

Thinking About Imperfect Duties  
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A Brief Overview. The larger work from which these pages are drawn started out as an investigation of imperfect duties (duties, like beneficence, that are incomplete, and so imperfect, in giving us a required end and not a requirement on action). There are reasons to find imperfect duties puzzling. It's not clear what kind of guidance they give, or, therefore, how important they are. There are also reasons to find imperfect duties interesting. They seem to give the moral agent a more active role – they add to the limits and restrictions, especially of deontological theories, some goals, something the agent has a say in bringing about. However, once we begin thinking about imperfect duties, things don't stop with them. Although it may surprise, sorting out the issues that come with imperfect duties can have a transformative effect on our understanding of moral activity in both public and private fora.

This paper begins by looking at some imperfect duties – especially the understudied duty of due care – with the aim of getting a grip on their shared features. One thing we find out is that imperfect duties are embedded in a network of other duties that they complement and complete. Another is that the guidance imperfect duties provide depends on some kind of value, not on a rule. Given their systematic connections with other duties, this gives us reason to seek out the work of such value across all the kinds of duty with which imperfect duties intersect.

As an example of a system of duties that can provide a suitable home for imperfect duties, I offer (in abbreviated form) a somewhat revisionary account of Kantian ethics – one that emphasizes the systematic connections, not just between perfect and imperfect duties, but also between the duties of public morality, including law, and those of private or interpersonal morality. The system is dynamic in both directions. From one side, a basic structure of right sets the first terms of moral content for our duties: the institution of property, for example, in addition to securing the usual claims and liberties over material stuff, affects how we understand the personal duties of beneficence and gratitude. From the other side, whether a moral task

belongs to public morality or is a matter of private duty is partly determined by the nature of the moral work that needs to be done and partly by our circumstances. So if too much moral work in a domain is left to private individuals – about welfare or safe working conditions, for example – it can mark a system failure at the higher, or public level. Using the *human right to housing* as a trial case, I examine some of the different moments of this dynamic: what it would mean in the system of duties for it to be a right and a *human right*; how the right is affected by different conceptions of the person and of property; and then the effect such a right would have on our interpersonal duties. Throughout, as we shall see, imperfect duties play a key role.

Some Background. Imperfect duties have had an intermittent but continuing presence in the history of moral thought, showing up most commonly in nonconsequentialist accounts of morality that want to include in addition to duties of right, duties that take the good as their object. They also offer a site of resolution for substantive problems in the accounts of some positive duties, e.g., how to manage the scope of beneficence or allow the personal inflection of some otherwise impartial duties in light of our attachments (to persons and projects). If, as it is thought, imperfect duties allow for individual choice in their execution, we may justifiably turn away from others' need if we choose to (so long as we don't altogether neglect them) and may also select those to whom we direct attention and resources according to considerations that track our relationships. The solution has always seemed both right-headed and unhelpful. The right-headedness comes with the recognition that many good-promoting obligations are, by the nature of their requirement, so entangled with our private activities that unless some priority is afforded to the interests of the agent of obligation, she is in danger of becoming a creature of morality rather than a person living a life, even a moral life. The problem is that the template of the solution is in essence a reciprocal projection of the problem: imperfect duties are duties that both obligate and leave room for whatever living a life amounts to. It's more the form than the

substance of a solution, leaving unanswered on what terms we may carve out room for our lives and attachments. One might well think that if this is all imperfect duties add, we don't really need them.

And indeed, many would proceed without them. One can, on the basis of intuition and overall plausibility, simply include relational duties in the census of our obligations, and argue that these introduce limits to the demandingness of impartial good-promoting requirements (by their nature? by their weight?). Sometimes one kind of duty, sometimes another dominates. To the extent that one also holds that duties either directly reflect a balance of reasons, or are inputs in an all things considered calculation, it may seem that we can manage deliberative tasks: aid for tsunami survivors outweighs some number of nice family dinners; either surplus funds are better spent on researchers tracking the effects of global warming than on famine relief – or not (and 'surplus' here means..?); and those piano lessons for one's child?...well, given the importance of music in cognitive and affective development, and given the importance of responsible parenting, the balance tilts. Except, of course, for the existence of some child who could be saved from... (name a life-threatening condition).

Further moral resources can be wheeled out. There are substantive questions about who is responsible for what, and about justice and the distribution of wealth. Answers to these questions will manage some of the issues, often by burden-shifting from the obligations of separate individuals to those of social and political institutions. I think they can advance the debate only if the explanation of the relation between individual and institutional obligation blocks the devolution of unmet institutional obligation back onto the individual (or, in different terms, only so long as there is a good argument about why the relation between individual and collective obligation is not essentially instrumental). I will leave these issues aside.

In investigating imperfect duties, I propose a different path. I think they offer a missing middle term in a complete account of moral obligation that knits disparate elements together into

a usable moral garment. I don't mean to say that they do it all on their own. When embedded in a system or ordered structure of duties, public and private, they open up a principled solution to many of these difficulties. The key is to rethink the nature of the license imperfect duties provide. As we shall see, the discretion they offer is not a benefit for the agent of the duty but something necessary for its object.

In the larger work, I proceed by looking in some detail at several imperfect duties. I try not to be trapped by beneficence. Although it is the poster child imperfect duty, I worry that we start out committed to a view of it and its problems. The duty is about providing help for persons in need; its problems are about demandingness and partiality. Perhaps. But even if that were right, it wouldn't follow that these problems were characteristic of imperfect duties generally. So I thought I might do better to start with other, less central imperfect duties, ones that didn't seem to carry so much weight or so many preconceptions. If one aim is to understand the mysterious choice that imperfect duties allow, seeing where choice or discretion show up in these others areas should be instructive. I limit myself to brief sketches here.

First cases. I'll start with gratitude.<sup>1</sup> Its puzzle is this. How could it be that a benefit freely offered, needed but not claimed, could burden the recipient with an obligation to do more in return than thank the benefactor? Why owe a response in kind to someone whose help was offered without expectation of benefit as a condition? The debt of gratitude also creates perverse choices. We can imagine someone deciding to reject much needed help on the grounds of not wanting to be obligated to benefit *that* benefactor. And why does the historical tradition take *ingratitude* to be among the most grave of moral failings? So we should ask, what problem is it to which such a duty could be a reasonable response? One common answer is that the job of gratitude is to return things to their *ex ante* condition. I was in need; you helped; I benefited; you

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<sup>1</sup> The fuller version of this account is in my "Being Helped and Being Grateful," *The Journal of Philosophy* (2012) 391-411.

suffered a loss. Through paying the debt of gratitude things are again as they were. But that answer suggests you were not so free, that there was an unwanted withdrawal from your resources – a kind of required loan or forced taking that is the basis of owed compensation. Yet gratitude is in play even when the attitudes are not like this. And interestingly, especially when they are not. The freer and more willing the benefiting, the deeper the debt of gratitude. I think we should find this very strange.

There is, however, a competing picture of the deficit created by an act of beneficence. When I am in need and you help, you in a sense stand in for my agency. You are able to act for me when I can't act for myself. This suggests a kind of awkward dependency: I am in a position I can't want to be in, but I also can't reasonably reject the help (suppose that's so). Indeed, the freer and easier your generosity, the worse the problem for me with respect to you.<sup>2</sup> The solution is for me to assert (correctly) that I am as able as you to give help, and to commit to so acting as the occasion arises. That is, through assuming the debt of gratitude, I resolve the threatened status inequality in our situation.<sup>3</sup>

That leaves two questions (I leave out all sorts of fascinating complications). One is about the sense in which gratitude is an imperfect duty. The other is about what's at stake in going for one account of the duty rather than the other. It's clear that depending upon what gratitude is about, the agent of the duty of gratitude will express something different in assuming and later acting on the debt, something about the nature of the relationship that the helping act brought about. In one case I stand to the helper as to a bank – a mobile ATM that offers a line of credit. (If that were right, it's odd that others can't pay my debts of gratitude.) In the other case, I have to manage a new dependency. No one else can do this for me, including the original helper (this is not a debt she can forgive).

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<sup>2</sup> That's why it can be better for the beneficiary to be benefited anonymously.

<sup>3</sup> This answers a puzzle in the compensation story about the felt duty to "pay it forward," even to a stranger, when the target of gratitude is not available. There is unfinished work.

Which account will make most sense, I conjecture, depends on how we think about property, the moral institution that lies behind gratitude (because it lies behind beneficence). If what property is for is the accumulation of wealth for private purposes, then it will be natural to think that what I am grateful for is your willingness to divert your productive resources to me; my gratitude aims to make you whole. If instead what property is for is to enable the promotion of a common goal (we together produce wealth for us), or if it is for securing the conditions of effective rational agency, then the diversion of goods for others' need will mean something like lifting a companion up so she can pull her oar, or releasing some of what exists for all of us from the contingencies of what persons happen to have. Since beneficence inherits the point of property, so does gratitude. So the answer to the puzzle about gratitude depends on answers to questions about the point of other duties to which it is systematically related.

As we expect of an imperfect duty, gratitude is indeterminate in its requirement (we owe something in return for a benefit, but it is not fixed just what); and though gratitude is described using the language of debt, it is not a debt that anyone can claim as a matter of right (so not coercible). However, its indeterminacy does not imply much liberty to choose. The fact that I have many debts of gratitude is not a reason for me not to discharge one or many if I can, even if it is burdensome. Three other marks of the duty are of interest: it is in systematic relation to other duties (property and beneficence); it has expressive content (a grudging pay back is not gratitude at all); and there is a connection to motive (to have a debt of gratitude involves being on alert for occasions of discharge and so attentive to another's needs). All three marks show up in other imperfect duties.

Another thing we do with property is give gifts.<sup>4</sup> For birthdays and holidays, in recognition, in ritual performances, or just out of an abundance of generosity, we convey to others something that is ours. Gifts can be used to cement relationships, encourage favorable

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<sup>4</sup> The full version of the summary discussion that follows can be found at:  
<https://www.dropbox.com/s/nbf7o7fvhe8dl0k/Doing%20Too%20Much11.docx?dl=0>

treatment, or display power. A gift is a one-way transfer; unlike a sale or exchange which is done with expectation of return, with a gift there is no equivalent that must be offered to complete it.<sup>5</sup> Of course not expecting anything in exchange doesn't mean that there aren't other expectations and obligations that attend the receipt of gifts.

However nice to get, gifts can also be inappropriate, harmful, or insulting. They can be intrusive; they can put the recipient at a disadvantage. Giving a gift either presumes or creates a relationship, not necessarily one that's wanted. In many contexts, gift-giving is reciprocal, but it needn't be. Gifts are expressive. From the box of candy to a favorite book to a new bicycle, we are conveying something by means of what we give. The puzzle that caught my attention was a problem about *giving too much* – about instances where a large gift freely given alters the terms of a relationship in ways that are wrong, e.g., the gift of a new car or a large sum of money to a professional colleague. I think it's obvious that such gifts shouldn't be given, and that if proffered, they shouldn't be taken. Just the tendering of that kind of gift distorts the relationship, introducing not just awkwardness, but conditions of deference and inequality. The too large gift is not a bribe because it is not offered with the intent of securing favor, but it is like a bribe in the way it distorts subsequent judgment. In either accepting or rejecting the too large gift, one enters into new lines of connection that colleagues shouldn't have to have.

In the healthy cases, we recognize one another in the gift and the giving, taking something of the other into our lives through the gift. We are each enhanced. In giving too much we disrupt this mutual recognition. Along with the gift we seem to take in the other's power or wealth or advantage. (I leave aside special cases.)

The power to give gifts also belongs to the institution of property. Having the right to do what we want with what we have so long as we don't violate the rights of others is an expression of our equality. The moral value of property is not undermined if we cannot use what is ours to

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<sup>5</sup> As we'll see in a moment, making the transfer complete and making the gift complete are not the same thing.

violate the rights of others. It would be undermined if we could not exercise extremely wide discretion in the one-way transfers that mark gifts.<sup>6</sup> The gift is central to the way individuals and groups create and sustain various kinds of sociality (both private and more broadly social relationships). The discretion available in the gift exchange is essential to this work – it allows us to decide how we wish to express ourselves in and through the gift (tailoring the gift both to the recipient and the social purpose the gift is to serve). Getting things right is often hard. This is one reason this region of interaction is a magnet for convention – most of us much of the time want not to depend on our own resources of judgment (and we express *that* as well when we give a socially sanctioned gift). Getting it *morally* wrong here will involve making gifts that cause or threaten to bring about or maintain status inequality between persons – where the giving is undermining of the point of having property rights – to maintain independence and formal equality (one can see problems coming for some patterns of inheritance). So for some gifts in some conditions, the giving violates a duty whose purpose is to manage the moral effects of the movement of goods and services on our relations as equals.

If there is such a duty, it is an imperfect duty. It is indeterminate; it is not acted on in response to a claim held by others; one usually has choice about the gift to be given, but no choice about the duty to give with moral discretion. The giving and the gift are partly expressive through this duty – that is, by maintaining my connection to you as an equal through the course of my giving (by my attention to detail and scale and significance), the gift enhances and does not undermine the moral conditions of a relationship.<sup>7</sup> The duty also exhibits the other two marks I noted in the case of gratitude. It's a duty that makes best sense in systematic connection with other duties (and the background moral institution of property); and it is (partly) directed at our motives. It appears to be a duty about managing some effects of the movement of property

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<sup>6</sup> It is consistent with this discretion that there be legal restrictions on gifts – no cash gifts to the post-person, no gifts at all to the tax collector, etc..

<sup>7</sup> Of course not all gift-giving is between equals. A parents gifts to a young child express love and aspiration. They can also infantilize – interfering with the emergence of a relations between equals.



on the moral character of relationships.

In talking about the use and misuse of discretion in the giving cases and about the ways responses to being the beneficiary of beneficence can go wrong, we encounter regions of activity and response in which an agent either takes on or finds herself in a moral position where action is morally salient (she can go right or wrong) and yet underdetermined by moral principle. There are sometimes pragmatic solutions. Pieces are carved off into etiquette and thank-you notes, conventional gifts, calibrated reciprocal helping or giving. As often as not, the pragmatic solutions don't quite work, or the issues the agent has to respond to are novel or more personal or more tangled with other matters. She must judge, assess, decide, in order to act as she ought. There can be a great deal of moral complexity involved in satisfying these imperfect duties, and *that* can be demanding.

With these preliminaries in mind, I want to turn to a different piece of moral theory: moral negligence and its companion duty of due care. Due care is an imperfect duty, perhaps the most important one, both familiar and surprising in its requirement. It introduces a fruitful set of connections between responsibility and moral inventiveness, requiring as a matter of duty that we be able to respond to unusual or unexpected circumstances. Since the detail of the duty is instructive about what imperfect duties can be like, I'll spend some time setting it out.

The Duty of Due Care. The agential tasks of attending, remembering, preparing, being careful, and the like are often also moral tasks, at least in the sense that failure at them can be moral failure. Something I forgot to do yesterday makes me unable to do what I ought today. Aiming to take care of moral business, I act in haste and don't get things quite right. I don't think about the fact that the gift I am giving will cause embarrassment. My expressions of gratitude are too public. All of these are instances of moral negligence, showing a deficiency in due care.<sup>8</sup>

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<sup>8</sup> In Fall 2013 I co-taught a graduate seminar with Seana Shiffrin on Moral Negligence. We felt like explorers in a new land, one that happened to be beneath our feet. I am deeply grateful for how much I learned from our working together. It is at times pleasingly hard to know who owns which ideas.

That there is a moral duty of non-negligence is obvious once you think about it. But if you try to find a literature on the subject, there's hardly anything there. Negligence as a wrong *and* as a subject-matter is pretty much owned by the Law and run by the department of Torts. It's not hard to guess how that came about. The law has the task of managing a large class of actions that harm persons and property, and interest in when and how that happens in ways the law should concern itself with has to be high. However, if we think about negligence away from rights and remedies and instead in the more ordinary things we do, it's clear that it isn't always about harm, though it is about acting responsibly.

The duty of non-negligence, or of due care (as I shall refer to it), is about avoiding a certain kind of fault. Its issues are less about balancing harm and remedy and more about our staying connected with all that we ought to do. It is an imperfect duty, best understood as what an older tradition called an *accessoric* duty, a secondary duty that comes into play when one or more primary duties are to be acted on.<sup>9</sup> That does not, however, make it secondary in importance. And although we should not tie the moral duty to the theory of torts, that does not mean that there is no connection between moral negligence and the content of law.

Let's start with familiar things. When you and I interact, on the street or in my front room or even over the internet, lots of things can happen. We pass and make room for one another, we exchange ideas or gifts, we make plans to meet – and we intend things to go a certain way. But we also bump into one another, fail to notice a salient change, make an offending remark, miss a meeting – without intending these outcomes. Suppose we could have done better. Of course, even if we take the care we could and should take, failure happens. So it matters how things come about. Failure isn't proof of negligence; success is consistent with it (ordinary morality doesn't require harm to find negligence).

Getting it right is not quite a matter of more or less caution. Or of moral luck (as if at

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<sup>9</sup> Kant uses but does not invent this interesting notion. See his *Metaphysics of Morals (MM)*, 6:448.

any moment we might find ourselves stumbling into a Rube Goldberg or Chuck Jones constructed universe). It is true that the ordinary universe causally outstrips our ordinary vision of it. Knowing that, we learn caution. But not too much caution, else we become paralyzed. As with many regions of activity where the “right amount” is for good reason under-specified, a responsible agent acquires the habits of caution suited to the range of activities she engages in, alone and with others. How we hand one another tools or put out a grease fire or maintain the brakes on our car. We monitor what we say to whom, try not to drive when we are sleepy. We also knowingly play games where someone is likely to get hurt and engage in productive activities whose footprint will not be light. And sometimes we throw caution to the wind.

We could say that ordinary negligence lies in failure to direct the right kind of attention to our acting, making non-negligence an appropriate attitude of attention and care. The non-negligent agent takes a critical view of herself as an agent, recognizing that the horizon of her intention is not the boundary of her agency. It’s more than a bit challenging to work out what this requires of us. Being careful is no guarantee: there are hazards that we can’t anticipate; others’ actions may alter the circumstances in ways that defeat our cautions.

Curiously, while it may be hard to say what caution or due care involve, it seems easier to identify carelessness, perhaps because the examples are so familiar. The right turn made without looking; loudly voicing a criticism without attending to who can hear it; closing a valve or a latch, but not all the way; relying on memory rather than writing down a complex schedule. These acts all seem to involve taking for granted something that shouldn’t be. We don’t, in acting carelessly, disregard *everything*. And due care is not acting with attention to everything, but to those areas where absence or misdirection of attention is a fault (one could be attending very carefully to the identity of the birds in the branches while making the right turn). When we say, “Pay attention!” we assume that it’s obvious where attention *isn’t* being directed – that the target already knows where the spot is in what she is doing that might warrant the warning. It’s

as if we are primed for failure to take due care.

Suppose one makes a promise to A to do X, where X is complicated enough to require some planning to execute. How do we understand what's required of us? Do we have in addition to a duty to do X a separate duty to plan and execute? Or are planning and executing already involved in the duty to do what you promised? I promise to bring bread; I forget the bakery closes at 6 and arrive at 6:30; it turns out the bakery has changed its hours and is open until 7. I bring the bread, as promised. I also acted negligently. Have I succeeded in one thing and failed in another? One can't succeed negligently, only despite one's negligence. Had I forgotten the promise and brought the bread for some other reason, we would not say I kept my promise. The examples suggest that if there is a second duty, it is not an independent duty alongside the promissory duty, but a secondary or executive duty, dependent for its content on the primary duty of the promise – of promising generally and of *this* promise in *these* circumstances.

It therefore seems a reasonable conjecture that there is no independent “duty of due care” as such, but rather, where there is a primary duty or obligation, the duty of due care applies. That would explain why the duty points to the idea of a standard for action but does not provide one. Failure in its sphere means that *something* that required attention because one had a specific duty was not managed effectively. This is what divides negligence from pure accident.

The duty of due care is also not a special case of the requirement to take necessary means (even for moral ends), though it often does its work in tandem with the instrumental requirement. Having a duty to repay, I must gather and then convey funds in a timely manner. But servicing the duty instrumentally is not all that is required.<sup>10</sup> I should not, for the pleasure of it, act in ways that lead you to doubt that I will repay. If I have a duty to be truthful about something, I

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<sup>10</sup> Instrumental failures are typically regarded as a species of irrationality, not negligence. In some cases, failure to take the *best* available means is negligent – e.g., a doctor who does not shift from his old ways to a newer medication that has fewer side effects. It is not that one must always take best means, but a doctor has a primary duty not to cause unnecessary harm or suffering.

should try to make the truth accessible (not deliver medical advice in a rebus, or in an overly technical manner). A duty to aid should be carried out in a way that does not cause unnecessary waste. Although none of these are instrumental requirements, failing to get them right can diminish the value of a dutiful performance.

A temptation to be resisted is explaining the moral data in terms of additional independent primary duties. A duty to help *and* a duty not to cause damage; a duty to speak truthfully and a duty not to obfuscate; a duty to pay debts and a duty to appear to intend to pay one's debts. There are of course circumstances in which one has and must act on multiple independent duties.<sup>11</sup> But in the cases at hand, the supposed second duty somehow belongs to the first. We do not have straight-up duties to be transparent or not to obfuscate or to act without incurring costs. We also have no standing duty to remember. We have a duty to remember (or to take steps so that we remember) when forgetting is a foreseeable impediment to fulfilling another duty. We have a duty not to obfuscate when lack of clarity undermines the point of the truthful communication. And so on. When our not taking steps to remember, or not making the effort to speak clearly, incapacitates us with respect to the primary duties we have, it makes sense to describe these situations as failures to take due care.

If it still seems that “not taking steps to remember” has to be a failure to take necessary means, consider how things go. I say, “See you for lunch tomorrow at noon,” and that’s the end of it: at noon the next day there I am. No memory-inducing steps were taken. Maybe I am good at remembering social arrangements but have trouble remembering names. That changes things. If knowing your name on another occasion will be important for me, or show lack of respect for you if I fail, I should take steps to remember. It’s true that on the rare occasion I may forget an appointment. I am surprised and disappointed, but there was nothing I failed to do as a means: I just forgot. But if in the swirl of the social moment I didn’t take steps to remember a name and I

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<sup>11</sup> The literature tends to focus on cases where duties conflict, but, as we will see, there is interesting work to be done on the effects duties have on each other when they can be co-instanced.

later don't recall it, the failure is of a different order. I ought to have taken steps.<sup>12</sup>

Of course many moral failures involve not taking necessary means – one miscalculates or makes a mistake about what causes what. But where we can't fully count on our abilities, or where we know that the stakes are high, the failure is of a different sort. A skill that is normally routine and beneath attention may have to be brought forward and disassembled (performing a complex task while extremely tired or anxious can require this), reminders put in place or external help sought. We don't come to know this as a result of means-ends reasoning; in the actual circumstances of action, it's simply on us to know both when we can't rely on routine and how much additional care it is reasonable for us to take.<sup>13</sup>

It is a failure of practical rationality if you are pursuing multiple ends and do not notice that actions taken for one of your ends threatens to undermine another, and a moral failure if the ends are moral ones. But it is not a failure of ordinary practical rationality if you keep a promise in an offhand way or in a manner that conveys contempt for the promisee. Done intentionally, these are acts of disrespect (riding on the back of *fulfilling* a duty!). Done without recognizing what one is doing, they are morally negligent.

Suppose that you do not fail in doing what a duty to repay requires, but the manner of conveyance introduces other kinds of difficulty. You repay the debt with a check, but after the banks have closed, and I needed use of the funds today. We know each other well enough so that you knew that. If it was easy, or easy enough, for you to have avoided the difficulty, then you should have. While I have no claim on you to do that based in the duty to repay, there surely seems to be a failure of due care here. But if so, with respect to what? Plausibly, the standing duty you have to be mindful of a friend's welfare. So not a *conflict* of duties; it was possible to

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<sup>12</sup> Politicians take these steps when working a crowd – they come with an aide who stands at their shoulder and whispers the correct name.

<sup>13</sup> What counts as the means to an end is not the complete set of necessary conditions for its pursuit. Breathing is not typically a means, though typically necessary for doing most things. It can become a means in special circumstances – e.g., because of its role in an activity, such as Ujjayi technique in yoga, or because the breathing itself has gone awry, as in a state of panic where resuming regular breathing is a remedy.

attend to both with the same action. And although there is only one claim on you – were you able to attend only to the debt you would not violate a welfare duty – there is some kind of requirement that in the servicing of the debt you not do less than you easily could to avoid serious inconvenience to your friend. If you do less than you could, it would seem to be a failure of due care *in the exercise of one duty with respect to another duty*.

If we collect the data from the cases we should say that as a moral requirement, the duty of due care has no content of its own; it is a secondary duty whose application and content depend on independent or primary duties. It requires that we attend to and avert the effects of a wide range of foreseeable sources of failure (both generic and personal) that impinge on dutiful action, and that we manage the intersection of action for a primary duty with other duties (possibly, but not necessarily, conflicting duties). The duty calls for no specific action or action-kind; in contrast to legal standards of non-negligence, what it requires is not owed to anyone as a matter of right. It is a task for the agent to determine when due care requires her doing anything (that is, it is a duty that can apply and be satisfied without any specific action – *not* in the manner of negative perfect duties, e.g., not to murder, which we satisfy when such a kind of action is simply off the table, but in the active judgment that what needs to be is being done). There is no single standard of due care; not everyone faces the same demands of due care in similar circumstances. The duty casts the agents of morality in a managerial and not merely an instrumental role with respect to their duties, not just one by one, but as an organized whole.

The duty of due care's indeterminateness and dependence on individual judgment might suggest it is an imperfect duty in the standard sense. Other features make it a poor fit. It doesn't seem to be directed at an end, or not an independent end. It doesn't leave agents room for choice in how and when they execute it. (If it is ever a reason not to help someone that you helped someone else yesterday, it is inconceivable to think that exhibiting care in acting yesterday has any bearing on whether you should be careful in your actions today.) Taking due care is often

demanding, and its importance in the moral scheme of things is greater than many perfect duties. Further, its sphere of application ranges across all duties, from the most public duties of state institutions to the intimacy of personal relations. The negligent agent can be the private individual, someone acting in a defined public role, but also a court or a corporation or a battalion. The directing of non-negligent attention can be a matter of individual judgment or of institutional design. Due care can prompt creativity or dependence on check-lists.

Because the duty of due care is something like a managerial requirement, it is directed not just at our actions but also at our *motives*. Think of it this way. There's a volunteer weekend, and some dozen of us want to spend it refurbishing an inner city playground. A site has to be identified, materials purchased and transported, assignments made, and so on. One of us agrees to act as the group's manager. She knows what the group is aiming at, as well as the values and resources of the members. She knows that it matters to the group that the task be finished in the one weekend. Several people really care about repurposing old materials. There is a budget; they all want the playground to be attractive and safe; it would help get the work done if there were decent food nearby. The manager has a list of things to do. She also has a different kind of list – of things to attend to, to balance, to anticipate. To be a good manager, she will need to be flexible and creative, focused on and able to focus others on what matters. She must, in effect, organize her agency around their shared values. That second list, the one that organizes her agency, is the motive the manager has to have to do the job.

Although it's something of a truism these days to say we can't choose our motives, it seems to me plain that the manager accepts a motivational burden in assuming her role. If her decisions are made and expressed in ways that ignore the group's values, she will be negligent because she failed to be motivated as she should have been. Of course the manager is a volunteer and the duty of due care is not optional. We could say that the negligent manager's failure was in assessing her motives when taking on the job. She should have declined. We



can't say that about a moral agent.

I think we can accept that we can't love or feel pity or be outraged by injustice at will *and* also take it to be true that *as* moral agents, *as* bearers of duties and obligations, we have the motivational resources of due care. Whatever a motive's neuro-physical or rational nature, whether it involves a responsiveness to reasons or is something independent, it's an organization of the whole agent, more like an instinct than a desire. Instinct involves arousal, heightened attention, quickened activity, focus on an object *as* fits the instinct and a directed approach to it. The same is true for the system of motivation for a rational moral agent. In the face of a duty (paying a debt, keeping a promise, respecting rights), a moral agent is aroused, attentive, active, focused on a required object *as* of value, judging how and ready to act. That the specific content of a duty is acquired makes no difference. If we are not troubled by Strawsonian reactive attitudes as an element or condition of our moral agency (attitudes that include norms of appropriateness), we should also not be troubled by a connection between moral agency and complex motives (*proactive* attitudes?) that organize the whole agent, connecting her actions and attitudes to what matters in having a duty. So I think we can say that duties can place demands on motives.

If there is a problem here, it may not be as much about the role assigned to motive as it is about the range of concerns the agent responding to a duty must have in order not to be morally negligent. The duty of due care offers the agent no rule of action. Primary duties are in play – a duty about harm or a debt to repay or a requirement of fair treatment – but circumstances are such that how to act is not fully fixed by straight-up appeal to the rule of the duty. If the success of the non-negligent agent is not a result of better instrumental reasoning, what guides her?

We can be guided both by the *content* of a duty and by its *value*. Sometimes all that is required of us is that we avoid doing what a duty forbids (its content) – not to take more than our share or violate a right or fail to show up as promised. At other times we need to look to what

makes the requirement of a duty matter (its *value*). Consider the promissory duty. It contains sub-duties about promise-making, promise-keeping, and promise-breaking. They set content rules. There is also what promising is for – its object or value. Our grasp of *that* is what orients due care. If we take the point of promising to be about securing cooperation without depending on altruism, that puts the focus of due care on avoiding promise-breaking since defection defeats promising's point. But if we thought the point of promising is to enable us to give another limited authority over what we do, our attention would be on trust as well as security of performance: that both parties act in good faith; that defection plus compensation is not an equivalent; that the promisee will not take inappropriate advantage.

Or consider the right to privacy and different accounts of what it protects. There need be no disagreement about the kinds of invasive actions forbidden, but different accounts of what the right of privacy is for (its value) might yield different contents for a related duty of due care. If the right protects a valued interest, compensation for violation (for the sake of other interests) is within the horizon of the right, and that would affect how careful one needs to be. But if privacy matters as an integrity value – because it partly constitutes the social boundary of who we are, of our identity – then due care will call for a high threshold of alertness so that privacy concerns are kept separate from other interests. In either case, it is the interpreted value of the duty that directs the agent, making a demand on her motives – on her ability to draw the value of the duty into her practical deliberation and proactive attitudes.

A side note. The motivational demand does not limit the duty of due care to the actions of natural agents. Groups and institutions, public and private, can be negligent, and their negligence also a function of failure in motive. Some might argue that talk of motives is ruled out for many of the purported bearers of this duty because they lack a psychology. That's a mistake. You don't need a psychology to have a motive in the relevant sense. A basic structure that adheres to Rawls's two principles in lexical order has a motive in that its activity is oriented

by and responsive to values of equality and fairness. Strict scrutiny in law is a structural expression of a motive that tracks the value of some due process protections. If an institution is insufficiently or inaptly attentive to considerations that bear on its primary duties, if, for example, its procedures are closed to relevant information, that is a lapse in due care attributable to its institutional motives that can result in negligent actions.<sup>14</sup>

I turned to the duty of due care to provide an extended example of an imperfect duty that was clearly important, but not so familiar in moral theorizing that we knew going in what made it imperfect. The sketches of the duty of gratitude and the nameless duty about giving gifts called into question the old idea that the defining marks of an imperfect duty were noncoercibility and choice. What was important instead was their connection to other duties, attitudes about equality and its expression in action, and the need to exercise discretion about the relations our actions can bring about (that, rather than freedom of choice, was the source of the indeterminateness of requirement). The duty of due care brought these elements into sharper focus. Due care requires that an agent attend and respond to the ways the actual circumstances in which a primary duty applies can affect the conditions of successful action. This calls for proactive attitudes: being attentive to contingencies (both worldly and of our own agency), to the expressive impact of particular dutiful performances, and to the potential interaction of dutiful action with other moral concerns in the vicinity. To satisfy the duty of due care, an agent's motives need to be engaged with the point or value of our different duties. I think it is this trifecta of related elements – some notion of the value of a duty, the systematic relation of duties to each other, and attitude

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<sup>14</sup> Consider, for example, the circumstances around *Brown v. Board of Education of Topeka*. The research findings of psychologists Kenneth B. Clark and Mamie Phipps Clark about social disadvantage and segregation challenged the idea that the formal equality of separate but equal met constitutional standards for equal protection. Though not discussed in these terms, the argument addressed to the Court was about due care: *if* the Court accepted the Clarks' empirical findings *and* was motivated, as it institutionally had to be, by the value of equal protection, it had to take steps that would alter existing educational arrangement in the direction of the value. The assignment of motivation to the Court as such seems to me uncontroversial. Had the Court refused to consider the Clarks' findings, it would arguably have been negligent (or worse) because badly motivated. The evidence for this would have been the Court's arguments, not the motives of its justices.

(including motive) – that lets us make sense of imperfect duties.

The next question is not directly about imperfect duties but about the theoretical place of the elements of the duties, especially in nonconsequentialist theories which we think of as resisting appeal to the point or value of a duty in their accounts of what morality requires. It will take some doing to sort this out since I want to set the elements into an interpretation of Kant's moral theory. What we'll get when we're done is a version of Kantian moral theory that is remarkably open to contingency and change in large part by way of the role it gives to imperfect duties. The view of morality is not in the end dependent on the particulars of Kant's arguments.

A System of Duties. It should be obvious, though I know it's not, that any account of our duties has to answer a "What's it for?" question. If we are to be bound by duty, there has to be something we are aiming to do in acting morally, something we would here or later, alone or with others, bring about. Even Kant sees the question as inevitable.<sup>15</sup> Taking the question seriously does not mean, *pace* Prichard, that we are looking beyond morality for an answer in our interests. It's that if morality is to guide us and not just dictate behaviors, we have to be able to see in what we are directed to do a point or purpose that can engage attention and deliberation.

The "What's it for?" question seems easy for the consequentialisms – they are designed to answer it. But their kind of answer, where duties are about outcomes and nudges are as good as motives, makes it hard to capture many of the features of moral action we've canvassed. The focus on a palette of current options threatens the ongoing connectedness of action and attitude that some duties call for – we sometimes carry the shadow of past actions into current choices in a non-outcome-centered way (the demands of gratitude are rarely outcome optimal). Of course a certain amount of theory construction is inevitably ptolemaic. Most any plausible theory can, by way of epicycles, accommodate itself to objections from common sense and to the compelling

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<sup>15</sup> See, for example, Kant's *Religion Within the Boundaries of Mere Reason*, 6:5.

bits of competitor theories. As the history of moral theory shows, ptolemaic solutions tend to be unstable and are reactive, not generative.

To set the terms of the alternative view, I want to take the occasion to explore some less used features of Kant's moral theory. The danger in accepting the "What's it for?" question to anyone friendly to the Kantian enterprise is the possible confusion between ground and object of duty. In seeking an account of the point or purpose of duties, one isn't replacing arguments *for* a duty with arguments about what we can expect a duty to effect (though we do expect our dutiful actions to have relatively predictable effects and often adjust our dutiful activity by how things go). However, suppose being treated as an equal made no difference in the way human beings went about their business, or worse, provoked depression and distaste for the company of others. Or, when we imagine the world that "reason would bring forth, if only it had the power" we find it cold and hateful, a source of despair, not hope, or bad for the children. It's not just that it would be difficult to discipline oneself to acting morally in the face of this – people have done worse for themselves. Such a morality, as a practical regime, would be incoherent: in following the principles constitutive of their active power, persons would undermine their active lives. Which of course is not to say that morality promotes our interests or that in acting morally we should expect to benefit.

There is ample evidence in the Kantian corpus that the answer to the "What's it for?" question is that the point of our duties and permissions is to create a habitat for free, equal, and self-directing persons to develop and express their rational natures. As a habitat, it is an environment suited to persons, together, over time. As a created habitat, it has laws, but they are moral laws, not laws of nature. It is, in the Rousseauian sense, a second nature. Its fate is to a large extent in the hands and wills of those who inhabit it.

What we get is an agency-centered view of morality: duties are deliberative and orienting in their requirement, not just productive. They set terms of standing between persons; action is a

mode of address as well as an efficient cause. On such an account it can matter to the rightness or wrongness of an action how the agent reasons to it – what her motives are – not for all dutiful performance, but for some. The duties we have are distributed across public and private morality: positive law along with the duties governing interpersonal relations and duties to the self are the vehicles for habitat construction.

As befits the ecological metaphor of a habitat, duties are interdependent and morality is holistic. Not that action taken for one duty can't interfere with action called for by another, but the overall direction of two duties cannot be incompatible (e.g., that we are to be helpful to one another and yet allowed to be indifferent to the unintended effects of what we do on others' well-being). A duty considered in isolation from other duties is deliberately incomplete. It's not just that one may not be done with a duty once one has performed, because, e.g., of unintended effects or some surprise about what an outcome in a context can signify, what we are to do in the first place can depend on the way the duty in question intersects with other duties. If what I would say to you is gratuitous and hurtful, a duty of truthfulness gives me no reason to speak (and reason not to). If we have agreed to meet and it is known between us that the arrangement is not consequential, I don't violate the promissory injunction not to defect if I signal it is off when compliance would be costly. On some moral conceptions, the import of other duties or important projects comes from outside the deliberative catchment of the promissory obligation and is weighed against it. On the more holistic view, it belongs to the sorts of thing we are to be looking at as we make and maintain promises. In general, neither the specific directives of a duty nor its practical valence (importance or stringency) is set for all circumstances, though it will inevitably be the same for many.

The anchor of the Kantian system of duties is something like a basic structure, a theory of Right. It provides a framework of moral kinds, a first ordering that sets moral terms for public institutions and law. These secure the equal status of persons, sanction basic protections, and

provide the moral authority for legal institutions of property and contract. That's to be expected. What's surprising is the further claim that the duties of interpersonal morality depend on the basic structure and can only be fully specified after it is set out. So truly a system of duties.

This goes against the traditional view of Kant drawn from the *Groundwork* that is about deriving duties from the categorical imperative or its conceptual equivalent, the idea of rational nature as an end in itself. I think that tradition lives off a profoundly mistaken reading of the argument of the *Groundwork* that confuses a metaphysical question (what would it take for a principle of morality to be possible?) with a normative, substantive one (given what we are like – that is, as beings capable of moral agency – what are our duties?).<sup>16</sup>

On the traditional (mis)reading of the *Groundwork*, we would conclude that any person's duties (and so all persons' duties) could be generated through the separate exercise of her judgment and will. We get to a common ethics, some call it a kingdom of ends, because each of us as a free rational being is under the common rule of reason. (In semi-Rawlsian terms, it would be an ethics derived from the point of view of a representative person.<sup>17</sup>) Even if we set aside all the problems about making this work, if we look at the *Metaphysics of Morals*, this simply is not Kant's view of the route to our duties.

The *Metaphysics of Morals* begins with a doctrine of Right (or *recht*) – the duties of public morality.<sup>18</sup> If we are thinking in terms of a moral habitat for human beings, this makes sense. We need principles that provide public recognition of what we are – principles of standing – and principles about how we, together, are to use the material elements of the world on which the moral habitat depends. Until we know who we are and what we have power to do,

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<sup>16</sup> Just to be clear. The *possibility* of morality depends on their being a source of action other than self-interest (a principle other than happiness), one connected essentially to our freedom or autonomy as rational beings. But the matter or *content* of morality, of our duties and obligations, is about us as human beings. If human rational nature can't explain our duties, nothing can.

<sup>17</sup> Rawls himself thinks of Kant this way. See his *Lectures on the History of Moral Philosophy*.

<sup>18</sup> What I call public morality or Right is divided by Kant into "private right" and "public right". The former concerns property and contract – rights individuals have against each other; the latter is the system of laws necessary to maintain a rightful condition among people living together in civil society. I'll try to keep things simple.

what kind of freedom we have, we can't ask about principles for private action that express our nature. If the duties of public morality provide a framework for private morality, private morality, in turn, completes the work the public morality begins. So even though standing is secured as a matter of public morality, what it amounts to in the relations between persons is not clear until the full system of duties, public and private, is laid out. In the larger picture, it is only within a well-formed political space that the demands of individual morality can make sense as an essential part of a full human life. Kant is hardly alone in thinking this.

The source value of the basic structure, that is, of the first principles of public morality or Right, is located in the innate right of persons to be free from four things: others' private authority, differential status, moral taint, and constraint on expressing one's mind. They set out the basics of what it is to have standing: to be and to be regarded as a proper subject of public law. (1) One could not be a proper subject of public law if one were already subject to the law of a private person (this gets us the integrity of the body – neither in its totality nor in its parts can the body of a person be under the private authority of others and the person be under the authority of law). (2) All who are subject to public law are subject to it equally (there can be no legal castes if someone is marked as a subject of law by her rational nature). (3) No one under the law is judged guilty of anything apart from his or her own doings. And last, (4) no one can be a subject in the space of public law who cannot speak her own mind but is forced to present someone else's ideas as her own. The four elements are not moral or legal entitlements, but moral categories, or value premises, from which valid entitlements can be derived.

To get a sense of how the system of duties descends from innate right, we can look at basic protections for life and limb. They are not reflections of duties in a state of nature. Rather, public morality anchors a set of legal duties that moralize bodily injury; they tell us what counts as assault and battery and what is incidental contact. Having the enforceable right not to suffer assault on one's life or body is a necessary protection of the independence and integrity of the



person from the private authority of others. This is a part of morality that has to have juridical form since it licenses public coercion. The value that is protected cannot be at the mercy of the moral goodness or the discretion of other persons since what is to be protected is a status condition, the condition of other practical goods, including effective moral agency.

*Duties of Right* shape the duties of the moral person (setting some of the principles of interpersonal morality). Ideally, once there is public right, once the value of independence is articulated in law, the related duties of moral persons are given some deliberative shape. There is continuity from what the state has a right to do to the individual's morally available reasons. Consider assault and the morality of self-defense. The state can prevent assault without itself engaging in it, even if it uses force as a means. Its entitlement to protect determines the moral status of its actions. The same reasoning applies to individuals on their own, as it were. If the wrongfulness of physical assault is about culpable disregard for the independence of the victim's agency, justified self-defense isn't protective assault directed back at the aggressor. It's not simply a means to furthering a private purpose. The difference is in the motive or end: justified self-defense aims to restore the moral condition of rightful independence that is the point of public right.<sup>19</sup> One can hear this in the "You have no right!" directed at the aggressor (compare: "Don't hurt me!"). While the law can ignore motive and let a "private interest" self-defender be its ad hoc deputy (it might on this ground choose not to prosecute), as a moral matter the difference remains. For the private or "natural" person, there is no right to self-defense, and certainly no entitlement to take whatever measures are necessary to repel a perceived threat. There is, on the other hand, an entitlement, even a duty, to protect standing. This justifies defense of oneself, but only on grounds that equally justifies the defense of others. We should regard the justification of defense as an element of what can be called public reason.<sup>20</sup>

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<sup>19</sup> Given the aim, the minimal force requirement follows, as does a prohibition on harm to innocent parties.

<sup>20</sup> The terms of public reason delimit what one can publicly complain about, what demands one can make, how one can describe an event (in terms of public reason, in this sense, it's not wrong to call it rape if the woman says no, even if, in the event, things between the parties were murky).

*Perfect duties* are the private side of duties of Right. That is, they are duties of private persons that continue the work of Right, protecting fundamental value by limiting what we may do for the sake of our own purposes (this is just the idea of deontology<sup>21</sup>). Perfect duties rule out reasoning from considerations of self-interest to lying, killing, breaking promises, etc. They are not exceptionless prohibitions on action-types. What *is* exceptionlessly prohibited are deliberative schema (certain maxims or patterns of reasoning). So there is no perfect duty not to cause physical injury or other harm. There is a perfect duty not to unilaterally initiate injury or harm as a means to a private end. This sets a default requirement. However, as with self-defense, in circumstances where adhering to the default requirement would undermine its own supporting value, there can be reason *based in that value* not to act on the default rule.

Here's another example. Kant argues for a perfect duty the private individual has to herself not to identify her person with the life of pleasures and pains in such a way that when the balance goes hard against her, she finds herself without a reason to live (*MM*6:423). This sets the default rule against suicide. However, he notes, the duties of a public person, a king, might include at the extreme an obligation to voluntarily end one's life if so acting were necessary to preserve the state. Such a suicide would not be an exception to the default rule because it does not issue from any over-valuation of the prospects for pleasure and pain. It is supported by different reasons and belongs to a distinct set of duties. The default rule does not apply.

We find the same general pattern with the perfect duties concerned with lying, deception, and truthfulness. Anchoring these duties is the innate right to speak one's mind. Its first role in public right is that we be free to speak to power.<sup>22</sup> If we could only say what someone else thinks or permits us to say, or if what we could say is regulated by its expected effect, then we

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<sup>21</sup> Note how on this account the law-like nature of perfect duties is not a reflection of the law-giving nature of the categorical imperative but instead follows from its being the private side of public right – a matter of content, not form.

<sup>22</sup> As Kant argues in “What is Enlightenment?”, though one may because of a social role not be free *in that role* to dispute and disobey authority, as one is also potentially a scholar (the citizen about taxes; the soldier about the military, etc.), one must in that role be free speak one's mind.

could not represent our ideas to others, and our speech would carry no authority. Beyond securing the conditions of public reason, the right is also the condition for how we regard giving one's word in contract (as authoritatively self-binding), and it is a starting place for intellectual property (it is because we are original authors that there is something to protect). Private morality takes up the rationale for the innate right in a general presumption of truthfulness in speech (only if I speak my mind can we reason together) and perfect ethical duties of communicative integrity (that I not regard myself or cause myself to be regarded as a mere speaking machine, uttering words that look like communicative speech, but are sent out simply for their effect).

If duties of communication are perfect, truthfulness trumps private interest; false communication betrays the common rational endeavor.<sup>23</sup> However, if by eliciting your honest speech I would co-opt you in wrongdoing (the murderer at the door), you may lie to me. This is not an exception to a duty of truthfulness, but a speech context that lies outside its orbit. The point and purpose of truthfulness is to make common reasoning possible, something not available once the murderer sets things in motion. His speech is not an invitation to common reasoning but a subversion of it. In this case, resisting the subversion with untruthful counter-speech is a defense of the moral value of truthfulness.

It is at this point that we come to the *imperfect duties*. (I will continue to emphasize the transition from public to private morality, but as we have already seen, it is not only private individuals who have imperfect duties.)

If the point of morality were primarily for protection and coordination, most of its work could be done by carefully crafted public rights and perfect duties. But if we are talking about a habitat for rational persons, something we make together, there will be ends we need to have. It is not just that it is a social and not a natural object; its maintenance calls for our having

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<sup>23</sup> If one's partner in a scientific inquiry brings false data to the project, even if the effect is neutral (it does not in fact skew results), the project is now a failure.

principled relations and for resisting corrosive forces, both between and within persons.

Consider the familiar list of imperfect duties: preventing violations of other duties; concern to prevent harm generally; benefiting others; self-perfection; due care. Each represents a goal well-suited to the moral habitat project: we add material and psychological resources to making the habitat safe and accessible; we provide one another support and cooperation; we take ourselves on as a moral project; we bring due care to our lawfulness.

If we understand this to be the work of imperfect duties, their ends call for the further articulation of the moral value underlying the common moral project. They refine and develop our motives. They could not then be ends that we can set to the side when we would rather act for private ends. If they allow us discretion, it will be on grounds of a different sort.

To appreciate the effect of locating imperfect duties in the system of duties, I want to return to the poster child imperfect duty, beneficence, and see whether it looks different. Because it's a duty with lots of moving parts, we'll want to examine a good number of them.

Here too we should begin by asking "What's it for?" – what good does beneficence promote? Even if on every account of beneficence we are directed to feed starving children, there is more than one way to understand why we are to do that. We can sensibly ask, what, beyond the alleviation of suffering, are we aiming to accomplish? Why food and not anesthesia? It's natural to respond that while we care about suffering, we are aiming to preserve life and promote the human good.<sup>24</sup> But then, which sort of good? On the Kantian account, the good involves something like the conditions for the rational well-being of persons. So indeed we should feed the hungry; but on the very same grounds, we should meet needs for education and sustainable community. When we then ask, "Who is the "we" here, and for whom should we act?" the answer is not obvious.<sup>25</sup>

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<sup>24</sup> Even the good of the alleviation of pain requires interpretation. If it's phantom limb pain, it is simply about the pain. But if the pain is part of a process of restoring function, we regard it and treat it differently.

<sup>25</sup> For insightful work on this and related topics, see Onora O'Neill, *Towards Justice and Virtue*.

Let's accept for now that the object of beneficence is a component of habitat construction – the part having to do with individuals meeting other individuals' need. Even if there were no problems of global poverty (suppose just institutions have done their work), given the way human life goes there will always be need for goods and services beyond what individuals are able to provide for themselves, and beyond what social institutions can or ought to provide. Suppose morality, via the duty of beneficence, then taxes us to help one another. We will naturally ask: Will the tax leave us enough for ourselves and our relations? Can we live a life that makes sense if we are indentured to human need? That's one picture.

Here's a different one. When you are engaged in a cooperative endeavor, (some of) the needs of others are your needs too. Suppose beneficence is like that. Morality wouldn't then tax you in a way you'd be moved to resist. We'd ask instead: Whose needs are our needs? Moved to the head of the list are our family members, friends, colleagues and co-workers, neighbors. Beneficence would then *follow* on attachment, not compete with or threaten it. This duty could be very demanding without our raising a moral eyebrow. A sick child or parent, a friend in crisis, can introduce almost limitless demands. Demandingness is not the problem.<sup>26</sup> Tending to a sick child or parent can change your life, but it doesn't make it less your life (even if it sometimes feels that it does). By contrast, most of us have good reason to fear that we might lose our grip on the narrative arc of our lives under the pressure of full-blown stranger beneficence.

What decides which account of beneficence we should adopt? Beneficence calls on us to provide for others: we give time and effort and stuff. What we give matters to us; it also has a place in the moral scheme of things. The part of what we give that typically raises the problem for beneficence is not our hand on a fevered brow but our *property*, material stuff that is both protected and interpreted by the moral basic structure. So if the answer to "What's it for?" about

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<sup>26</sup> If there is a problem here it may be more about the nature of our relationships, the loss of community, and the paucity of humane social services. Practical problems, not moral limits.

property is that it's *for* the private accumulation of wealth, then beneficence is a moral tax on that. But if property is for the provision of the material conditions for a society of free and equal moral persons, then not. This locates the questions about beneficence inside a system of duties whose aim is common and cooperative. And that affects our response to demandingness and the way we approach the question of what we may do for those close to us. So if we may help differentially, it must be because we in that way realize a goal of our common moral endeavor.

One thing we know is that it matters for children that their parents or their intimate circle act on their behalf. Providing help is part of building a relationship of trust and support that enables a child's healthy moral development. It's not just that I may help my child and not yours; a stranger's help can (sometimes) be intrusive. My child trips, I reach out, but you, a swifter helper, dash in. If there is no real danger, that the help might get there some seconds earlier is not usually a good reason for a stranger to intervene. There is a lot the parent might be doing in helping – providing support, giving instruction. A parent might choose *not* to help as the best response, seeing the episode as a teaching moment.

Across the board, we communicate and create through our helping. It is one of the ways we say how we value each other, how we confirm and build relationships. Among the existence conditions of friendship is that friends be able to help one another. Sometimes, against one's preference, one may need to help a friend *or* let oneself be helped by a friend. Even in easy rescue cases we express something – someone must help and because I was first on the scene, it's me. (We sometimes confirm this when we deflect gratitude with “I only did what anyone would have done.”) If helping is to express these values, we need discretion over who, how, and when to help, and space to be sensitive in our beneficent actions to other moral concerns that overlap. *It is this sort of expressive discretion, not bare choice, that imperfect duties enable.*

But is it clear that helping must express these values? Couldn't one say that helping is just helping, and what it expresses is respect for or moral attention to human need? Of course

when helping occurs within a relationship, there is expressive significance: my attention is directed not just to human need, but to *your* need. But why wouldn't that show either that it is an act of friendship, not of beneficence, or that it is an act of impartial beneficence that absorbs an expressive aura from the context of friendship?

This is the sort of question that cannot be answered looking at beneficence in isolation from other related duties. The point I am making is that *if* we start with a notion of property as the material means for the cooperative project of habitat building, and if beneficence descends from the moral purpose of that institution as an imperfect duty, then it is an element of what beneficence is about that we regard our helping as supporting the larger project. Because need often presents in contexts of relationship where providing help is part of the construction of character and community, the duty requires, and does not merely allow, discretion.<sup>27</sup>

This confirms the earlier conjectures about gratitude and the moral constraints on gifts. Moral talk about property rights is often about the power it gives us to make and accumulate for ourselves. But equally central to having the right is the power to build relationships that express our moral nature. If efficiency is the virtue of the first power, discretion is necessary for the proper use of the second. That is why in benefiting we are to meet need with an eye to avoiding humiliation and the creation of dependency. In gratitude we at once accept our need and assert our independence. If we give inappropriately, overstrain reciprocity, or impose unwanted intimacy, we can threaten our ongoing relationship as equals. And so on.

Not all imperfect duties that have to do with material objects are about helping or giving. Having borrowed something from you, say a book, I have a perfect duty to return it, and an imperfect duty to care for it while in my possession. The designations mark different deliberative requirements – one signals that I cannot keep the borrowed thing just because I'd like to (my preferences don't create a transfer of possession); the other signals a responsibility

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<sup>27</sup> This doesn't mean that we may always give preference to our intimates. It is part of due care to recognize diminishing returns (and destructive excess) – when energy and goods are better directed elsewhere.

for how the borrowed thing fares. I shouldn't leave it out in the rain if that will ruin it, or dog-ear the pages, though I needn't devote myself to its care. In the typical case, I exercise judgment: about what's normal wear and tear, how much trouble to go to, what the lender's reasonable expectations are (with respect to the object *and* with respect to me).

Part of the exercise of judgment is to be open to special features of our circumstances. Knowing you to be fastidious about your library, I might take special care always to carry the book in a plastic sleeve. I wouldn't violate a right if I didn't take extra care (there were no terms like this in the lending), but if we are friends, I should (unless, perhaps, your fastidiousness has become an obstacle). The richer moral context affects the practical and expressive demands of due care. I can replace a ruined library book with no remainder. Not so for my friend. It is part of what property is about that it can enter into the fabric of relationships.

When we turn to helping strangers, we don't abandon the relational account. In situations where it doesn't matter who helps, or where the needs that call for help are "human needs as such" (famine, tsunami, traffic accidents), we may say that the imperfect duty holds for each of us, and so all of us, because each person is related to all persons (however minimally, we recognize that in the helping).<sup>28</sup> If many of us could help and are ready to help, but not all of us are needed, the actual person or persons who provide the help can be thought of as our *delegates*. We can imagine the helper saying: you don't owe me special thanks, I just happened to be the one who reached you first.<sup>29</sup> Imagine someone floundering in the water and there is a group of seven stranger-savers struggling to reach him. One of them finally succeeds (not by doing anything the others aren't also doing). I think the flounderer owes no special debt of gratitude to the actual saver, whose hand he grabbed, though there is gratitude owed to the group of seven.

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<sup>28</sup> If a parent managing the needs of a sick child is not available, we should not say that the duty applies differentially, as if the parent were exempt or the interests of the child outweigh those of the stranger. In her declining to help the stranger, the parent acts as the value supporting beneficence directs.

<sup>29</sup> A lot of moral information is available in gratitude conversations.



Despite its being only one hand that pulled him out, *we* saved him.<sup>30</sup>

Beneficence is relational in another dimension. Once I initiate help, I can be on the hook for more than I intended. Many helping actions are in passing – I offer directions, give change for a dollar, pick up the book you dropped. One and done. But as the need is more serious or complicated, the first step in helping is often not the last.<sup>31</sup> *We*, through our help, may have intervened in something ongoing that needs to be completed, perhaps in ways not foreseeable. There may have to be exchanges of information that breach privacy, personal plans revised and costs incurred. Without meaning to, we become entangled in the life of the other person.

Of course we also have obligations to take care of ourselves. The issues here are delicate. A person might find great fulfillment in service to others. Tending to a loved one's needs can be an appropriate completion of a relationship and consistent with due care for oneself. We might also find our lives increasingly subordinated to the needs of others. There is no theoretical difficulty in the possibility that the different strands of our duties may interfere with our best efforts to do all that we think we should. One of the tasks of the duty of due care is to minimize and manage such occurrences. It could be a personal issue and we have to rethink what our lives are about. Or we might need to introduce a professional caretaker. Or it could be a system failure (think healthcare) and the burden is properly a task for public morality.

I have several times returned to the role of due care in laying out what our duties require of us. The imperfect duty of due care itself sits in no one niche in the system of duties. As a secondary duty, it can be engaged at any point in the system of duties, addressing either private or public agents. Sometimes it calls on us to do more, to take extra steps, or to integrate the

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<sup>30</sup> We can extend this picture to global beneficence. Just as a drowning stranger needs someone, *anyone*, who can help, where there is large-scale distress why not say that such people need *us* to help – not this or that group, but those of us, amongst all of us, who can (we are all bound by the same duty, but not all are equally well positioned to help). There may be additional issues about how to *divide the labor* – questions of efficiency and fairness, who has the ships, the medications, the wherewithal to rebuild bridges – *but we do not thereby divide the obligation*. (Hard facts of past and current injustice may complicate things.) There is then good reason to organize aid in a way that that expresses that the help comes *from all of us*, through our delegates, not *from* the US, or *from* France.

<sup>31</sup> Henry Richardson has explored this territory in his *Moral Entanglements*.

concerns of more than one duty which intersect in a context of action. Because its bottom line in the system of duties – its object – is maintaining the continuity of moral action with the habitat project, it can also draw us into casuistry to improve the moral situation.

Hard Cases. Casuistry is a deliberative response to hard or unusual cases. Some consideration that is not part of the default rule of a duty urges reconsideration – not of whether the duty applies, but of what its value or object requires in these special circumstances. Sorting out the casuistry of a duty is not the work of due care, it is rather being alert to the approach of a casuistical question and mindful of its dangers. Either excess is a failure of due care: that we rely on the rule no matter what or that we too easily take our circumstances to be special.

Embedded in a system of duties, the duty of due care can in this way be an instrument of change, for putting pressure on agents to depart from the rule of a duty. The casuistry it supports does not set aside default rules because doing so would be better. It looks to the same value that set the default rule as a constraint on private interest when we are in different circumstances, where acting on the default rule would defeat its point. Casuistry implies deliberative responsibility; someone who doesn't grasp the relevance of the difference cannot simply follow suit. And because in taking the step into casuistry the agent takes it on herself to judge what she may or should in good faith do, in departing from the default rule she assumes responsibility for what she does and owns negative consequences that flow from erroneous judgment.

There's a hard question here. Normally, acting as duty requires insulates the agent from harms that may follow. The deaths of the five are not imputable to the doctor who refuses to sacrifice the one to save them. The hard question is whether the default rule of duty is a moral safe harbor. Requirements of due care suggest that if it is a safe harbor, it is not a place where one can hide from what is or should be in moral plain sight.

While casuistry allows the deliberating agent to respond to special circumstances and, if

it's justified, depart from the default rule of duty, it is not the only way the system of duties can be responsive to unusual circumstances. Adjustment and amendment can occur elsewhere in the system, in institutional change or through a kind of public casuistry that is a form of civil disobedience (with an eye to inducing change, as a citizen one cannot in good conscience adhere to *this* rule in *these* circumstances). Some change will be remedial; some will be prompted by increased understanding of the affects of material and social developments; some will come from changes in our ability to act, both intimately and at a distance. We may gain subordinate duties (to inoculate our children); the agent of a duty may shift (charity to social welfare). While there is good reason for our immediate and interpersonal duties to resist change, they are not impervious to adjustment.

Of course it's one thing to imagine an individual agent responding to an inevitable inefficiency or coarse-grainedness of the system at the level of action, and quite another to imagine changes higher up in the system's structure. We need to keep in mind the kind of system it is. Since duties, public and private, perfect and imperfect, descend from a source in innate right, articulating a basic structure and the additional deliberative norms needed to create the conditions for a moral habitat, the duties interlock, some duties setting basic terms for action, others completing their work. If change is needed in one place in the system, given the interlocking structure, other changes will often have to follow. This is an obvious fact of social policy-making, less so in the way we think about morality. Suppose it's true as reported that 40% of new mothers in the US are unmarried, and that there is a connection between this demographic fact and childhood poverty. There is then a moral problem about children in plain sight and a moral duty to change something. We could direct our attention at individuals, urging more marriage, or free contraception, depending on where we think the problem is. Or the change could be entertained higher up in terms of publicly funded childcare and better, more accessible education. If it's to be contraception, there may be a threat to religious liberties. If

it's pressure to marry, the safety of single mothers in the targeted group may be at risk. If women with young children need education or have to work, it is morally negligent not to have publicly funded childcare. (NewYorkTimes 9/14 SR1,9)

The examples highlight the way individual and public morality, relational duties and legal requirements, function together inside one system of duties.<sup>32</sup> Legal institutions, for example, not only frame personal duties and obligations, they are under pressure to be coherent with the duties of individuals. They can also play a role in bringing individuals' motives and attitudes into conformity with moral requirement.

Given their fallible mix of abilities to maintain connection with fundamental value across moral contexts, individuals have an ongoing project of criticism and reform. Some defects can be schooled – we can learn to do better. Others require more systematic remedy. While racial prejudice affects status assessment, person by person, the remedy isn't in the first instance a matter of individual fixes.<sup>33</sup> Status is secured by means of uniform public treatment, not private adjustments of attitude. However, change in attitude may be necessary to fully realize equality of status. A demand in public morality for equal treatment can introduce new attentional duties and require sensitivities that lead to an alteration of the motives from which we act. Because there is no tidy border between our attitudes and motives as private persons and those we have as social agents, those in morally impacted social roles may change for the better because attitudes can be affected by working with and for others in equality preserving contexts.<sup>34</sup>

Some might say that in presenting the system of duties in these dynamic terms I am no

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<sup>32</sup> Cf. Mark Greenberg, "The Moral Impact Theory of Law" in *Yale Law Journal* (2014).

<sup>33</sup> Separate but equal is not a way of realizing what equal standing requires, though a devoted teacher can make a "separate" classroom of equal value to her students.

<sup>34</sup> Something like this might partly explain some of the softening of day-to-day racism in the American South (as compared with the North). Proximity and new public rules created a different kind of community. Northern racism was inoculated through redlining and other forms of de facto segregation.

longer really talking about morality. They might regard it as a conceptual point. Our duties don't change; what we need to do to fulfill a duty may change, but the basic duties we have remain constant. I think such a view depends on a disputable picture of morality and of what duties are. On this revised Kantian view, the constants in the system of duties are the underlying values and first principles, not the duties themselves. Duties are not requirements on choice and action but deliberative requirements.<sup>35</sup> That leaves them open to input in their premises that reflect changes in our circumstances broadly understood.

In talking about changing and shifting and adjusting duties, I don't want to say that duties can simply vanish or that new duties can just show up, creating moral surprise and consternation even for the best of us. What I do want to say is that the articulation of duties – of what they are and what they require and from whom – can be an on-going and dynamic and deliberatively open process. It can happen that moving a duty from the private to the public sphere can change its content. In education, the public duty has a central requirement of equality that the private duty lacks (an inequality that persists in the peripheral areas of education and training that remain in the private sphere). When education belongs to public duty it can have public tasks – training in citizenship, for example – that might be discretionary when education is private; there can also be special prohibitions, such as teaching specific religious values and practices. Due care has a complex task here, for we may be acting at the same time as parents and as citizens.

Adjusting the System. In thinking about the possibilities and conditions of moral change, it will be useful to remind ourselves of the different elements of a duty: object, content, and agent. The *object* of a duty is like a final end, regulative and hermeneutic. As regulative, it controls the choice of means and subordinate ends. As hermeneutic, it gives them an interpretation that maintains the connection to what the duty is for (viz., its part in the habitat project). The object

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<sup>35</sup> Sometimes the space for deliberation is so limited, as with fundamental duties of right, that they can appear to be requirements on action.

is not identified by the direct effects of acting as the duty requires. Although respecting property rights provides security for right-holders, the *object* of property rights is providing the wherewithal for individuals to express their rational agency in their plans and projects – what security is for. Depending on the object, different features are marked as salient; casuistry and the adjustments of due care maintain that connection.

The *content* of a duty is a deliberative result in a region of moral concern derived from the value to be had in the realization of a part of morality's *object*. In the Kantian system, the *content* will therefore be concerned with autonomy or independence from others' wills, equality of status, the conditions of imputation, and the freedom of communicative expression. *Content* is further articulated by the place of a duty in the system of duties (public, private, perfect, imperfect), and the conditions on choice and action that come from its intersection with other elements in the system of duties.

The *agents* of duties can be individuals, stable or transient groups, institutions, the community, or all of us. Since in the system of duties something of moral concern can have more than one location, what we might once have thought of as a single duty with a single agent (individual or institutional) might now be a complex of interrelated duties with different agents.

To gain a sharper idea of what's involved as the system adjusts, I want to continue examining duties that articulate the institution of property. I am especially interested in three things. What it looks like when there is adjustment or innovation higher up in the system of duties; whether it's possible for the agent of an imperfect duty to be the state; and last, the effect such an imperfect duty would have on individuals' duties. The example I will focus on is the right to housing.

We start with the Kantian postulate that there are no rights or duties of property independent of the general conditions of *Right*. We get to property rights and relations because duties that have that form are needed to realize both the independence and equal standing among

persons with respect to possible objects of possession. Not every place can be privately owned; however property is arranged it may not yield a system of differential status and privilege. This affects downstream legal arrangements such as inheritance, toll roads, water rights, intellectual property, etc. In addition to maintaining the conditions of equality and independence, part of the value of property as an institution is that it facilitates the development and expression of our rational powers through what we do with things, on our own and with others.

It matters whether the source values are best understood as independent streams coming together in property rights or as presenting a kind of compound in their co-instantiation in the property system. For example, in many discussions of property rights, it is argued that someone's need for something I rightfully possess doesn't weaken my entitlement to hold onto it. The conclusion is said to follow from the very idea of a property right. I think that's not right. It is a conclusion about *content* derived from an account of property rights that is focused on individual entitlement (on the liberty value of rights). Such a scheme prizes independence. If, however, the institution of property is a vehicle to express and protect *both* independence *and* status together, not just of the right holder but of all who are affected by the system, it is hardly clear that the *content* of property rights would have to prize a liberty value for the right-holder over other moral concerns that involve property. To think otherwise is to confuse the logic of the right (its Hohfeldian form) with its *content*. If property rights are a piece of a system whose object is a Kantian moral habitat, they serve a common purpose. The source values would not then be separable when it comes to moral content.

It also matters how we imagine the source values to be expressed in human activity. Suppose persons could, through discipline and extremes of internality, secure a kind of independence in circumstances of coercive control by others. Maybe a Stoic ideal, where independence does not require that an agent be able to express herself in the world. And suppose one could come to see an equality of persons in their dependence on an alien power (as sinners in

the hands of an angry God, perhaps). These notions of independence and equality reflect a very constricted idea of what it is to be a person (contrasted with a conception of persons as equal and independent through their activity).<sup>36</sup> Such a constricted idea of a person (of the values that define it as a moral idea) would in turn call for limited duties and permissions, given the powers and possibilities taken to matter (e.g., securing more external freedom won't get us more of what matters). If we try to imagine such a moral environment, it is doubtful we would think robust property rights necessary since sustained possession of material objects would be gratuitous – there would be no special value in the realization of our powers through making or building. Insofar as our equality was found through our relation to a judging God, mitigating the effects of material inequality might seem to conflict with a divine ordering of things, and envy at others' good fortune be evidence of confusion about what counts as real harm. But that's not what we think we are like as doers and makers.

A different kind of issue starts deep in the history of political thought, where the first question about property has been about first ownership. It's a posture of great anxiety.<sup>37</sup> Unless there is a possible (even quasi-) historical story that could make some original sequence of acquisitions and transfers legitimate, property rights look to be without foundation, are mere convention, and if mere convention, then unstable, or vulnerable to radical critique. *And*, how we answer first ownership questions tells us what the right is like. But why think that? Even if there were a good argument justifying the initial acquisition of land, the *content* of property rights would not thereby be determined. The content is answerable to more than the need for organizing relations between persons about things through the moral logic of a right to them.

There are two stages in a non-historical, moral-philosophical account of property. The first tells us the form or shape of property relations – is it rights or reasons, ownership or

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<sup>36</sup> There may be circumstances in which relying on internality and renunciation is the best we can do. But that is all the more reason not to encode them in our morality.

<sup>37</sup> That there's an issue about our very title to live here, to not be guests, or just passing through.



possession. The second stage articulates content: setting the terms that determine how having relations of that form affects other moral relations we have. So suppose the answer at the first stage is that it's rights that are needed – i.e., a structure of legal protections from interference with the holding or use of property. If we are growers or makers or builders, in order for our potential to be realized, we require secure and stable control over stuff – stuff whose productive value would be fundamentally compromised if you could, for your perfectly good reasons, pick up tomorrow what I started making or assembling today and put it to your use. The structure of rights blocks balancing need against need. But that can't tell us how things should go about adverse possession or patent, or if one has finished harvesting, whether one can prohibit a gleaner's access to one's fields?<sup>38</sup> These are second stage questions about content, the answers to which draw on the full set of articulated values involved in public and private duties.

So suppose we are considering a right to housing – that is, the right to a secure and stable dwelling, with water and sanitation, light and heating, access to social and economic resources, etc. – now widely regarded as one of the basic human rights.<sup>39</sup> It is a right to have and control a material resource, so it is a property right, though not necessarily an ownership right. It goes well beyond protection of existing housing (limiting the scope of evictions and removal via eminent domain): its satisfaction conditions arguably require the creation of the very objects claimed as a matter of right. International rights documents describe the right to housing as essential for other rights, such as employment and education, as well as for the exercise of the liberties of speech and association.<sup>40</sup> It is at once an anchor of citizenship and a condition for having a personal life. It is a place for rest, the site of family relations (in some places, for

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<sup>38</sup> Until 1788, English common law included gleaning as a kind of primitive welfare right; in some areas, there was even a requirement that farmers leave a corner of their field unharvested.

<sup>39</sup> Perhaps the original division of land was assumed to carry with it a place to house those (and only those?) who first worked it. There are many hidden assumptions in the just-so origins story.

<sup>40</sup> The human right to *adequate* housing is recognized in the Universal Declaration of Human Rights, elaborated in General Comment 4 to the Covenant on Economic, Social, and Cultural Rights. It is the right not to be homeless. The right to *domicile*, that is, not to be stateless, is a different, though obviously related right.

friendship as well); it is a location or orientation in the social world, a possible site of work, and a space for personal expression. So not just a place to live, not just a roof over one's head.<sup>41</sup> The needs this right meets are not an aspect of natural ethology, not like the hive to a bee or the den to a bear; it is an artifact of a social world in which the absence of modern sanitation and electricity is more than a disadvantage – it is a form of social disability.

The right to housing is of interest for various reasons. Claimed as a human right, it is not clear that it could always have been a right – not just because of the details, like sanitation, but even as an idea or aspiration. It cannot be satisfied outside a political scheme, yet the needs it meets transcend any political framework. It looks to be a right whose corresponding duty is *imperfect*. Its requirement spreads out into other duties. It is one of the ways a property right carries fundamental moral value out into the wider space of activities and relationships.

Different questions about the import of the right will be addressed at different locations in the system of duties. The general right to housing is not in the same register as an individual's deliberative response to another's need to use or take refuge in her home. The first is a question in the space of public right, perhaps about whether "we" are obligated to build or supply housing (or just insure fair access to what is there), about the possible use of rent control to stabilize tenancy, about zoning or other regulations to insure the construction of affordable housing, and so forth. The second is a question about the kind of control one has over the resource that is one's home. The first involves distributive questions – with whom the burden should lie if housing is a basic right; the second is more about what a home is, how it figures in a moral life.

The right to housing could not in the first instance be a right of individual against individual. In a Kantian system of duties, it would belong to the part of public right that secures for all the conditions necessary to maintain each as a member of society (*MM*6:327). The state does this for the wealthy through the legal regulation and protection of property. It acts for those

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<sup>41</sup> One of the many dehumanizing features of imprisonment is denial of expressive control of space. Even temporary tent cities are often distinguished by expressive display.

unable to secure housing on their own through provision of what they lack via taxation, public works (that is, using different means). In recognizing and acting to meet the right to housing, the state respects the values of independence and equality. The duty is imperfect for the reasons we have canvassed: there is no determinate way to act for it; in acting, the state expresses its moral relation to its citizens (that it is no more than a representation of their unified will); and it is essential to the duty that it be exercised with discretion.<sup>42</sup> Although the duty is imperfect, it makes sense to talk of a right: it marks a moral concern not to be outweighed by general welfare.

It matters that what's involved in meeting the right to housing plays the role of a home.<sup>43</sup> Because a person's right to her home is not like her right to her piano, because the value that supports the right to a home is deeper, it differs in its deliberative import. Some have argued that one can defend one's home with a level of force that one cannot use to protect one's piano because the home is something like the carapace of the person, without which she is vulnerable, dependent, etc. It's not a good argument for the use of lethal force, but it's not wrong to appeal to those values to explain the *moral* force of maintaining the integrity of a home.<sup>44</sup>

What, then, should we think about the title to exclude? Is it part of the right? In some social worlds extending hospitality by taking in a stranger in need is one way the value of having a home is expressed (what it is to correctly appreciate the thing one has a right to). In other places, the value is taken to lie precisely in being able to exclude others from one's private space without further justification. These are not merely different conventions, but different possible articulations of a right whose content is not fixed. Given the right, there is room for moral

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<sup>42</sup> The failure of Cabrini-Green was in these terms systematic.

<sup>43</sup> A home is not necessarily a separate dwelling, but it is a place where a person or family stably resides and can lead a reasonable, independent life (that is, there is access to work and schools, medical care, etc., as well as sanitation, running water, cooking fuel). Refugee camps can provide elements of housing, but cannot meet the standards the right demands and only tragically count as a home. Some forms of collective housing may tread a fine line. There might even be an obligation that adults with children have to accept housing even at the expense of valued ways of life. Some of the Masai people in Kenya and Tanzania are compelled to winter in non-native villages built next to towns so that their children, especially their girls, can attend school.

<sup>44</sup> It's why the power to evict needs careful regulation, and why the destructive force of the sub-prime mortgage crisis was for some more like a moral tsunami than a banking crisis.

contingency. We will need to look elsewhere to find its limits.

The question is about the latitude that comes with the values that support the right to housing that affect the moral understanding of having a home. Is it a space of privacy and authority? Or one of social expansion and display? Is it a base from which activity proceeds and to which one returns for rest and repair? Or a place where one shares what one has? What is it to think of a home as a castle (drawbridge and moat)? Does it matter if the home is the locus of a nuclear family or one is “at home” in an extended affiliative group (think of communes and family compounds).<sup>45</sup> It is in answering these questions that moral content is fixed. How would this go? Here is one possibility.

I live in southern California where we are waiting for The Big One. In 1994 the Northridge earthquake shook my neighborhood: some chimneys fell down; there was a fair amount of damage inside homes; the power was out for a couple of days. People went outside, checked that no one was injured or in danger, and somewhat nervously went about their business. Suppose it had been worse, as it was in other neighborhoods. Suppose a wall of one of the houses to the south of me had collapsed, making the house uninhabitable. I know the people who live there, but just slightly. We occasionally pick up each other’s mail. We are not friends; we do not visit in each other’s homes. Yet if in the earthquake their wall came down, I’d take them in. I don’t see that I’d have a choice (modulo the neighborhood organizing itself in a different way to manage the crisis).

In a different California scenario, my neighbors to the south are about to lose their house to foreclosure (they were over-optimistic when they bought the house and now are “under water”). Although they are facing eviction, I don’t see that I have to take them in (nor does the neighborhood need to act to manage the crisis). I’d say it’s not my or our responsibility. But

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<sup>45</sup> Some of this is geographical. Where people live at great distances from one another, travelers in need landing on the doorstep can’t be passed on. The question is very different in a dense urban environment. Living on the 24<sup>th</sup> floor of a high-rise, what would count as a traveler landing on your doorstep? Issues about neighbors in need will introduce different questions.

how could that be right, given the gravity of the threatened loss?<sup>46</sup> After all, when I find you in the kitchen, bleeding, it doesn't matter whether you cut yourself or someone cut you, I should do what I can to staunch the flow.

A possible explanation. In the earthquake, something happens to all of us at once; for no apparent reason, some suffer more than others.<sup>47</sup> It's as if we wind up (temporarily) in a state of nature (the institutions of civil society are not working) and so with a common obligation of repair (for a time, and in a limited way, the moral work of civil society devolves on us). *We* have to take the neighbor in: I do it, but I am acting for us. The foreclosure, by contrast, is a personal event in the life of a neighbor, a kind of financial disease. Unlike the earthquake, such an event does not change everyone's situation in a way that gives rise to a common obligation. I am free to exercise the discretion to exclude that my right in my house gives me.<sup>48</sup>

If, however, the foreclosure was the result of the sub-prime mortgage fiasco, that changes things. It's not just that my neighbor was the victim of a wrongdoing, it is a wrongdoing that I might be said to benefit from – if not directly, then indirectly from the system of market activity that protects such wrongful activity (through my pension, perhaps). Because as a citizen I share responsibility for a civil society that allows such activity to be lawful, as a citizen I (and my neighbors) have some obligations: in general, to act politically to reverse the injustice, and specifically, for our neighbor, to facilitate the civic work of repair to the extent that's possible. For example: if some of us have experience with agencies that can provide assistance with housing or refinancing we can and should act to bring these resources of civil society to bear. Unlike the earthquake case, the civil framework remains in place and it has moral work to do to

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<sup>46</sup> The story may be different if the foreclosure is part of the subprime mortgage crisis; maybe not if the problem originates in a single unscrupulous lender. We will take up this thread in a moment.

<sup>47</sup> In other areas we treat such an eventuality by means of insurance.

<sup>48</sup> After the earthquake, those who remain housed are so by accident, not by entitlement. There is no right of exclusion to stand on, no discretion to exercise. The earthquake creates a situation where the assertion of one's independence (by insisting on a right to exclude) is at the expense of others' independence. It is like the assertion of a right of exclusion at the only remaining water hole in the desert: the basis for a legitimate assertion, for standing on one's rights, is no longer present.

remedy the injustice it has allowed. We are, we all are, its agent. However, *acting as civil society's agent*, it would be inappropriate to take myself to be obliged to lodge my neighbor in my house (as inappropriate as it would be to billet them with someone else).

I can, of course, out of beneficence, assist my neighbors – loan money, help arrange temporary housing, or, indeed, invite them to stay with me while other arrangements are being made – but I need not if I have good reason to withhold my hospitality. Perhaps I already have people in my home I am caring for, or I might be in the midst of completing a vital work project that is taking up our extra room. Or, more sparsely, I might not feel up to taking on the responsibility of housing strangers. Just as I may say no to taking care of a sick neighbor's child while she goes to work, even though I am at home and could do it, so likewise I don't need to take my homeless neighbors in. The discretion I have in beneficence about when and how much I am to help extends to my home.<sup>49</sup>

Where my neighbor's loss or threatened loss of her home is the result of a personal event, I could, out of compassion, decide to make my neighbor whole – loan or give her the funds to service her mortgage. I act as a surrogate for her impaired agency (at least in this regard). If, however, the loss or threat is the result of an injustice, I can't make her whole. I can mitigate the consequences of the injustice, but I don't touch the wrong in so doing: something was lost or threatened that should have been protected as a matter of right. That's exactly what does not happen when I treat the loss as a need I am prepared to meet. If your watch is stolen and I buy you a new watch, even the same watch, there still was a theft.

The pieces of explanation come together around that fact that, considered morally, a home is not a mere dwelling-place (a hotel room might be that). It is an extension of one's person in civil society – it is our public address and location (a place where we can be reached

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<sup>49</sup> It helps that we're in southern California and not in the midst of a blizzard. The discretion also has limits. If my neighbor's phone service has been cut off and she needs to make an urgent call, I cannot appeal to these reasons as grounds for saying no. And I cannot say no because of my neighbor's race or out of anxiety about getting dirt on my carpets.

even when we are not ‘at home’). It is the public face of both our independence and our common status (as citizen, at least<sup>50</sup>). That’s why it is something to which persons are entitled, and why the way it is provided and protected expresses something important.<sup>51</sup> Private individuals coming together to build housing can meet some persons’ need for a place to live, but that doesn’t satisfy the entitlement. Why not? Surely if I buy housing for you I have put you in possession of a home in the morally relevant sense. Parents often do this for their children. What parents do in modern society isn’t simple. A house is both a market object and a moral object. Civil society may be set up so that in gaining one you gain the other (as with motives, civil society has good reason to be more concerned with external actions – here “title” of some sort may be all that matters, and although title can be conveyed, it can’t quite be a gift). It is an illusion, or a sign of something gone wrong, that we might come to think that what is being bought is the status that, in moral fact, only civil society can provide.<sup>52</sup>

There are several lessons to draw from this discussion. Specific property rights are part of a system; not all points in the system are deliberatively equal. The key deliberative differences are not matters of weight but of value; the values involved can be foundational for the system of property as a whole. We have rights over, and not merely reasons of use with respect to, a variety of things when authoritative control over a range of resources is necessary for persons to lead independent lives as equals among equals. Some things over which we have property rights have a special place in the system because they are necessary for our independence and for the exercise of our rights generally. I don’t think it much matters whether the right to housing is a *new* right, in some sense, or is an historically contingent elaboration of

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<sup>50</sup> Some of the anxiety about itinerants and gypsies comes from their being literally *unheimlich*, and so outside the law.

<sup>51</sup> There are comparable lessons in the early history of labor unions. A benevolent factory owner could decide to raise wages, but in so doing might make his business and his workers vulnerable to market pressures. Unionizing the workforce across an industry gave workers certain rights *and* protected them from the market vulnerability involved in being an outlier.

<sup>52</sup> The way in which a society treats the homeless reveals a lot about its commitment to justice. Unhoused persons are not fully citizens (lacking a permanent place of abode they typically cannot vote).

the rights of citizenship. Having an explicit right to housing in the system of duties makes moral sense, and it makes moral sense now to think of it as a human right. Beyond its contribution to well-being, the right to housing is an element of civic standing, providing a juridical abode. It recognizes a need we have if we are to be effective citizens. It is where we are safe to think and speak, to experiment and be creative with forms of living and relationship, to nurture and be nurtured, and to rest. It cannot be a place where others are free to come and go as they have need for the space and its resources. None of this is about the home as a large chunk of private property, or a castle. Where our home and our status are not fragile, we can safely take on a public role to manage an emergency. But it is also part of due care in taking such measures that they be temporary.<sup>53</sup>

Once again, I don't see reason to be concerned about this openness to the empirically contingent in the specification of duties. It is, after all, a system of duties for us, living now. If one allows that morality is not merely a set of duties and permissions but a practical project that involves duties and permissions, then the idea that the system is dynamic and open should not perturb. Some things remain unchanging – fundamental value; some things cannot change easily – elements of the public basic structure; the *form* of certain duties. Other parts of morality – especially the content and agents of specific duties – are more empirically responsive. To accept this is not to embrace some rampant moral relativism and it does not undermine the authority of the moral duties we have. There are hard questions about when and how moral change takes place: it can't be declared or voted on, but it is something that we come to through reflection on problems and tensions that familiar ground-level duties may not seem to be managing well.<sup>54</sup> It's true that in some cases we will want to say that the correct ground-level duty simply wasn't

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<sup>53</sup> There are also duties of due care on the other side – e.g., that rules and regulations not be such that beneficent or surrogate public responses to disasters disqualify victims from relief to which they would otherwise be entitled.

<sup>54</sup> This fits well with a certain idea of constructivism in morals – that morality is the solution to a practical problem for human beings who regard themselves as free and equal. One could have the view that the elements of the problem are fixed and so therefore is the solution. But one needn't take that view.



the duty we thought we had – a ptolemaic problem. And maybe this is what we should say in most cases where we come to reject one way of understanding what we are required to do for another. But not every case must be like that. Sometimes can implies ought.

In saying this I *am* assuming that there is in principle no complete or ideal system of duties. There is no theoretical point of view from which all that ought to be done is fully determinate. There are new questions. As we better understand the effects of interacting institutions, as we gain control of new resources and abilities, what we can do changes, our vulnerabilities may change, and so our obligations and responsibilities may change as well.

The version of Kantian morality I have been sketching both expects and accommodates this outcome. The uncovering of the duty of due care goes a long way to making the resulting project morally credible. Part “ombudsduty”, part line producer, the duty of due care not only aids in our doing whatever we are required to do well, it is alert to contingency and provides a value-anchored framework that maintains continuity when we would depart from the familiar in moral question or response. It matters that the duty belongs to a system of duties. It is also essential to its role that it is a secondary duty and that it is imperfect.

As a secondary duty, due care pairs with a primary duty: it has the same object as the primary duty, but not the same content. The duty of due care does not provide additional means to act for the primary duty. Its aim is to insure that the means taken, in the specific context, in fact promote the duty’s object as well as its immediate end. When that connection is challenged or at risk, due care can require that we do more.

Here’s the sort of thing I have in mind. The *content* of regulations (the duty) concerning sexual harassment in the workplace targets the creation of a hostile environment and inappropriate *quid pro quo* conditions on employment. The *object* of the duty is equality in the conditions of work, where it is understood that the value of work makes it part of public morality. If success at introducing procedures to minimize harassment comes at the expense of

hiring women or other vulnerable populations, then the means, even if immediately successful, weaken the *object* of the primary duty. To shrug one's shoulders at this effect is negligent. Due care requires that we maintain contact with the object of the duty and manage the untoward effects of our new procedures, here by monitoring hiring bias or adjusting the applicant pool. It is not a criticism or an enhancement of the original means. Due care introduces an additional end, an end it would be negligent not to have, given the effect of the adopted means on the object of the primary duty.<sup>55</sup>

The advantage that comes with the duty of due care being an imperfect duty is that an imperfect duty brings with it a sphere of responsibility that calls for attention and response *as things happen*. We do not know in advance what the duty will require. It can depend on what others do or need, on contingent or accidental occurrences, or on the realization that what we have routinely been doing in some moral sphere is in the instance insufficient. When due care directs us to take additional or different steps when leaving things to follow their course would exhibit indifference to the object of a primary duty (this is the real worry about morality as rule-following), it directly expresses the value of the duty – in effect saying, *this* is what matters. In its attentional dimension, it can also confirm that enough is being done (the duty still applies: one should not come to do nothing out of inattention or carelessness), or that no more can be done by *you*. In ordinary contexts of beneficence, not acting to help when one easily could is cold or callous or care-less. But sometimes it is a concern of due care that you hold back. It depends on where we are in the system of duties. It is both inappropriate and negligent for an official counselor in a public welfare office to use her own funds to help a needy client; there are issues of fairness, of record-keeping, but also of becoming an object of personal gratitude.<sup>56</sup>

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<sup>55</sup> In the circumstances imagined, there might not have been a pool problem had the pressures of maintaining a safer workplace not provoked a reaction about hiring. Though as we know, the two problems live together and typically have the same source.

<sup>56</sup> It's not always wrong for a public employee to pay for things – teachers sometime buy supplies that financially strained schools cannot afford. There is a moral failure here, but it is not the teachers'.

Since institutional duties also come with secondary duties of due care, they can take advantage of the imperfect duty's expressive power both in normal circumstances (to insure that a regime of rules maintain connection with what it's for) and in conditions of change, especially when an institutional duty is taking over a new moral task. Changes in the direction of making things better aren't always altogether benign. Change is (and may be meant to be) destabilizing, and with that can come confusion and some sense of moral loss. Changes can reveal previously hidden problems; they can themselves, or in their implementation, make some population vulnerable in unanticipated ways. In the language of this discussion, in taking on the responsibility for managing a moral problem, an institution has an imperfect duty (of due care) to be aware of and responsive to the ongoing effects of its policies, to make it clear, through its actions and procedures, what values it pursues.

Recent critical discussion of the handling of sexual violence on college campuses indicates that a difficulty that used to be handled "privately" now requires formal reporting, impartial investigation and official resolution. An institutional version of a perfect duty. While it can be a mark of awareness of the moral gravity of something to introduce such a change, if the issues are intimate, the awkwardness of the formal apparatus can be experienced as a step backwards or in the wrong direction. Extra protections may be needed to moderate the costs of the better regime of protection. But having recognized the problem, it would be negligent to let university lawyers and administrators draw up the new rules by themselves. The primary duty that the universities have failed in is the protection of vulnerable students whose activities take place under their broad authority. Where an institution has been seriously inadequate in meeting its moral charge in this way, an approach to moral repair that is both procedurally inclusive and value expressive is not just better able to sustain common understanding than a confident new rule on its own (even if it is the right rule), it is an element of the remedy. It is a virtue of imperfect duties that they can provide this sort of deliberative direction.