

RESCUE AND HARM:

Discussion of Peter Unger's Living High and Letting Die

F.M. Kamm

I. INTRODUCTION

How much must we sacrifice in order to stop strangers from suffering serious losses, and does distance from them alter our obligations? When may we harm some people to help others? How can we best reason about these issues? These are three general questions—the first two are substantive ones, the third a methodological one—that Peter Unger discusses in his book *Living High and Letting Die* (hereinafter LHL) and that I discuss in this article.¹

Substantively, I believe the book moves as follows: Show that quite generally we must suffer loss of property to stop others' mortal loss; show that quite generally we may impose such loss of property on *third parties* to prevent mortal losses; show that quite generally we may impose mortal loss on *third parties* to prevent greater mortal losses to others; show that quite generally, *we* must suffer mortal loss to prevent greater mortal losses to others, to the point where we have a moral duty quite generally to give up our life to save two lives. Hence, the movement is, for the most part, from what we may do to others, to what we are then required to do to ourselves.

Methodologically, the central aim is to prove that many distinctions between cases in which we or others would suffer losses, distinctions to which some nonconsequentialists attribute moral significance, do not matter morally. (This is why I have said “quite generally” in describing the substantive results.) These include the distinction between harming someone so that he suffers mortally and not aiding him when he suffers mortally, and harming someone by redirecting a threat to him and harming him by using him to stop a threat.

The procedure for showing this is threefold. First, propose that *general* reflection (rather than reflection on cases) reveals our basic primary values, and these leave no room for the importance of many distinctions between cases, relative to the aim of preventing mortal loss. Second, show that

1. Peter Unger, *LIVING HIGH AND LETTING DIE* (1996).

reflection on particular cases, reflection that supports the importance of nonconsequentialist distinctions, is subject to *negative* distortion. That is, it is inaccurate because it veers us away from the basic values revealed by general reflection. Third, support the claim that belief in constraints on harming others is based on such negative distorting tendencies by altering the presentation of cases so as to change the responses we have to the performance of particular acts. This will make the responses more in keeping with basic values that deny the significance of the distinctions. In these revised cases, distortion is *positive*—that is, it leads to judgments about cases that agree with, and hence reveal, basic values. (An example of a positive distorting medium, Unger believes, is salience. It is distorting because it is truly morally irrelevant how salient an event is; salience should not affect our judgment about a case. However, salience does lead us to have more consequentialist intuitions.²) In sum, we may say that whereas many nonconsequentialists fashion principles to match intuitions, Unger's aim is to show that we can fashion cases to match principles.³ This third step also involves showing that our intuitions about cases are inconsistent: For Unger, this means that, in one context, we approve of a constraint on harming; in another context, we disapprove of the very same constraint.⁴

The fourth step is to reflect on the differences Unger has introduced into cases to alter our intuitions about the permissibility of acts and to see that these differences in contexts are not in themselves morally significant. Hence, the same acts in other contexts merit the same response, even if intuitively they do not prompt the same response.

The upshot of Unger's procedure is supposed to be that when there is a conflict between the theses supported by general reflection (e.g., reduce suffering) and judgments about particular cases, we should stick with the results of general reflection, for our intuitions are unreliable and manipu-

2. Unger contrasts his position on intuitions with what he calls negativism, at least insofar as he describes the latter as the complete denial that intuitions about cases reveal any moral truth. See *id.* at 13. In the same paragraph, however, he also describes negativism, not as a methodological principle about intuitions, but as the attempt to bring about consistency between seemingly conflicting intuitions by denying the duty to aid quite generally, rather than extending the duty to aid quite generally. This makes negativism a substantive position about aiding: We need not suffer any loss to reduce mortal loss. Substantive negativism also liberates us from what it takes to be negatively distorted (i.e., non-truth tracking) intuitions about cases, only it sees these as the ones that tell us *to aid*. These are the very ones that Unger thinks are *positively* (i.e., truth tracking) distorted.

3. I owe this summary description to Ghopal Sreenivasan.

4. Consequentialists have often accused nonconsequentialists of being inconsistent. For example, why, they ask, do nonconsequentialists say that we may redirect a trolley to save six from being killed by it when we foresee this will kill one, if we may not save six from the trolley by pushing someone in front of it? As we shall see, Unger repeats this criticism but goes beyond it. He tries to show that sometimes we would say it is permissible to push someone in front of a trolley to save six and sometimes we would say it is impermissible, and this (he claims) is a clear inconsistency. Insofar as he tries to change our responses to acts on the basis of altering what he believes are morally irrelevant features of the context, his technique is like "framing" used by cognitive psychologists Daniel Kahneman and Amos Tversky. See my *Moral Intuitions, Cognitive Psychology, and the Harming-versus-Not-Aiding Distinction*, *ETHICS*, cviii (1998).

lable by morally irrelevant factors. Unger thus presents an *error theory* of nonconsequentialist intuitions. Hence, the nonconsequentialist tactic of presenting case judgments that conflict with the principle of minimizing mortal loss cannot be used to defeat the obligation to minimize mortal loss. For example, Unger suggests that one of our primary values is that people's suffering and dying is bad and more of it is worse than less. Yet, case intuitions sometimes show that we believe that we have no obligation to cut off our arm to prevent a loss of another's life. When there is a conflict between intuitions on cases and the primary value, we should stick to our value.

However, it should be noted that Unger is not consistent in abiding by this recommendation. He considers a case in which, while we are visiting a poor and distant country, we meet someone whose leg we can save. He says it would be "morally outrageous"⁵ to leave this person on the grounds that if we save his leg he will reproduce at a greater rate, leading to an overall increase in human suffering in that poor land. This case intuition conflicts with the general value to reduce overall suffering and death, for future suffering and death are both part of overall suffering and death. Why does Unger think it is permissible to side with the intuition that we must help the person in this case rather than with the general value?

I shall assume that Unger would be willing to revise his judgment about this case and side with the general principle, leaving the man by the road. If he would not, he risks allowing cases to drive the formulation, acceptance, and rejection of normative principles in the way they have for nonconsequentialists. This would be contrary to his stated view that, rather than preserving our original intuitions—a hopeless task anyway if they are inconsistent—we are (correctly) liberated from them as primary guides to moral truth.

It must be emphasized that the fact that Unger's ultimate thesis is that we should make moral decisions using only primary values does not mean that in proving the thesis his method ignores case judgments. It is important to his project to show us that our responses to cases will change in the direction of primary values if he alters cases in certain ways. If our intuitions about cases do not in fact change as he says they will, his arguments against relying on case judgments in deciding what to do will not succeed. Likewise, his arguments against the existence of nonconsequentialist constraints on preventing mortal loss will not succeed. (It is when he asks us to consider whether the alteration in cases that [supposedly] changes our intuitions could possibly be morally important in itself—the fourth step in the method—that he relies on reflection rather than on intuitions in cases.)

Of course, it is important that Unger, who believes that intuitions about cases are subject to both positive (i.e., value tracking) and negative (i.e., value veering) distortions, have some method besides cases for identifying

5. Unger, *supra* note 1, at 37, n. 7.

correct values. For without knowing what the truth is, we will not know whether what he thinks are negatively distorted cases (i.e., ones that lead away from the truth) really are taking us away from the truth. As noted, his method for finding the true values is direct reflection on general claims, such as that mortal loss should be minimized.

I do not believe that Unger is successful in proving either his substantive or his methodological claims as I have described them. In this essay, I shall first consider his claims about the duty to suffer losses of property and the permissibility of imposing losses of property on others in order to save people. I shall pay special attention to whether distance or salience alter our duties. Then, I shall critically examine his attempt to move from the permissibility of physically harming some to save others in some cases to the general claim that we have a duty to physically harm ourselves to save others. The methodological claims will be evaluated as well. Along the way (in Section IV), I shall present a positive alternative account of some of the cases Unger discusses. However, the correctness of this alternative is not essential to my critical argument. In conclusion, I shall discuss his project of reconciling his views with our ordinary moral judgments with which these differ.

II. DOES DISTANCE MATTER MORALLY TO THE DUTY TO RESCUE?

A. Distance vs. Salience

Our so-called common-sense intuitions about cases suggest that we think that at least sometimes we have a stronger obligation to help those in need who are physically near us than those who are at a greater distance.⁶

Those who think distance itself does matter do not believe that it is the only factor that matters, of course. For example, if I can help more people at a distance and fewer who are near, this might be a reason to help the distant. Furthermore, to say that distance matters is not to say that we need do *nothing* to help distant strangers; nor is it to say we must do *everything* to help strangers who are near. To say distance matters is just to say, minimally, that other things being equal, we will have to do more for the near than for the distant. One measure of this difference could be whom we have a duty to save when we cannot save all; another measure could be differential upper limits on required costs to ourselves for saving—higher for the near

6. The material in Section II of the present article derives from a more complete description of the topic. See F.M. Kamm, *Famine Ethics: The Problem of Distance in Morality and Singer's Ethical Theory*, in SINGER AND HIS CRITICS (Dale Jamieson ed., forthcoming 1998). The material in Section III represents my article *Grouping and the Imposition of Loss*, in UTILITAS (November 1998). I am most grateful for the opportunity to present for the first time and to a legal audience my complete discussion of Peter Unger's *Living High and Letting Die*.

and lower for the far. The classic set of cases that has been used to make this point was presented by Peter Singer.⁷ Here is a variant of it:

Pond: I am walking past a shallow pond and see a child drowning in it. If I wade in and pull the child out, my \$500 suit will be ruined. I ought to wade in to save him.

Overseas: I know there is a child starving to death overseas. To save him, I must send \$500. I am not obligated to do so.

If we are using cases to see whether distance per se matters, all other factors in the cases should be held constant. But these two cases have many differences between them besides distance. In *Overseas*, money is a means to saving someone. In *Pond*, money will be lost as a consequence of wading in, which is the means to saving someone. The person who is near me in *Pond* may well be a fellow citizen or member of my community, whereas the person overseas may not be. In *Pond*, I may be the only one who can help, but not so in *Overseas*. In *Pond*, we may be assured our efforts will be efficacious; in *Overseas*, we cannot be sure our efforts will pay off. That a child is starving in *Overseas* may suggest that an issue of basic justice is at stake, rather than a life-threatening accident as in *Pond*. We might eliminate these differences (if not others) to better focus on the role of distance per se by revising the cases as follows:

Near Alone Case: I am walking past a pond in a foreign country that I am visiting, and I *alone* see a child drowning in it and I alone can save him. To save him, I must put the \$500 I have in my pocket into a machine that will *certainly* scoop him out.

Far Alone Case: I *alone* learn that in a distant part of a foreign country that I am visiting, a child is drowning and I alone can save him. To save him, all I must do is commit the \$500 I carry in my pocket to his cause so that rescue machinery can *certainly* save him.

Near Many Case: I am walking past a pond in a foreign country that I am visiting, and I and many others see a child drowning; any of us can save him, but the others will not. To save him, I must put \$500 I have in my pocket into a machine that will *certainly* scoop him out.

Far Many Case: I and many others learn that in a distant part of a foreign country that we are visiting, a child is drowning; any of us could save him but the others will not. To save him, all I must do is commit the \$500 I carry in my pocket to his cause so that rescue machinery can *certainly* save him.

7. In *Famine, Affluence, and Morality*, reprinted in *WORLD HUNGER AND MORAL OBLIGATION* 22–36 (W. Aiken & H. LaFollette eds., 1977); and Peter Singer, *PRACTICAL ETHICS* (2d ed. 1993).

Near/Far Case. I learn that in a distant part of a foreign country that I am visiting, a child is drowning and someone is near him. Either one of us could successfully help by depositing \$500 in a device that will trigger a machine that will scoop the child out. Who has a stronger obligation to help?

Do we still intuitively believe there is a difference in our responsibility in these cases that at least may be based on distance? I suspect so. Of course, the difference may not be due to distance *per se*, as there may still be important differences among these cases besides distance.

The methodological point here is that if we are trying to find out whether a factor *x* matters *per se* in our intuitions, we must construct a set of comparable cases, one with factor *x* and one without it, and hold all other factors in the two cases constant. I call this “equalizing the cases.” (The methodological issues here are the same as in the discussion of whether killing and letting die are intuitively thought to be morally different *per se*.⁸)

Suppose we formed a set of equalized cases in which distance intuitively made *no* difference. Would this show that distance *per se* intuitively makes no difference? No, because the claim that distance *per se* matters intuitively is not the claim that it *always* matters intuitively. (It could be overridden by contextual factors.) It is the claim that at least sometimes it matters intuitively; that is, if there is even one case in which it *does* matter, this shows that it matters *per se* intuitively.⁹ If someone found that there was an intuitive difference between Near Many and Far Many but not between Near Alone and Far Alone, distance would still be of some significance *per se*, though it would be a less important factor than if it had import in a wider range of cases.

Similarly, if famine relief implicates issues of basic justice and distance is not relevant to the duty to promote basic justice, distance could still matter morally when other aid is at stake. (Notice that a duty to promote basic justice may only obligate us to support just institutions, not to aid directly. Even the strength of this obligation may vary, not with distance, but with social membership.) Suppose one found an intuitive moral difference only in the Near/Far Case. One might then claim that those who are near have first responsibility to aid, but if they cannot or simply will not, those who are far have as strong a responsibility to aid as those who are near. (This would be like arguing that one has a stronger obligation to one’s own children than to one’s sister’s, but if one’s sister’s children are orphaned, one has as strong an obligation to them as to one’s own.) This claim would be consistent with there being no intuitive difference between Near Alone and Far Alone or between Near Many and Far Many, and yet it would still reveal that distance mattered *per se*.

8. For detailed discussion of that issue, see F.M. Kamm, 2 MORALITY, MORTALITY chs. 1–5 (1996).

9. Assuming nonintentional contexts.

It is plausible to assume that certain contextual factors should be altered equally in the Near and Far cases in the hopes of finding cases where distance intuitively matters. For example, as we vary the effort required to aid, we should look to see whether we think we have an obligation to aid at large cost in the near case but not in the far. We could also vary probability of success of the aid equally in both cases to see, for example, whether we intuitively believe that we are obligated to aid in the Near Case but not in the Far Case when probability of success is low. We could vary how great a harm or absence of benefit is at stake for the person not aided, and see if we must help prevent a small harm that is near but not a small harm that is far.

We must also be more precise about whether we are interested in the intuitive moral significance of any difference in distance or rather a certain type of difference in distance. There is a difference in distance when one child is near and another is in a distant part of the country. But a third child could fail to be near me yet be much closer to me than the one in a distant part of the country. Would there be any case in which our intuitive responses would tell us that our obligations to this third child were weaker than to the near one but stronger than to the more distant one? The claim that (1) all intervals of distance matter intuitively is different from the claim that (2) the distinction between the near and far matters (where the non-near is the far). The latter claim is compatible with there being no intuitive differences in our obligation to the second and third children. I suspect that it is really the second claim with which the problem of distance in morality is concerned. Hence, we really want to know if *proximity* matters intuitively.¹⁰

Following in Peter Singer's steps, Unger argues against even the intuitive significance of distance in the course of his discussion of variations on two other Near and Far Cases, Sedan and Envelope.¹¹ In the first version of Sedan, we are driving by some stranger who is near us and who needs to be taken in our vehicle to the hospital. If we do not help him, he loses a leg. If we do help him, damage is done to our car that will cost us \$3,000 to fix. In the first version of Envelope, we are asked to send money to needy strangers who are far away (their plight is not the result of an accident and implicates basic justice). Intuitively, we think we have a stronger duty to aid in Sedan than in Envelope (even though in Sedan one person will lose a leg if we do not aid and in Envelope many will have their lives saved at less cost to us than in Sedan). The question is what difference between the cases accounts for our intuitive responses (even if it does not justify them). Unger's strategy in answering the question is to consider various candidate differences by, for example, (a) removing a difference from Sedan to see if our intuitions

10. I owe this point to Julia Driver and Jerrold Katz.

11. Unger, *supra* note 1, at 24–36.

change from the original Sedan, and (b) adding the difference to Envelope to see if this changes our intuitions from the original Envelope.¹²

Unger removes nearness from Sedan and claims that when we hear on our car radio that someone at a distance needs aid, our sense of obligation to drive him to the hospital is not reduced. Next, Unger considers a version of Envelope to which nearness is added: On vacation, someone visits a poor country. Near his vacation house people are dying. He receives an envelope in the mail from a local charity asking for money.¹³ Unger thinks that, at least intuitively, we believe the visitor does no wrong in not giving the money. Unger believes it is salience and not nearness that our responses to cases track, *even though he does not think salience can be theoretically justified* as a morally relevant difference determining obligations.

My claim is that if the Near and Far Cases also differ in salience, it is nearness and not salience that gives rise to our intuition that we have a strong obligation to help in Near. That is, when we think we have a strong obligation to aid in Near and not in Far, it is the difference in distance represented by the cases rather than the difference in salience that is determinative of the sense of obligation. This is contrary to what Unger argues for. If it can be shown that it is distance and not salience that drives our intuitions, this does not yet show that our intuitions are justified. That is, we would need a separate argument to show that, as a theoretical matter, we can justify using distance to distinguish cases. I shall first concentrate on accounting for our intuitions. Only later shall I say something about justifying them.

Salience of need refers not only to the obviousness and inescapability of noticing need, but also to the continuing imposition of this knowledge on us. Unger,¹⁴ for example, says salience is not always present when something is clearly visible close up, for we may well be able to pass over what we notice. The salient event, according to him, is the one that attracts and holds our attention so that we cannot stop thinking about it; it presses itself upon us. Thus, need that is near and obvious may not be salient if I can simply put the need out of my mind. This understanding of salience suggests that it is “subjective salience” with which Unger is concerned: Whatever a person cannot get out of his mind is salient to him. But there is also a notion of “objective salience,” which suggests something that is such that it would attract and hold the attention of a normal (or ideal) observer.¹⁵ When I want to distinguish varieties of salience, I shall speak of S_s and S_o .

12. The first step, I believe, is a sounder way than the second of seeing whether a factor has an effect in the original Sedan. This is because if a factor is “exported” into the Envelope Case, as in the second step, it may have no effect in its new context, but this will not show it had no effect on its home ground. (This is due to what I call the Principle of Contextual Interaction.) For discussion of these points, see Kamm, *supra* note 8.

13. Unger, *supra* note 1, at 34.

14. *Id.* at 28.

15. I owe notice of the importance of this distinction between subjective and objective salience to Michael Stocker.

Some need that is near may be S_s and S_o , even though it is not obvious or easily observed. For example, suppose I am informed by a detecting device that someone just outside my door is dying and I could help. Even though I cannot see or hear him (and he cannot see or hear me), his need can be salient to me in the sense that I cannot stop thinking about it and a normal individual would not stop thinking about it (Door Case).

Need that is at a distance could be salient. Suppose I have very long-distance vision and can see great need at a distance; the need is then obvious. The need may also be salient in that I cannot get the scene out of my mind and a normal observer could not. In the Far Cases, as described, we can assume I do not have long-distance vision. Let us assume this makes the need nonsalient in both senses. In the Near Cases, the child's need is obvious and, let us assume, salient in both senses. Hence, salience-via-sight is not equalized in the two types of cases.

Here is the key point in showing that, contrary to Unger, it is not S that our intuitions about obligation track: The mere fact that we cannot take our mind off of someone's need does not mean that we would think it impermissible to do what *would* take our mind off of it, if we could, though this interfered with our aiding. If we do not think there is some other reason besides salience why we have a duty to aid, I think we intuitively believe that we may eliminate salience, even if this interferes with our aiding. If we think it would be permissible to do what would take our mind off of the need, though we then do not aid, this indicates that salience alone is not generating the intuition that we have an obligation to aid, for if we believed salience gave rise to an obligation, we would think it wrong to alter the salience if this reduced our tendency to help. Here is an example: Suppose that when I directly see the suffering overseas with long-distance vision, I also cannot stop thinking about it. Is this likely to make me send money when I would not otherwise? I doubt it. But, if it *is* likely to lead me to send money to aid, I may sense this only as psychological pressure, which is not the same as a sense of duty. Indeed, I intuitively think this is one of many cases where it would be permissible to do what eliminates the salience of need, unless there is some other ground for a sense of duty. For example, I think it is sometimes permissible to turn off my long-distance vision if this will help me stop thinking about the long-distance need and make it less likely that I will aid. It is probably because I believe that I am not strongly responsible for helping these distant people that I think it is permissible for me to eliminate the salience of their need, so the salience of their need does not imply that I think I have a duty.

This applies to S_o , too. Suppose the person I see with long-distance vision is truly striking, dressed in a clown suit and much more dramatically exhibiting his need; he stands out from the crowd of equally needy people—so that a normal observer would attend more to him. I do not intuitively believe that I have a greater obligation to this person than to the others at

a distance, even if I feel under more psychological pressure to aid.¹⁶ I may permissibly reduce a certain sort of S_o of this person by getting rid of my long-distance vision (as seeing him may be what makes it impossible for an ideal observer to forget him).

By contrast, suppose the person outside my door is in great need. As noted above, his need may be salient (S_s and S_o) even though it is not observed. May I take a pill to eliminate its salience? If I think that I am obligated to help someone who is near, I should not eliminate salient knowledge if it is necessary to help me fulfill my obligation. Another sign that I intuitively believe it is nearness that obligates me to help is that once I am near, I do not think I am permitted to move myself to a greater distance merely in order to avoid being near. (Though I may move if this is necessary to bring aid.) Contrast this with my sense that I am permitted to change the salience of need if no other factor obligates. If I thought salience obligated, I would not be permitted to change it to avoid being obligated, as I believe I am not permitted to change nearness in order to avoid being obligated.

I have argued that we may not alter the characteristic (our nearness) that we intuitively think gives us the obligation once we have it in order to avoid the obligation. This does not mean, however, that we *have to acquire* the characteristic, that we may not avoid having it. For example, if I want to have a quiet vacation, intuitively I may permissibly avoid going to places where I am likely to have an obligation to aid those near me. By contrast, if I have an obligation to aid independent of distance, I may well have a duty to go where I can be useful.¹⁷

Now let us reconsider Unger's variation on Sedan and Envelope. As noted, he removes nearness from Sedan by arranging for us to hear on our car radio that someone at a distance needs aid. By contrast with Unger, I believe that our intuitive responses *do* change, and we sense a reduced obligation once we take account of the fact that what is costlessly "near by car" may be farther away than what is near if I am not in a car. He changes Envelope so that someone visiting a poor country receives an envelope from a local charity. Unger claims that intuitively the visitor has no greater obligation to give than when the country is distant from him. One alternative analysis of this revised case¹⁸ is that the visitor need not give only if the money will not go to the *very* people who are in need near his vacation house. If it is clear that the money will go to the people next door, intuitions say he *is* under the more stringent obligation to give. A second alternative analysis explains why he does no wrong in not aiding

16. One way in which salience works is to help me to really understand someone's need. But when I understand what the person's need is really like, I now also understand what every other person who is as needy is going through. So, insofar as salience is revealing of need, one would expect that salience would lead me to help everyone—salient or not—who is so needy. It would not bias me in favor of helping just the person who is, in fact, salient.

17. Similarly, Unger believes not only that I have an obligation to give away money once I have it; he also believes I must go and earn money in order to have it to give away.

18. Which I owe to Franklin Bruno.

directly by distinguishing issues of basic justice from accidents: If many people outside his vacation home are drowning, the visitor should save the one he can.

In sum, salience and distance are not only different concepts, but far things can have salience and near things can lack salience. Salience alone does not intuitively ground an obligation (let alone truly ground an obligation in being theoretically justified). Evidence for this is that we think it is permissible to eliminate salience when there are no other grounds for the obligation to aid. Obligations do, at least intuitively, seem to vary with the near and non-near in some cases; near things should be salient if this aids us in meeting the obligation that nearness generates. The obligation can be avoided by staying far rather than being near. At least, I claim, this is the report of our intuitions.

I have also distinguished between Far cases that involve starvation and those that involve accidents. I said that the former seem to raise issues of basic justice, whereas the latter only raise the issue of duties of beneficence. I have only claimed that intuitions in accident cases track differences in proximity.

It is worth pointing out that in drawing these distinctions, I may be taking a stand on the so-called two-subject question: Should issues of social justice be distinguished from issues implicating the individual's duty of beneficence, or does the latter underlie and reflect the former? The view that there are two subjects (justice is separate from beneficence) is Rawlsian.¹⁹ By contrast, some (e.g., Liam Murphy²⁰) see only one subject: The duty of beneficence both underlies concern for basic justice and the same principles governing institutional action to achieve basic justice should govern individual morality.

Suppose there is a duty to aid in Near Case and not in Far Case (both involving accidents). This supposition in combination with the claim that there is no difference between the duty to secure basic justice and the duty of beneficence would imply that there is no duty to help in Overseas Case either. But I suspect there is some duty to support basic justice in Overseas. Hence, I conclude that the two-subject view is correct and the one-subject view is incorrect.

This does not mean that the duty to support basic justice is to be carried out by individuals directly. (This may give rise to a mixed reaction to giving to Oxfam: On the one hand, Oxfam is concerned with what basic justice is concerned with; on the other hand, Oxfam requests direct giving.) Individuals may only have a duty to support institutions providing basic justice. Furthermore, the strength of the duty may vary with social membership—stronger to one's own society, weaker to other societies—even if it does not vary with distance, as the duty of beneficence seems to.

19. See John Rawls, *A THEORY OF JUSTICE* (1971).

20. Liam Murphy, *Institutions and the Demands of Justice*. Unpublished paper presented at the New York University Colloquium on Law, Philosophy, and Social Theory, 1997.

If we intuitively think obligations can vary as a function of proximity, we can account for our responses to two puzzles that Unger raises.²¹ In the first one, someone who has already given a lot to Oxfam feels morally free to refuse to respond to another request for lifesaving aid. The same person, however, does not feel that simply because he has already given a lot to Oxfam, he may refuse services to a person he meets on the road who needs lifesaving help. Because Unger denies the significance of distance, he concludes that one cannot refuse the additional Oxfam request for aid to distant lands anymore than one can refuse the person on the road.

But suppose we think we have a duty to help those who are near and not as strong a duty to help those who are far. Then, by our intuitive lights, giving a great deal to Oxfam will either not have been a duty or will have satisfied whatever duty of direct aid we have to the distant. Performing supererogatory acts or different duties at one time does not necessarily relieve one from doing a different type of duty at a later time; for example, to help the stranger one meets on the road.²² But doing supererogatory conduct at one time or fulfilling one type of duty *can* relieve one from doing more of the same at a later time; hence, the sense that one may permissibly decline the additional Oxfam request in good conscience.

What if one has already performed a duty, for example, saved someone that one came across on the highway, and then one receives a request from Oxfam? Having performed a strenuous duty can lead one, in good conscience, to refuse a strenuous supererogatory act—if it is such—without even being ungenerous. Can having performed a strenuous duty of one type relieve one of performing another of the same type, for example, saving the next person on the highway? Only if there is a limit to how much of a price one must pay to perform such duties.

Hence, it is not merely that one has aided in the past, but whether one's aid was seen as a supererogatory or a different type of dutiful act that can affect one's sense of what one must do in the future.

Unger's second puzzle arises in connection with his views on what he calls "futility thinking." This is the tendency to not help anyone if one cannot help a significant proportion of those who need help. (He claims that salience helps overcome futility thinking.) The puzzle is: When do I *not* have a case in which I can only help a nonsignificant proportion of those who need help? Unger says that the case in which I can definitely save the only person near me who is drowning is *not* a case in which I can take care of

21. Unger, *supra* note 1, at 60–61.

22. Exceptions can arise if doing the supererogatory act has the further effect of *raising* the costs one would have to make to perform one's duty. For example, suppose Albert Schweitzer has been serving the poor his whole life supererogatorily, and this results in his only having a few days left in his life to play the piano. The cost of giving up one's *last chance* to play the piano might relieve him of certain duties to others.

“the whole problem,” anymore than I do when I save a few of those doomed by starvation in distant Africa.²³ This is because the one person who is drowning is just one of many people in the world who are drowning. But suppose we sometimes intuitively distinguish morally between cases of near and distant aid. Then it is understandable that when I take care of the only person near me who needs aid, I think I have completely dealt with a problem.

B. How Does Distance Matter?

Suppose our intuitions suggest that proximity can alter our obligation to aid. Does this mean that our intuitions support a greater duty to aid a person who is near than one who is far? Unger and all discussants of this issue that I know of believe this follows. If I do have a stronger duty to help a near person than a far one, does this imply that it would be wrong of me to help the far one rather than the near? Unger also believes this implication holds. I shall now try to show that both these claims are false.

I shall try to rebut the first claim by considering certain selected cases. The general point of all the selected cases that I shall present in this section is that the intuition that nearness matters morally does not, contrary to what is commonly thought, conflict with our having a strong obligation to help distant strangers.²⁴ In the first case, suppose I am *near to a threat* that will shortly travel *far* away and kill someone who is far from me. (Call this the Near Threat Case.) Must I help that far-away person? My sense is that, intuitively, my obligation to stop the threat to him, like my duty to help in the Near Case, is strong. So, without leaving the level of intuitive responses, we see that *when the threat is near to the agent but the victim is far*; the agent still has a strong duty to help. Hence, *even if nearness is intuitively important, it does not imply that we have no strong obligation to distant people*.

We can conclude that, intuitively, we think that we have greater obligations to take care of *what is in the area near us*, whether this is threats that will cause harm at a distance, or persons who are or will be victims. Hence, the view that the distance between ourselves and needy strangers matters morally is too narrow, for it is also the distance between ourselves and threats that seems to matter. Contrary to the common view, our intuitions do not tell us that we always have weaker obligations to aid strangers who are far than those who are near, yet this is consistent with proximity making a moral difference. This is because it may be our *nearness to a threat* to distant people that is morally relevant.

Now, consider a second case in which the agent is far both from the victim and from the threat to victim (which is either close to or far from the

23. Unger, *supra* note 1, at 41.

24. Again, I am focusing on accident, not basic justice, cases.

victim), but the agent's means are near to the victim and can be activated by the agent (by remote control). (Call this the Means Near Victim Case.) I suggest that, intuitively, we think that the agent has a strong obligation to let his means be used because something efficacious that he owns is near to the victim, even if he is not.²⁵

Similarly, suppose that the agent is far from both victim and the threat (which is far from the victim), but the agent's means are close to the *threat* to victim, though far from victim. (Call this the Means Near Threat Case.) Again, I suggest that, intuitively, we think that the agent has a strong obligation to let his means be used because something efficacious he owns is near to a threat that will eventually harm the victim.

If the agent is far from victim and threat and his means are also far from victim or threat, intuitively the agent would not be strongly obligated to aid barring some other relevant consideration.

If this is so, does it open a truly vast potential obligation? Consider that one's money now seems to be locatable almost anywhere owing to banks and cash machines.²⁶ Suppose there is a cash machine in a distant part of India, and with it I could access my money if I were there. If my money is there whenever I need it (or anyone who has my code needs it), why is it not simply *there*? I believe there is still a difference that may have moral significance between (1) things of mine being transmitted to distant India rapidly or things that are not mine becoming mine rapidly (in virtue of exchanges in bank balance), and (2) what is mine being there, in distant India, already. Certainly, my money cannot now actually be wherever there is a cash machine that would give me money if I were there, for that would mean my assets were enormous, when actually they are very small.²⁷

Once again, intuitions support the claim that I can be obligated to help those who are not near me, even while also confirming that, at an intuitive level, nearness seems to matter morally. Our most recent cases also show that reference to distance between *ourselves* and strangers or threats is misleading, as it may be distance between our *means* and strangers or threats that is important.

It is now possible to see an important relation between the case in which my means are close to victim (or threat) but I am distant, and the cases in which an agent who is near a victim (or threat) makes use of means that belong to neither him nor the victim, but to someone else who is distant (Distant Owner Case).²⁸ Peter Unger discusses a case like Distant Owner. In his Yacht Case, an agent takes a boat that belongs to another to help

25. If the means is the agent's employee, he does not, of course, own the employee. Nevertheless, I shall understand him to have a relation similar to ownership to his employee, for our purposes.

26. I owe this point to Sigrun Svavarsdottir.

27. Liam Murphy suggests an alternative account: Money is too abstract to be dealt with like concrete means. (If it were in a sack next to a child in distress, this might not be so, I suggest.)

28. As a matter of biography, it was by trying to explain what goes on in such a case that I stumbled upon the possibility of separating the location of agent and means.

someone near him. The rescue will result in a million dollars worth of damage to the boat for which he cannot compensate. Unger compares this with the Account Case in which a delivery boy to the office of a rich person can do a computer transfer of funds from the rich person's account to UNICEF's. Unger claims that our intuitions are approving in Yacht and disapproving in Account, but there is no morally significant difference between them. Before we consider Unger's case, consider my Distant Owner Case.

Suppose a rich foreigner is in Chicago, but his boat is at Cape Cod where a victim is drowning. I am at Cape Cod, observing the victim, and the boat is near to me and the victim. One justification for my taking the boat to help victim is that if the owner of the boat were near, he would have a duty to use his boat to help victim. He is not near, but his means are, and so, according to what was said above, he is intuitively thought to be obligated. In taking his boat, I help him fulfill the duty he has even while he is in Chicago, in virtue of his means being near.

One difference between Unger's cases, which might be suggested on the basis of my analysis, is that the owner's yacht in Unger's case is near the victim, though the owner is not, but in Account, *both owner and his means* are far from the victim or the threat to him. In Yacht, when I take the yacht to help someone, I am carrying out someone else's duty for him, either based on his nearness or the nearness of his property.²⁹ In Account, I cannot say I am enforcing an owner's obligation to victim if nearness is a ground for obligation. It is also true in Account, but not in Yacht, that the *agent* is not near the victim.

If the nearness of the yacht but not the account were explanatory of different intuitions, what about the following revised version of Account? On his way in, the delivery boy sees someone in danger nearby. (An accident, rather than social justice, like the Yacht Case.) Only if he transfers funds out of the rich person's account will a machine that will help the endangered person be activated. Here we have made the account near the victim, so if we still think the delivery boy may not transfer funds, the factor to which I have pointed will be insufficient alone to explain the difference between Yacht and Unger's version of Account.³⁰ Suppose the money that would be transferred in this revised Account Case is from the yacht repair personal account of the owner—that is, money that was set aside for a luxury rather than for a business item.³¹ Furthermore, the transfer is intended to be temporary; the transfer that makes the machine work is needed only for a short period of time; however, it is foreseen that some of the money (a million dollars) will get eaten up in transaction costs. I suggest

29. Oddly, even though Unger thinks he has shown, in ch. 2, that the owner of the yacht has a duty to use it to rescue, he does not make use of the conclusion in deciding why I may take the owner's yacht to do a rescue.

30. I owe this point to Wei Cui.

31. I owe this point to Dr. James Hicks.

that these changes, but only in combination with nearness, may make the delivery boy's transfer as acceptable as taking the Yacht.

But if we have isolated nearness as a reason why we think it is *permissible* for the agent to take the boat in the Distant Owner (and Yacht) Case, how can we explain our sense that he is *obligated* to do so? If I am *near*, I seem to have an obligation to take advantage of another's obligation in order to help the victim. If I am far away (in Alaska) but see the victim in Cape Cod via long-distance vision, do we think I am as strongly obligated to move (by remote control) the means at Cape Cod owned by someone who is in Chicago? Our intuitions say no, I believe. Hence, even if the person in Chicago is thought to have an obligation to use or let his means be used, it does not seem that I am as obligated to act on his obligation if I am distant from victim (or threat).³² However, we think it is still permissible for me to do so.

Now, suppose the Chicago person's boat is close to him but *at a distance* from the victim (it is on Lake Michigan). I am near the victim (or threat) on Cape Cod. Do we believe I have a strong obligation to move the Chicago person's boat to help victim? Is it even thought to be permissible for me to do so? These are, of course, two different questions. The first question also suggests two separate issues: What do we think my obligation is, and what do we think the obligation is of the owner of the boat? When the owner is distant from victim or threat,³³ and his means are as well, intuitively he has no strong obligation to aid. So, in this case, I cannot justify bringing his distant means to use at Cape Cod by saying I am the agent of his obligation, for he is not thought to have any. Does my felt obligation in virtue of my nearness give rise to a felt obligation on my part to use the means that another is thought to have no obligation to use and that belong to him? (This is what Unger seems to be considering when he imagines that I am near a drowning victim and I must forge a check on a billionaire's account in order to buy a yacht to save the victim.) Possibly I have such an obligation, but I doubt it. More likely, I am thought to have a strong excuse rather than a justification for taking the other's means. But notice that this is still different from the case in which I am not near a victim or a threat, and I am tempted to use means that are not near victim or threat and whose owner is not near victim or threat (arguably that is what is true in Unger's Account Case).³⁴ If the means that are distant from me are *unowned* and I

32. And distant from victim's own means either, I should add, though the significance of this point will not be clear until later. I should also add "distant from the Distant Owner's means." That is, suppose there could be cases in which I am near the distant owner's means but not near the victim or threat (or the victim's means), even though the means themselves are near to at least one of these. I do not think that being near the distant owner's means—any more than being near any owned useful thing—will give me an obligation to use it.

33. And victim's means, as we shall see below.

34. In that case, agent is distant from victim or threat, means are distant from victim or threat, and the owner of the means is distant from victim or threat.

have a strong obligation arising from my nearness to victim, I do, intuitively, have a strong obligation to employ these distant means by remote control.

Classifying all these Distant Owner Cases as our fourth type, let us consider a fifth case. It is a version of the Near Case in which I see a lifesaving machine that belongs to victim floating in the pond near me. Unless I throw my \$500 jacket in the pond, thereby ruining it, the machine will go down the drain. The point here is to construct a case in which *the means belong to the victim, the agent knows this, and these means are near the agent when the victim and threat are far from him*. (Call this the Victim's Near Means Case.) In this case, intuitively, the agent has a strong obligation to save the machine that will help the distant victim. If the victim's machine were distant from the agent (and the victim and threat were also distant), there would not intuitively be such a strong obligation.³⁵ Once again, our intuitions tell us that the strong obligation to help a distant stranger is consistent with nearness having moral significance, and it is our nearness to the victim's means that is relevant.

In the sixth case, my efficacious machine, which is distant from me, the threat, and the victim, *is near the victim's means*, which are distant from agent, threat, and victim. (Call this the Means-Means Case.) (It is a case in which the means of both agent and victim are present.) My means can rescue the victim's means, which can then help him. My sense, in this case, is that, intuitively, I have a stronger obligation to aid in virtue of some form of morally relevant nearness than if there were no nearness. Once again, I intuitively seem to have a duty to help someone far from me, and yet this is because nearness is intuitively a matter of moral significance. This time, it is nearness of my means and the victim's means.

My tentative conclusion is that the problem of distance in morality should be understood as whether we can justify our intuition that we have a greater responsibility to take care of what is going on in the area near us or near our efficacious means, whether this involves needy victims, threats, or means belonging to victims.

But there is one final question to be dealt with in this section: Given that all these factors are relevant in the issue of distance in morality, is there still some greater weight given intuitively to some of these factors relative to others? My view, based on intuitions I shall not here describe in detail, is that the responsibility to the near person is stronger than that to other near factors, and nearness to an agent has greater significance than nearness to an agent's means. Responsibility to deal with a near threat may take precedence over dealing with a victim's near, or an agent's distant, means.³⁶

35. However, it is possible that when a victim has the means to alleviate his condition but is far from them, there is still an impetus on those who are also distant from these means (and from the victim and threat) to help the victim get his means, greater than if his rescue depends totally on means belonging to others. This is not because there is reduced cost in saving him if we use his means (because there may be no reduction), but because there is a sense in which we conceive of him as *more self-sufficient*. This issue deserves further examination.

36. For more detail on this and other points in this article, see Kamm, *Feminine Ethics*, *supra* note 6.

My tentative conclusion has been based on consideration of near cases in which aid is to be rendered at the time the agent or means are near. But what if, for example, when agent is near to victim or (to-be-victim) he does not then know of his plight. Consider the following case, which I call a Temporally-Variou Case:

Near-Then-Far. I am passing nearby the child drowning in the pond, whom I am able to help. But, through no fault of mine, I do not know I am near (i.e., I do not know I am near the person and I do not know he is in danger). When I am already far away, I first learn that I was near him when he was in trouble. I can still save him from that trouble by putting the \$500 in a device that will activate a machine to scoop him out.³⁷

I believe that, intuitively, the obligation to help is stronger than it would be if I had never been near. Hence, I can be obligated when I am far because I once was near the person in danger. The obligations I have at t_n to take care of the problems going on in the area near me is not limited to problems in the area near me at t_n .

What if when I was near, the person was not in danger but only became endangered once I was far? Intuitively, I think our obligation is not stronger than in ordinary Far Cases. So, the fact that I was near (or, I would also say, *will* be near) someone does not mean that I have a stronger obligation to help if it is only when I am far that he is in danger.

Now we should consider different temporally-various cases. In these, I was near a *threat* to a distant person, or near a far victim's means when it could have been useful for rescue, but I did not know it; now I am far from these (as well as victim) but am able to stop the threat or get the means, that are still needed for the same purpose, to the victim. My sense is that, in these cases, it is also true that now that I am far, I have a greater obligation to help because I once was near.

What if in these temporally-various cases it is not I but my efficacious means that were near to victim, threat, or victim's means, but my means were then not known to be near or useful? Now they are far but still can be useful. My sense is that intuitively the obligation to aid is greater than in other Far Cases. A possible difference between *my* having been close and *my means* having been close is that it is only the means that were close that one may be obligated to use when far. But if I was near, it is not only what I could have used at the time to help that I may be required to use now that I am far.³⁸

In another form of temporally-various case, a problem is now going on in an area from which I and my means are now far but it will still be present when I or my means are near in the future. It is only now that I or my

37. I owe this case to David Mellow.

38. If my device was not useful at the time but is now that it is far, it was not an efficacious means at the time, and I do not think its past presence obligates me now.

means can deal effectively with the victim, threat, or victim's means. Intuitively, I do not think I am more obligated to deal with a problem that *will* be near but is far, though I am sometimes more obligated to deal with what has been near but is far. A past tie based on nearness seems not to be wiped out once it exists, but a future one does not obligate before it exists. If so, there is an asymmetry between past and future, because a failure to do something about a near problem in the past may have to be made up for.

So, we can further revise our tentative conclusion: The problem of distance in morality should be understood as whether we can justify our intuition that we have a greater responsibility to take care of needy victims, threats, or means belonging to victim that are or *were* in the areas near us or our efficacious means.

C. Why Distance Matters

I have dealt with whether and how *intuitively* we think distance matters. In this article, I shall not deal in great detail with the question of whether distance actually matters morally—that is, with whether the intuitions are correct. But I do want to deal with some suggestions for why it might matter.

Perhaps it will help to understand why proximity may affect the duty to aid by considering why it does *not* affect the duty not to harm. That is, negative and positive duties and negative and positive rights behave very differently in response to proximity. We have at least as strong a duty not to harm someone who is far as not to harm someone who is near. I suggest that this is because in standard cases in which we would harm someone, we would deprive her of what she would have had independently of our aid. These things people have independently of us are protected by the negative right relative to us. This “protective coating” goes with the person wherever *she* is located—near or far. Hence, the strength of her negative right is something that has its source in her, not us, and is based on properties located where she is. Efforts we make not to harm someone involve doing things in order not to impose first on that to which they have right.

This contrasts with someone who needs our help: If we do not aid, he will lose something that he would not retain without our aid—that is, something he would not have independently of our aid. If we do things for him, in a sense, he imposes first on us. The focus would then seem to be about what comes *from us* and adds to what the person would have independently of us. This may seem to explain why the focus is on us, and hence on where *we* are.

But this is much too quick for at least two reasons: (1) Even when someone is near us and he needs aid, he still loses only what he would not have had without our aid. If this factor explains why the focus is on the agent rather than the victim, it can seem to justify the absence of *any* duty

to aid, even those who are near. (2) Suppose someone has a positive right to aid based on considerations *other* than the person's being near to us. People's right to this aid and our duty to aid them does not necessarily disappear just because they are not near.

All this suggests that (a) we have to show that we have a special responsibility to do something about what goes on in the area near us or our means (so nearness is a sufficient condition for some duties), and (b) we have to show that there is a duty to aid whose *origin* lies in nearness, so that when nearness stops, the duty stops (hence nearness is necessary for some duties). That is, if we had a duty to aid a stranger—even though the fact that he needs our aid means he loses only what he could not retain without us and he imposes on us first—which stranger we must aid is connected with the fact that the focus in aiding is on the agent from whom aid comes and who is imposed on first, and that agent has a responsibility for the area around him or his means.³⁹

Now, why might one actually have such responsibility for the area around her or her means? It is commonly thought that one has a moral prerogative to give greater weight to one's own interests rather than giving equal weight to oneself and to others.⁴⁰ This is a permissible option, not a duty. But possibly, if one takes advantage of the option of giving greater weight to oneself and what one cares about, there is an *associated duty, the flip side of the prerogative* and generated from the perspective on life that leads to the prerogative, to take care of what is associated *with oneself*—for example, the area near one or one's means. This would imply that the person who does not act on the *self*-focused prong of the prerogative, but treats himself impartially relative to others quite generally, would not have a greater duty to take care of those who are near than those who are far.

D. What Must We Do?

Now we come to the second claim, that if I do have a stronger duty to help a near person than a far one, this implies that it would be wrong of me to help the far one rather than the near one. Peter Unger believes this implication holds, for he argues that to say we have a duty to aid the person near us but not a duty to aid distant people implies that we have a duty to save one person close to us rather than do what will save many at a distance.⁴¹ In discussing whether distance per se affects our intuitions about obligation to aid, I have tried to keep constant the number of people and the loss they will suffer in the Near Cases and the Far Cases. Theoretically, therefore, everything I have said is consistent with our having a duty to save

39. This special responsibility is not to be identified with any property-like stake in the area around him, as this would imply that he not only had special responsibilities for, but also special privileges in, the area near him. But this need not be true.

40. See Samuel Scheffler, *THE REJECTION OF CONSEQUENTIALISM* (1982).

41. Unger, *supra* note 1, at 55.

two in the Far Case rather than one in the Near Case. But I now wish to assume that the intuitive bias in favor of the Near Case is strong enough so that there is *no* strong duty (e.g., one for which one would have to sacrifice a significant amount) to rescue several in the Far Case. The question is whether this implies that we have a duty to save one person close to us rather than do what will save many at a distance.

One ground for the implication would be the claim that in a choice between a duty and a supererogatory act, one always has to do the duty. But this claim is not true.⁴² For example, suppose I have a duty to meet someone for lunch because I promised to do so. On my way, I see someone dying of kidney failure. I am willing to give him my kidney, a supererogatory act (let us assume). It is wrong to say that the supererogatory aiding may not take precedence over the duty. I believe this is so, even if the person to whom I am obligated would lose so much if I do not aid him that he would not be morally required to waive his right to my performance. For example, suppose I have promised to save one person from paralysis that threatens him, but as I am about to help him, I see a thousand people drowning nearby. Aiding them, but not him, would cost me my leg, so it is supererogatory of me to save them. Still, if I am willing, I think I may choose them over the one person to whom I am obligated.

This suggests that even if it is wrong not to save a near person when there is nothing else to do and not wrong to fail to save a greater number who are far, if one had a choice between saving the near or a greater number of the far, one might permissibly do the latter. So, for example, this suggests that I may permissibly abandon the one drowning near me in France to rush off with a check to catch the last postal delivery to a distant area of India and thereby save hundreds from drowning there. Hence, it would be wrong to think that one may not do the supererogatory act, simply because one would be failing to do one's duty.⁴³ It may not matter morally which act one does, and this is compatible with its being a duty to help the near but not the far. One may not need to abstain from helping the far in order to help the near.

Unger himself would, presumably, wish to make use of the permissibility of doing a supererogatory rather than an obligatory act. This is because he argues that we have a duty to give our money to help the poor⁴⁴ (i.e., it would be wrong not to), but he also argues that it is permissible and morally

42. I first tried to show this in my article *Supererogation and Obligation*, J. PHIL. (March 1985), reprinted in THE PHILOSOPHER'S ANNUAL (1985). For an expanded version, see Kamm, *supra* note 8, ch. 12.

43. Earlier I said that our having done a supererogatory act need not, in general, free one from doing one's duty. Hence, the fact that one can often do a supererogatory act rather than one's duty when the two conflict should be consistent with one still having to do one's duty, if one can, once one has done the supererogatory act.

44. Unger, *supra* note 1, ch. 3.

worthwhile to steal from others to help the poor, though it may not be wrong not to.⁴⁵ This means it is supererogatory to steal. If he believed the duty took precedence over the supererogatory act, he would be committed to thinking that a person who had few resources would have a duty to give a small amount to the poor rather than steal a lot of money from a rich person to give to the poor if he could not do both, even when he was willing to steal. But, presumably, Unger would think it is permissible to do the supererogatory act instead of the dutiful one. This helps us deny his claim that if we have a duty to help the near but not the far, we have a duty to help the near instead of the far.

Notice, however, that there may be a moral difference between different types of supererogatory acts. In the case in which I must choose between my obligation to one person and saving a thousand near people, saving the thousand people would be at least one of my duties if it were not for the great cost to me. If it were costless to me, then this *duty* would conflict with my duty to keep my promise to save one person. Because we are free to absorb a cost if we want to, an account of why one kind of supererogatory act may compete with a duty is available. But it is not necessarily the great cost to me that makes aiding those far away not a duty; we intuitively think it has something to do with distance per se, so that a high cost that would be required in the Near Case would not be required in the Far Case.

Also, it might be suggested, we are *not* free to make the plight of those who are at a distance as important as those who are near in order that the supererogatory act compete with a duty. (Similarly, it might be argued that what great costs we will absorb is up to us, but it is not in our power to make helping members of other societies a competitor with helping those in our own society.) If it were not permitted to put this particular type of supererogatory act in competition with the duty, this would be a *second ground* for the view that we *must* aid a smaller number of near people rather than aid a greater number of those far away. I shall not pursue this issue further here. Suffice it to say that if we are to fill in the outlines of our intuitive conception of duty that varies with distance, we need to deal with this issue.

Finally, there could be motivational oddities in the person who does the supererogatory rather than the obligatory. For example, suppose that when faced with saving a near drowning child at the cost of \$500, one instead decides to save 300 far children because that will only cost \$100. Or, someone who has never thought of saving distant children thinks that given that he now has a duty to spend \$500 on the near child, he might as well spend the \$500 in achieving the better consequence of saving more distant children. These cases differ from the one in which someone who is independently motivated to save the distant children wishes not to give up that

45. *Id.* at ch. 3.

act in order to do less good for someone who is near; here these motivational oddities, at least, do not arise.⁴⁶

III. THE DUTY TO HARM ONESELF AND OTHERS

A. Unger's Thesis

Now we come to those chapters of Unger's book in which he moves beyond imposing losses of property for the sake of saving life and argues for duties to physically harm oneself and others. It is by deduction from intuitions about cases in which someone is *not* simply giving up his life to save others that Unger arrives at his conclusion that I have a duty to give up my life to save two distant strangers. That is, Unger does not present *direct* intuitions about cases to support the claim that one has a duty to suffer great physical loss to prevent mortal loss to two strangers. This is so even when the need is salient (i.e., attracts and holds our attention) and the loss is going to solve the immediate problem (i.e., there is no sense of futility that the major part of the problem in my surroundings remains). For example, suppose I drive by two people who will live if and only if I give up my leg: Unger never shows that our *intuition* about this case *directly* tells us that we have a duty to make the sacrifice.

The case Unger presents in which our intuitions directly tell us we should kill *another* person to save a greater number of people is the so-called Trolley Case, in which a trolley is headed toward killing six and we may redirect it away, though we foresee that it will certainly kill one. Indeed, it would not be wrong to summarize a great deal of what I shall describe in more detail below by saying that Unger attempts to use the *redirection of threat structure of this case* to generate the permissibility of sacrificing people in general to diminish mortal loss. He does this by arguing that what the redirection structure does, and what in large part accounts for the permissibility of killing in this sort of case, is to *group people* and so overcome our tendency to *separate people*. Hence, whenever we can manage to group people (even by a different structure), we will think (correctly he believes) that it is permissible to sacrifice some to save others. But when we reflect on how grouping arises, we see it is *not really morally crucial per se* and so even in cases where there is no obvious grouping, it should be permissible to sacrifice some to save others.

The traditional Trolley Case is a two-option case: Either we let the trolley kill the six or we redirect it and it kills one. In this respect, it is like the case where we either let the trolley kill six or we push someone in front of the trolley to stop it. In discussing the traditional two-option Trolley Case,

46. I thank Liam Murphy for suggesting that I examine the significance of physical distance. I am indebted to the students and faculty of my graduate classes in ethical theory at UCLA and NYU for their discussion of the ideas in this part of this article. I am also grateful for comments from Sigrun Svavarsdottir, Derek Parfit, and the audiences at the Philosophy Department Colloquia, Graduate Center, City University of New York, and the Philosophy Department, University of Calgary.

Unger claims that we think of the one and the six as grouped (he calls this projective grouping), because they share a connected set of trolley tracks. But in discussing other cases⁴⁷—cases that, I believe, also have a redirective structure, though Unger does not explicitly draw attention to this fact—he points to other factors that produce grouping that can also be found in the traditional Trolley Case. These are the fact that the same threat will affect either the one or the six, and the fact that the threat going to one is the flip side of the threat ceasing to go to the six.⁴⁸ Unger thinks that these factors group the one and six; that is, we think the one is involved with the six, shares their problems, and hence is “fair game” to be harmed so that the six will survive. This contrasts with our tendency to “projectively separate” someone off from the problems that other people are facing, leading us to think it is wrong to involve her to save the others.

In addition to grouping versus separating, Unger argues that we respond to what he calls “protophysical” characteristics of a case—that is, we find it easier to redirect an object already in motion rather than start one up; we find it easier to slow an object down rather than speed it up, and so on.⁴⁹ These factors will also affect our willingness to harm someone to help others.

If we think of pushing a stationary person in front of the trolley to stop it from hitting the six, we are faced with putting an entity into motion, producing harm to someone who does not share trolley tracks with the six, and producing harm to someone that is *not* the flip side of the threat’s ceasing to the six. Hence, according to Unger, we see him as separate and not to be involved in the six’s problem. Unger thinks that projectively separating someone involves treating people unequally,⁵⁰ because it gives the one person’s claim not to be harmed more weight than is given to the comparable claim of the six not to be harmed by the trolley.

He thinks we can overcome projective separating, and so find it intuitively permissible to push one person in front of the trolley *because we group him with others* by constructing *cases which involve several options* (more than two).⁵¹ So he constructs Switches and Skates, described as follows (LHLD, p. 90):

By sheer accident, an empty trolley, nobody aboard, is starting to roll down a certain track. Now, if you *do nothing about* the situation, your *first* option, then, in a couple of minutes, it will run over and kill six innocents who, through no fault of their own, are trapped down the line. (So, on your first option, you’ll let the six die.) Regarding their plight, you have *three other* options: On your *second option*, if you push a remote control button, you’ll change the position of a switch-track, switch A, and, before it gets to the six, the trolley will go onto another line, on the left-hand side of switch A’s fork. On that line, three other

47. Unger, *supra* note 1, ch. 5.

48. I focused on this “flip side” aspect of the Trolley Case in my first attempt to explain it. See F.M. Kamm, *Harming Some to Save Others*, PHIL. STUD. (November 1989).

49. Unger, *supra* note 1, at 101–3.

50. *Id.* at 100.

51. The method of aptly combining cases, which Unger also describes, is just a way, I believe, of creating cases with several options. See *id.* at 106–14.

innocents are trapped and, if you change switch A, the trolley will roll over them. (So, on your second option, you'll save six lives and you'll take three.) On your *third option*, you'll flip a remote control toggle and change the position of another switch, switch B. Then, a very light trolley that's rolling along another track, the Feed Track, will shift onto B's lower fork. As two pretty heavy people are trapped in this light trolley, after going down this lower fork the vehicle won't only collide with the onrushing empty trolley, but, owing to the combined weight of its unwilling passengers, the collision will derail the first trolley and both trolleys will go into an uninhabited area. Still, the two trapped passengers will die in the collision. On the other hand, if you don't change switch B, the lightweight trolley will go along B's upper fork and, then, it will bypass the empty trolley, and its two passengers won't die soon. (So, on your third option, you'll save six lives and you'll take two.) Finally, you have a *fourth option*: Further up the track, near where the trolley's starting to move, there's a path crossing the main track and, on it, there's a very heavy man on roller skates. If you turn a remote control dial, you'll start up the skates, you'll send him in front of the trolley, and he'll be a trolley-stopper. But, the man will be crushed to death by the trolley he then stops. (So, on your fourth option, you'll save six lives and you'll take one.) On reflection, you choose this fourth option and, in consequence, the six are prevented from dying.

In this case, Unger thinks we will find it permissible to push the one person on roller skates into the trolley, even though when we consider doing this as one of only two options in a case (and even as one of three options in a case), we find it impermissible. But we should reflect on the psychologically powerful features that differentiate pushing someone in Switches and Skates from pushing someone into the trolley (which we think is impermissible) in a case where it is the only option to letting it kill six. These features are not really morally important, according to Unger. So, we will conclude (by deduction if not by direct intuition) that it is also permissible to push someone in the two-option case.

Why does he think we will find pushing the one into the trolley permissible in Switches and Skates? Essentially, because intervening possible courses of action serve as bridges between what we intuitively find permissible (redirecting to the one) and what is thought impermissible (pushing the person into the trolley) if it is the only other option in a two-option case. The bridge is supposed to occur in the following way. Redirecting the light trolley (which is already in motion) has many of the properties of redirecting the trolley, so we are supposed to think it is as permissible as redirecting the trolley threat. And pushing the person into the trolley has some of the same characteristics as redirecting the light trolley, so we will think it too is permissible. More specifically, he says, like the six and one in the redirection option, the people in the light trolley are on trolley tracks; they are in a trolley that is already moving, like the trolley in the redirection option on its way to the six, and all we must do is redirect it. And so (he thinks) we will find it permissible to redirect the light trolley with its heavy people into the heavy trolley. The single person, he says, like the people on the light trolley,

will be in motion once we start him and, like them, he is on wheels (albeit roller skate wheels), though we do have to start him up and he isn't on any tracks. And so (Unger thinks) we will find it permissible to send him in.

Abstractly, the model is that option *A* has properties *a b c*, option *B* has properties *b c d*, and option *C* has properties *c d e*. He thinks that because *B* is in some ways like *A*, which is permissible, we will think *B* is permissible, and because *C* is in some ways like *B*, we will think it is permissible, too. Hence, *C* will be permissible, if *A* is. All this, even though the resemblance between *A* and *C* when considered directly is minimal.

Given that, according to Unger, this “bridging resemblance” (my phrase) is all that makes us think it is permissible to reduce the number killed by pushing in the one person, we cannot think that it is only when the bridging resemblance is present that it is permissible to send in the one. That is, there is nothing intrinsically morally important about this bridging resemblance, except that it helps overcome inhibitions in a positive direction (given that it leads us to minimize mortal loss, as general reflection, according to Unger, says is correct). For example, there is nothing intrinsically morally important about being on wheels rather than not being on wheels in a position from which you may be pushed. Thus, Unger concludes, it is, in general, permissible to push one person into the trolley to save a greater number.

To summarize Unger's theses: (1) Our intuitions change in Switches and Skates from the two-option case with respect to pushing someone into the trolley, so that we think it is permissible to push the one person into the trolley; (2) it is projective grouping of the one person with the six that leads us to think that it is permissible to do anything necessary to him to help minimize mortal loss to the six; (3) projective separating leads us to believe we may not involve someone in this way; (4) if it is permissible to act when people are grouped; it is permissible to act in the same way when they are separate.

B. Criticisms

Let me summarize my view about each of these theses: (1') My intuitions about the impermissibility of sending someone into the trolley are *not changed by* the introduction of several options, as in Switches and Skates; (2') (a) Unger employs a highly contentious notion of grouping, which he is right to think has no intrinsic moral significance, and so it *should* not lead us to change our intuitions about what it is permissible to do; (2') (b) It is not true that people who are grouped in his sense of grouped are intuitively thought to be “fair game” to have anything done to them to minimize mortal loss. Hence, such grouping is *not sufficient* to account for the permissibility of harming when it is intuitively permissible; (3') (a) He employs a contentious notion of “separateness”; and (3') (b) It is not true that we

think it is impermissible to do harmful things to people who are separate in his sense; hence, grouping in his sense is *not necessary* to account for the permissibility of harming when it is intuitively permissible; (4') Sometimes contexts have intrinsic moral significance, and so we cannot draw implications from them for other contexts, but because the several-options context does not change our intuitions, this point is moot.

Let me expand on these points (not necessarily in the same order in which I have presented them). I do not find that my intuition changes about the impermissibility of pushing someone in front of a trolley, whether it is one of two options or one of several options. Indeed, I do not even intuitively think it is permissible to send in the light trolley with the people on it to crash into the heavy trolley. Hence, we cannot be accused of inconsistency in thinking it is wrong to send in a person in a two-option case but permissible in a several-option case.⁵²

I believe that my intuitions do not change in Switches and Skates because the sort of bridging resemblance that Unger creates between the options in Switches and Skates (and in other several-option cases he discusses) do not ensure that the characteristics which truly account for the permissibility of *redirecting* the trolley are present in the other options. This implies that grouping of the sort Unger focuses on is *not* the characteristic that accounts for the permissibility of redirecting the trolley. The fact that option *B* resembles option *A*, and option *C* resembles option *B*, does not mean that they resemble each other in sharing the property of *A* that makes it permissible. His technique of grouping seems no more explanatory than saying that because all people involved in the second, redirection option are wearing red, we can show that it is permissible to push someone wearing pink into the trolley because we can show it is permissible to push the light trolley whose occupants are wearing half red and half pink. This is part of what I meant when I said (in (2') (a)) that Unger employs a contentious notion of how people get grouped. But there is more to be said about the notion of grouping.

If Joe is close to Jim, who is close to Tim, who is close to Tom, then Joe and Tom may be part of a group, in the sense of "not separated by much space," whereas if there were no individuals between them there would be

52. However, it should be noted that there is, in general, no inconsistency in thinking that an act of a certain type is impermissible in one context and that an act of the same type is permissible in another context. For example, I believe intuitively that pushing a person in front of the trolley may be impermissible when it would merely paralyze him in a two-option case. But suppose it is permissible for me to redirect a trolley from five to one, thereby killing a person on the other track? I am about to do this, when I find out that if I push the person in front of the trolley instead, it will only paralyze him. Because it is better *for him* if I throw him than if I redirect, it is permissible in this context to do what it would not have been permissible to do in another context, where I had no option of redirecting a trolley that would kill him. I refer to the principle that accounts for the change in permissibility as the Principle of Secondary Permissibility. In these cases, however, unlike what is true in Switches and Skates, there is a *morally important* difference produced by doing the act in one context rather than in another (i.e., someone will suffer less harm).

no group—they would be separated by space. And their being part of a group, in the sense of not being separated by much space, might have significance for what it is permissible to do to the people. This is one way in which we can group people. But this is not Unger's sense of grouping. Rather, as I have described, he creates a group in virtue of a *linkage* of similar properties. But, if act *A* is permissible because of some property it does not share with *B* or *C*, other similarities between *A* and *B*, and *B* and *C* do not imply that we may do act *C* because we may do act *A*.

Indeed, Unger's method of creating equivalence of permissibility between redirection of a trolley and pushing a person into a trolley has something like a sorites structure:⁵³ Creating a series with (supposedly) slight differences between each member of the series gets us to equate the two extremes of the series, which we know to be distinguishable. Unlike a true sorites, however, a morally significant difference between the first act and the others should stop the illegitimate equivalence in its tracks, as evidenced by my intuitive rejection of the permissibility of sending in the light trolley (as well as the man on roller skates).

I also said that Unger employs a contentious notion of "separation" in projective separating. I think his concern with grouping and separating is a sort of response to the objection raised to utilitarianism that it does not take seriously the "separateness of persons."⁵⁴ The point of this objection is to emphasize that when one person is sacrificed to benefit others, the benefits to the others do not compensate him for the harm to him. This is unlike the case of *intrapersonal* harm for benefit, where the person himself is compensated. The failure of compensation is still true of people who are grouped (in any of several senses of "grouped"); the loss to the ones who die is not compensated for by any good to them. Hence, we do not eliminate the separateness of persons in the sense in which this is the basis of objection to utilitarianism by grouping them.

There are at least two other senses of "separate persons." First, persons are separate when they are not in a group linked *spatially* by other persons. Second, persons are separate when they are not grouped together because they do not share the same or similar properties. The latter is Unger's sense of separate, corresponding to his sense of grouped. (Call these last notions of separate and grouped, *Unger-separate* and *Unger-grouped*.) Thus, we can put Unger's ideas (2) and (3) (see my summary, p. 26) as the view that when people are Unger-separate, the fact that one would not be compensated for harm to him by reducing mortal loss to others *will* be thought morally important by us. But when people are Unger-grouped (not Unger-separate), we *will* ignore the fact that the one will not be compensated for harm to him in reducing mortal loss to others.

My strategy for showing that Unger-grouping does not make such harm

53. A form of argument Unger is famous for using in his early skeptical work in epistemology.

54. This is one of John Rawls's objections. See Rawls, *supra* note 19.

morally irrelevant to permissibility is as follows (summarizing my points (2') (b) and (3') (b) above, p. 27): *Show that, contrary to what Unger says, when people are Unger-grouped (not Unger-separate), it is not thought to be permissible to do anything to one person to minimize mortal loss to others; show that when people are Unger-separate (not Unger-grouped), it is still thought to be permissible to do certain things to them to minimize mortal loss to others.* This suggests that what makes acts which harm permissible or not has nothing to do with Unger-grouping or separateness. Indeed, rather than permissibility stemming from Unger-grouping versus Unger-separating, grouping or separating in a sense different from Unger's is, to a large degree, a product of permissibility. For whatever factors account for the permissibility of harming, those who may be harmed *will be* potentially involved with each other (or grouped), and those whom it is impermissible to harm will be uninvolved with each other (or not grouped).⁵⁵

To carry out this strategy, I must first point to intuitions about cases that conflict with the moral significance of Unger-grouping and Unger-separating. Ideally, I should then suggest a principle other than Unger-grouping and Unger-separating that correctly distinguishes between the cases where harming is permissible and where it is not. However, I shall not spend too much time delineating the correct principle. This is because Unger's claim is that by Unger-grouping we can *change* our intuitions about behavior, and only if he can do this will he be able to support the principle that we may in general do harm to minimize mortal losses. So, all we need to do to argue against him is show that grouping does not affect intuitions as he says it does. We need not provide a correct alternative principle.

I have already given my first counterexample to Unger-grouping as an explanation of permissibility: My intuitions do not say it is permissible to send in the light trolley or the man on skates in Switches and Skates. Here are further particular examples: (1) As noted, Unger says that in redirection cases the people on either side of the trolley track are grouped, and grouped people are fair game to be used to save others. This is why he thinks our intuitions tell us we may redirect, thereby killing the one. But if this were so, then we would also think it was permissible to do many other things to Unger-grouped people. For example, consider Case (1) in which three and six are on either side of a trolley track and the trolley is headed to the six. These are grouped people according to Unger's criteria. But redirection will only save four of the six people at the cost of *paralyzing the three*, as the trolley will roll back after four have escaped but two people still remain pinned to the first track. However, if we throw the three people who are on the second track in front of the trolley, all six on the first track will be saved, though the *three will die*. Although these people are Unger-

55. In 2 MORALITY, MORTALITY, *supra* note 8, at 160–2, I consider a possible exception to this, where the determination of who is uninvolved or involved precedes and determines permissibility.

grouped, I do not think it is permissible to cause these people *greater harm* than they would suffer by redirection in order to save all six.

In Case (2), the trolley is headed toward six. It can be redirected to another track where it will kill three people. However, the three on the track will not stop the trolley and this track also leads to the six. The three and the six are grouped according to Unger's criteria, but, of course, we should not redirect the trolley, as we would then kill nine. May we throw the three from the right track onto the main track if this will stop the trolley but kill the three?⁵⁶ I do not believe this is permitted.

Hence, members of an Unger-group are not necessarily "fair game." There are some acts of harming them that are still impermissible. This defeats Unger's claim that Unger-grouping accounts for the permissibility of mortal-loss minimizing harm.

But what about the factor of protophysics? If we think it is more permissible to redirect a threat already in motion, perhaps this will account for the judgments of impermissibility,⁵⁷ even when people are Unger-grouped in Cases (1) and (2). Can we find a case where there is Unger-grouping and *no* protophysical problem and still there is impermissibility? I have already said that if we redirect the light trolley in Switches and Skates, there is *no* protophysical problem and the people are Unger-grouped, yet I think it is impermissible to send in the trolley with people in it.

Also consider Case (3). Suppose trolley *A* is already in motion and headed toward destroying some furniture. We could redirect it so that it crashes into and stops trolley *B* headed toward killing six, though *A* will also run into and kill three people on a side track (situated as in Case (2)) toward whom we could only wastefully have redirected trolley *B*. I think it is impermissible to redirect the trolley in this case toward the Unger-grouped people. Hence, protophysically correct acts are not always permissible to Unger-grouped people. Again, grouping where there are no protophysical problems is not sufficient for permissibility.

Unger also says that when people are *not* Unger-grouped, we think it is impermissible to involve them in other people's problems. (So, he has an *if and only if* Unger-grouped claim.) In a two-option case, he argues, a single person who is not on trolley tracks branching from the tracks on which the trolley is headed is Unger-separate from the six toward whom the trolley is headed. Yet my sense is that if we could redirect the trolley from the six, knowing it would run *on the grass* killing that one person, it would be permissible to redirect. Unger also thinks that someone sitting in his yard beneath a

56. I owe this case to Michael Otsuka.

57. I should point out that my intuitions do not agree with Unger's in some of the cases he uses to support his theory about protophysical distinctions. For example, he says that if there is a resting bomb that will explode and kill five, we think it is *not* permissible to start it rolling away from them when it will foreseeably kill a bystander. By contrast, he says, we think it is permissible to redirect a bomb that is already in motion away from five it will kill, though we foresee that it will kill a bystander. But I think it is perfectly all right to start the first bomb moving; it is a threat and may be moved.

mountain far away from trolley tracks is separated from the six toward whom the trolley is hurtling (Yard Case).⁵⁸ However, my sense is that it is permissible to redirect the trolley away from the six, even though we foresee that it will tumble down the mountain, killing the one person sitting in his yard.

It is interesting to observe that when Unger considers the Yard Case, he does not consider redirecting the trolley so that as a result of redirection *it* kills the man in his yard. Rather, he considers the following sequence of events: We start another trolley that crashes into the trolley headed to the six, but the *second* trolley then tumbles down the mountain, killing the man in his yard.⁵⁹ Unger says we intuitively find this impermissible. I agree, but it is not because we are killing someone who is Unger-separate from those threatened by the original trolley, for we *would* think it permissible to redirect the *original trolley* in the Yard Case.

Furthermore, we can find Unger-separate cases in which there is also what he would consider a protophysical problem and yet it is permissible to kill one to save others. If this is so, the combination of separation and protophysics problems will not account for impermissibility (i.e., grouping and no protophysical problems will not be necessary for permissibility). For example, consider Case (4). A trolley is headed toward killing six people who are seated on a resting lazy Susan turntable. We cannot redirect the trolley, but we can *start up* the lazy Susan, turning the six away from the trolley. However, the lazy Susan will then start a rock slide that will crash into and kill a bystander standing on the grass far away. Here we start a threat and kill someone who is Unger-separate, yet I believe this is permissible. It is even permissible to start up the lazy Susan, I think, if an effect of its turning is to drag a bystander into the path of the trolley. Thus, contrary to what Unger says about protophysics, even in a two-option case, we not only think it is permissible to send a threat into someone (as when we redirect the trolley), we think it permissible to send an Unger-separated person into a threat.⁶⁰

So we believe we may harm Unger-separate people in a protophysically problematic way, and we may not harm Unger-grouped people in a non-protophysically problematic way. Hence, our intuitions of permissibility of harming in a two-option case do not stem from Unger-groupedness, and no protophysical problems and intuitions of impermissibility in a two-option case do not stem from Unger-separateness physical problems. I conclude that neither grouping nor the absence of problematic protophysical factors, alone or together, is sufficient to determine the permissibility of harming some to save others or necessary to determine the permissibility. So, it is not by altering cases to achieve grouping and by manipulating protophysical factors that one can acquire the intuitions that permit us to push someone

58. See Unger, *supra* note 1, at 98.

59. *Id.*

60. I first discussed the lazy Susan cases in *Harming Some to Save Others*, *supra* note 48. See also Kamm, *supra* note 8, for additional discussion.

into a trolley to save others. Hence, one also cannot reflect upon factors that *change* our intuitions—as there is no change wrought by these factors—and conclude that because they are per se morally insignificant, harming some to prevent greater mortal loss to others is, in general, permissible. The method of several options does not, contrary to what Unger claims, liberate us to the values he claims to know are true by reflection on general theses.⁶¹

C. The Correct Principle of Permissible Harm.

I believe that there is another characterization of factors necessary and sufficient to make harming some to prevent greater mortal loss to others permissible. Those who may permissibly be harmed when these factors are present will form a group with those they may be harmed to help. (Call this permissibility-grouping.) If Unger's description of when people are grouped did (perchance) partially coincide with this other characterization, it is this other characterization that is more precise and revealing. Similarly, when protophysical properties are consistent with the characteristics that make acts of harming permissible, they will be permissible; when they are inconsistent, they will be impermissible.

Those we may not permissibly harm for the sake of others will not form a permissibility group with those others. But this does not mean (contrary to Unger) that their claim not to be harmed is treated as greater than that of other people. After all, we might harm them for those others if permissible means of doing so were available. The impermissibility of harming them just means that they, like everyone else, including those who need to be helped, should not be treated in a certain way for the sake of others. If a large number of people are mistreated and we do not stop this because to do so we would have to mistreat a smaller group, this does not mean we endorse the mistreatment of the larger number. But if it were permissible to do to some what it is now thought to be impermissible to do in order to save others from comparable mistreatment, we *would* be endorsing such treatment. This would change the status everyone has as persons who may not be treated in certain ways.⁶²

What characteristic distinguishes the permissible from the impermissible cases of harming, and why is it morally significant? As I said above, I do not intend to dwell on this subject, since I do not believe it is necessary for my criticism of Unger. I shall only roughly (and hence incorrectly) describe the characteristic without explaining why it is morally significant.⁶³ The permis-

61. In his review of Unger's book, David Lewis accepts that varying grouping and proto-physics accounts for our intuitions, but he denies that these factors are morally irrelevant. See *EUREKA STREET*, vi (1996). I deny that the factors account for our intuitions and that the factors are morally relevant.

62. For more on such status, see Kamm, *supra* note 8.

63. I have described this principle in detail in *id.* and in *Nonconsequentialism*, in *BLACKWELL'S GUIDE TO ETHICAL THEORY* (H. LaFollette ed., forthcoming 1999).

sible cases involve, I believe, lesser evil coming about as an effect or aspect of greater good or of means that have greater good as their *noncausal* flip side. (In the Trolley Case, redirection saves the six because a threat-free space is left as the threat itself moves away. This threat-free space seems no more a causal effect of the trolley's movement away than the empty space that is left when I move my hand up.) The impermissible cases involve lesser evil either (a) being a means to greater good or (b) being the effect or aspect of means that have greater good as a *causal effect*, unless the means do this by ultimately having greater good as the noncausal flip side of means that cause lesser evil. (Call this principle the Principle of Permissible Harm [hereinafter PPH].)

The intuition behind this theory is founded in a criticism I offer of Philippa Foot's own criticism of the Doctrine of Double Effect (hereinafter DDE).⁶⁴ The DDE says we must not intend a lesser evil as a means to a greater good, but we may pursue greater good if the means have lesser evil as a side effect. Foot criticized the DDE by using an example: It is impermissible to operate to save five people using a gas that we foresee would seep next door, killing one immovable person (the Gas Case). From this, she deduced the priority of not harming the one over aiding the five. I think she is right about this case, but it does not show the priority of not harming over aiding. For consider the Germ Case: I operate to save five people. Only because they are healthy will they breathe normally, thereby changing air currents in a room, moving hitherto closeted germs into the next room, killing one immovable person. Even if I foresee that this will happen, I should operate to save the five. Here the greater good (of the five being okay) causes the lesser evil, whereas in the Gas Case, a means to greater good causes the lesser evil. The PPH explains this.

The PPH can be used to explain various cases we have discussed. For example, when we turn the lazy Susan we also move the six away from harm—this is the greater good—and it causes the death of the one. When we turn the trolley away from the six, the flip side of this is that the six do not have a trolley threat upon them, and this is a greater good. So, the turning of the trolley, which also causes the death of the one, is a means that has greater good as its flip side. By contrast, when we send in the light trolley with people on it, it diverts the trolley headed to the six and also causes the death of the people on the light trolley. Hence, sending in the light trolley (the means) has the greater good of the six being saved as merely a further causal effect of the means. When we send the man on skates into the path of the trolley, this has a further mere causal effect of stopping the trolley and this saves the six.⁶⁵

64. See Philippa Foot, *The Problem of Abortion and the Doctrine of Double Effect*, in *VIRTUES AND VICES* (1978).

65. In 2 *MORALITY, MORTALITY*, *supra* note 8, I describe the major emendation to this description of the PPH, that sometimes diversion of people from threat or threat from people

Unger finds it odd⁶⁶ that we think it impermissible to chop off someone's foot to save twelve lives and yet we think it permissible to kill twelve people to save a foot. The case in which we do this involves redirecting a trolley toward twelve and away from killing twelve other people and cutting off the foot of a thirteenth.⁶⁷ But if chopping off the foot violates the PPH but redirecting does not, there is no oddity. These cases show that something besides reducing mortal losses is important. I hypothesize that this something is a view of persons and what is owed them that is expressed in our theory of permissible and impermissible harms.

D. Indirect Harms

In *Switches and Skates*, I would directly cause harm to others. In another type of case which Unger discusses, I do not directly harm others, but a decision I make to help reduce harm overall can lead to someone else harming others. These are the UNICEF Card and Lesser Loss Card Cases.⁶⁸ In UNICEF Card, if I pick up the card, aid will go to many people in Africa but the villain *Strangemind* will send his henchmen to chop off someone's foot in Asia. In Lesser Loss Card, if I pick up the card, I will save the lives of many people in Africa *from Strangemind's henchmen*, but he will then send another henchman to Asia to chop off someone's foot. Unger thinks our intuitions are that it is *impermissible* for me to pick up the UNICEF Card but permissible to pick up Lesser Loss Card. He distinguishes the cases on the basis of grouping and separating.

In UNICEF Card, the people in Africa are not suffering from any problem *Strangemind* gave them, so the cause of the threat to the Asian whom *Strangemind's* henchmen will hurt is different from what threatens the Africans. This makes the Africans and Asians seem separate from each other. By contrast, according to Unger, in Lesser Loss, the same threat—*Strangemind*—threatens Asians and Africans and his henchman's movement to Asia is the flip side of the removal of henchmen from Africa. This, according to Unger, creates the sense that the one in Asia and the many in Africa are part of a group. Hence, it is permissible to help the Africans by doing something that leads to harm to the Asian. Once we see

is not sufficient for the greater good; but, I claim, when it is nevertheless permissible to redirect, this is because (a) diversion produces what I call the "structural equivalent of the greater good," and (b) while we divert only because the further effect occurs, we do not divert *in order* to produce that further effect.

66. See Unger, *supra* note 1, at 121–3.

67. Unger notes that we might *not* redirect when on balance we only maximize utility by a smaller amount than a foot. I have discussed the question of what is an "irrelevant utility" in such cases (and in others as well) in detail first in *BIOETHICS* (1987), and in F.M. Kamm, 1 *MORALITY, MORTALITY* (1993), chs. 5–10.

68. Unger, *supra* note 1, at 126–8.

that this is all that grounds our sense of permissibility, we should be able to deduce the permissibility of picking up the UNICEF Card as well, he claims.

It should be clear (though he does not make it clear) that Unger has modeled the Lesser Loss Card on the redirection cases with the following variation: that there are, strictly speaking, two different threats in Lesser Loss Card—either one set of henchmen is sent to attack Africans, or *another* set of henchmen is sent to Asia. I have argued that cases in which we must either direct threat *A* to one group or direct threat *B* to another group have the same structure satisfying the PPH (the noncausal flip side) as those in which we redirect threat *A* from one group to another.⁶⁹ This is because threat *A*'s not facing group *A* is the noncausal flip side of instead sending threat *B* to group *B*. So, as in Switches and Skates, Unger's aim is to move from the permissibility of redirecting a threat in order to save a greater number to (b) the permissibility of minimizing harm by any means.

Again, my strategy in dealing with Unger's attempt to assimilate Lesser Loss and UNICEF card is to show that grouping does not account for permissibility, and separation does not account for impermissibility.

First, consider those who are Unger-grouped and yet are not fair game. Case (5): If I pick up the Lesser Loss Card (1), Strangemind sends fewer henchmen to kill a group of Africans, killing only twenty instead of fifty, and he instead sends the rest of his henchman to chop off the foot of an Asian. So the one in Asia and the many in Africa are Unger-grouped. But if I pick up Lesser Loss Card (2), Strangemind will send a henchman to kill the Asian instead of just chopping off his foot and because this has such a calming effect on him, Strangemind does not send any of the other henchmen he had planned to send to Africa. I think it is intuitively impermissible to pick up Lesser Loss Card (2), even if the alternative is to pick up Lesser Loss Card (1). My explanation of this relies on the PPH. In Lesser Loss (2), our means to saving many lives (the greater good) would be a lesser evil, whereas in the original Lesser Loss Card and in Lesser Loss Card (1), the lesser evil is an effect of means that have greater good as a noncausal flip side.

Now consider those who are Unger-separate. Case (6): If I pick up UNICEF Card (1), money gets sent to save many people in Africa who are suffering independent of any threat of Strangemind's. As a consequence of seeing them so well off, Strangemind gets angry and sends his henchmen to kill an Asian. I believe it is intuitively permissible to pick up the UNICEF card in this case, even though the Asian and Africans are Unger-separate, because Strangemind does not threaten both. This is because the *greater good* results in the lesser evil, even if the lesser evil results from a different threat than faced by the Africans. Conversely, in the original UNICEF Case, it is the *means*—our choice—that has greater good as a mere causal effect, and which also leads to the lesser harm that Strangemind will do.

69. See Kamm, *Harming Some to Save Others*, *supra* note 48, and Kamm, *supra* note 8.

E. Tolerating and Imposing Nonphysical Harm on Ourselves

Recall that Unger wishes to move from the permissibility of our causing others mortal loss to our having a duty to harm ourselves in order to prevent greater mortal loss. We have examined and criticized a significant part of his attempt to prove the first premise. One *direct* route from the first premise to the conclusion would involve what Unger calls the Principle of Ethical Integrity. Roughly, this says that what you would do to others, you cannot fail to do to yourself, for the sake of equal or greater reduction in mortal losses.⁷⁰ In dealing with cases, as we have seen, Unger's goal is to assimilate our treatment of people in *one sort of case* (e.g., pushing them into a trolley) to *other cases* (e.g., redirecting a threat to them). Similarly, his attempt via the Principle of Ethical Integrity is to assimilate our treatment of *ourselves* to our treatment of *others*.

A less direct route to the conclusion is to show by cases that we think we should *tolerate* serious harm to ourselves rather than have others suffer even greater losses. Then we would have to move from showing what we should *tolerate* to what we should *impose* on ourselves. I shall first deal with this less direct route, putting off discussion of the Principle of Ethical Integrity. I do this because I have already argued that Unger has not shown that we may always harm others to lessen mortal loss. If we may not harm others, then we cannot show we must harm ourselves, for we must do to ourselves what we would do to others. Perhaps showing that we must tolerate serious harm to ourselves will be a more successful route to the requirement that we seriously harm ourselves.

In Unger's Bankcard Case, Strangemind will impose a \$1,000 loss on your bank account—we start with a nonmortal loss—unless you pick up a card, and if you do, he will send a henchman to chop off a distant stranger's foot. Unger agrees that intuitively we think it is impermissible to pick up the Bankcard. He contrasts this with our intuition that in the Envelope Case it is permissible to refuse to send \$1,000 in an Envelope to save a distant stranger from losing his life, let alone his foot. Unger believes he can account for our intuitive distinction between the cases on the basis of grouping and separating, respectively. Only in Bankcard is the individual who would threaten your bank account the same person who would threaten the distant stranger, and his doing so is the strict alternative to your picking up the card, hence you think of yourself as grouped with the Asian. This liberates you to what Unger thinks are true values, that a lesser loss to you is not as important as preventing a bigger mortal loss to another *in general*. From this you can *deduce* that your intuitions in Envelope were wrong.

My analysis of Bankcard differs from Unger's, and I do not think it supports his conclusion. The structure of Bankcard is, once again, that of a redirection of threat case, but because it would involve redirecting Strangemind

70. Unger, *supra* note 1, at 139f.

from causing a small loss to you to his causing a greater loss to others, it seems wrong to redirect. But the impermissibility of doing what leads to harm in Bankcard is not dependent on Unger-grouping or even on the redirection structure. Suppose a villain will cause a loss to my bank account. The only means I can use to stop him has as a side effect that a distant stranger suffers mortal loss. Here the distant stranger is *separate* according to Unger's criteria, because what threatens him is different from what threatens me. Yet it is still impermissible to do what helps me and harms her. So Unger-grouping is not necessary to account for why we may not do what leads to harm.

Notice, in addition, that Unger-grouping may make it intuitively *easier* to harm another on our own behalf than Unger-separation. For suppose a villain threatens to chop off my legs unless I pick up the Bankcard, in which case he sends a henchman to chop off a distant stranger's foot. Because this is redirection from greater harm to lesser harm, it may be permissible. It also seems to be endorsed by the values Unger thinks are correct—that is, it reduces overall mortal loss. But if a villain will chop off both my legs unless I shoot him, it is not clear that I may do so if I know the bullet will go through him and also hit off the foot of a distant stranger. (This is on the model of its being impermissible to set off a bomb to stop a trolley from killing five when we foresee it will also kill a bystander.) The PPH I have proposed would suggest this distinction between the cases. (However, it may be that what we permit in defense of self is broader than what we permit in defense of others. This would, of course, create problems for Unger's Principle of Ethical Integrity, or PEI.)

More evidence can be given for the view that there is a duty to suffer losses instead of *harming* people in particular, rather than any general duty to bear lesser losses to prevent greater mortal loss. It comes in the fact that grouping is not sufficient to support intuitions that we must suffer losses *to aid* those with whom we are grouped. For example, consider Case (7): If I pick up Bankcard (1), I prevent Strangemind from taking \$1,000 from my account, but he goes off to chop off a distant person's *leg*. If I do not pick up the Bankcard, he only chops off that same distant person's *foot*. I could prevent his even chopping off the foot by giving another \$1,000 to him. Even if I should not pick up the Bankcard and be involved in harming the distant person, I do not think intuitively that the duty to give the extra \$1,000 to aid the person with whom I am Unger-grouped is any stronger than to aid the person in Envelope. Hence, it is not grouping versus separating that is responsible for our different intuitions in Bankcard and Envelope, nor grouping that overcomes intuitions that support Envelope.

Suppose we give a redirection structure to the aiding itself: In Case (8) Strangemind will send a henchman to chop off a distant stranger's foot, but I can prevent this by suggesting that Strangemind instead keep busy by removing \$1,000 from my bank account. (This is a way of *redirecting* him to where he does the least damage.) In this case, I and the stranger are Unger-grouped, but intuitively there is no stronger (or weaker) obligation

to aid than in Envelope. In Case (9) Strangemind offers to either give me \$1,000 or—the flip side of not doing this—give a distant needy stranger \$2,000. Again, there is Unger-grouping of the people, because we are redirecting a benefit, but there is not as strong a duty to refuse the money as there was not to resist Strangemind's taking my money in Bankcard. Presumably this is because I would be involved in Strangemind's harming the distant stranger in Bankcard but only his not aiding the stranger here. In Case (10) Strangemind offers to give some of his own money to a distant needy stranger, if I allow him to take some of my money. If he cannot take my money, he will not give to the distant stranger. In this case, if I resist his threat to me, a benefit does not go to the distant stranger with whom I am Unger-grouped, yet it is intuitively permissible to resist.⁷¹

In Case (8) (presented above), my suffering a loss in order to aid would take the form of *my redirecting a threat from a distant stranger to myself*. In such cases, I do not merely fail to resist a nonmortal loss someone else will impose on me; *I impose it on myself*. I concluded I need not impose the loss. But Unger also presents such a type of case as proof that our intuitions tell us that we have to impose at least a very big financial loss on ourself. Bob's Bugatti (in which he has invested his entire retirement fund) is parked on one arm of a branching trolley track. On the other arm is a child, and a trolley is headed toward killing her. Unger thinks we will agree that Bob has a duty to turn the trolley away from the child, even though he foresees that it will certainly cost him his retirement fund. Suppose we agree. This raises the question: Why is he intuitively required to redirect a threat toward his Bugatti, but the person in Case (8) is *not* required to redirect Strangemind toward harming his bank account? Four hypotheses suggest themselves.

First, in the Bugatti Case, someone will lose his life, whereas in Case (8) only a foot is at stake. But the monetary loss is also lower in Case (8). Second, the Bugatti will be destroyed as a *foreseen consequence* of turning the trolley away from the child. In Case (8) by contrast, we *intend* that Strangemind pay attention to our bank account, and this causes him to give up his harmful intentions toward a distant stranger. But if this makes a difference to our intuitions, then it will also distinguish a case like Envelope from the Bugatti Case—for in Envelope we intend the loss of our money for someone's benefit.

We can show this as well by considering a variation on Bugatti. Turning the trolley away from the child cannot be done quickly enough to prevent its running over and paralyzing a second child who is not as far up the line as the first child. The Bugatti is only partially destroyed by this redirection, leaving

71. Possibly, if I see my refusal as a way of stopping a plan that he already had to give to the stranger—and I see this as a form of making the stranger worse off than he would be without my role—I will intuitively think I should allow Strangemind to take my money. But if Strangemind puts the offer as a case in which he will follow my lead (i.e., if I am willing to lose money, he will lose some money too), I do not think our intuitions suggest a stronger obligation to aid than we think exists in Envelope.

Bob with a still-significant retirement fund. However, if instead of redirecting the trolley he sends the Bugatti across the tracks into the trolley, he will prevent harm to both children. He must aim that it get crushed in the wheels of the trolley, as that is the only way to stop the trolley. Do we, intuitively, believe that he must do this for those with whom he is Unger-grouped? I do not believe so. This means we get no stronger conclusion from an Unger-grouped case for a duty to aid than we get from a case that involves people who are physically near to each other but who are nevertheless Unger-separate. Sedan, which I discussed in Section II, is such a case which Unger presents. Recall in that case I see a stranger who needs to be taken to hospital in my car, and whose bleeding will cause several thousand dollars' damage to my car.

The third hypothesis to distinguish Bugatti from Case (8) is that physical distance makes a moral difference. The person to be harmed in Case (8) is a *distant* stranger, as are those in Envelope. The one in Bugatti is a *near* stranger. Unger does not believe physical distance can affect obligations. I have argued in Section II that he is wrong about this.

The fourth hypothesis to distinguish Bugatti from Case (8) is that when an intervening agent like Strangemind is involved we need not take as much responsibility for preventing harm, as we should not allow ourselves to be manipulated by evil people who are primarily responsible for the harm. I shall not pursue this view, but only note that in this respect Envelope is closer to Bugatti, because evil perpetrators are not the usual cause of harm to distant strangers.

I conclude that grouping does not account for our intuitions that we should tolerate losses rather than be involved in harming someone; we also should not harm those with whom we are Unger-separate. Unger-grouping also does not lead us to change our intuitions so that we think we should, in general, minimize overall mortal loss by aiding as well as by not harming. The harming/not aiding distinction, rather than the Unger-grouped versus Unger-separate distinction, seems to be doing the work in accounting for intuitions. Therefore, we cannot take the next step in Unger's argument to reflect on the per se moral insignificance of grouping and then deduce the duty to impose financial losses on oneself in order to prevent mortal loss *in general*, even to those from whom we are Unger-separate.

F. Imposing Moral Loss on Ourselves

Recall that Unger would like to conclude that we have a duty to impose *mortal loss* on oneself for the sake of reducing mortal loss in general. So far, when it comes to imposing mortal (rather than property) loss, I have argued that despite Unger's arguments, direct intuitions or deduction from intuitions show only that it is permissible to redirect threats (or people from threats, if my Lazy Susan Case is correct) in order to minimize mortal loss. Of course, Unger also believes that reflections on general theses, such as

the overriding importance of reducing suffering, support imposing mortal loss on oneself. But his point was to quell disagreement about the adequacy of such general theses by showing that intuitions on cases plus deduction support the general thesis, and I claim he has not shown this.

What do we get when we combine what we already believe about cases with a requirement that we treat ourselves as we treat others such, as the Principle of Ethical Integrity (PEI) (described above, p. 36)? Unger seems to believe that we can derive the duty to do mortal damage to *ourselves* in redirection cases, and given his assimilation of different types of cases, also a duty to do mortal damage to oneself to minimize mortal losses in general. I emphasize that he *derives* this result. He does not present a case in which we have the direct intuition that we must sacrifice our life to save two strangers, though he thinks case intuitions (as in Bugatti) do support imposing *property* damage on oneself.

As a particular example of what the Principle of Ethical Integrity implies, Unger presents a trilemma case: If a trolley is headed to six, I should redirect it to three, but if I can redirect it to one instead, that is even better. If the one happens to be me, the conclusion still holds.

The only duty that Unger allows may take precedence over the duty to minimize mortal loss is duties to our closest dependents—for example, our children. But because they too have duties to sacrifice themselves to prevent others' losses, what we do for them presumably must be tempered by the thought of what they are duty bound to suffer (LHLD, p. 155).

I am not convinced by these arguments. In the trolley cases we argued that it is *permissible* to redirect and cause mortal loss in order to minimize mortal loss; not that it is a duty to do so. But we already know that it is *permissible* for us to suffer mortal loss for the sake of minimizing mortal loss; we do not need PEI to show that. If we do not have a *duty* to harm others, the PEI cannot show that we have a duty to mortally harm oneself.

However, the Trilemma Case does, I believe, provide a scenario in which we have some *duty* to turn a trolley in a certain way, though I do not think Unger brings this point out. It may be merely permissible to turn from six to three, but if I *would* actually do this, and I can instead redirect to one other person, then I think intuitively I have a *duty* to redirect to the one other person. In other words, I may not have a duty to reduce harm by redirecting, but if I decide to do so, I have to choose the route that causes the least harm, at least other things being equal. (I, unlike Unger, do not say I would have to make a large sacrifice to reroute from the three to the one.) Here then we have derived a *conditional duty* to harm one other person. Then, if we accept the PEI, can we conclude that I have a conditional duty to turn the trolley on myself, if I am the one? But then I would have to make a large sacrifice to reroute, and intuitions denied this.⁷²

72. Suppose I realize this and when I see that I will be the one, I decide not to redirect *at all*, but when I see that someone else will be the one, I do decide to redirect. Have I then violated the PEI because I respond differently to a situation as a function of whether I am in it or not? But then I might as well violate the PEI *and* also reduce the total number harmed by turning only from six to three, and not onto myself.

The PEI also conflicts with our ordinary intuitions about what *those others* to whom we redirect threats may do, whether we think we are merely permitted or duty bound to redirect to them. That is, we do not think they have a duty *not* to resist the assault on them. If the single other to whom I redirect has a button he can push to send the trolley away from him, we intuitively think, I believe, that he may do so, even if he foresees that it will kill the six toward whom the trolley was *originally headed*.⁷³ Intuitively, he may permissibly *just make things as they would have been without redirection* by re-redirecting, even if this does not minimize overall mortal loss.⁷⁴ Finally, if he has a button that would permit him to turn the trolley away from the six and onto himself, *he would not have a duty to use it*.

If another person would not have a duty to do this to himself, we would not, contrary to Unger, have a duty to do it to ourself either. We impartially universalize the permission not to sacrifice oneself—and in this way support the PEI. But in this universalized permission, there is still embedded a rejection of the complete PEI, because all potential victims are permitted to treat themselves differently from how they treat other people. Our intuitions, at least, support a self–other asymmetry at some level. So, whereas previously I argued, contra Unger, that we cannot move from redirection cases to ones where we directly give up something to help reduce mortal losses, here I suggest that we cannot move from what we even must do to others to what we must do to ourself.

What about Unger's claim that our duty to our dependents might override the duty to lessen mortal loss to distant strangers? I do not understand how on Unger's view one comes to have a right to have dependents at all when I foresee that this prevents me from engaging in projects that minimize mortal loss. For if I have a duty, on his view, to suffer mortal loss in order to minimize mortal loss, then it would seem I have no right to have dependents in the current world as it is if I could spend my life saving the starving poor instead. But suppose I do have dependents (perhaps because I am more productive if I have them than if I do not—a limitation of my human psychology). Unger says that I may be excused from minimizing mortal loss in order to pay for my dependents' education. But recall that Unger wants to take what losses we should impose on ourselves in redirection cases as an indication of what we must, in general, sacrifice for others. So (analogous to Bob's Bugatti Case) imagine that my child's education fund is tied to one arm of a trolley track and a trolley is headed toward

73. Interestingly, I do not think that the one may use *means* that will stop the trolley redirected to him if as a side effect it harms the six, unless this is a substitute for turning back the trolley that would have done the same or lesser damage to the six. (This makes it secondarily permissible.) Nor may he necessarily turn the trolley away in a direction where it harms six people who were *not* originally threatened by the trolley. He would also not be permitted to redirect a trolley that was *originally* coming at him, foreseeing that it will then do more damage.

74. However, suppose Strangemind had redirected a threat from harming people in Africa to imposing a loss on my bank account—a property damage. I do not believe I also am permitted to redirect back. Property versus mortal loss makes an intuitive difference here.

killing a child on the other track (Education Fund Case). Suppose it would be wrong for me not to turn the trolley, as Unger thinks it would be wrong for Bob not to turn the trolley, even though I foresee it will destroy the money. Then Unger's own views should lead him to conclude that I must send my child's education fund to famine relief. Given his views, to say I need not give the fund to famine relief implies that I need not turn the trolley in the Education Fund Case.

I conclude that Unger's arguments for the conclusion that we have a duty to impose mortal loss on ourselves to reduce mortal losses fail.

G. Sensitive Reconciliationism

I have argued that Unger's arguments fail to support his radical conclusions, but of course he believes he succeeds. So, in addition to presenting normative claims, and a theory about how to develop a normative theory, Unger tries to develop what he calls "context sensitive semantics" in order to make it possible for him to live with the enlightened but speak with the vulgar. That is, he tries to explain how he, who believes that it is wrong not to send much money to Oxfam (Envelope Case), can still agree with the common folk that not sending the money is not morally so bad. He also tries to explain how he can believe that it is permissible to steal in order to save distant people from mortal loss,⁷⁵ and yet still agree with the common folk who condemn it morally.

Unger's suggestion for the first problem is to distinguish (1) a context in which his judgment is about the correctness of someone's acts according to his primary normative values (e.g., reduce suffering) from (2) a context in which his judgment is based on his secondary values. The secondary values tell us it is important to know, and be motivated to carry out, the acts that are correct according to our primary values. It may be hard for someone to know how she should act or to be motivated to act as she should, and if this is so, we may from the point of view of secondary values think she is doing okay morally, even if she does not do the morally right act.

But according to Unger's theory, when someone with Unger's normative views speaks with the "commoners," in saying that a person who does not send much money to Oxfam is not doing something morally very bad, he is not really agreeing with the commoners. This is because they are claiming that from the point of view of primary normative values, the person is doing okay morally if he does not give in the Envelope Case, whereas in agreeing the Ungerite is really just saying that someone is not to be blamed for not doing the right act. If the "commoner" asks Unger whether the person who does not give to Oxfam is bad, he is *not* asking if it is hard for him to know

75. See pp. 14–15 above.

the correct values and be motivated by the correct values. But that is the question Unger is answering.

Unger notes that agreement between the Ungerite and the commoners cannot be reached in the second problem by using his solution to the first problem. This is because the thief that the commoners condemn is not someone who does not know the moral truth when it is easy to know it or someone who is not motivated to act when it is easy to be motivated according to moral truth. Rather, the thief is someone who does know what Unger believes are true primary values and *is* motivated to act on them.

Unger's suggestion for the second problem is to distinguish (1) a context in which our judgment is based on primary normative values about which act is morally right from (2) a context in which we judge what accords with social norms. Once again on this account, Unger is not really agreeing with the "commoners," for they do not only claim that stealing is wrong according to social norms (as the Ungerite does), nor do they ask him if stealing is wrong according to the norms. They are claiming that stealing is wrong according to the primary moral values. They are thinking about moral truth, Unger about sociological truth when he says the thief does wrong.

What shall we do with a case in which it is easy for someone to know and be motivated to do what Unger thinks is correct, yet he rebels and does what Unger thinks is wrong but what the commoners think is right? For example, suppose someone grows up in a home of act utilitarians who educate and create models in accord with act utilitarianism. Nevertheless, the person rebels, represses his tendency to give his money away, and refuses to send his education money to Oxfam (Utilitarian Family Case). *We* think he is doing something permissible. But according to Unger's theory, he does the wrong act, though it was easy to do the right act. From the point of view of secondary values, as well as from the point of view of primary values, he is doing very badly on Unger's view. (He is unlike the thief who steals for Oxfam and does *well* on both primary and secondary values, and yet is condemned according to the social norms.) From the commoners' point of view, he is doing permissibly on primary values and *very well* from the point of view of secondary values because against all odds he has found out the truth (as commoners believe it to be). This is a case in which Unger can assent to the common judgment that the behavior is permissible only by using the social norm standard—that is, he is doing what is all right according to norms. But Unger cannot make a true moral judgment either about primary values or secondary values and agree with the commoners.

But the introduction of *two different standards*—secondary values and social norms—for reconciling Unger's theory with ordinary judgment makes for a problem that Unger does not notice. If his reconciliation semantics is correct, he should also be able to agree when the commoners say, "Stealing money to send to Oxfam *is worse* than not giving your own money in Envelope," which is an implication of their views that "stealing to give to Oxfam is wrong," and "not giving in Envelope is not so bad." But

how is Unger to understand that sentence so that he can agree with it? He himself warns us about using two standards (or referring to two standard-determined contexts) simultaneously.⁷⁶ Because Unger uses two different standards to understand each of the component claims of the sentence, will he use both standards in agreeing with the comparative claim? But then is he committed to the claim that it is worse to violate society's norms (using norms standard for the first part of the comparative) than to fail to know or be motivated by the truth when it is hard to do so (using secondary values for the second part of the comparative)? In excusing someone from doing the wrong act because it is hard to know or be motivated by the truth, Unger gives the impression that he should judge harshly someone who knew the truth and was motivated to act on it, yet instead chose to abide by society's norm. Why then should he condemn so strongly someone who does *not* abide by society's norm because that person knows the truth and acts on it?

There *is* a single standard that Unger could use to translate both components and the comparative judgment. That is the standard of social norms. He could agree with the comparative in the sense that he agrees that society's norms condemn the stealing more than they condemn not giving in Envelope. But then when he "agreed" with the commoners, he would never be making a genuine moral judgment—not even one from the point of view of secondary rather than primary values; he would just be engaging in sociological reflection.

The commoners may also make another comparative judgment; they may say that the person in the Utilitarian family, who does not send his education money to Oxfam, is in some respects morally superior to the ordinary person in Envelope who does not send his education money. He is superior from the point of view of secondary values, for he had to work hard to see the truth and break away. By what standard can Unger agree? From the point of view of *social norms* about primary values, they are as good, and from the point of view of secondary values, as Unger would see it, the person in the Utilitarian Family case seems to be worse. So there seem to be some cases where Unger cannot hold his moral views, and his two translation standards, and also agree with what the commoners say.

I conclude that Unger's context-sensitive semantics has significant problems.⁷⁷

76. He says (p. 166).

77. I am grateful for comments on Section III of this article to members of the Philamore discussion group. This section is dedicated to Mala Kamm whose persistence, strength, and values inspired it.