridge* 15

Thomson’s Distributive Exemption and Possessed Threats
Mason Liddell, *The College of William and Mary* 24

The Sandwich Dilemma: A Case for Ethical Veganism
Tom Cockell, *University of Cambridge*. 31

The Preemption Problem: What is a Harm and What Shall We Blame?

Evelyn Wang, *The College of William and Mary*

Abstract: The counterfactual comparative account (CCA) defines harm as that which makes someone worse off than they otherwise would have been. Such an account faces the preemption problem, wherein the agent causes the victim to suffer but may escape moral blame if the victim would have been even worse off or have suffered equally otherwise. In this paper, I attempt to solve the preemption problem by arguing that the agent may still be wrong even if his action has not harmed the victim. I delineate two types of preemption: those caused by actions performed by different agents and those caused by actions performed by the same agent. For the former, the agent is morally wrong if he deliberately causes the victim's suffering with malicious intent. For the latter, the agent is wrong if he fails to prevent a situation where the victim's suffering is unavoidable for a blameworthy reason. Thus, I conclude that that which makes the agent morally wrong in cases involving preemption is not the direct action that causes suffering, but rather the reason for performing it or failing to avoid such a situation—an agent can be immoral without harming anyone.

It is generally believed that people have the duty not to cause harm and that harming others is morally wrong.¹ But what counts as harm? According to the counterfactual comparative account (CCA), harm is defined as that which makes someone worse off than they otherwise would have been.² It compares the actual state that the victim is in after an event with the alternative state in which the event had not occurred. An agent's action has harmed the victim if and only if the actual state of the victim is worse on the whole than in the alternative state in which he had not performed it.³ For instance, murdering someone with a life worth living—however that may be self-determined—is harmful because that individual otherwise would remain alive. The actual state—being dead—is worse than the alternative—being alive. Performing amputation to prevent death is not a harmful though it causes the patient to suffer from the pain and the loss of a limb.⁴ On the other hand, imagine a scientist develops a poison that will lower a genius's mental capacity to the level of an average person; poisoning the genius is, of course, harming him. Although there is nothing inherently bad about being a person of average intelligence, it is arguably

1 Ross and moderate deontologists demonstrate that people have a *prima facie* duty of non-maleficence: the duty not to harm. Ross, 21.

2 According to Bradley, intrinsic harm includes the pain and suffering that a person experiences, while extrinsic harm is the harmful events that cause the person to experience intrinsic harm. In this paper, I refer to extrinsic harm by the term "harm," while I will use direct terms such as "suffering" to refer to the intrinsic harm that the person experiences. Bradley, 392.

3 Bradley, 396.

4 Bradley also distinguishes between *pro tanto* (*prima facie*) harm and all-things-considered harm. For instance, losing a limb in amputation is a *pro tanto* harm as it causes the patient to suffer. But it is all-things-considered not harmful because it prevents him from death. Discussion about *pro tanto* harm is not within the scope of this paper. Using the term "harm," I refer to extrinsic, all-things-considered harm. Bradley, 393.

worse than the alternative state of being of superior intellect.⁵ Hence, it seems that making someone worse off than they otherwise would have been provides the correct verdict of whether an action constitutes a harm. And, it seems reasonable for us to say that murder—and bringing a genius down to average intelligence—is morally wrong while admitting that performing amputation is not immoral. Therefore, causing harm seems to be closely related to moral wrongness.

However, many philosophers have criticized the comparative definition of harm as it faces the preemption problem.⁶ In cases involving a preemption, the agent has caused the victim's suffering, but the alternative is equally bad or even worse had he not caused the suffering. Some argue that, although the hypothetical alternative state is perhaps no better, the actual state of the victim is nevertheless affected by suffering caused by the agent, so the agent still runs the risk of immorality.⁷ Thus, although the CCA concludes that the agents have not harmed the victim in those cases, intuitively, they have wronged the victim regardless of the alternative situation.

I hold that there are two types of preemption. The first type of preemption involves multiple actions performed by different agents, while the second involves multiple actions performed by the same agent. For the first type of preemption, the agent has done something that causes the victim's suffering, but if he had not done so, the victim will suffer the same or even more because of another actor. For instance, Abe fatally stabs Bea because he hates Bea, but a meteor hits Bea in the next millisecond.⁸ If Abe had not stabbed him, Bea would still have died because of the meteor. Thus, Abe has not caused Bea to be worse off than he otherwise would have been, as he would either be killed by Abe or, alternatively, by the meteor. Therefore, according to the CCA, Abe has not harmed Bea.

However, such a conclusion based on the counterfactual definition of harm is counterintuitive. Intuitively, we believe that Abe has caused Bea to suffer by stabbing him, and his action is as wrong as if the meteor had not struck Bea. The occurrence of the meteor is mere chance and should not have any relevance in determining whether Abe has done something wrong. But, if Abe has not harmed Bea, we lack the basis for concluding that Abe's action is wrong. Thus, if the intuition that Abe is wrong is reliable, the CCA provides the wrong verdict by falsely concluding that Abe has not harmed Bea.

For the second type of preemption, the agent has also caused suffering to the victim, but he has done so to avoid causing more severe suffering. For instance, Alastair Norcross

5 Although there are non-comparative accounts of harm, those accounts generally fail to explain why lowering the mental capacity of a genius is a harm while amputation is not. Therefore, in this paper, I will only discuss the CCA, which I believe is the most plausible account. This paper can also be seen as a defense for the CCA against the preemption problem.

6 Bradley, 397.

7 Ibid.

8 This case is a revised version of Bradley's original preemption cases in which Batman drops dead of a heart attack a millisecond before a flaming cannonball hits him. As this paper focuses on the moral wrongness of the agent's action in cases involving preemption, I replace the heart attack with a moral agent who deliberately kills the victim. Bradley, 397.

introduces a case⁹: Bobby Knight encounters a philosopher by chance. He has a violent desire to tear her arms off, but he manages to control it by deliberately choking the philosopher and damaging her windpipe instead. If he had not controlled his temper, he would have dismembered her. Thus, it seems that Knight's choking of the philosopher has not harmed her, according to the CCA, as Knight would otherwise have dismembered her. Hence, if whether he has caused harm is the only criterion for determining the wrongness of his action, it seems that Knight has not done anything wrong by choking the philosopher.

However, such a conclusion is also counterintuitive. We want to conclude that choking a random acquaintance causes severe suffering to her and is wrong. Thus, either the CCA provides the wrong verdict about what should be considered a harm in the preemption problem, or we need other reasons to explain our intuition that Abe and Knight have done something wrong despite not harming their victims.

I argue that the CCA correctly points out that Abe and Knight have not harmed the victim, but in both cases, they are still morally wrong for other reasons. To begin with, although harm is often associated with moral wrongness, they are not always mutually inclusive. A harmful action is not always wrong, and a wrong action does not always cause harm. For instance, if I accept a job offer, I make someone worse off because he or she may get the offer if I do not accept it, but my action is still clearly permissible though it causes harm. And, if I poison someone's water bottle, but he or she accidentally lost the bottle before drinking the poisonous water, my action is wrong though it does not cause harm. Thus, it is possible that in the preemption cases, Abe and Knight have done something morally wrong, but their stabbing and choking are not harmful, which I believe is the case.

Abe has not harmed Bea, but he is still morally wrong on account of his malicious intent: he wants to kill him because of hatred. Normally, an action performed for such intent will cause harm to the victim and is wrong. The only reason that Abe has not harmed Bea is because of the accidental occurrence of the meteor, but such a reason cannot justify the wrongness of his action due to his malicious intent. It is the intent of hatred and wanting to cause severe harm that is wrong, not merely the actual act that makes him worse off than he otherwise would have been. Consider if a meteor strikes Bea and kills him first, then Abe stabs his dead body out of spite; it seems that what Abe has done is still wrong though he has not harmed Bea. Therefore, what makes Abe's stabbing wrong is not the actual harm it causes, but the reason for stabbing Bea. A malicious intent to kill is itself sufficient in explaining Abe's moral wrongness in this instance, even if no harmful action is actually carried out.¹⁰ Furthermore, if we replace the wrongful intent of wanting to kill someone due to hatred with good intent, then Abe's killing Bea a millisecond before the meteor may not seem wrong. Consider if Abe is a doctor who promised to legally perform active euthanasia on Bea (presuming that active euthanasia is morally permissible).¹¹ After he injects the poison into Bea, a meteor strikes Bea. In this case, it seems that Abe has not harmed Bea

9 Norcross, 6.

10 Consider my previous example that poisoning someone's water bottle is morally wrong even if the victim has not drunk the water: the intent may matter above the consequences.

11 This paper assumes active euthanasia is morally permissible. It is not central to this paper's arguments, but such a presumption is based on Rachels' arguments; [Rachels](#).

and his action is permissible. In the altered and original case, the agent's actions are the same: deliberately killing the victim. The only difference between them is Abe's intent: killing to avoid unnecessary suffering or killing for hatred. While the altered case seems permissible while the original seems wrong, I hold that the CCA correctly concludes that Abe has not harmed the victim in both cases. In the original case, what makes him immoral is the malicious intent behind his action.

Therefore, for the first type of preemption, the criterion for whether the agent's action is morally wrong is not whether they have caused any harm to the victim, but their intent for performing such action. If the agent intends to act for a malicious reason, then he or she is wrong. On the other hand, if the intent is neutral or good, he has not acted wrongly. Nevertheless, despite the intent, the agent has not harmed the victim. Whether there is a harm in this type of preemption is a separate question from whether there is moral wrongness.

For the second type of preemption, however, it is doubtful whether it can be explained by the agent's intent. As the agent deliberately chooses to bring about the less severe harm, he likely intends to avoid harm. For instance, Knight actively manages to avoid dismembering the philosopher to avoid harm. He does not intend to dismember her. Nevertheless, Nathan Hanna attempts to solve this problem by arguing that, although Knight intends to refrain from harming, his intent to hurt is more fundamental:¹² although he deliberately chooses to choke the philosopher instead of dismembering her, he has a more fundamental intent to hurt her because he could have refrained from both choking and dismembering her. He should have controlled himself enough not to perform either. Moreover, there is no contradiction between refraining from a more severe harm and ultimately intending to cause suffering. If Knight prefers causing suffering by choking because that particular action creates a twisted pleasure for him, then he clearly intends to hurt the philosopher even if he actively refrains from dismembering her. Thus, he may still be immoral for his malicious intent.

However, I hold that Hanna's argument about intention cannot entirely solve the second type of preemption problem. He assumes that Knight has control over his action and can freely refrain from hurting the philosopher.¹³ But in this case, it is doubtful if Knight really has control and, intuitively, he harms the philosopher even if he is not capable of refraining from hurting her. His irrational temper can force him to hurt her despite having no intention to do so. While the monstrous temper swallows his ability to reason and control himself, choking the philosopher may be the best option he can choose. Since "ought implies can," if Knight cannot control his temper, we cannot say that he is morally

¹² Hanna, 267.

¹³ Hanna, 264-269.

wrong or should refrain from choking and dismembering.¹⁴ But, even if he genuinely has no control over his body and no intent to hurt, the fact is that he chokes the philosopher as a result. Thus, intuitively, he still has wronged the philosopher by causing her to suffer, which Hanna's account cannot explain.

Nevertheless, Hanna correctly demonstrates that although the choking action alone has not harmed the philosopher, Knight nevertheless has.¹⁵ Knight's choking the philosopher is not harming her; rather, what causes harm is putting the philosopher into a situation where she would have either lost her arms or damaged her windpipe—encountering Knight is harmful. Knight's choking has not harmed her, which is compatible with Knight's "harming her by encountering her." Specifically, though being choked is not a harm as it prevents her from being dismembered, encountering Knight, which causes her to either be choked or lose her arm, is harmful on the whole. If the philosopher does not contact Knight, she will not suffer at all. According to the CCA, encountering Knight makes her worse off than she otherwise would have been, so Knight has still harmed her.

However, this does not fully explain why Knight is morally wrong intuitively. We want to hold Knight responsible for causing harm. However, if Knight's deliberate choking of the philosopher has not harmed her, but his encountering her by chance does, we have few reasons to believe Knight's action is wrong, for mere encountering is out of his control, and people are hardly responsible for things that they cannot control. If the intuition that he is wrong is correct, he must be responsible for some deliberate events that he has control over.

My response is that Knight's deliberate action of choking and his mere encounter with the philosopher by chance are both not wrong, but his failure to prevent such a harmful encounter is. He has done wrong by knowing he has a monstrous temper that will endanger innocent acquaintances and deliberately failing to prevent such a harmful encounter. He could have easily prevented it by more actively treating his monstrous temper, quarantining himself, or tying his hands up, but he fails to do so. Consequently, he is responsible and wrong for allowing such a harmful encounter. The wrongness is in his inaction in the past rather than his action in the present.

To further demonstrate this, consider a similar case that I call the "Sleepwalk Knight:" Knight knows that he sleepwalks and may behave weirdly and dangerously when he sleepwalks. One morning, he wakes up and finds a philosopher trapped in a machine outside of his house that he made during his sleepwalking last night by coincidence. There is a button on the machine. A note (that he wrote while sleeping) says that if he pushes

14 Even if some may argue that they believe Knight can control his body in the original case that Norcross proposed, it does not affect my following argument. Assume a revision of Norcross's case that Knight genuinely loses control, and he chokes the philosopher. Although he does not want to cause her any pain or suffering, it still seems that he has done something wrong. I introduce this case as an example for it captures what I believe to be the major difficulty in the second type of preemption. Normally, when an agent actively chooses to cause a less severe suffering to avoid a more severe one, he intends not to hurt the victim. But, his action may still appear to have wronged the victim. The intuitive wrongness without malicious intent is what I aim to explain.

15 Hanna, 265.

the button, the philosopher will be choked so that her windpipe will be damaged; but if he does nothing, her arms will be torn off. The machine will only release her after she is choked or dismembered. Knight deliberately pushes the button to prevent her from being dismembered, and she is choked as a result. In this case, it seems uncontroversial that Knight's deliberately pushing the button has not harmed the philosopher, as her arms would have been torn off otherwise. But Knight still causes her suffering; building the machine by chance harmed the philosopher. If he had not built this machine, she would not have suffered. His deliberate pushing of the button has not made her worse off, but his making of the machine by chance has. However, Knight is not conscious when he builds the machine, so he has not acted wrongly. So, is it the case that Knight's deliberate action has not harmed the philosopher, and though making the machine by chance harmed her, he is not wrong because it is out of his control? No. Knight is still wrong for failing to change his weird sleeping habit: he knows that he may cause harm when he sleepwalks, but he deliberately fails to take any action to prevent such an event from occurring. He could have prevented it by going to the doctor, tying his hands, or moving to a remote place. But, he deliberately fails to do any of these. This is the ultimate reason as to why he has harmed and wronged the philosopher: the philosopher would have been better off if he had taken any of those preventive actions.

Analogously, in the original choking case, although Knight's deliberate choking of the philosopher has not harmed her, he is still morally wrong for having such a monstrous temper and deliberately failing to do something to prevent their encountering. Therefore, in both cases, although Knight's actions have not harmed the philosopher, Knight does; and although Knight's actions in those particular situations are not wrongful, he is still immoral for deliberate failure to prevent such preventable situations of choosing between causing two sufferings.

In addition, if Knight fails to prevent such a situation for morally innocent reasons, he may not be wrong at all. For instance, imagine that Knight's brain is severely damaged and that he suddenly only has an infant's mental capacity because of being struck by a tiny meteor. Ten seconds later, Knight encounters the philosopher and chokes her windpipe to control his temptation to dismember her while completely unaware of what he is doing. In this case, it seems that Knight is morally innocent. Although encountering her harms her, his failure to prevent such an encounter is not because of deliberate inaction, but of a mere accident out of his control: both of them are just unlucky. Thus, he is not wrong for allowing such a harmful encounter. Hence, whether Knight has done something wrong depends on why he fails to prevent such a situation, instead of the direct action that causes the victim's suffering. In Norcross's original case, he is still wrong even if we accept the CCA in that his choking the philosopher does not harm her.

Therefore, in the second type of preemption, what is wrong is also not the action that directly causes the victim's suffering; rather, it is the reason that the victim is put into such a situation that the agent unavoidably hurts him—a situation that he either suffers from one action or another performed by the agent. If the agent is responsible for creating or deliberately failing to avoid such a situation, he is morally wrong, although choosing the less severe suffering does not harm the victim.

Conclusion: the CCA provides the right verdict that the mere actions that the agents performed in those cases involving preemption have not harmed the victim. Such lack of harm is nevertheless compatible with holding them responsible. Whether the agent is wrong depends on why the action is performed or why the situation takes place. For the first type of preemption, rightness or wrongness depend on the reason for the agent's carrying out his action: if the intent for the agent's causing the victim's suffering is neutral or positive, then his action is morally permissible; while if the intent is malicious, then his action is wrong. For the second type of preemption, when there is a lack of intent to hurt, rightness or wrongness depends on why the agent will either cause suffering or more severe suffering to the victim. If the reason is neutral, then the suffering that he caused is not harmful nor wrong, but if the reason is morally wrong, he is wrong for causing such a situation. For both types of preemption, the CCA reveals that harm and wrongness are separable, and while the action itself is not harmful, the agents may still be wrong.

References

- Bradley, Ben. "Doing Away with Harm." *Philosophy and Phenomenological Research* 85, no. 2 (2012): 390–412.
- Hanna, Nathan. "Harm: Omission, Preemption, Freedom." *Philosophy and Phenomenological Research* 93, no. 2 (2015): 251–73.
- Norcross, Alastair. "Harming in Context." *Philosophical Studies* 123, no. 1-2 (2005): 149–73.
- Rachels, James. "Active and Passive Euthanasia." *New England Journal of Medicine* 292, no. 2 (1975): 78–80.
- Ross, William David. *The Right and the Good*. London: Oxford University Press, 1967.

NAGPRA Should Not Require Cultural Affiliation of Human Remains

Jonah Katzman, *Emory University*

Abstract: This essay is an exercise in policy debate written from the perspective of an attorney representing Native American tribal interests and the treatment of their ancestral remains housed in United States educational institutions and museums. Although Congress's National Grave Protection and Repatriation Act (NAGPRA) was enacted with the intent of promoting respectful treatment of native remains and funerary objects, certain requirements listed by the act (specifically the requirement that native remains be culturally identified by the university before being returned to native tribes) further impede respectful considerations towards Native Americans in academia and historical institutions. In this essay, I provide an argument that asserts that Native American identification by non-natives perpetuates the disrespect towards their culture and their history, as well as inappropriately forces Native Americans to prove the humanity of their own ancestors. Furthermore, I argue that respectful exhibitions of genocidal events can be successfully accomplished without the use of human remains. Finally, I assert that repatriation should be a collaborative process between native tribes and U.S. institutions; however, natives should be given more authority over how and where their ancestral remains are repatriated:

"I am representing the interests of Native American tribes. The Native American Graves Protection and Repatriation Act (NAGPRA) should not require the cultural affiliation of human remains because such a requirement perpetuates academic and institutional insensitivities towards native tribes, maintains barbaric practices of racist science, burdens native communities with arbitrarily high standards of proof for affiliation, and dehumanizes indigenous peoples' ancestors and the study of Native America.

Some scholars argue that trying to identify all human remains as *culturally affiliated*—finding a cultural or biological link between the remains and an existing tribe—for their subsequent repatriation risks the abandonment of information that is invaluable for the better understanding of indigenous and Pre-Columbian histories. UCLA archaeologist Clement W. Meighan perceives NAGPRA as a direct attack on archaeological data and scientific knowledge. Meighan suggests that the interests of native tribes to preserve and rebury their ancestral remains is at odds with universities' mission to provide the American public with scientific truth and knowledge. Meighan says "[natives'] suggestions for change involve the abandonment of scholarly imperatives and the adoption of an 'ethical' position that accepts the right of nonscholars to demand the destruction of archaeological evidence and the concealment of archaeological data."¹ Meighan views that science and native interests are naturally at odds with one another. He maintains that by entertaining native tribes and handing over remains that are centuries old, we as a society will abandon any possible knowledge of their culture and context that can be extracted through comprehensive university-grade research.

In response to Meighan, I argue that the native tribes are not motivated by the goal of depriving or confiscating archaeological data from museums and educational institutions.

¹ Meighan, 1.

Rather, my clients are taking such a drastic position as a result of the mistrust they feel towards institutions for failing to respectfully house their ancestors' remains. Through NAGPRA, my clients are primarily interested in addressing the lack of accountability and respect that is paid to their ancestral remains within scientific institutions. During the panel discussion concerning "Protecting Native American Human Remains, Burial Grounds, and Sacred Places," native leader Suzan Shown Harjo addresses the failings of government agencies and educational institutions in fulfilling their duties of repatriation. Harjo says:

*"[O]ur hope is that everyone will insist on the Park Service doing their jobs, which they're saying can't be done for 'a period of time,' meaning until the next ice age... let the Park Services, various museums, and congress in particular, know that the Park Service is not doing a good job, that they may be doing something dastardly, and that the dastards should be investigated."*²

What Meighan and other scholars fail to consider is that by seeing the interests of archaeological scientists as oppositional to the interests of the native tribes that they hope to study, the possibility of museums and tribes working together to solve and amend NAGPRA's favoritism towards wealthy institutions as well as restoring power to the voices of natives within Indigenous study and history is diminished. The goal of NAGPRA should be a collaborative and respectful effort to restore and rectify lasting injustices. By viewing science in such a dogmatic and inflexible way, scientists risk compromising the moral integrity of their research.

In order to address the tension between archaeological researchers and native tribes, we must first assume an ethical framework wherein universities are indebted to the native tribes whose lands they are occupying. Our ethical framework must maintain that the human remains both have and are currently the property of extant indigenous peoples. Logically, the ownership of the remains should be returned to those tribal lands where the remains were originally excavated. By viewing the bones as tribal property, scientists would have no right to perform any invasive study without the informed consent of the indigenous peoples. In effect, this would force archeological and anthropological researchers to first seek permission from native tribes; assuming that they are given the go-ahead, they must first disclose any and all research methods to be performed on those designated human remains.

Even though native tribes are largely fluid in their structure—gradually disbanding and growing, as well as converging and diverging with another—descendants of many existing tribes find common ground with one another and share mutual respect for self-determination and perpetuating the ancient histories of the American continent. They still have a voice and a relationship to their ancestral lands and those currently and formerly buried within them. Our ethical framework surrounding the appropriate study of Native America should take into consideration the familial and ancestral relationships that are being desecrated and disrespected through nonconsensual possession, study, or display of these artifacts. We must ask ourselves if scientific inquiry should perpetuate such an

2 Harjo, 181.

injustice as denying already marginalized people from performing sacred rituals for their ancestors' remains.

Under NAGPRA, the task of cultural identification is a collaborative effort between existing Native American nations and U.S. public and private institutions. However, my clients (native tribes) are understandably skeptical of these institutions' ability to initiate *repatriation* (or the return) of their sacred ancestral remains. According to the assistant professor of American studies at North Carolina at Chapel Hill and associate justice of the Turtle Mountain Tribal Court of Appeals, Keith Richotte, "Native America has had a long relationship with academia... the academics that have studied native nations and peoples were, in general, not particularly sensitive to the human beings and ways of life that they studied... beginning their studies with the belief in the inherent superiority of Western ways ..."³ Richotte goes on to describe:

"A great number of historians seeking to detail tribal nations or important events have ignored tribal oral histories and other tribally generated sources in favor of written western sources that were problematic in their own right. Just as important, these historians focused on wars and men, regularly neglecting women, children, and everyday life."⁴

Such biases within the foundational works of indigenous studies would be addressed if universities engaged with the oral histories of native tribes instead of examining or warehousing their ancestors' skeletal remains.

Among academics, there is still an assumption of inferiority ascribed to Native American remains within contemporary institutions. History professor and citizen of the Pawnee nation James Riding In recalls the terrible treatment and disrespect that the University of Nebraska had shown to Indian remains. Riding In stated that "sometimes professors and museum curators used the crania [of native remains], or skulls, as paperweights. In some situations, Indian students were forced to sit in classrooms that had Indian skulls lined up against the walls."⁵ This long-history of insensitivity from academia and the underlying assumption of native human remains as "sub-human" persists in NAGPRA's requirement that human remains be culturally identified before they are repatriated and reburied.

NAGPRA should not require the cultural affiliation of human remains because, as Riding In notes, it is a misnomer to say that any human remains are *culturally unidentifiable*. Riding In and other leaders of Native America articulated that the requirement of cultural affiliation is insensitive in its failure to consider that their ancestors (no matter how distant) are deserving of their burial rights. Furthermore, leaders such as Riding In explain indigenous knowledge is systematically overlooked as universities and museums prioritize Western definitions of culture and group identity while excluding Native American knowledge and understandings. He stated during a panel discussion discussing "Protecting Native American Human Remains, Burial Grounds, and Sacred Places:" "the position we Indians took was that research was unnecessary to determine cultural

3 Richotte, 530.

4 Ibid.

5 Riding In, 173.

affiliation, for we knew that the human remains held by the Colorado Historical Society had a cultural connection”⁶ Having to prove that human remains have an affiliated culture in order to be repatriated and reburied directly equates to forcing native tribes to prove the humanity of their own ancestors. This is only one of the ways in which the practice of culturally identifying human remains plays into assumptions surrounding Native America in academia.

Even more frustrating for my clients, there is an implied assumption that if human remains are culturally unidentifiable, then they belong to no culture—which is indeed a racist pretext. Museums and university institutions are aware that if the remains are culturally unidentifiable, then there is no obligation by NAGPRA to return those remains if there is no existing cultural group that can challenge those institutions for custody. Thus, through NAGPRA’s requirement of cultural affiliation, the legislation perpetuates university and museum practices of denying these human remains the respect of a burial while granting archeologists the freedom to use these “culture-less” specimens for anything from displays to ornaments. Our ethical framework should avoid thinking that a human’s culture can be determined forensically. Culture should automatically be assumed to belong to all members of the human species. For NAGPRA to argue that a human skeleton has no proven culture and is therefore subject to university experimentation effectively argues against the humanity of indigenous people and perpetuates the stereotype that—unless affiliated with an existing tribe—the specimen was a cultureless savage and exempt from considerations of modern human decency.

Not only are native communities required to provide proof of *affiliation* using evidence, but certain universities are positioned to set the standards of evidence that native nations must meet for repatriation. According to Shannon O’Loughlin—the Association on American Indian Affairs’ chief executive, attorney, and citizen of the Choctaw Nation of Oklahoma: “Harvard requires standards of evidence to establish an *affiliation* with human remains that the Association [on American Indian Affairs] characterizes as unreasonably high, forcing many tribes to seek their return through *disposition* (a process where native tribes can take ownership of culturally unidentified remains that have no link to their specific tribe, and in some cases, remains that have no affiliation to any tribe).”⁷

In addition to the high standards of evidence set by universities, lawyer and theologian Vine Delorian Jr. reveals that establishing the evidence for native nations is further complicated by university museums conducting invasive studies on human remains that irreversibly alter and damage them. In her journal article addressing the dehumanization of pre-Columbian indigenous societies within past and current U.S. academia, she states that during the process of repatriation, “some wanted to know if it was possible to get the indelible ink removed from their bones. Others said their remains had no feet or no head and they wondered at the kind of people who would remove these parts of the body and what they thought human life was.”⁸ It is ridiculous for universities to expect native nations

6 Riding In, 174.

7 Isselbacher, 5.

8 Delorian Jr., 596.

to present convincing evidence of a cultural affiliation when those very remains are being distorted and damaged prior to any consultation.

Knowledge extraction from the human remains come at the immense cost of irreversibly damaging them. We should expect that scientists and universities would have respect for the dead, regardless of culture. Scientists' argument that research on human remains is necessary to understand the Pre-Columbian history of America is misleading. They could learn so much more about native life by actively engaging and collaborating with their subjects' oral histories and ancestral traditions, not to mention their languages and social relationships. Instead, scientists would rather uphold longstanding academic biases of analyzing native skulls to arrive at empirical conclusions that benefit and perpetuate the settler-colonial narrative.

I want to draw an analogy comparing how scientists could extract information from their native subjects and how detectives could attempt to identify the owner of an abandoned, private residence. Imagine a few detectives realize that they are able to identify the potential owner of an abandoned house according to two methods: (1) The detectives could ask homeowners in the adjacent houses who might live within the particular house, utilizing a holistic anthropological approach to answer their question; or (2) They could trespass, looking at pictures and personal belongings from inside. The detectives eventually decide that it would be *easiest* to kick down the door and rummage through the cabinets and closets hoping to identify the homeowner. Essentially, scientists are performing the same invasive studies on fragile and sacred remains as the detectives breaking and entering into an abandoned, yet private, residence. Much of the information can be revealed by local tribes where the remains were originally excavated. The rich oral histories of many tribes can provide a lot of information about native culture—substantially more than scientists performing isolated, empirical studies on bones.

Furthermore, NAGPRA should not require the cultural affiliation of human remains because many universities use the label *culturally unidentifiable* as a method of delaying repatriation and maintaining ownership over their collections. Riding In points out that “NAGPRA does not provide for the repatriation of human remains that are classified as culturally unidentifiable.”⁹ Under NAGPRA, universities do not have any legal obligation to repatriate and rebury remains that they are not able to link with existing federally recognized tribes. As a result, institutions would be incentivized to label human remains as “culturally unidentifiable” through a less-than-ethical, yet completely legal, means of maintaining their collection. Juliet Isselbacher's journal article in Harvard Magazine, “Repatriating Native American Remains,” presents the disputes between native nations and university museums—specifically, how Harvard's Peabody Museum is delaying progress towards proper and efficient repatriation of human remains. In this article, O'Loughlin states: “Instead of trying to establish affiliation, the [Harvard] Peabody [Museum]... simply placed these remains on a ‘culturally unidentifiable list’ despite [the fact that] 6,372 of the 6,586 nominally ‘unidentifiable’ individuals remaining in the Peabody's collection are of known geographical origin. ‘96.75% of the Ancestors in [Peabody's] collections have

9 Riding In, 172.

information that will absolutely allow Tribal consultation and repatriation... ”¹⁰ It is crucial that NAGPRA remove its requirement of a cultural affiliation so that the unethical practice of mislabeling human remains as *culturally unidentifiable* will cease and that the remains may be rightfully and respectfully returned to their descendants.

The interests of my clients, the native tribes, are best summarized by an agreement drafted during a panel discussion which consisted of Riding In and others representing Indian leadership to present to university officials. My clients are calling for:

*“The university to change the designation of all those human remains in its collections that were listed as ‘culturally unidentifiable’ to be listed as culturally affiliated with the Indian nations in attendance for the purposes of repatriation, to cover the cost of reburial of those remains, and to cover the cost of any research that we wanted done so that individual nations could determine if any of the remains in question were affiliated exclusively with them.”*¹¹

My clients are calling for the repatriation and reburial of *all* indigenous human remains wrongfully taken from the ground and desecrated within U.S. public and private institutions. As a means of preserving their humanity and recognition of their past, my clients are also requesting that *all* human remains within those university collections be labeled under the umbrella of *culturally affiliated* to those Indian Nations. My clients want recognition that all humans assume a cultural affiliation within academia. It is important that everyone in the U.S. recognizes that these remains belonged to humans and should not be denied their sacred ritual of burial on the arbitrary basis of a cultural link.

Furthermore, the practice of keeping human remains within universities and institutions is reminiscent of the barbaric tradition of racist science that assumed certain races and ethnicities were inferior and subject to invasive study. In her journal article, Delorian Jr. briefly identifies a parallel between U.S. universities’ claims of ownership to human remains and “the National Socialist German Workers’ party of the 1930s and 1940s... [who] insisted [that] they had the absolute right to use and dispose of human beings and human remains without giving any other people a voice in the proceedings.”¹² Delorian Jr. recognizes that this is an extreme example, as the procurement of skeletons by the Nazis and U.S. institutions differ drastically. However, she does point out that those *culturally unidentifiable* human remains under NAGPRA are subject to the same forms of abuse and desecration as those skeletal remains that were within Nazi German universities and institutes.

German anatomy professor Ernest Lachman reveals in his journal article “Anatomist of Infamy: August Hirt” that the high-ranking Nazi leaders expressed an interest in collecting and displaying human remains of conquered peoples within their educational institutions. Lachman references a letter drafted by Nazi anatomist August Hirt—addressed to Heinrich Himmler—expressing “the desirability of procuring a collection of Jewish skeletons...”

10 Isselbacher, 3.

11 Riding In, 171.

12 Delorian Jr., 596.

within Nazi medical universities.¹³ The letter outlines “the comparison tests and anatomical research on the skull, as well as determination of the race membership, of pathological features of the skull form, the form and size of the brain... The basis of these studies will be photos, measurements, and other data supplied on the head, and finally the tests of the skull itself.”¹⁴ There is a chilling parallel between how Hirt expresses his interest in identifying the “race membership” of skeletal remains compared to NAGPRA’s criteria of establishing a skeleton’s tribal origin to determine if it is worthy of repatriation and reburial. This comparison should reveal the remarkably insensitive mechanisms perpetuated under NAGPRA: that U.S. educational institutions have the final say whether certain native tribes *qualify* for having their ancestral remains returned to them.

Finally, certain museums are already able to accomplish the accurate portrayal of their subject matter without displaying skeletons. It is interesting to point out, despite the tremendous historical significance of the Holocaust and its association with death, that no actual human remains are kept within the Yad Vashem Holocaust Museum. Great lengths have been taken to depict, document the unimaginable cruelties of the Holocaust, and memorialize its victims, while respecting the Jewish traditions of burial—by not displaying remains. The same respect and sensitivity that is given to Holocaust victims’ bodies should be given to Native Americans in educational and archeological institutions.”

References

- Delorian Jr., Vine. “Indians, Archaeologists, and the Future.” *American Antiquity* 57, no. 4 (1992): 595–98.
- Isselbacher, Juliet. *Repatriating Native American Remains*. Harvard Magazine, August 2021.
- Lachman, Ernest. “Anatomist of Infamy: August Hirt.” *Bulletin of the History of Medicine* 51, no. 4 (1977): 594–602.
- Meighan, Clement W. “Some Scholars’ Views on Reburial.” *American Antiquity* 57, no. 4 (1992): 704–710.
- Richotte, Keith. “Cultural Resources.” In *Federal Indian Law and Policy: An Introduction*. West Academic Publishing, 2020.
- Riding In, James, Cal Seciwa, Suzan Shown Harjo, Walter R Echo-Hawk, and Rebecca Tsosie.
- “Protecting Native American Human Remains, Burial Grounds, and Sacred Places: Panel Discussion.” *Wicazo Sa Review* 19, no. 2 (2004): 169-183. [↗](#)

¹³ Lachman, 597.

¹⁴ Ibid.

Error Theory – Where Next?

Jack Walker, *University of Cambridge*

Moral error theory is traditionally understood as a conjunction of a linguistic thesis and an ontological thesis that looks something like the following:

Linguistic Thesis: Our moral discourse aims to track onto mind-independent, objective facts in the world in the same way as other cognitive judgements, such as ‘Paris is the capital of France’. As such, moral judgements are apt for ascriptions of robust truth and falsity.¹

Ontological Thesis: There are no mind-independent objective moral facts.

If both theses are true, we get the result that all positive first-order moral judgements are false. In other words, the judgements (1) “it is good to give to charity” and (2) “it is bad to give to charity” are equally untrue. Richard Joyce, perhaps the leading modern error theorist, offers the following summary:

*“The moral error theorist takes an attitude toward morality analogous to the one that the atheist takes toward religion: the world simply isn’t furnished with the objects, properties, or relations necessary to render any of the discourse true.”*²

Error theorists often differ in the scope of their scepticism about the existence of moral phenomena. For our purposes, we are concerned with the broadest kind of moral error theory which holds that all moral judgements, in some sense, go wrong. Moral error theory faces a lot of resistance and most of the discussion of the position centres on the plausibility of the above theses. For example, non-cognitivists reject the linguistic thesis and moral realists of many stripes deny the ontological thesis.³ Recently, “companions in guilt” objections have also been popular, holding that arguments for error theory end up proving far too much to be respectable. These are important objections that the error theorist must deal with. However, once the possibility of error theory is floated, another line of questioning also becomes relevant: what comes after error theory?

More precisely, what are the implications of accepting error theory as our metaethical position? These questions may appear odd—isn’t the whole point of error theory that it has no implications since there is nothing we *ought* to do, morally speaking? I consider this worry further in (I) however, as it is obvious that some decisions would have to be made upon accepting such a radical theory. Much of human behaviour is explicable only if we assume that people take themselves to have genuine moral reasons that apply to them categorically. If no such categorical reasons exist, how should humans behave instead?

1 Finlay catalogues many of the reasons that have been given to support this thesis in *The Error in the Error Theory*.

2 Joyce in Garner & Joyce (eds.), 12.

3 Cognitivists argue that moral language can be meaningfully assigned truth values, while non-cognitivists deny this. In these terms, error theory is a cognitive anti-realist position in metaethics.

My main contributions in this essay are (1) defending the expressibility of the “what next?” question from some objections and (2) showing that the implications of moral fictionalism, a popular form of error theory, are far more radical than its defenders often make them out to be. As such, I don’t provide any defence for the linguistic or ontological theses but instead take them as given for the sake of argument.

I begin in (I) by considering the argument that the “what next?” question makes no sense for the error theorist to ask. In response, I show how the traditional reply distinguishing between categorical and hypothetical reasons should be developed further. In (II), I reject the idea that error theory would result in anarchy before showing why an error theorist need not be committed to get rid of moral discourse. Finally, in (III), I consider Joyce’s fictionalism as a paradigm example of what might come next after error theory before offering a novel critique. I argue that the fictionalist cannot consistently take all aspects of everyday morality into their fiction, focusing specifically on the supposedly moral duty to relieve suffering from global poverty.

(I) *Can one Formulate the ‘What Next?’ Question?*

We might worry that error theory itself runs us into contradiction by forcing us to give up the law of excluded middle: for every proposition, either that proposition or its negation must be true—i.e. for all p , $(p \vee \neg p)$.⁴ Take the judgement “torture is permissible,” for instance. Error theory says that this is false, thereby seemingly entailing its negation, that torture is not permissible. However, since “torture is not permissible” is itself a substantive moral judgement, error theory says that this statement is also false in turn, giving the implication that torture is permissible. It seems like adopting error theory in this way lands us in a nasty contradiction that would require us to give up the law of excluded middle.

I take it that this is only a *prima facie* worry that can be sidestepped once adequately understood. For example, one easy response for the error theorist here is to maintain that the “error” in question is not falsity but instead presupposition failure. This is to say that when speakers make moral judgements, they take the existence of the moral phenomena that they are trying to refer to for granted since its existence is not the main content of their utterance. Yet, since there are no such moral phenomena, their utterances can’t refer and so fail before getting to the stage where they could be considered truth-apt. This Strawsonian move allows the error theorist to hang onto the idea that there is something fundamentally wrong with moral discourse without needing to say it is universally false and do so without having to engage in the excluded middle paradox.

The bigger worry is that the question “what should we do after accepting error theory?” is ill-formed. Accepting error theory means that we can’t ask what we “should” do in any robust, normative sense because there are no facts of this kind that we can appeal to. The standard reply here is to draw a distinction between categorical and hypothetical imperatives where the latter refers to those things that we ought to do relative to our desires. For example, compare (1) “James should refrain from killing people” and (2) “if James

4 Obviously, some people are happy to give up this law, instead advocating for many-valued or intuitionistic logical systems. However, I take it as given that it would be an uncomfortable result for many if our metaethics forced us to give up on a very intuitive logical principle.

wants to get to work on time, he should wake up early.” The former is categorical whereas the latter is hypothetical since what James ought to do is tied to what he wants to do and so it need not apply in all cases. This is a use of “should” that relies on no moral content. Therefore, the error theorist can meaningfully ask what we should do next after accepting error theory so long as this is a non-moral use of “should”—meaning something like, “how can we best achieve our goals upon accepting error theory?”

So far so good for the error theorist then. However, there is more that needs to be said if the error theorist is going to avoid this charge of inconsistency. Put another way, the error theorist obviously must avoid smuggling in any moral content into their formulation of the “what next?” question. One worry here is that the decision to frame the question in terms of “we” is itself a loaded choice which relies upon assumptions of a shared community of agents. We might object then that this assumption of community isn’t neutral but is instead an inescapably moral decision to consider the needs and interests and others.

Obviously, the error theorist might simply bite the bullet here and concede that each of us is only able to ask, “what should *I* do next after error theory?” for ourselves. However, this seems like a major concession from our normal discourse to be forced into by our metaethics and so should be avoided if possible. To avoid being forced into this formulation, the error theorist needs to give some picture of why it is in some non-moral sense better to frame the question in this way rather than in a more individualistic sense. In my view, the best response has two parts. Firstly, the error theorist should point out that we aren’t starting from a neutral position and that our framing ought to respect this. We already find ourselves in complex social structures, such as through relationships of family, friendship, community, etc. Undoubtedly, we care about others to whom we are related for moral reasons—we may think that we have certain duties to help our family, for example. However, we also care deeply for other non-moral reasons, such as prudential or cultural reasons. In other words, we would continue to care about community even once the moral component has been removed.

Secondly, the error theorist can strengthen this case by endorsing some kind of Humean moral psychology. On this view, humans have some innate psychological dispositions to feel certain sentiments towards others. For example, when we see someone suffering, we typically cannot help empathising with them and be concerned for their interests whether or not we believe in the existence of moral facts or not.

To reiterate then, it is not that the error theorist is making some loaded moral choice to focus on the needs of others. Rather, it is unclear how we could fail to be concerned with the needs of others in some sense given facts about our psychology and the social relations we find ourselves in.

(II) *Rejecting the Anarchy Implication and Moral Abolitionism*

Having shown the question to be expressible, we can now begin to ask what comes next after error theory. Our developed distinction between categorical and hypothetical reasons helps us address a supposedly negative implication of being an error theorist—namely, that if everyone were an error theorist, there would be nothing left to keep society together. I take it that the worry is something like the following: a true error theorist would recognise that all of their supposedly normative commitments are in error and so abandon them,

“thereby leaving a gaping hole in their normative lives.”⁵ As a result, if everyone were an error theorist, there would be nothing to prevent them from acting exclusively in their own self-interest, and we would have no way to admonish them for their selfishness. As a result, error theory threatens the breakdown of society since cooperative enterprises will be undermined by “immoral” behaviour.⁶

There are a few ways that error theorists might wish to go from here. Firstly, it is worth recognising that the objection above moves too quickly from the recognition that moral discourse is in error to the resulting abandonment of that discourse. Indeed, many error theorists hold that moral language has significant prudential value despite not being true. In other words, it is only a subset of error theorists who are abolitionists about moral discourse entirely. Nevertheless, both abolitionists and other error theorists have the resources to see off the implication of anarchy. The abolitionist might reply that we would still have strong hypothetical reasons to avoid actions that we might ordinarily think of as immoral. For example, we might judge that stealing from a random stranger is not in our interest because we are likely to be caught and imprisoned or otherwise harshly punished. Furthermore, on a societal level, it is far better to have a general prohibition against stealing because people won't have to constantly be on guard to ensure the security of their property. Accordingly, it seems like the abolitionist can resist the anarchy implication by relying on the significant overlap between supposedly moral reasons and prudential reasons.

Still, there are good reasons for an error theorist to want to hang onto moral discourse. For example, Joyce argues that moral discourse prevents us from engaging in patterns of reasoning that don't serve our long-term interests by acting as helpful precommitments. To use Joyce's terminology, morality serves as a “bulwark against various kinds of motivational infirmity.”⁷ Joyce contends that we are generally far from ideally rational agents and so often fail to do the things which are in our long-term interest due to factors like short-term bias or weakness of will.

If we were to engage in a fresh calculation about whether stealing from someone was in our interest in each instance, our psychological limitations would likely lead to bad outcomes. As such, it is better for us to have a general prohibition on some actions in place ahead of time, rather than allowing ourselves the opportunity to “rationalise a suboptimal choice.”⁸ Indeed, Joyce argues that this is likely a strong reason why humans evolved a capacity for morality in the first place. We can grant that the choice between abolishing and retaining moral discourse in some form ultimately comes down to a cost-benefit analysis based on contingent facts. Yet, this kind of evolutionary explanation shows at least one strong reason

5 Lutz, 3.

6 This point shouldn't be understood as a principled objection to error theory, such as “error theory leads to this undesirable consequence and therefore, we must reject error theory as our metaethical view.” Methodologically it would be a mistake to conflate a true metaethical theory with that which has the best results for us. Instead, we are in the business of scoping out the implications of adopting error theory in as neutral a way as possible.

7 Joyce (2008), 4.

8 Ibid.

why we might think that moral discourse and reasoning are worth maintaining in some form. How then to go about this?

(III) *Fictionalism and Its Implications*

Joyce's answer is to maintain moral norms as a kind of useful fiction. In other words, the fictionalist argues that we ought to treat moral discourse as analogous to claims like "Sherlock Holmes lives at 221b Baker Street." Namely, when we make these kinds of claims, we express the proposition in question but don't assert it with the same kind of force that we would with other propositions. In other words, when we are really pressed, we don't really believe that if we went to Baker Street we would find Conan Doyle's character in his deerstalker hat. Similarly, Joyce wants us to say that when we are at our most reflective, such as in the philosophy classroom, we would all still agree that there are no moral facts. However, in all other circumstances, we would continue to believe that there are because to do so brings with it various instrumental benefits, such as combatting weakness of will and cognitive biases as already mentioned.

Significant worries have already been raised about Joyce's fictionalism in the literature. Most troublesome are a class of problems surrounding the psychological plausibility of maintaining the "doublethink" that Joyce asks us to and whether this will give us the benefits that he promises.⁹ Specifically, we might be concerned that a fictionalist attitude towards morality could perform the "bulwark" role characteristic of genuine belief. I won't rehearse these criticisms here although they are important. Instead, I will finish by highlighting a different implication of fictionalism that I take to have been underdeveloped in the literature. By their own logic, fictionalists ought to give up on those moral beliefs which aren't prudentially useful to hold even as fiction.

Joyce seems optimistic that if we endorse a fictionalist account, we will be able to carry over many of our everyday moral beliefs and practices without issue. For example, he writes, "morality can continue to furnish significant benefit, both at a societal and an individual level."¹⁰ We can buy Joyce's claim for some behaviours like stealing, where it will be useful for us to have this precommitment since otherwise we might make decisions that aren't in our long-term interest.¹¹ However, the problem comes in the apparent assumption that those precommitments which are instrumentally valuable to us will be coextensive with the moral commitments that we have pre-error-theory. Indeed, in his exposition and defence of fictionalism, Joyce often inexplicably talks as if the set of beliefs and practices that make up morality in general must all stand together. This is problematic because it seems like there are some things that we have good reason not to carry over into our fiction—specifically those practices and beliefs which are instrumentally bad for us but seem morally good or obligatory for our pre-theoretical picture.

9 Lutz, 11.

10 Joyce (2001), 205.

11 Admittedly, there is still some complexity here. The issue seems to hang on an empirical question concerning how accurate people are in general at predicting whether they will be caught stealing. However, we can grant this to Joyce for the sake of argument.

Thomas Pözlzer considers the example of how an error theorist ought to deal with problems from climate change and concludes that there are enough non-moral reasons that can be given to motivate action even in the absence of genuine moral reasons. As a result, since we all have an interest in avoiding the consequences of environmental disaster, it might make sense to continue to speak in terms of a moral duty to avoid catastrophic climate change. However, the same cannot be said for other cases. For example, most people take it that we have some level of beneficence duty to help those in poverty, whether this be collective or individual. Given that this is part of our typical moral picture, it seems like Joyce would want to say that we should incorporate this into our fiction. However, this seems to conflict with the whole point of fictionalism since in most cases, instead of helping us achieve our goals, it actively makes us worse off to donate resources to those in poverty. [In this case, “us” is understood to refer to those people whom we share a community with and care about the interests of due to contingent social and psychological facts.]

A defender of this kind of fictionalism might try to resist this argument and insist that there is a place for the belief that we should help those in poverty in their fiction. The argument is that our knowledge of the suffering of those in poverty will make us unhappy because we cannot help but empathise with them. Accordingly, it will be in our interest to help them, making it plausible that this belief can be consistently included in the fiction.

This response is inadequate for two reasons. Firstly, this response seems to get the direction of things confused. We can reasonably speculate that eventually we would only feel bad if we genuinely believed that what was going on was immoral. Obviously, human emotion is not quite this simple; our beliefs and emotions can often pull in different directions. However, even though this is the case, we still have good reason to believe that the emotional responses of fictionalists to suffering would change over time in light of their beliefs. To see this, consider an analogous case of a person raised in a religious household but who is now an atheist. As a result of their upbringing, this person often feels as if they are doing something wrong when they don't pray to God and go to church on Sundays, even though on a rational level they are a firm atheist. However, as the effects of their upbringing lessen over time we would expect them to feel less bad. Crucially, since they go on to raise their children in a non-religious environment there is no reason to think that their children would feel bad for failing to engage in religious practices. Similarly, if we think about multiple generations of fictionalists who each believe that there is no genuine moral reason for them to help those in poverty, it seems plausible to suggest that a fictionalist would no longer feel bad about this kind of suffering.

Secondly, as fictionalists we would be under no obligation to expose ourselves to this kind of information about global suffering even if it did continue to make us feel bad. If we are only concerned with how best to achieve our goals, it seems like the rational thing for a fictionalist to do would be to prevent themselves from developing interests that worked against their welfare in the first place. For example, consider a case of a rational fictionalist watching the news who hears that South Sudan is experiencing severe famine. Our fictionalist is particularly empathetic and understands that if they were to watch the coverage, they may start to feel bad and develop an interest in alleviating the suffering of those affected. This interest would then lead the fictionalist to donate resources to assuage their own unhappiness. However, since they are rational, they instead decide to simply change the channel in the hope that their cognitive biases will enable them to better pursue

their own interests. In other words, they effectively choose not to develop an interest in alleviating the suffering of the global poor, instead embracing blissful ignorance. Given these considerations, it seems clear that a consistent fictionalism wouldn't be able to accommodate the pre-theoretic belief that we have a duty to help the global poor.

Again, under error theory, these implications that I have highlighted shouldn't be seen as good or bad consequences of holding this metaethical position—to say this would conflict with the core commitments that “good” and “bad” fail to refer to real properties in the world. We can't hold up the seemingly unpalatable results of error theory against our intuitions in an attempt to refute error theory since our intuitions can no longer be afforded this kind of weight. In other words, this style of argument has been completely deflated out of existence. To paraphrase Christopher Cowie on this point, since “part of the purpose of [error theory] is to conflict with ordinary moral judgment, then the fact that it succeeds in doing so isn't obviously a dialectically forceful objection.”¹² Thinking otherwise would be overly methodologically conservative, effectively rigging the inquiry from the start. Although consulting these intuitions might be a good starting guide of what is prudentially good for us, we should not be misled into thinking that the categories of “pre-theoretic moral beliefs” and “prudentially useful beliefs” are coextensive. Instead, we would do better to reflect on the implications of individual moral beliefs rather than thinking in terms of whole sets of moral beliefs. However, the point remains: Joyce's descriptive account of the implications of fictionalism is far from adequate.

(IV) *Conclusion*

To conclude, the implications of error theory turn largely on what we decide to do with moral language. I have shown that both error theory itself and the “what next?” question can be expressed without contradiction. I then argued that accepting error theory does not have anarchic implications—regardless of whether we are abolitionists about moral discourse, as is typically assumed comes after accepting error theory, or not. Despite this, I followed Joyce in suggesting that we have reasons to retain moral discourse in some form due to its usefulness in acting as a “bulwark” against our psychological shortcomings and biases. Finally, having set out Joyce's fictionalism as a plausible way of hanging onto moral discourse, I argued that his position as he articulates it is inconsistent. This is because there are clearly some “moral” beliefs and practices which fail to offer the fictionalist any prudential benefits. As such, there is no reason to afford them a place in their fiction.

I focused specifically on the supposed duty to relieve suffering from global poverty as a case study, but there are undoubtedly other examples that mirror its structure. Supporting progressive political causes or advocating for animal welfare are examples that spring to mind. This is not to say that fictionalism as a whole is inadequate as an answer to the “what next?” question. Rather, the point is that an internally consistent fictionalist account will look very different from our everyday moral life as it stands. In terms of how to work out the implications of fictionalism in greater detail, I echo a point made by Pözlner that “in-depth case studies ... seem to be our best bet for advancing the ... debate.”¹³ This insight

12 Cowie focuses on internalism about reasons, but the point holds equally well when applied to error theory, 609.

13 Pözlner in Garner & Joyce (eds.), 213.

is significant because it suggests a serious methodological departure is required from Joyce's way of seeing things. Moral systems need not stand and fall together. Instead, the fictionalist needs to think at the level of individual moral beliefs to see whether they can be consistently included in the fiction. Considering the implications of fictionalism is vital even though they can't be straightforwardly weighed against our pre-theoretic intuitions. Before adopting a specific view in our metaethics, we at least ought to know what we're getting ourselves into.

References

- Cowie, Christopher. "Conservatism in Metaethics: A Case Study." *Metaphilosophy* 46, nos. 4-5 (2015): 605-619.
- Finlay, Stephen. "The Error in the Error Theory." *Australasian Journal of Philosophy* 86, no. 3 (2008): 347-369.
- Garner, Richard and Joyce, Richard. "Moral Scepticism and the 'What Next' Question." in R. Garner & R. Joyce (eds.). *The End of Morality: Taking Moral Abolitionism Seriously*. New York: Routledge, 2019.
- Ingram, Stephen. "After Error Theory, After Moral Realism." *Southern Journal of Philosophy* 53, no. 2 (2015): 227-248.
- Joyce, Richard. "Moral Anti-Realism." in *The Stanford Encyclopaedia of Philosophy* (2021): <https://plato.stanford.edu/entries/moral-anti-realism/>
- Joyce, Richard. "Moral Fictionalism." in Joyce, Richard. *Essays in Moral Scepticism*, Oxford University Press, 2016.
- Joyce, Richard. "Morality Schmorality." in Bloomfield, Paul (ed.), *Morality and Self-Interest*. Oxford University Press, 2007.
- Joyce, Richard. "Precis to 'The Evolution of Morality,'" *Philosophy and Phenomenological Research* 77 no. 1 (2008): 213-218.
- Joyce, Richard. *The Myth of Morality*. Cambridge University Press, 2001.
- Lutz, Matt. "The 'Now What' Problem for Error Theory." *Philosophical Studies* 171 no. 2 (2014): 351-371.
- Mackie, J. L., *Ethics: Inventing Right and Wrong*. London: Penguin Books, 1977.
- Olson, Jonas. "Error Theory in Metaethics." in Plunkett, David & McPherson, Tristram (eds.), *Routledge Handbook of Metaethics*. New York: Routledge, 2017.
- Olson, Jonas. *Moral Error Theory: History Critique Defence*. Oxford University Press, 2014.
- Pözlner, Thomas. "The Effects of Morality on Acting Against Climate Change." in Garner & Joyce, (eds.). *The End of Morality: Taking Moral Abolitionism Seriously*. New York: Routledge, 2019.
- Queloz, Matthieu. "The Self-Effacing Functionality of Blame." *Philosophical Studies* 178 no. 4 (2021): 1361-1379.

West, Caroline. "Should Feminists be Moral Error Theorists?" in Garner & Joyce (eds.), *The End of Morality: Taking Moral Abolitionism Seriously*. New York: Routledge, 2019.

Williams, Bernard. *Internal and External Reasons in his Moral Luck: Philosophical Papers 1973-1980*. Cambridge University Press, 1981.

Thomson's Distributive Exemption and Possessed Threats

Mason Liddell, *The College of William and Mary*

Abstract: This paper critiques Judith Jarvis Thomson's 1985 response to the trolley problem. In her response, she rejects the doctrine of double effect (DDE) in favor of a modified version of the doctrine of doing and allowing (DDA). I argue that, if you are inclined to believe the arguments that lead her to reject the DDE, her modified DDA is unsatisfactory. It fails to consider the intuitive consideration of threat possession. Through this paper, I explain a set of cases that highlight a weakness in Thomson's response. From those cases, I derive an explanation of what it means to possess a threat. Then, I explain why threat possession is morally relevant and accordingly, why Thomson's response needs further modification.

Introduction: This paper discusses Judith Jarvis Thomson's 1985 response to the trolley problem. In her paper, she seeks to reject and replace the doctrine of double effect (DDE). For the purposes of this essay, the DDE can be understood to mean that it is morally worse to intentionally harm as a means to an end than to cause the same harm as a foreseen side effect of achieving an end. She appeals to a principle that she calls the Distributive Exemption, which says that it is morally permissible to redirect the threat of a harm from more to fewer except in cases of major rights violations. However, this principle's sole exemption is not enough. In addition to the exemption for major rights violations, I propose that it is also impermissible to redirect a threat that is already possessed.

I support that proposition first by, in detail, explaining Thomson's argument. Afterwards, I describe a set of cases, Parasites (Unpossessed) and Parasites, which highlights a tension within the Distributive Exemption. To explain that challenge, I define a novel concept: threat possession. Threat possession is a morally relevant consideration that helps to explain why in otherwise similar cases, it can be impermissible to redirect a threat in one but not in the other. I then explain why threat possession matters to Thomson, how it comes about, and defend it from an objection.

Thomson's Argument

First, Thomson compares the two relevant trolley cases. I will call the first case "Bystander." In this classic case, there is a trolley headed towards five people, but you have the ability to switch the trolley onto a path where it will instead hit one person. She assumes that the general intuition will be that pulling the switch is, at a minimum, permissible. The DDE permits this because you are not using the person you kill as a means to an end. Their death is merely a foreseen side effect. Then, Thomson turns to a case she calls "The Loop Variant" (Loop) wherein the tracks loop around like the letter "P." In this case, not switching the trolley will let five die. Flipping the switch would also kill those same five people if not for another person standing before them. That one person's body is enough to slow the trolley and save the five. Although, this explicitly uses the one as the means to an end. According to the DDE, switching the trolley is much morally worse in Loop than in Bystander. Thomson finds this conclusion absurd. Thus, Thomson rejects the DDE.

Instead, she—more or less—endorses the doctrine of doing and allowing (DDA). For the purposes of this essay, the DDA can be understood to mean that it is worse to *do* a harm than to *allow* the same harm. She embraces the DDA with one exemption:

Distributive Exemption: Given that a harm will occur, it is permissible to redirect the threat of that harm from more to fewer except in cases of major rights violations.

As long as a threat will inevitably do harm and would be better distributed to fewer, it is permissible to make that threat harm the fewer regardless of whether it is “doing” or “allowing.” The trolley in Loop and Bystander is a threat to *somebody*; you can only choose who is threatened. Thomson’s principle permits diverting that threat.

Thomson creates an exemption to her exemption by making it impermissible to commit major rights violations in the process of redirecting threats.¹ She uses a case that I will call “Footbridge.” In it, you can push a large man onto the tracks to stop the trolley from hitting five but kill him in the process. Thomson argues this is in and of itself a major rights violation and thus impermissible. Now, imagine that the man is leaning against a handrail. Wobbling the handrail will cause the man to tumble off the footbridge. Thomson holds that this is a major rights violation too. Wobbling the handrail is a part of the means taken “to get the trolley to threaten the one instead of the five.”² For her, the issue is whether the means by which the threat is redirected involve major rights violations. Wobbling the handrail is a violation of the man’s rights and it is the means by which you force him to stop the trolley. In Bystander, the means by which the threat is redirected do not involve any rights violations. Specifically, you merely flip a switch. As such, wobbling the handrail and pushing the man are both impermissible, but flipping a switch is permissible.

Though, Thomson does not exempt cases of minor rights violations. For example, she says borrowing someone’s tools, without permission, to flip the switch is a permissible rights violation. Infringing on property rights is too minor to be important when saving five people’s lives. So, there are some rights violations that are acceptable.²

Overall, Thomson argues that the DDE is incorrect. Instead, she endorses a modified version of the DDA. With her modification, it is permissible to redirect harms from more people to fewer people given that the threats will do harm regardless. The only exception is that it is impermissible to redirect threats via major rights violations. Otherwise, she argues it is acceptable to redirect threats from more to fewer.

Introducing Parasites (Unpossessed)

Imagine a case that I find most similar to Bystander. I call it Parasites (Unpossessed).

There are five parasites headed towards one person each—five total people. Each person will certainly host and be killed by one of the parasites unless you redirect them.

1 Thomson, 1410.

2 Her 1985 article does not provide a way to differentiate major from minor rights violations. Although, delineating them is not necessary for this essay. The key question to determine whether redirecting a threat is a major rights violation is only whether the means used to redirect a threat involve a major rights violation.

Fortunately, there is a garbage chute in the room. You can redirect all five parasites into the trash. But you hear someone in the room below. You know that a janitor is rummaging around. If you redirect the parasites down the chute, they will certainly infect the janitor. The janitor, in turn, will inevitably die. These are, for whatever reasons, your only two options. The parasites must be allowed to infect and kill their current targets, or they must all be redirected by you and kill the janitor down the chute.

It seems permissible to redirect the threat in Parasites (Unpossessed). At a minimum, it is as permissible as redirecting the trolley in Bystander. The Distributive Exemption concludes that it is permissible to redirect these parasites too. Yet, this case can be changed slightly and render a different conclusion.

Introducing Parasites

The Distributive Exemption does not consistently produce intuitive results. Redirecting harm from more to fewer is impermissible even in some cases without major rights violations. To illustrate this point, imagine a modification to the above case. I simply call this case "Parasites." Again, you are standing in a room with five others. Some cruel person has involuntarily infected them with a parasite. The parasites will kill their hosts as they continue their lifecycles. Once someone is infected, they will die unless the parasites are removed. For whatever reasons, your only two options are to remove the parasites from all the hosts and put them down the garbage chute or remove no parasites and allow five deaths. Although, you have consent from each host to remove the parasites. Again, unfortunately, the janitor is down the garbage chute. If you remove the parasites and toss them down, you will kill the janitor. Fortunately, the hosts are presently experiencing no symptoms. You have two options:

- (I) Leave the parasites where they are, allowing five to die
- (II) Remove them and throw them down the chute, killing one

Comparing Parasites to the Trolley Problems

Though you are redirecting a threat, it is intuitively impermissible in Parasites. Again, you must let five die or kill one. In Bystander, Loop, and Parasites (Unpossessed), redirecting the harm is permissible. Yet, in Parasites, it is impermissible. What could account for the changing intuition?

The first possibility is that redirecting the harm in Parasites is a major rights violation. If this is true, then the Distributive Exemption accounts for the wrongness of redirection and needs no further changes. Though intuitively plausible, Thomson's account denies this possibility.³ She explains that, in Bystander, the means by which one is threatened is pulling a switch. Pulling a switch and turning a trolley in and of itself is not a rights violation. If the one were somehow unharmed, you would have done no harm. So, no rights are violated. The same logic applies in Parasites. The means by which the parasites are redirected

³ Perhaps Thomson is wrong about what constitutes a major rights violation. I take no stand on that in this essay. I only mean to say that by Thomson's 1985 account of major rights violations, Parasites does not include one.

violates no rights. Consensually and painlessly removing parasites violates no rights. Disposing of the parasites by way of a garbage chute violates no rights. If the janitor were somehow unaffected by the parasites, you would have done nothing wrong. For Thomson, the difference is whether the means by which the victim becomes threatened involves rights violations. Pushing the large man in Footbridge into the path of a trolley is a rights violation. Therefore, it is impermissible according to the Distributive Exemption. In contrast, the acts taken in Bystander and Loop to redirect the threat involve no intrinsic rights violations. Therefore, Thomson's framework concludes it is permissible to redirect the threat. Under the Distributive Exemption to the DDA, redirecting the threat in Parasites would be permissible as well. The Distributive Exemption, against intuition, permits redistribution in Parasites. Instead, another option should be explored.

The second possibility is that redirecting harm is impermissible in cases where the threat is already "possessed." Accordingly, I propose an additional exemption to the Distributive Exemption. My Modified Distributive Exemption reads as follows:

Modified Distributive Exemption (MDE): Given that a harm will occur, it is permissible to redirect the threat of that harm from more people to fewer people except in cases of major rights violations or if the harm is already possessed by some moral agent or moral patient.

Positive Threat Possession

Positively possessing a threat operates similarly to possessing a good. Uncontroversially, you can possess something good. For one simple example, you can have a claim to something that was promised to you. If a friend promises to give you their apple, you have a claim to that apple. The same logic, I argue, applies in harmful scenarios.

Threat possession can manifest when someone has a claim to a harm that others do not share. I call this "positive threat possession." Having a claim to a bad (rather than a good) may seem initially unintuitive, but it is not without precedent. For one example, imagine an office. A team of five employees collectively makes a mistake. There is no team leader. All five are equally at fault. Regardless, Employee X promises to take all the blame when their boss comes by. If X follows through, they will be the only one blamed. Soon, the boss comes to yell at the team. X quickly points their finger at Employee Y, who is subsequently fired. In this case, the threat was positively possessed because X promised to endure it. It was no longer up for distribution; X had already claimed it. Accordingly, it was impermissible for X to redirect this harm.

Negative Threat Possession

Another plausible way a threat can be possessed is when someone's claim against it becomes relatively weaker than everyone else's. This could mean that the person's claim gets weaker and/or everyone else's claim gets stronger. A threat can also be negatively possessed by forfeiting the claim against it entirely. I will call this "negative threat possession."

To begin exploring when a threat can be negatively possessed, I think it is helpful to look at how positive possession comes about. In the case that only Person X promises to suffer a harm, they give themselves alone a positive claim to that threat (i.e., X has a claim to a threat that others do not have). Simultaneously, only X waives their right against the

same threat (i.e. X lacks a claim *against* a threat that others *do* have). X's claim against that threat has been voluntarily reduced compared to other people's claims. Accordingly, the threat is no longer up for distribution. It would be immoral to redirect a threat that is possessed negatively, just like it would be to redirect a threat possessed positively.⁴

To understand negative threat possession without positive threat possession, consider the following case. Some cruel person has poisoned you. You have mere minutes before dying. Luckily, you happen to own a genie's lamp. The genie offers to teleport your poison to another location where you know someone else happens to be. The only way to cure yourself is to doom someone else. Intuitively, one reason you should not redirect it is that you are, by happenstance, already in possession of the poison. The threat has already been distributed to you. In Genie-Poison, you literally possess it. Therefore, it is not yours to redistribute to another victim. The threat is yours to face.

This case is not coincidentally similar to Parasites. In both cases, the harm is bearing down on someone. Yet, the same is true of every trolley case. The difference is that there is a negatively possessed threat of that harm in Genie-Poison and Parasites. The same is not true of Bystander and Loop. But why does negative threat possession matter?

Why it is Impermissible to Redirect a Possessed Threat

It is immoral to redirect a negatively possessed harm on the grounds that other people have a strong claim against suffering threats possessed by others. To be clear, the person on the side-track still has a claim against being hit by a trolley. They share that claim with the five people on the main track. Yet, because the trolley is not a possessed threat, claims against suffering someone else's threat are irrelevant for both the side-track and main-track people. In Parasites, the janitor and the hosts all have claims against being killed. Yet only the janitor has a relevant claim against being killed *by someone else's threat*.

Claims against someone else's threat are necessarily only relevant if the threat is possessed. The difference is that the threat in Bystander and Loop is not possessed, while the threat is possessed in Parasites. The hosts have weaker claims against this threat than the janitor because the janitor has a morally significant claim against suffering threats that belong to other people. Accordingly, the MDE does not allow this redirection.

When Threats are Possessed Negatively

Negative possession of a threat can come about voluntarily or involuntarily. As was briefly explored earlier, people can negatively possess a threat when they choose to positively possess one. However, this form of negative threat possession is irrelevant. In Genie-Poison, Parasites, Parasites (Unpossessed), Bystander, and Loop, the potential victim has not consented to be harmed. There is no positive threat possession in any of the five. As such, there is no associated negative threat possession. Instead, the threat in the first two cases is negatively possessed by a different mechanism. Threats are involuntarily negatively possessed once the threat meets two criteria.

⁴ Any possible overlap between positive and negative threat possession is not the focus of this essay, so I will avoid lingering. Although, I suspect that at least most cases of positive threat possession also entail negative threat possession.

For a threat to be involuntarily negatively possessed, it must first be operative.⁵ Operative means that the threat has begun a process that entails harm. To highlight the difference, recall Parasites and Bystander. In Parasites, the lifecycle within the hosts has already begun. That process in and of itself is the threat that entails harm. In Bystander, the trolley continuing down the tracks is not in and of itself a harmful process. Continuing down the tracks towards people merely causes harm. But to continue down the tracks is only to continue down the tracks. Any harm results from a second process beginning. Namely, colliding with people. Operative threats have already begun the process that will harm.

The threat must also be self-sustaining.⁴ Self-sustaining means that the threat requires no outside contribution in order to continue threatening. For example, imagine that the trolley in Bystander must be actively hand-pumped. There is a person on the trolley who is continuously working to make it go forward. The trolley threat is not distributed partially because it is not sustaining itself. Whereas, Bystander, Loop, Parasites (Unpossessed), and Parasites all have self-sustaining threats. Thomson wrote that it is only acceptable to redirect harm given that it “will do harm anyway.”⁶ My additional exemption rests on it being given that the harm will occur. If that is not the case, then the original Distributive Exemption and MDE are irrelevant. Once the threat is operative and self-sustaining, it is involuntarily possessed by the moral agent or patient who is being threatened.

Objection: Musical Parasites

One objection against this view is that it holds unintuitive consequences in a case that I will call Musical Parasites (gruesomely named after the game Musical Chairs). Imagine that there are three people: X and Y, who have one parasite each, and Z, who has two parasites. There are four total parasites and each one is initially possessed in the same way that they are in Parasites. Though I initially stipulate that this is not possible, imagine that you are able to switch the parasites around. Z now offers one parasite apiece to X and Y, while X and Y offer their parasites in exchange to Z. Everyone has new parasites, but the threats were redirected after they were possessed. This seems, at a minimum, more permissible than Parasites. So, the MDE appears to deliver the wrong answer.

But the MDE is not committed to that answer. By consenting to the procedure, X, Y, and Z all waive their claim against threats that are possessed by other people. So, the parasites are no longer negatively possessed by their hosts. Thus, the MDE can permit consensual Musical Parasites.

What if the procedure is not consensual? Then, the threat of the parasites is still involuntarily negatively possessed. The MDE would not permit this because it would likely involve major rights violations—by virtue of violating bodily autonomy—and would redirect a possessed threat. Further, it seems correct to say that it is impermissible to play non-consensual Musical Parasites. To keep things familiar, imagine cases of possessing a good. It is generally considered impermissible to steal someone’s apple, even if it gets replaced with an exact copy. As is generally the case with threat possession, the same logic of possessing goods applies.

5 I have borrowed this framework from McMahan, “Killing, Letting Die, and Withdrawing Aid.”

6 Thomson, 1408.

Conclusion: In this paper, I have argued that Thomson's Distributive Exemption is incomplete. To accomplish such a goal, I first explored Thomson's argument in favor of the Distributive Exemption. Then, I described the set of two Parasite cases which highlight a weakness in her argument. Instead of only exempting major rights violations, Parasites show why the Distributive Exemption should also exempt the redirection of possessed threats. Although, threat possession is a vague concept. To help clarify, I use the cases of Employee X and Y to explain both positive and negative threat possession. From there, voluntary and involuntary forms of negative threat possession are separated. I posit that involuntary negative threat possession comes about when a threat is operative and self-sustaining. Once these criteria have been met, the threat is possessed by someone. In such cases, that moral creature's claim against a certain threat is diminished relative to everyone else's. These criteria are met only in Parasites, not in Bystander, Loop, or Parasites (Unpossessed). Therefore, the MDE holds that it is impermissible to redirect the threat.

References:

- McMahan, Jeff. "Killing, Letting Die, and Withdrawing Aid." *Ethics* 103, no. 2 (1993): 250-79.
- Thomson, Judith Jarvis. "The Trolley Problem." *The Yale Law Journal* 94, no. 6 (1985): 1395-.

The Sandwich Dilemma: A Case for Ethical Veganism

Tom Cockell, *University of Cambridge*

Introduction: Philosophers can often fall into the trap of overcomplicating problems far beyond necessity, especially in ethics. This can be aptly demonstrated through a thought experiment presented by Peter Singer in “Famine, Affluence and Morality” (1972). There, he states: “if I am walking past a shallow pond and see a child drowning in it, I ought to wade in and pull the child out. This will mean getting my clothes muddy, but this is insignificant”.¹ There is nothing controversial about the claim to save the child, even if no justification is provided, as no justification is really required. It is obvious that one ought to save the child.

That is not to say that the reasoning is not important, just that they are not needed in order to understand that one ought to save the child. Take two approaches to the dilemma presented. In the first case, the agent saves the child and then starts to ponder on exactly why this was the right thing to do. Through contemplating ethics, they eventually determine that the right thing to do was save the child. In the second case, the agent contemplates ethics first—not wanting to act without being certain that it is the right action—before concluding that the right thing to do is to save the child. At this point, however, the child has already drowned. It seems evident that the former case provides the correct approach to this situation. Thus, reasoning may still be important, although it is just not necessary to understand what one ought to do in the situation.

Abstract: This essay will argue that this approach to practical ethics may be applied, perhaps more controversially, to other ethical dilemmas. That is, it will be argued that there is sufficient reason to believe that transient human pleasure does not justify the suffering and death of, at least the most cognitively developed, non-human animals. This claim seems far less easy to accept, however, likely due to how engrained within our culture this practice is. In the following section, I shall present a thought experiment that may act as a formula to demonstrate why one ought to take the same approach with the consumption of animal products as with the drowning child. That is, one ought, at least, to give up on the consumption of most animal products prior to engaging in a metaethical debate. The thought experiment, much like in the case of the drowning child, produces one obvious conclusion. In the final section, I shall demonstrate that the obvious answer to the thought experiment and the belief that it is permissible for some non-human animals to suffer and die for our transient pleasure are incompatible and, thus, the latter belief ought to be rejected.

To proceed further, I must first lay out the definition of ethical veganism—the view that I am presenting. I shall be understanding ethical veganism as follows:

Ethical Veganism: A lifestyle that seeks to exclude the unnecessary suffering and death of non-human animals.

By “unnecessary”, I mean any amount of suffering and death that cannot be considered “life-saving”. This definition, then, excludes two common objections to similar positions. Firstly, the condition of the suffering and death being unnecessary excludes life-or-death

1 Singer, “Famine, Affluence, and Morality.”

situations in which one must kill a non-human animal in order to survive. Secondly, the conditions of there having to be at least some suffering exclude cases in which an animal wants to give up its life like Douglas Adams' "Dish of the Day".² Simply, this definition only refers to the everyday situation in which one purchases an animal product that was produced as a result of suffering, death, or both.

It is important to note that this essay is not a conclusive argument in favour of Ethical Veganism but seeks to provide enough reason for one to act upon ethical veganism—or similar perspectives which demand a vast reduction in the consumption of animal products—until one has strong enough evidence to refute Ethical Veganism. For the same reason, that intuition is not enough to conclusively prove that one ought to save the drowning child, but it does provide enough reason for one to act on the maxim, "always save drowning children where capable," until strong enough evidence is provided to refute it.

Finally, only in the most extreme cases of empathy will this argument result in the reader adopting the full stance of Ethical Veganism. More likely, the formula presented by the following thought experiment will only lead to the reader abstaining from the consumption of products that have been taken from the most cognitively developed non-human animals. This does, however, include the majority of animals that the animal agricultural industry uses to create their products, so the argument is still an important one to be made:

The Sandwich Dilemma

- (I) *Alex is taking a walk through the countryside and finds herself very hungry, so she heads to the only place that she knows to be in the vicinity where she can eat. The sandwich van in question offers only two kinds of sandwich—sandwich A and sandwich B. Luckily, Alex likes the sound of both, and, after some thought, she chooses sandwich A. After purchasing the sandwich, she takes a seat. Before she is able to take a bite of her sandwich, a woman carrying a pig in a cage walks towards her. The woman stops in front of Alex, places the cage down, and removes the lid. She then starts whipping the pig. Horrified, Alex demands to know what is going on. In response, the owner of the sandwich van explains that this woman is Zoey: she who makes all of the sandwiches of the A-kind but will only make them if she is allowed to whip a pig to death in front of every customer who buys one. All Alex has to do to make it stop is swap her sandwich A for sandwich B. What should Alex do?*

I will assume that it is not a possibility for Alex to go anywhere else for food—she is so hungry that she simply must eat now. Thus, her choice is simply whether to have sandwich A—which results in a pig being whipped to death in front of her—or sandwich B—which does not result in any further consequences. Both sandwiches satisfy Alex's hunger and nutritional needs, so the only relevant difference between the two is preference. Much like with the drowning child, the correct decision here is obvious. Almost anyone, if placed in Alex's shoes, would choose sandwich B in a heartbeat, even if they vastly preferred the taste of sandwich A. In the same way one would not ponder on whether to save the drowning child prior to saving them, they would not ponder on the superiority of humanity, nor the structure of the food chain, or even the sentience of the pig whilst eating their sandwich

2 Adams, *The Restaurant At The End Of The Universe*.

A—all the while watching the pig being whipped to death and claiming that maybe they'd choose sandwich B next time if they decided it was the right thing to do.

Of course, there are those who would object to this thinly veiled analogy to real life by claiming that the whipping of the pig is clearly barbaric, which is what makes the decision between sandwich A and sandwich B so easy. This is not enough to object to the consumption of animal products on a commercial basis, as one should not purchase animal products in which the animals were made to suffer—only products where the animal lived a happy life and died as painless a death as possible. It is debatable as to whether these products actually exist, but the thought experiment can be modified to accommodate such a possibility whilst still reaching the same, obvious, conclusion:

(II) *Ben, like Alex, finds himself at a sandwich van that only serves two sandwiches. Similarly, Ben decides on sandwich A. As he is about to pay, he turns to see another customer with a sandwich A and, in front of them, stands Zoey with a pig. Without warning, Zoey takes out a gun and shoots the pig in the head, instantly killing it. Ben immediately demands to know what happened and the owner explains that, in exchange for making the sandwiches, Zoey gets to shoot a pig dead in front of every customer who orders a sandwich A. The owner assures Ben that it is very much humane, as the pig dies instantly. What should Ben do?*

Again, I will assume that Ben must order a sandwich from this van. Thus, he must either choose sandwich A, resulting in a pig being shot dead, or sandwich B, which does not result in a pig being shot dead. As with the case of Alex, the decision here is not difficult, nor does it require any great metaethical contemplation. The idea of watching the pig die just for one's sandwich is too uncomfortable an idea to even attempt to justify. It makes little difference that the pig did not have to consciously suffer; the reality of death is enough to put most off from ordering sandwich A.

Yet, the fact that the pig's death is solely for a single sandwich seems disanalogous. An individual is not solely responsible for the death of the animal whose body they are consuming when they purchase an animal product, as the product is only a small part of the animal. The responsibility falls upon everyone who purchased a product that could only be brought about by that animal's death. Again, the thought experiment can be modified to accommodate this possibility:

(III) *Charlie takes their entire extended family to eat at the sandwich van. After listening to preferences, they order everyone a sandwich, thereby purchasing multiple of both kinds. The owner of the van warns them, however, that should they go through with this order, Zoey will bring out a pig in front of the family and shoot it dead. What should Charlie do?*

As with the others, this is the only place Charlie and their family can eat at. Once again, there is no situation in which someone not only subjugates themselves but their family as well to the sight of a pig being killed solely so they can enjoy a sandwich when there are other food items that they would also enjoy.

Distance (IV): What we have arrived at, with the third version of the dilemma, is a suitable analogy to real life with only one real difference—the distance. As with reality, Charlie is

paying money which, along with the money of other consumers, demands the death of an animal, as the product cannot be produced without this death. The difference for Charlie and the average real individual is that the individual does not go to the slaughterhouse for a ham sandwich. Few would argue that distance is particularly relevant to moral dilemmas. Imagine Zoey was in a car with the pig, instead, and driving away from the consumer. The question “at what distance does it become okay to buy sandwich A, causing Zoey to shoot the pig?” is intuitively absurd. Nothing is changing, other than the fact that the consumer cannot see what is happening anymore, but no consumer would suddenly change their mind and order sandwich A because they can no longer see the pig being shot.

There are those, however, that would argue there is some difference. Julian Baggini argues that those who are willing to witness the killing, or even do it themselves, of the pig are no more entitled to being able to eat the pig than someone who is not as it would also be absurd to claim that someone unable to witness open-heart surgery without fainting is not allowed to undergo the procedure themselves.³ This is disanalogous, however, as someone who cannot stay conscious through watching open-heart surgery faints because they are *squeamish*, whilst the person who cannot watch Zoey shoot the pig opposes the killing because they are *empathetic*. If I faint at the sight of my own blood, I do not do so out of ethical opposition or empathy, but squeamishness. If I oppose witnessing a child die, it is not because I am squeamish, but because my empathy leads to me being ethically opposed to the child dying. It may be partly out of squeamishness that we do not want to witness the pig’s death, but our empathy towards the pig also plays a significant part. The difference between the two cases is obvious when we look at intention. Those carrying out open heart surgery do it to help the individual, those who kill pigs do it to harm them. Adverse reactions to benevolence come from a different place than those in opposition to cruelty.

Consistency

As touched upon in subsection IV, the third iteration of the Sandwich Dilemma bears no relevant differences from the fourth—that is to say that the ethical choice is the same in the case of the casual consumption of animal products. In both cases, the consumer is knowingly paying for the death of an animal, in tangent with others. Yet, in the case of the casual consumer, most people are willing to buy a ham sandwich—thereby paying for the death, as well as the suffering, of a pig—whilst in the Sandwich Dilemma, it is obviously wrong to pay for the pig’s death. Thus, these are two beliefs that contradict one another and, in the interest of consistency, one ought to be rejected in favour of the other.

One ought to reject the belief that the permissibility or impermissibility of purchasing animal products arises as the main difference between the two cases in that, in the Sandwich Dilemma, the consumer has more complete information. In the latter case, the consumer is forced to face the consequences of their actions, and, from there, their empathy kicks in and demands that they do not do it. Whereas, in the case of the casual consumer, they are able to ignore what goes into the product, thereby suppressing their empathy and moral instincts. When evaluating which decision is likely to be the best—the one born from

³ Baggini, 64.

more information or the one born from less—an agent would struggle to justify following the decision born from less information.

Thus, due to it being obvious to most people—I accept that there do exist those that would be willing to watch a pig be slaughtered in order to eat a ham sandwich, but they are the minority—that one must choose sandwich B in all iterations of the Sandwich Dilemma as presented, those same people are, in the interest of ethical consistency, obligated to accept that they cannot consume products that result from the suffering and death of pigs until they have conclusively proven that it is permissible.

The argument does not end there, however, as I have only provided one use of the formula provided by the sandwich dilemma. That is, I have presented the sandwich dilemma as applied to pigs but, in order to determine exactly where one's beliefs take them, I would urge the reader to go back to the third iteration and replace all instances of "pig" with any other animal whose suffering or death led to the creation of a product that the reader intends to consume. This will, most likely, lead to the rejection of the consumption of the likes of pork, beef, chicken, dairy, and eggs, at the very least.

References

- Adams, Douglas. *The Restaurant at The End of the Universe*. New York: Del Rey, 2021.
- Baggini, Julian. *The Virtues of The Table*. London: Granta Publications, 2015.
- Singer, Peter. "Famine, Affluence, and Morality." *Philosophy & Public Affairs* 1, no. 3 (1972): 229-243.

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116