

## Chapter 12: Moral Improvisation

In the most general terms, Kantian ethics is about the rules and standards necessary for free rational action and choice. It provides guidance, first of all, through the rule of permissibility associated with the categorical imperative, but also by way of two obligatory ends—of one's own perfection and the happiness of others—whose role in the theory is rarely taken seriously enough. When it is, they transform the way we should think about Kantian ethics. In the previous chapter, I sketched out a picture of Kantian moral theory that gives a central place to obligatory ends. Here I want to explore some of the far-reaching effects obligatory ends may have on our understanding of what morality can require of us.

Obligatory ends lead us to think about the way morality becomes situated in a life. They identify the kinds of things it is objectively good for a person to do, and so provide the categories, or basic value concepts, for the premises of sound practical reasoning. Unlike standards of justice, or negative duties, which provide rules for action (we should not deceive or take others' possessions), obligatory ends place demands on our intentions and motives, our reasons for acting. They require that we choose activities as they are friendly to our and others' rational natures; they give reason to reject ways of living and even social structures that are detrimental to good reasoning (lives of excess, avarice, rigidly authoritarian social organization). They are to be our ends, directive and regulative, whatever other ends we may have. *That I enjoy something does not explain why or whether it is good to do.* We do not need to explain the *liking*, but how enjoyment should figure in a life that requires a significant level of rational functioning (morality calls upon rational abilities that we neither have nor sustain as a matter of course). Since our actions affect others in all sorts of ways (we help, harm, support, and interfere

with them), we are required to regulate these interactions with an eye to the development and sustenance of their rational abilities, not just our own. The two obligatory ends also generate positive duties that more closely regulate regions of activity where we are tempted to act in ways inconsistent with the value of rational agency: duties of beneficence, gratitude and respect; duties to avoid servility and avarice; and most especially, duties concerning our own moral agency. Since we have ultimate responsibility for acting correctly, for most of us, the duty to be and to become an effective moral agents is both complex and likely quite demanding.

To explore the effect of obligatory ends on the commitments of agency, and, especially, the scope of moral responsibility, will require some idealized imagining of what we would be like if our moral abilities were fully realized in the way obligatory ends direct. Moral theory is not merely a descriptive enterprise about what our duties are given what we are like as agents. The however-formed person may not appreciate reasons that the well-formed person can. On the other hand, morality cannot require truly exotic dispositions or a nearly perfect social setting as a condition for our acting well. It *can*, however, require that we develop sensitivities that we may lack, that we be able to act well in unexpected and difficult situations, and that social and political institutions be responsive to moral needs—taking on some of our moral burdens, enabling effective moral criticism. It is a rather practical and realistic notion of the ideal.

My approach to this large set of issues will be in terms of four more limited topics: the kind of unity obligatory ends give the lives they shape; the ways they require moral and political creativity; the importance, therefore, of moral history; and last, the significance of the idea that the positive duties they set are imperfect.

In an obvious sense, obligatory ends do their work by shaping an agent's pursuit of happiness. They manage tendencies to activity that are natural for us. Persons *will* pursue the satisfaction of their desires; they need to learn when the way they are inclined to act is bad for them, when to take the interests of others into account, and to conceive of what they do in terms of value, not merely desire. Morality, broadly conceived, has this educative task. In coming to see the conditions of rational agency as the first element in claims of value, in learning what to do and what to attend to, and what counts as sound reasoning, we are made and make ourselves into effective moral agents. The distinctive feature of this route to moral agency, and so for our sense of ourselves as moral agents, is the emphasis on our deliberative and critical abilities.

Although the work of obligatory ends is a discipline for the pursuit of happiness, it is not hostile to the sorts of things we care about. Indeed, a morality that did not see the need for enjoyments or strong attachments, or that was uncomfortable with parents giving special time and attention to their children, would not be credible. However, morality need not be equally sanguine about what we care about *as* we are inclined to care about it. It asks whether some of the things we feel we must do—taking special care of our friends and children—are kinds of things that are good for them, and for us, as rational agents, and it requires that we give priority to the answer, whatever else we may value in acting.<sup>1</sup>

If we should take on the obligations of parenting or friendship in these terms, it does not mean that we should love our friends or children because it is a moral thing to do, or act for their sake out of a sense of obligation. The idea is rather that, in loving our friends and children, morality is one of the norms that shapes what that love amounts to. The obligatory ends that regulate our loves require that we be attentive to, because we may be responsible for, the development or rational health of those we love, and of ourselves. So it may be required that we sometimes say “no” because to do more would tilt us toward self-neglect, or that we should

check a tendency to indulge our children's escalating desires, because too much stuff is foolish and can affect a person's sense of what is important. These homilies of good parenting partly explain why this activity is a kind that morality has to take into account.

Obligatory ends not only discipline the pursuit of happiness, they introduce a kind of deliberative unity by way of their governance of an agent's active desires and interests. This occurs, first, because they are *obligatory*, and so always of deliberative import, and second, because their value content is derived from a single source that has general application—the principle that sets the standard for correct willing. It is natural when we think of ends to think of means and of instrumental reasons. But ends are not just states of affairs with targets drawn on them, and means are not merely arrows aimed at the target. It is better to think of an end as providing guidance for reasoning. Sometimes it is a matter of indifference how we get what we want—I can buy it, find it, you can give it to me. Sometimes a way of getting what we want can ruin it. When I find out that my success came at your expense, I may not take myself to have succeeded after all. We explain this by saying it was not simply a state of affairs that I wanted, but a state of affairs that satisfied a set of conditions (including, to be sure, that I get what I want). The agent's end is evaluatively complex. Obligatory ends add a non-contingent element to that evaluative complexity. That makes even our instrumental reasoning no longer merely a matter of causal efficiency, because instrumental reasoning is responsive to the structure and substance of our ends.

The importance of deliberative unity can be missed if we over-simplify practical reasoning by working with isolated examples. In a normal agent, even the simple decision to stay home and read a book rather than have a night on the town operates in a complex deliberative framework of wants and interests, preferences and conditions on action. Some, but hardly all of the elements of complexity are moral. When things are working well, little is at

issue in my deliberative activity apart from determining which thing I prefer to do. But that is because I take myself to know without further thought that my options are permissible: I rely on my memory (that I have no outstanding obligations that require me to do one of these things, or something else entirely), I count on the everydayness of things (there are no life-endangering wires attached to the ordinary objects I might use), and I assume that obligations with a larger, impersonal scope (world hunger; the needy elderly; victims of war) are being managed well enough in the background. Of course I may be wrong about any of these things. And although it matters that I get things right, the way that it matters does not impinge on normal decision making. There is a certain seamlessness to ordinary thought and action. We are warranted in taking a great deal for granted in the background of our deliberations, and the warrant is both reasonable (normally) and necessary, else we would be unable to function as normal persons.<sup>2</sup>

For the most part, then, we deliberate neither about ends nor about means. We come to decisions with ends in hand and a library of practical knowledge at our disposal. This is not because we are all too busy, or overly programmed, or lacking in spontaneity. Those may be problems, but their solution hardly requires that we come to each choice as if born anew. If we did not know our ends, or most of them, and if we did not have a catalogue of means at hand, there would be little of any complexity we could undertake. So the truism of our form of agency, one that builds on competencies and seeks increasingly complex activity, is that when we decide what to do now, we must already know a great deal about what we are already doing.

## II

For normal action to be possible, the restrictions and positive requirements of morality have to become part of common knowledge, and to some extent, part of the way we come to desire. There is, at least in principle, a moment when it is open to reflection whether there is

good reason to be honest or fair in one's dealings with others. But the question is not permanently open, and for many of us it never gets asked. One is brought up so that values of fairness and honesty become constitutive of our relations, or at least of the central ones. It's not that we don't think about them. We affirm these values in our judgments, teach them, refine their scope or stringency, inflect them with style; but their primary function is as background premises in our practical reasoning. A great deal of practical and moral knowledge must be integrated into an agent's deliberative field if she is to be able to act smoothly and with normative confidence, or, when circumstances require it, to deliberate about what to do. When this background is not stable, when values or basic factual assumptions are in question, we may not be immobilized, but there is often a sense of having to guess at or rethink familiar things. Acting in the dark, morally, is a situation to be avoided. There are areas of life where novelty and risk-taking can be fun; morality is not one of them.

The structure of the deliberative field is determined objectively by the norms of rational deliberation, and subjectively by the agent's grasp of factual and evaluative connections. Moral error comes from mistaken representation either of formal elements of the field, or of the facts judged salient. Ideally, when an agent gets it right, the deliberative field is unified: the principles of practical reasoning, including the moral principle, can be co-instantiated. Because obligatory ends introduce lines of reasoning from fundamental moral values to the concerns we normally think of as belonging to happiness,<sup>3</sup> finding the pursuit of some interest blocked by a moral prohibition is not a sign of a conflicting value. However, since the way obligatory ends construct a bridge between morality and happiness is by bringing considerations of rational well-being into the forefront of judgments of value, they alter the terms of our attachments, creating some critical distance from the fluency of the ordinary. We become alert to the possibility that our feelings of fit can be misleading. Examples of this are not hard to find.

In many adult relationships, routines develop whose rationale is mutual benefit. Even if that's how they start, we know they can evolve into structures of deference and domination. In a complex work environment, one need not know much to know that a task that is a matter of course for one person can be a source of enormous anxiety for another. We are aware that it isn't easy to negotiate the obstacle course of gratitude, the giving and accepting of favors, the beneficial use of one's good fortune. However we come to help, we are committed to a certain degree of critical vigilance. Paternalism lurks in the provision of all sorts of goods; one takes oneself simply to be concerned with the happiness of another, but, it turns out, only conditionally so. In most of these cases what is required is not deliberation *de novo*, but an increase of attention, and a degree of flexibility in response to what one encounters.

How we understand relations with friends or marital partners is not usually up to us. There is a social division of labor that has an impact on our private lives—who takes care of the needy, the children, the elderly. It may be harder to see wrong-doing if inappropriate actions are embedded in an accepted routine endorsed by background social institutions. But just because this is so ordinary and inevitable, acting under obligatory ends we are required to be alert to such possibilities, develop means of increased sensitivity to the way institutions hide injuries, and be prepared to remedy them, as we can. Even in matters of social justice, where one might hope the background social order will do the heavy lifting, we are not free to let things be as we find them. The domain of obligatory ends is continuous with many of the concerns of justice, and intimately engaged with the effects of injustice. So we may have to seek out and take on justice-related burdens whether or not we have acted wrongfully. And this should not be surprising, since in contrast to claims *of* justice, for what one is due, the demand *for* just institutions follows from the nature of our *moral* interest in happiness.

Some of the critical work can be done by means of incorporating a kind of activity within the deliberative field. For example: We think friendship is a good thing in that it offers a sphere of intimacy in which activities and feelings can be experienced and shared, it is a locus of special pleasures, it can extend the base of mutual reliance, mitigating isolation, and so on. Some of the goods of friendship are instrumental, some are good in themselves. This conception of friendship is quite comfortable with morality. But not every conception of friendship is so accommodating (one for all and all for one; clan ideals of brotherhood). So either we will have to argue for the priority of the moral over other, independent values, or argue for the place of morality in the formation of other values, challenging their independence.

Since each and every moral consideration is not likely always to outweigh everything else—we cannot say in advance how important all the demands of friendship might be, or in which circumstances some moral requirement ought to be set aside, or taken care of later—it does not make much sense to argue for the priority of the moral in a general way. Even if we argued for the priority of some moral values, or for the conditional priority of, for example, rules of moral permissibility, we will still need to explain why some cost to friendship provides a condition that justifies our doing or omitting something that would otherwise be wrong to do or omit.

Instead of trying to fit together the autonomous spheres of morality and friendship—and why not also art, sport, and work—we might consider how these things that we care about stand with respect to the value introduced by obligatory ends. It is not hard to see that persons who care about others as intimate equals, who have special commitments to each other's well-being, and so on, will be in relationships that enhance their practical abilities, connect them with reasons that do not start in their own needs, and give them access to pleasures that make them more engaged in living. The benefits of that kind of friendship are valued by the person who has

them, but they are also, in the wide sense in which I am using the term, moral goods. Friendship, so valued, is then part of morality—as are, in different ways, art and sport and work. They are set into a deliberative framework that gives them an importance that transcends our caring about them, though they would not have that importance unless we cared.

If obligatory ends set basic values for choice, what gives an activity standing in the deliberative field is its being of a kind that is supportive of our rational abilities. That won't be the basis on which we choose friends or work, but it is a necessary condition for our choice being a good one. Where the needs of friendship conflict with what would be required by some duty, instead of making cross-value judgments we can ask whether an exception of this kind to the duty makes the duty itself cohere better with the values of the deliberative field. Note that the question that has to be answered is not: may I lie if it would advance the rational interests of my friend? but: is lying in order to advance the rational interests of friends a possible rational principle?<sup>4</sup> The incompatibility of lying in general with rational activity suggests a negative deliberative conclusion. Would it be different if the purpose of the deception was to save lives? One might want to distinguish lies that block coercive aggression from lies that promote some good: stopping a mugger or a tank and getting someone into a better college. Producing a unified deliberative field does not eliminate hard cases; it rather allows us to think about our interests and our obligations as they are differently seated in our lives, and as valuable, if they are, because objectively good.

### III

In imagining the construction of a deliberative field, we are imagining the construction of a unified agent. The unity is formal, not substantive (there is no ideal unified set of desires, for example). It is a unity in many ways of the agent's own making, but in other and equally

important ways, it is not. The external sources seem to be four-fold. There are objective principles of correctness for action and obligatory ends that reconfigure desires and interests as possible objects of rational choice. There are projects derived from positive duties that will fit with other things we value, but may impinge on specific preferences (to say that they fit is not to say that both can be acted on as we might wish; it is to say that both kinds can belong to a well-formed life.) And last, there are the constraining facts of the world in which one acts. We cannot choose anything we want, nor be whatever we wish to be. The roles and institutions present in our social world preconfigure our possibilities, some in ways that are hospitable to what moral value allows, some not.<sup>5</sup> So, even ideally, in becoming ourselves we work within norms, some rational and moral, some social, with ultimate responsibility for being right about what we choose.

Deliberative unity does not give the agent every kind of unity she might want. It might, for example, preclude wholeheartedness, if by that is meant reflective satisfaction with one's affective and volitional condition.<sup>6</sup> Knowing the complexity of my circumstances, of the limits to the knowledge which lies behind my ends and choices, I need not be ambivalent or skeptical, but a little cautious and a lot humble about my aims and actions. One needs to be on the lookout for unintended consequences, not because of fear of a hidden moral quagmire, but because in forming one's intentions, however carefully, one may not have seen far or wide enough; even a careful agent may not fully understand what she does.<sup>7</sup> I say: "I'm just having a little fun." You respond: "No, that's cruel." The edge often goes to the response because cruelty so often occurs precisely because one is not attending to something, or attending, but not under the right description.

We certainly have reasons for wanting to avoid ambivalence. It impedes activity; our deliberations lack closure; choice is forced. It can lead to various forms of damaging double-

mindedness. Those one loves cannot be confident in being loved. Work that requires effort and concentration may be tarnished, even inhibited, if one is still tracking a foregone option. But if these are the kinds of costs that come with ambivalence, there are ways to avoid them that do not require anything like wholeheartedness. One can learn to let go of the options not taken, however attractive, especially when they do not provide reasons against what one has chosen.<sup>8</sup> There are strategies of focus and attention, engagement with the pleasures of the option taken that can make a decision made in the face of ambivalence one which one comes to have no reason to regret. There is an important difference between having made a hard decision, aware of some good foregone (it would not otherwise have been a hard decision), and feeling the pull of what is set aside as a kind of tax on one's choice.

Confidence and absorption are two other forms of volitional unity. Normally we seek absorption only for a time, and usually in special activities (an athlete's "zone", the heightened attention of the musician practicing, the immersion of self in play or sex). We know that these states are not normal, and that, however appealing, even tempting, they neither offer a practical ideal, nor any guarantee that we are not at the same time overlooking important things. Absorption may be necessary for certain sorts of creative activity, and if so, these activities may involve practical risks. Confidence is different. One can be confident in what one is doing while remaining open to correction, to the need for adjustment. There can be false confidence, but not false absorption. We are confident when we believe our abilities and judgment are up to the task. I need to know who I am and what I can do, but I need not be some one thing, nor unaware that my arrival at this place has had costs, nor ignore the fact that the bases that I appeal to for justification may not all be sound, or within my control.

Morality introduces other kinds of unity, some of which we might not like. It is a requirement of moral agency that we recognize that our activity is morally hostage in ways that

we may not now see. The circle of effects of most of our acts dissipates quickly, and we can easily see to the end of the chain. But it is not always so, and the fact that one could not reasonably have expected a bad outcome does not leave one off the hook, though one may well not be to blame. Something I do as it happens puts you in harm's way; I am not free to ignore what unfolds. This is in some ways strange. We have a duty not to harm. We cannot have a duty not to be an unwitting part of a harmful causal sequence. How do we get a duty to pick up the pieces of an action that is not morally imputable to us? One way could be via the connection to others that is the basis of all positive duties based in our obligatory ends. The obligatory end of others' happiness requires that we regard our actions, whatever our intent, as they bear on the well-being of others. So intended and unintended effects, as well as omissions, get factored in. And as we must be mindful of what we do, we are responsible for what we effect. In general, our duty to take care of others is stronger as our relationship is closer, and the relationship of being a proximate cause of harm is very close, if unchosen. Choice is not in any case the necessary metric of relationship. There are relationships we are born into, others in which we simply find ourselves. I have greater concern for my neighbor than yours for no more reason than I happened to land next to mine. What I do or refrain from doing, intentionally and not, can make a considerable difference to her well-being. Similarly, if I have negatively, though faultlessly, had a direct impact on the well-being of another, that can be enough of a connection to put me at or near the front of those who might help. To be sure, others may have greater responsibility, my relation to the harm may be more distant or indirect. What is to be explained is why even in the absence of either causal or moral responsibility (in the usual sense), the obligation to fix things might be mine.

There is a similar extension of responsibility that comes with the incompleteness of our knowledge. Even if those who designed the Tacoma Narrows Bridge—a state of the art

suspension bridge that collapsed in unanticipated winds—built to the limit of prevailing engineering standards, the fact that there were likely to be significant things they did not know makes them responsible for the bridge’s failure. Not that they owe damages and the like, but that the failure belongs to them. This is because one of their ends—building safely— always demanded more than the available means. Reasoning does not always go from the end to the means at hand. The end of building a safe bridge puts pressure on the builders to expand their knowledge and their skills. Because of the riskiness of the activity, their responsibility is open-ended, though the same is not true of blame, if they acted responsibly.

The phenomenon occurs equally when the unexpected effect is on oneself. When my home improvement project turns into an obsession, even if I manage to fulfill all my specific duties and obligations, or trim them back so that I can spend yet more time with my contractor, there is a failure here, and I think it is a kind of moral failure, of not preparing well for managing a psychologically demanding project. Why not be consumed, if that’s how it goes, so long as the taxes get paid, the children are fed, and classes taught? Because the extreme and unnecessary devotion of attention and energy to such a project is the kind of thing that makes one generally less able to respond and act well, given what may come one’s way. It is not an enormous moral failure, but it is one, at the least of a duty to oneself.<sup>9</sup>

Because obligatory ends require heightened attention to the effects of what we do on the rational well-being of ourselves and others, they give us positive duties to give our life a moral shape. In a sense, moral training that was originally among the obligations of those who raised us becomes the subject matter of duties to self. The responsibility we have is then that we be or become a certain kind of agent. There is no paradox here. If we are moral subjects, we have the capacity to act morally. Theoretically there may be kinds of rational agents in whom the capacity entails the ability. We are not like that. For us, the capacity is given, the ability is

acquired. And each of us has final responsibility for developing the abilities necessary for moral reasoning and action.

#### IV

If there are moral norms that constrain self-making, it is also the case that in the course of becoming a deliberatively unified self, an agent shapes morality. As she fills out her projects and relationships, she may extend herself in ways that generate new duties, or discover obligations with respect to things not thought to be within morality's scope; she may come to be critical of morality as she finds it and perhaps need to discover a way to make repairs or a new way to act well. There is no ideal moral system, no set of perfect rules that we approximate. Some parts of morality involve practices, and then we cannot just set off on our own. However, in other areas we may need to be creative. If morality is about the conditions necessary for rational persons to live well, living together, and if it includes obligatory ends of the kind I have been discussing, then the content of extensive regions of what we ought to do will be in important ways up to us.

I do not mean to say that we create morality—as if we invented it at a conference or on a playing field. It is more like our contribution to the norms for a physically healthy life. Broken bones, cancer, organ-failures are objectively bad. We should avoid them if we can. But the prescription for a healthy life is in principle open: fact-sensitive, revisable, to some extent relative to other choices we make, risks we are willing to take. (Does the standard of health for a woman include child-bearing even though it involves risks to health?) We cannot simply create the norms that apply to us; we can and do shape them. And if we shape them, we will need reflective and critical abilities to do the work well. The ability to act creatively and correctively will obviously depend on the evaluative richness of our moral knowledge. This puts a burden on

the providers of moral instruction to insure that the value content of requirements is accessible, and in terms that suit our needs as moral agents.

A mature moral agent should thereby have some ability to negotiate complex or changing circumstances. Procedures of deliberation anchored in (the right kinds of) moral concepts give her resources to respond to unexpected or unfamiliar events; she can challenge or even set aside familiar moral practices in order to accommodate a new situation. In doing this, she engages in a kind of moral improvisation. It does not mark an abandonment of moral values, but is a way of extending them that remains subject to the same standards of justification that were directed at suspect actions set aside. Not every region of morality permits improvisation, but many do. And not every improvisation marks out a way the rest of us should act. The situation that warranted the move may be unusual; our circumstances may be less hospitable to the change; the new way of acting may depend on talents and abilities of the improvising agent not widely available (an easy reach for you can be supererogatory for me).<sup>10</sup> We might think of the many different adjustments couples make in their living arrangements as they became increasingly sensitive to the moral import of choices about career and family.

The umbrella of protection from constant deliberation that is necessary for ordinary life depends on trust in the background institutions that support these activities: that our ways of doing things are all right, and that we have an adequate system of warnings that will flag unanticipated moral danger. But the very seamlessness of ordinary morality that is necessary for everyday judgment and action also poses a danger; it can easily mask injustice, prejudice and other forms of moral blindness. Ordinary morality is wary of moral conflicts, but we need not be. The rules of ordinary morality are middle-level principles that structure deliberation. They need to be consistent—it cannot be the case that they could never be co-instantiable—but they need not co-determine what is to be done without the active intervention of a moral reasoner.

When wrongful conditions are systematically embedded in our institutions, in formal and casual practices, it can be difficult to see what to do even when it is easy to see that something is wrong. It is not just that the solutions are hard to find, the very identification of a claim of injustice or exclusion often provokes campaigns of resistance and denial. The moral history of environmental hazards, of racial and sexual discrimination, of basic welfare rights, traces the tension between discovery and resistance. Some resistance is attributable to vice: greed, selfishness, racism; some simply belongs to morality as a structuring element of everyday life, one of whose roles is to provide stable assurance about the moral adequacy of normal action.

Sometimes the history of a wrong is essential to, and so ought not be divorced from, what the wrong means, nor, in some cases, from its remedy. A good example is the current debate in the United States about affirmative action; it is complicated by the presence of two different strands of argument, one about justice in access, the other about a just remedy for past wrongs (discrimination, slavery). Procedures that might well be benign in an egalitarian setting, or thought to be fair in current circumstances, are challenged on two different fronts. It is a very different question whether one may use identity-based preferences to remedy inequality, or to adjust the conditions of access to gateway institutions and jobs in response to a continuing history of social discrimination. The answers may be the same, but the way one understands what one does is different, as are the categories in terms of which we acknowledge legitimate complaint. One argument is based on statistics, under-representation, the values of diversity. The problem to be addressed might or might not be the result of moral failure (as opposed to error or even accident). The other argument is on a different moral plane, condemning the application of ideals of formal equality as masking a continuation of institutional racism. The wrongs picked out are different, and failure to express the difference in both argument and remedy can cast suspicion on the moral adequacy of a response.

One sign that suspicion could be warranted is found in the treatment of shared history. The wilful erasure of difficult parts of the history coupled with a conviction that “the past is in the past” casts doubt on the moral neutrality of appeals to formally correct arrangements. In this case, it is the legacy of chattel slavery. Americans accept that slavery was a moral stain on their history through the middle of the 19<sup>th</sup> century. But since the spirit and the effects of an institution do not necessarily cease when the institution is dismantled, its legacy has to be traced with unusual honesty before it can be said that, morally speaking, it is in a now morally irrelevant, distant past. If it turns out that there is a failure to acknowledge or teach uncomfortable large chunks of this history, it is not paranoid to read the silence as a sign that the past that is repressed remains morally active.

Does this mean that moral agents need to be historians? In a sense yes. We are all consumers of history, of the stories that describe how things come to be. If the stories we believe are suspect, then we fail as moral agents if we do not seek out different ones. In this light we ought to ask: What does it mean for American history and moral culture that lynching, particularly of African-Americans, has a place in it? Suppose one thought: here is a dark piece of the past that is, fortunately, in the past. It is an item in the catalogue of moral horrors, but it has no current moral bearing: the practice and the effects of lynching are long over. There are some compelling reasons to think this is wrong. Precisely because it has been an effaced piece of twentieth century history, lynching bears on the questions of whether and to what extent the legacy of chattel slavery has continuing moral effects.<sup>11</sup>

Making a case for such a claim of course depends on the evidence for the effacement. Such details matter in another way as well, since the larger the thing that is absent from “history” the more interesting the moral questions we should ask. So I want to pause for the moment to look at the record. The example maybe parochial; the general point I would make with it is not.

The Tuskegee Institute lynching archives record 3,417 lynchings of blacks in the US between 1882 and 1944; considered estimates of the actual numbers are much higher. Prior to WWII, thousands of blacks migrated to northern states in part to escape a climate of violence, where being black could be sufficient cause to be summarily tortured and killed. Federal anti-lynching legislation, repeatedly proposed, never became law.<sup>12</sup> 1952 was the first year without a single recorded lynching, though 1952 was not the year of the last recorded lynching.

Up through the late 1930s, many lynchings were public spectacles. On some occasions, thousands gathered for a lynching—men, women, and their children. People sometimes do things together that they cannot imagine doing in isolation, but these collective and often festive events speak of something else. The popularity of photographic postcards of lynchings, the practice of collecting and displaying body parts of the murdered victims, indicate that lynchings were occasions people wanted to remember, to make part of their family life. There was collective pride in being there, in witnessing the event. It is impossibly hard to understand, but people were eager to claim the acts as their own, and to make them part of their children's memories and moral education.

How far in the past does something like this need to be in order to lack present moral force? What is remembered and spoken, or hidden and suppressed, shapes the ideas in terms of which moral and practical possibilities of the future are understood. It is difficult to imagine how one would trace the moral consequences of either the active memory or the silence in this case. But if we remember that a teenager in the 1930s is someone's grandparent in the 1970s or 80s, then the moral history of many black and white families is unlikely to be the official one, and it is surely a history, whether of silence or speech, that affects the character of our current moral culture.

Different kinds of past injustice place different demands on memory. The South African Truth and Reconciliation Act was concerned with the necessity of turning an unspeakable recent past into an acknowledged collective past so that there would be some usable moral thread in the history of the new state. The pressure on moral history that came from the experience of Nazi mass murder in central Europe was not the same. Here the demand on memory is not in the service of finding a way for oppressor and oppressed to live together, but in making continuously present the fact that an unthinkable human limit was transgressed, in the hope that knowledge of the possibility is a barrier to its happening again. The efforts made to move lynching into the active public history of American race relations is a similar piece of moral historiography; it offers some evidence that it is not yet possible to make ahistorical moral arguments about equality and race.

How would a moral history that included the facts of lynching matter? Here is a conjecture. One reason that affirmative action policies are resisted is that they seem unfair. In an effort to shape the future, it can seem that some are asked to bear burdens they do not choose for ideals they may not value. Knowing little about history increases the room for resentment. Knowing a lot more history, more of us might welcome an opportunity to be the ones to include those who were wrongfully excluded. The moral imagination is labile—subject to enthusiasms of reform and anxieties of loss—and its management is among our most pressing obligations. If we do not attend to moral history, or look beneath the public face of institutions, we fail not just a duty to others, but also the duty we have to ourselves to deliberate rationally.

## V

Because cultures can hide or efface their history, or their current unjust policies, we cannot be confident that a moral practice that would satisfy criteria of moral adequacy were it

evaluated on its own, or as part of some other, more just social order, is in fact permissible. It follows that an agent's moral circumstances may not be the ones she sincerely takes them to be. (Not every aspect of a moral order is suspect: promises are to be kept, acts of kindness performed, truth and trust preserved. But what counts as kindness, or who counts as trustworthy, may not be unaffected.) If this is a real possibility, then one should be prepared to accept that some familiar ways of acting may need to be changed, even if an activity is one which is in its own terms defensible. Moral history makes connections that can alter one's obligations.

The importance of history and context to correct moral judgment reveals that morality is in important ways a local institution.<sup>13</sup> (It is not the only reason for thinking that it is.) There can be universal human rights, principles of international justice, moral rules that no decent society can be without, and it still be the case that the concepts and competencies that make up our moral abilities tend to be firmly anchored in a place. I don't think this feature of moral practice is a bad thing; it certainly doesn't imply anything like moral relativism. There are objective standards for what will count as a response to problems that require moral solutions. But if morality is in these ways local, it may make some forms of moral traveling difficult.<sup>14</sup> Some regions of local morality—those that shape intimate relations, or the conditions of fit for moral criticism and reform—may not translate. There may also be related constraints on how or even whether some groups can live together and continue to maintain their separate identities.

That what any one of us can do in response to large or systematic wrongs is very limited is no reason to think the moral assignments are not ours. The source of a wrong can create a collective burden; but the bearers of the burden are individuals, even when they act collectively in fashioning a remedy. The space between seeing that something is wrong and making it right is filled by a mix of individual and public action. Individuals can be the agents of change, through their own immediate behavior, but also by way of their institutional roles. By choosing

to live in racially integrated communities, or by being in a position to alter the gender conditions of one's workplace, one can take steps to change a moral environment. This is a place where the flow between morality and politics is natural. We can protest, join groups, initiate lawsuits, "work from within." Moral change that requires new categories, or abandonment of central older ones, is hard; without some level of social agreement, the risk of unintelligibility and unintended harm can be great. One of the dimensions of moral creativity and improvisation will then be social—something we have to do together. If one of the positive duties we have is to promote just institutions, to insure that injustices are not ignored, then it is a moral constraint on the institutions we have to permit and promote the kinds of activity that make this possible. The freedoms of speech and assembly are therefore freedoms that morality requires.

More than a modest degree of improvisation cannot be required since people vary significantly in their abilities to imagine and carry out alternative ways of acting. And grand improvisations are very hard to pull off. If those affected by an action cannot read it correctly, cannot respond in its spirit, then the improvisation is a failure—though not all causes of such a failure are innocent. There is not a lot of room for moral genius, though some for virtuosity.

## VI

So, how much can we be required to do? Most moral theories have difficulty answering this sort of question across their domain. Typically, if how much one is to do in some moral region is not fixed, there will be a minimal standard: *this* much everyone has to do. In certain areas, the minimal standard then comes to be regarded as an independent duty. We see something like this with the strict duties of easy rescue and small kindnesses, a standard of providing help that one may not fall below, and then with the more open duty of beneficence, that allows the agent to determine for herself how much to do, and under what circumstances,

and at what cost. However, since bearing costs is something morality can require, it may seem puzzling why there should be two obligations with the same content, one strict and one open to choice.

One familiar resolution of the puzzle is in terms of imperfect duties—duties whose concept implies room for agent discretion about how and when to satisfy them. Our duty to make charitable contributions allows us to say yes to Oxfam and no to the United Way, so long as we sometimes give. The strictness of easy rescue is then explained as a limiting case on the imperfect one: one could not consistently acknowledge a duty to aid and refrain from helping when the need is great and helping is easy. But even easy rescue is an unstable notion—one easy rescue is easy, but if there are four of the same kind in a row, is it now not easy? If a duty allows for discretion, why can't it be exercised here? and if here, why not in the first place?<sup>15</sup> There does not seem much guidance to be drawn from thinking about a moral requirement this way.

One source of the difficulty with imperfect duties comes from interpreting an agent's discretion as a "count" notion: so long as one does something for an imperfect duty, one is free not to do more. If there are positive duties—of beneficence, to promote justice, of moral improvement—they make little sense as part of an annual "to do" list, something the morally efficient take care of early, and the rest of us race around in December trying to get done. Nor is the discretion like tithing. Tithing is a budgeting device—M% for clothes, N% for housing, 10% for charity. It assumes a whole of which charity is to be a part. Income is a recurring whole used for various purposes; past a certain point, anyone can live without 10% of it. We can budget other resources too—our time and energy, our bodies, our relationships—but it is a perverse way to give a life shape. And unlike charity, the needs beneficence responds to don't come in the form of an annual appeal.

Another way of looking at the puzzle is in terms of the supererogatory. Here an agent does more than is required, but the role of discretion seems different. The central cases are exceptional moral actions, that either because of what they are, or because of their costs, are not required. They are moral actions because the considerations that move these agents belong to morality, and absent the conditions that make the actions exceptional, they are what one ought to do.<sup>16</sup> Moreover, persons who perform supererogatory actions have not merely chosen to do more than they must for *whatever* reason. The reasons for which they act have to be continuous with the moral reasons that apply to all of us. This is perhaps why it would be “off” for the hero or the sacrificer—falling on the grenade, giving up a kidney—to think of what they do *as* supererogatory.<sup>17</sup> She may recognize that the circumstances do not strictly obligate—she would not criticize others for not acting—but if she sees the action as one *she* could or could not perform, genuinely just a matter of choosing, then the action, though praiseworthy, is a different moral animal. Partly, this is because one must correctly value what one gives up.<sup>18</sup> Partly it is because the hero and the sacrificer regard themselves as doing something they have to do. The recognition that the action is supererogatory, and as such praiseworthy, comes third-personally.

When, out of kindness or concern, a person does more than she must—stays later, runs the extra errand, shares a task to make things easier—are her actions supererogatory? Is there anything gained in thinking they are? I don’t think so. Actions of this sort are ordinary, and often provoke a familiar colloquy. The recipient says: “you didn’t have to do that”; “you shouldn’t have”; or “however can I thank you”; and the reply is: “it was really nothing”; “I am happy to help”; “don’t be silly, you’d have done the same for me”. Both movements are instructive. The first step in the exchange acknowledges something, the second does not rebut what is acknowledged, but asks that it be taken a certain way. When sincere, the deflection of the thanks or the praise is a way of describing how this person sees their relationship.<sup>19</sup> For just

this reason, we may sometimes want our gratitude to be accepted as a way of limiting a relationship.

But now imagine the following pattern of action. Presented with a dozen episodes of need of the same kind, *A* helps every other person whose need presents (let other things be equal). In each case in which *A* acts he does more than he is required to do; in no case is there any great sacrifice. In some cases he acts, in some he doesn't. Something here is not praiseworthy, and not because *A* does less than he must, for he does more than he must every time he acts. The peculiarity of the omissions raises a question about the positive actions. If the difference is explained by how *A* feels at the moment of choice, given that *A* recognizes that he is not required to act in any of the cases, then he cannot be taking the need as a reason for action, but the need-when-I-feel-like-responding-to-it. So although the every-other-time helper does more than he must, the way he comes to act, rather than making his actions (or himself) praiseworthy, shows him to be morally capricious. So the puzzle remains.

I think what distinguishes imperfect duties from perfect ones, and what is misrepresented by the count interpretation of discretion, is in the reasons agents may put forward to justify their *not* acting. Perfect duties—not to lie or harm or trespass—can be overridden in the presence of *other* moral considerations. Imperfect duties, by contrast, allow an agent some say about how the duty will figure in her life. One may decide to have nothing to do with large public charities; or commit to working in one's neighborhood; or volunteer for an international relief organization. Right now one may be able to do little: one's work is demanding, or one's children are. As these things change, the role of the positive duty in one's life should change too. As Kant put it: one duty limits another, extending rather than limiting the field of moral action.<sup>20</sup>

Because the morally relevant reasons arise from the shape of a particular life, what must be done will not be the same for everyone.

This might explain why agents who lead morally exceptional lives often see themselves as having to live as they do. Their sense of connection with others, their response to human need, in part defines them.<sup>21</sup> That does not make what they do less praiseworthy—though it is the whole and not each action that is exemplary. It is like joining the fire brigade: you do not have to do it, though you may feel you must; but once you are there, the rest is straight obligation. What may be of further interest is the issue of exit. Leaving to the side issues of reliance that may arise as a result of past choices—how to think about them is not obvious—the fact that a way of life was not required makes it permissible to stop, even though while engaged in it, one is under obligation to act.<sup>22</sup>

Characterizing the sphere of discretion this way comports well with the account of obligatory ends. There is space for creative action—even of a whole life—by way of the structure of obligations of impartial morality. A person with many friends has much wider moral exposure than a person with few or none, and not just because requirements are a function of numbers, but because friendship is a relationship that is partly constituted by mutual dependencies. It is not a violation of impartial morality that one person has to negotiate heavy demands from aging parents while another does not. It may, however, be a violation of *justice* if, for example, nursing costs for elderly parents fall on their children. In such cases, the positive, imperfect duties we get from obligatory ends make us vulnerable to the effects of institutional failures of responsibility.<sup>23</sup>

However, like public education, which is a general entitlement that all children have to start life with adequate equipment, it is hard to see why a decent end of life is not also something we are due.<sup>24</sup> Were there no public schools, individuals would have more extensive obligations than they do to provide children with the skills and resources for a successful and moral life. The fact that this would outstrip the abilities of many possible providers is itself part of the argument for public education. Likewise for provision for the end of life. Indeed, one of the

roles the state should play is to equalize provision of resources in regions of normal need that individuals cannot reasonably be expected to manage on their own.<sup>25</sup> This is why many of our *non-relational* positive duties are best taken care of through social institutions. More generally, there is a moral burden on institutions, beyond those of justice, to do their work in ways that maintain an environment in which we can reasonably deliberate and effectively act.

Still, most of our positive duties involve specific relations—friend, family-member, fellow citizen—and if these relations are both socially formed and idiosyncratically inflected, no determinate account of positive duties is possible. Part of what I do in satisfying imperfect duties is shape the relationships that make claims on me, and in so doing, shape myself. In most instances it is ensemble work, where some things are made possible for me by what others do, on their own and in response to me. Thus the metaphor of improvisation.

So, how much *are* we to do? There is no amount, no set of obligations we can fully discharge, nor should we expect there to be. Rather, there is an injunction to extend the domain of what we are responsible for and to make an expansive notion of due diligence a part of ordinary and intimate actions.

Given this, we should ask a natural last question. Do we need such an ambitious conception of morality, one with obligatory ends and complexly structured, open-ended positive duties? The answer begins with the sort of conjecture I have entertained here: that those subject only to more modest minimal moral requirements on action are not well positioned to negotiate the historically specific social world in which they find themselves. A morality of positive duties under the authority of obligatory ends, rather than assuming that each agent is a complete and competent deliberator, the autonomous author of actions, gives the individual agent responsibility for becoming such an agent, to the extent that she can do this on her own, and for supporting the social and political conditions that improve the chances for rational agency

generally. This way of thinking about morality enlarges the scope of our responsibility; it also discloses some of the extensive resources we have for managing it.

## Notes

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1

. Special obligations are thus not needed to justify such partiality, for the purposes of *impartial* morality are served this way.

2

. That an ordinary agent in ordinary circumstances needs to be able to act confidently and directly, to go about her business without a sense of pitfalls and snares, is not special to morality. One of the reasons so many people resent a certain large software company is that it both inserted its products into ordinary life *and* they are unreliable. Activities of any degree of complexity—skiing, musical composition, cooking—rely on a background of learned skills and assumptions. This does not mean that they are fixed, or immune to innovation. But reconsideration of fundamentals is unsettling and cannot be taken on too frequently without undermining a region of our activity.

3

. That our actions not be of a kind that are bad for us as rational agents makes the justificatory standards of all of our choices more complex: “that I want to” is not ever the full story, even if it turns out that here, and for this choice, “that you want to” is sufficient justification. (Going to see “Dumb and Dumber” doesn’t make you stupid; celebrating a culture that cynically encourages permanent adolescence might.)

4

. This also eliminates a worry about perverse agents—ones whose rational abilities are somehow dependent on their performing immoral acts. Justification tracks kinds; it is then both logically and psychologically possible that there be persons who cannot flourish within the framework of objective value.

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5

. Some attractive activities likewise have acceptable forms in some social worlds, some not.

6

. One might think here of Harry Frankfurt's claim in his essay "The Faintest Passion" that it is "a necessary truth about us that we wholeheartedly desire to be wholehearted." (*Necessity, Volition, and Love* (Cambridge: Cambridge University Press, 1999), 106.)

7

. Insofar as I act because I judge that X is to be done, I intend to X. But whether what I do is to correctly described as X-ing is not in the same way under my control.

8

. And when they do, their continued presence may help keep one honest, or decent.

9

. For related reasons, we speak of obsessions as life-depriving, though they obviously give those subject to them reason to live.

10

. Is there room for moral genius? Would it be a form of leadership by example? Can it be exemplary?

11

. The information that informs this discussion is from Phillip Dray's study *At the Hands of Persons Unknown* (New York: Random House, 2002), and James Allen's *Without Sanctuary*, an exhibition of photographs and postcards of lynchings that can be viewed at <http://www.withoutsanctuary.org/>.

12

. One of the earliest petitions to the United Nations Commission on Human Rights called for international condemnation of U.S. racial policy.

13

. The local is not an absolute notion. Different elements of our lives can be local in different ways. There are things one does in one's family that don't fit outside it; we may choose

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communities of one sort to live in, but of quite another sort for our work, or our vacations. How much variation persons can tolerate or negotiate is hard to say; it may be like the ability to think in several languages—only some can do it. Whether one's moral self has to have a home depends on what we understand the obligations of agency to be. If the gap becomes too wide, the values instantiated too different, the agent's integrity comes into question.

14

. There are other positions one can occupy: a visitor or a child can certainly act in accordance with the rules of the social moral world in which she finds herself without being able to act fully in their terms: a "do in Rome" morality. What may matter to the visitor, but not to the child, is not understanding why the moral world she finds has this or that particular feature; what *will* matter is any serious conflict she finds between the recognized moral rules of the locale visited and the moral actions she understands as required whose values she acts "from" or honors in acting morally. It may be that she discovers the local rules are possible instances of values that are familiar to her; then she can deliberate, awkwardly perhaps, as with any new language. But it may also be that they are not, or that though she can connect the actions and systems of actions with values that are familiar to her, those for whom the actions are local hold other values—that is, that the commonality of morally sanctioned action is in some sense accidental.

15

. One impulse for moving easy rescue out of the sphere of imperfect duties is to remove discretion—its natural extension is good samaritan laws.

16

. There is nothing exceptional in Superman covering a grenade; he ought to do it.

17

. Compare this with the person who, feeling flush, makes an especially generous charitable contribution.

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18

. It is not praiseworthy to save another's life in order to hasten one's own demise, or to give what one doesn't care about having. The pleasure of the saintly in their "way" is not a mark against their sincerity, nor a sign that the choices they have made have not been difficult. It seems an indication or expression that they have found what they find to be a good way to live.

19

. Thus the oddness, and source of hurt, when someone who has sincerely spoken this way, looks at the next situation of the same sort as if it were an open matter of choice. Not that having helped once gives you a commitment to help again; but having taken the need to be a reason, and having indicated that you regarded your action as having no special merit, you have said something about the kind of person you are, or about how you see your relationship with me, and that has to be acknowledged when the need comes around again. There may be no fault: you were just being polite; I heard the remarks as indication of the way you saw things—the kind of person you are; how you took yourself to stand in relation to me. You may have been a bit insincere; I may be overeager to see relationship where there really is no more than kindness. But the opportunity for the misunderstanding implies something about the meaning of the exchange. That is when the exchange has the tinge of insincerity—an exchange of politenesses.

20 *Metaphysics of Morals*, 6: 390.

21

. I am inclined to understand the single heroic act in the same way, though, if the person survives it, less an expression of a life than defining it post factum. This may be why the heroic act can become a burden, something the hero has to live up to.

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22

. Obligations to parents and children, to one's country, have a similar structure, though different terms of entry and exit. The burdens of special obligations give an agent reasons that can rebut the claim of a more general duty.

23

. This problem is particularly acute in the United States. When we consider the way the very old and infirm are cared for, there should be no surprise that the socially confirmed mix of values we have cannot all be satisfied: longevity as a good in itself; technology-intensive medical care; ultimate family responsibility; very limited state support. Perhaps no element is per se wrong or per se necessary; the acute moral problem arises from having them all at once.

24

. It is morally irrelevant that the history of public education legislation involved a need to produce factory workers and to assimilate immigrants, and that no such need is present for negotiating life's exit. Sometimes practical exigencies prompt changes that then allow us to realize moral entitlements.

25

. Where the state acts as my surrogate, the way needs are met often does not and sometimes should not reflect the structure of the primary relationship (it is not the job of the state or its institutions to replace me; it is just to do some of my moral work).