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**LEVEL: 9**

## [Chapter 4]

# *Stage 3, Stage 6*

[URL: Stage 6]

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Stage 6 is the final, legendary<sup>1</sup> stage of Lawrence Kohlberg's stage sequence of moral reasoning.

Kohlberg was never able to find enough Stage 6 reasoners for its scoring or even any settled sense of its existence,<sup>2</sup> but he continued to include it in his scheme "for theoretical completeness"

(Kohlberg, personal communication). Ann Colby (personal communication) opined that it could not be given a structural specification. James Rest's (19xx) Defining Issues Test makes no

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<sup>1</sup>According to many of Kohlberg's critics, "legendary" = "nonexistent".

<sup>2</sup>During 1970-1974, the period of my closest contact with Kohlberg's efforts to construct his scoring system, Kohlberg kept redefining the stage definitions so that in many cases, reasoning that was previously regarded as Stage X became regarded as Stage X-1.

provision for a Stage 6, considering it, if at all, part of his general “postconventional morality” category. Neither Piaget’s (19xx) nor Selman’s (19xx) work include an equivalent stage. Even Kohlberg’s testing and scoring method (Colby & Kohlberg 1987) does not assign Stage 6 scores.

Despite this general pessimism, I believe Stage 6 reasoning can be defined, and I attempt to do so below. To do this, I need to discuss the entire stage sequence. My earlier exposition of the stage sequence (Chilton 1988:Chapter 3) is here modified in two ways. First, my earlier exposition put undue weight on the moral problems *unresolved* by each stage. My primary motivation there was to explain the forces driving cognitive development – after all, *DPD*’s goal was to define development –, so my primary interest in each stage was how it failed and thus required the subsequent stage. My perspective there was not wrong, exactly, but I failed to appreciate fully that each stage could also be unproblematic. Despite my conscious recognition that the stages do not form a sequence of moral worth, I was still subconsciously driven by the mentality that everyone really should aspire to high-stage reasoning and Western civilization. The description here is more balanced between assertion and critique – as is appropriate for a stage marked by dialectical logic.

Second, I now understand more clearly the nature of the vertical decalage between Stages  $X$  and  $X+3$ . Rather than taking the six stages in sequence, I will be handling them in their vertically connected pairs. This will help clarify the description of Stage 6 through its connection with the conceptually simpler Stage 3. It will also clarify the limits within which the lower stages can be used as models for the higher stages.

## **I Direct vs. Mediated Relationships**

If I had to choose the place of my birth, I should have preferred a community proportioned in its extent to the limits of the human faculties; that is to the possibility of being well governed: ... a State in which its individuals might be so well known to each other, that neither the secret machinations of vice, nor the modesty of virtue should be able to escape the notice and judgment of the public; and in which the agreeable custom of seeing and knowing each other, should occasion the love of their country to be rather an affection for its inhabitants than for its soil....”

— Jean-Jacques Rousseau (1755/1967:154)

The connection between Stage X and Stage X+3 is the difference between moral reasoning about “direct” relationships vs. “mediated” relationships. This section elaborates on that distinction.

In Stages 1, 2, and 3 we relate to each other directly, face-to-face, individually. This is possible for a dyad or even for collectivities up to a small village. It is technically true that any group of three or more people has the potential for conflicting dyadic relationships, and thus would have to resolve their moral conflicts at Stages 4, 5, or 6, but these conflicts can be worked out on a face-to-face basis as long as everyone in the collectivity can know everyone else by name and can work things out on a face-to-face basis, perhaps even in a community meeting. The economy is not so differentiated or complex that they can’t understand each other’s jobs and the associated requirements and complex coordinations.

However, even though Stages 1, 2, and 3 can handle moderately large groups, at some point the group gets large enough and/or the economy gets differentiated enough that face-to-face meetings become impractical. At this point people relate to one another through the medium of an overarching moral order of some sort: a system of laws, or of religious injunctions, or of a monarch’s wishes, or tradition, or whatever. The point is that this overarching moral order

[which I will call the o.m.o. for short, or, even better, “omo”]<sup>3</sup> stands in for you in my relationship with you. We may not be able to relate to each other directly, but the omo can express our desire for what we wish the relationship to be. Granted, the connection is only clumsily mediated through this omo, like trying to cook with boxing gloves on, but this is necessary – the only way we can care for each other absent a direct relationship. I will call this sort of relationship a “mediated relationship”.

Note that mediated relationships do not replace direct relationships. Mediated relationships are necessary when people are not immediately available to us but are still affected by our actions. If there are no such other people affected, then a direct relationship is fine. But if there are, then moral problems occur, because people don’t see the other people affected and operate solely on the basis of direct relationships. In a direct relationship, hiring one’s spouse is just a loving expression of your relationship with h/her; but when one recognizes that other people are affected by your choice, then in mediated relationship terms, hiring your spouse becomes nepotism.

For each of Stages 1, 2, and 3, which govern direct relationships, there is a moral stage (4, 5, and 6, respectively) that represents the same relationship but for mediated relationships. This connection between different cognitive levels Piaget referred to as a “vertical decalage”, where a sequence of stages are paralleled by a similar sequence of stages at a more abstract level. In the following, therefore, the moral reasoning stages appear in pairs, first the (lower) stage in terms of the direct relationship it sets up, and then the X+3 moral stage, where the nature of the direct

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<sup>3</sup>Omo was the name of a dishwashing soap at one time. (“Omo – it’s fantastic!”) No relation. Actually, I use this phrase in honor of Miss Ella Leppert, my high school civics / economics / history teacher, who used a similar expression.

relationship is paralleled by the nature of the mediated relationship.

There is an important emotional difference between Stage X and Stage X+3 reasoning.

Here I will use an image I used previously in the book's [Introduction](#) in another context.

“By analogy, even though it is formally possible to see the Earth as fixed and all else as revolving around it, the most straightforward account – given the totality of our observations, of course, not simply our immediate, unreflective perceptions – is that the Earth moves amidst other moving entities. It is in that same sense that I believe the ways of relating perspective is the superior account. Our immediate perceptions may be of our own needs and desires, but I believe that a more careful look at the whole situation will show that the ways of relating perspective provides a more straightforward and comprehensive account.”

The morality of Stage X is reinforced by the force of immediate empathy. The morality of Stage X+3 may be just as strong logically, but it does not have the same support of empathetic emotion, since by its very nature it involves people and processes we cannot see directly and wholly.

## **II The Lifeworld Horizon**

I originally (mis)understood the moral reasoning stages in negative terms, concentrating on the inadequacies and injustices of each stage, the ones that caused further moral development to occur. This perspective was useful in a limited way, since my interest was in how / why countries developed along the same path.<sup>4</sup>

I do not see this perspective as wrong, but neither do I see it as complete. It neglects the other perspective I am discussing here: that each stage is also the *completion* of a developmental resolution of conflict. This move highlights and transforms some of the background assumptions

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<sup>4</sup>The dynamics of institutional development differ from those of individual development. The connection between the two is laid out in Chilton (1988, 1991).

constituting our lifeworld, but one can still see the new stage as residing happily within the horizon of an unproblematic lifeworld. Perhaps new conflicts will come to light, but at least for the moment we can celebrate the construction of a new, adequate, moral perspective. So in what follows I will be looking more at what the stages accomplish than at their inadequacies.

### **III Stage 1, Stage 4**

I used to conceive of Stage 1 as the “might makes right” stage, and I suppose that could still be true. But I’ve come to think of the moral relationship as seen by Stage 1 in the context of the relationship between a child (say, “Cally”, which coincidentally is the name of my granddaughter) and her mother (say, “Cathy”, which by another coincidence is the name of my daughter). Cathy tells Cally what to do, but not to dominate her. Cathy practices “[attachment parenting](#)” (xx 19xx), and she does her best to anticipate / understand Cally’s needs, and to satisfy them insofar as possible, and, if it’s impossible, to explain to Cally why she can’t. Cally sometimes can’t understand Cathy’s explanations, but Cathy’s tone of voice is confident and kind, and since Cally is generally happy with her life, and since she accepts the reasons when she can understand them, it is natural that she should look to Cathy to determine what is right. Right is indeed what the authority in the situation asks for. The relationship isn’t domineering or abusive;<sup>5</sup> it is unproblematic. Stage 1 is usually not about might but about accepting someone as a moral authority.

I originally misunderstood Stage 4 as involving a similarly abusive authority, the evil

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<sup>5</sup>Obviously some parents / authorities are domineering and abusive, caring little for their children’s interests, but we are speaking here only of good parents. Bad parenting would ultimately lead the child on to Stage 2 – but that’s another story.

dictatorship. But when we look at Stage 4 and its absolute omo in terms of their positive self-conception, we get a different picture. My relationship to the omo is that of the good citizen: I both obey its demands, which I experience as legitimate, and I support its existence as well. Not only are its dictates morally binding on me, I say, but they are also binding on others.

Let us now look at this not in terms of my attitude towards the omo but instead in terms of the mediated relationship between us constituted by this attitude. From one point of view, you are now the authority, expressing your sense of what is right not directly but by setting up this omo. What is right is what the authority – you – want. At the same time, and for the same reasons, I am also setting this up as the authority for you. So each of us experiences the other as an unproblematic authority. The omo we support represents the (caring, intelligent, responsible) authority we would like to be under.

It therefore appears that the difference between Stage 1 and Stage 4 is only the difference between a direct and a mediated relationship.

#### **IV Stage 2, Stage 5**

Up until recently I thought of Stage 2 in negative terms, with people jealously holding onto their precious bargaining chips and scrutinizing every deal with suspicion. But we can also look upon it as a simple recognition that in our relationships with each other, both sides must get something out of the relationship. Within the proper horizon, we can see it as just a gentle reminder; it doesn't have to be the basis of hostile, take-no-prisoners bargaining. If it degenerates into such, if the interests to be served becomes so disproportionate as to seem fundamentally unjust, well, we can talk about further development. But for now, here, we will take it only as that gentle

reminder.

As with my limited understanding of Stage 2, so also with my understanding of Stage 5 as the stage of evil capitalist exploitation and formal-but-not-real democratic equality. True, we can argue that Locke and Mill never considered any but the propertied, but we can also see that not as a plot but rather as an extension of their logic they simply did not consider or considered through the filters of their era's perceptions. Taking this more generous interpretation, we can see Stage 5 as a recognition that everyone deserved benefits from the omo. The old absolutisms were found to pinch at times, and the classical liberals set forth this gentle reminder that government was to benefit all. The utilitarians expressed a similar sentiment, concentrating not on benefits to each but the importance of aggregate benefits to all, which principle the old absolutisms were finally seen to be violating. The free market was justified in similar terms, with Adam Smith pointing out how it advanced both the classical liberals' emphasis on rights and liberty and the utilitarians' emphasis on more goods – well, more utility, technically, but more goods could produce that. From these perspectives flowed both fundamental limitations on the laws and constraints on the processes by which laws were created. Fundamental limitations would include the ban on writs of attainder, and on restriction of free speech. Fundamental constraints on the processes would include the principle of “one person, one vote” and “equal protection before the laws”.

Let us now see how the liberal / utilitarian / free market / Stage 5 perspective appears when we shift from the language of rights and constitutional structures and to the language of mediated relationships. If we see all these principles and structures (and their consequent laws) as no more than the best (albeit clumsy) way we are able to relate to each other, we can still see that they express our intention that our relationship bring benefits to both of us. They express my

desire that I be advantaged by our relationship, but they also express my insistence that you benefit as well. The institutional framework of a Stage 5 government serves only as a gentle reminder that in our (mediated) relationship, *both* our interests are to be taken into account, *both* of us are to gain. The Stage 2 motif of revenge – that if you take something from me, then I am morally justified in taking something from you – finds its Stage 5 parallel in Jefferson’s words in the Declaration of Independence, that when our relationship ceases to have benefit for me, I am justified in trying to remove myself from it. So in this Stage 2 / Stage 5 nexus, as with the Stage 1 / Stage 2 nexus, it appears that the difference between the two levels is only the difference between direct and mediated relationships.

[Here is another way to look at Stage 2 as a differentiation and coordination of Stage 1: We relate within the framework of autonomy. I *purchase* your obedience at the same time as you purchase mine.]

### **V Stage 3, Stage 6**

At Stage 3, the parties to the relationship now see themselves as *constructing* their relationship as each brings to the relationship h/her understanding of what a moral relationship looks like. This involves two forms of change in their relationship from Stage 2. First, in Stage 3 they are orienting to each other in terms of a mutually constructed-and-maintained, idealized relationship, while in Stage 2 they are relating only in the narrower terms of whether both gain some benefit. In other words, they orient to each other in Stage 3 through a mutual call to heed and maintain their idealized relationship. This is why feuds, in their cycle of revenge, can be stopped within the Stage 3 context but cannot not be stopped within Stage 2. In Stage 3, both parties can recall the

other to their shared sense of a good relationship, moving beyond their original grievances and misunderstanding.<sup>6</sup>

Second, the parties recognize that to be just, their idealized relationship must be seen as just by both of them; both want both of them to accept the relationship; both are committed to seeing the relationship from both sides simultaneously; both are committed to having both of their senses of morality respected. True, they may have to compromise with each other to achieve this, but this compromise is not made in a Stage 2 bargaining sense but rather in a shared, creative search for possible shared acceptance. This is why Stage 2 has problems dealing with situations in which the parties' bargaining power fluctuates or in which one party has much more bargaining power than the other. Even though both situations seem unjust or at least arbitrary, Stage 2 formulations cannot capture the elements of justice that go beyond mutual gain. In Stage 3, on the other hand, both parties orient to a relationship both consider fair, something that does not fluctuate according to bargaining power and does not accept the gross disparities that result from extremely unequal bargaining power.

Despite all these virtues, there is a central ambiguity in Stage 3 reasoning. Both parties believe that both their senses of morality should be respected, but what should their senses of morality be in the first place? The considerations given above put constraints on the basic form of the relationship, but they don't give any concrete sense of what a relationship ought to be.<sup>7</sup>

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<sup>6</sup>See the discussion in Chilton (1988:Chapters 3 and 4).

<sup>7</sup> This is Hegel's charge against Kant: that the Categorical Imperative is empty formalism, providing no concrete guidance about what norms can be accepted. Although it constrains the form of norms that can be considered, many possible norms satisfy that constraint, and the Categorical Imperative provides us no further help in distinguishing which of these norms we should choose.

However, Stage 3 supplies the constraint within which *any* content must be considered moral. It is the concrete participants who supply the content; the only requirement on the relationship of mutual orientation is that both accept it as moral. As long as they are both convinced, no further moral information exists to correct them. Granted, they could agree to any one of a number of relationships: to be lovers, friends, business partners, golf partners, and so on. But having decided between them on their relationship, then any further refinement or correction of it must flow through them. If I am convinced that Ed is being exploited by Phil, I am free to talk to them, but ultimately it is they, not me, who must be convinced.<sup>8</sup> People like me are not the only source of challenge to the relationship. Ed and Phil also bring to the relationship (and to the discussions creating the relationship) their own moral reasoning and moral intuitions. Their relationship is thus agreed-to only contingently within the dialectic swirl of these many factors. Either or both are free at any time to call for a renegotiation of the relationship, simply on the grounds that they are no longer convinced it respects both their moral senses. But even if the relationship is contingent, it is still binding – it is still moral – for however long their mutual agreement exists. No (metaphysical) information exists to set aside their decision; all information must pass through them. To the extent that their decision remains arbitrary, then to that extent arbitrariness is not a moral issue.

We are still faced with the “agreement problem”, even if only two people are trying to agree. The solution to this problem was discussed in Chapter 4. Briefly, there is a further level of

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<sup>8</sup>Note that this assumes that I am indeed free to talk to them – no one is being kept locked away from the world –, that they are both free to decide what is moral – no one is being threatened into pseudo-agreement –, and that both are committed to discussion of the relationship until both agree.

arbitrariness introduced when coordination must be achieved before discussions are concluded, but within the constraints listed for such coordination, this further arbitrariness is also morally neutral.

[xx Some of the following simply restates Chapter 2's discussion of the “relational principle”. I need to clean up this duplication.] Stage 6 reasoning is simply Stage 3 reasoning for mediated relationships. Here it is not two people forming an agreed-upon relationship but many people together. Their relationships each-to-all are mediated by the law and how it is made, but the basic point is still that any person should be able to go to any other person, look them in the eye, and say, “Given that I need to be able to say this to all others in our society, I can hold that the relationship this system creates between us honors and satisfies both your and my moral senses.” For example, I *cannot* say that to a homeless man. I cannot look him in the eye and honestly claim that our relationship is just when I get to sleep warm, eat regularly, and have medical care, and he cannot. In a society with as many resources as we have, no one deserves to be treated like that, regardless of the justification. If he looks at me and says, “I’m happy being homeless; I enjoy begging and being cold; I’m looking forward to the prospect of dying early by violence or untreated disease” – well, if he says that, and maintains it even if I argue with him, then in the end I must accept his moral judgment.<sup>9</sup> But until Reagan’s “urban campers” start saying this (rather than ideologues saying it for them), I contend that we do not have a just mediated relationship.

Of course the issue is not quite as simple as this single exchange makes it appear, because

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<sup>9</sup>There are some legitimate questions here about whether he really comprehends what he is claiming, of course, but these do not alter the basic point.

I have to know that we *can* create a system where homelessness can be prevented without creating other, equally serious problems for other people. If solving one problem merely creates similar or worse problems, I cannot focus on one specific relationship. If ending homelessness for the currently homeless means that somehow Bill Gates is made homeless, then I could not justify that solution; I couldn't look Gates in the eye and say, "It's better than you be homeless than this other man here." On the other hand, I can look Gates in the eye and say, "It's better that you have fewer billions than that this man be homeless."

Many of our public policy discussions are cast in terms of monetary winners and losers, which makes moral discourse remarkably inflexible. However, cupidity is not the root of morality, despite modern culture's preoccupation with it. People can create a meaningful life for themselves even if they haven't acquired their first billion. It follows that Stage 6 reasoning does not revolve around the leveling of all inequalities (although in our society it may and undoubtedly will demand some such leveling). It is more fundamentally concerned about people whose material circumstances prevent them from leading meaningful lives. When meaning is taken from people in this way, and when society could be organized to prevent this, we cannot approach such people in the open way Stage 6 requires.

## **VI Case Study: Dr. Jefferson's Dilemma**

Here's an example of what I believe to be Stage 6 reasoning, explained in terms of direct and mediated relationships. This example addresses the following moral dilemma, taken from Lawrence Kohlberg's moral reasoning test.

Dilemma IV: There was a woman [we will call her “Ms. Smith, though in the original dilemma she has no name] who had very bad cancer, and there was no treatment known to medicine that would save her. Her doctor, Dr. Jefferson, knew that she had only about six months to live. She was in terrible pain, but she was so weak that a good dose of a painkiller like morphine would make her die sooner. She was delirious and almost crazy with pain, but in her calm periods she would ask Dr. Jefferson to give her enough morphine to kill her. She said she couldn't stand the pain and she was going to die in a few months anyway. Although he knows that mercy-killing is against the law, the doctor thinks about granting her request (Kohlberg 19xx:xx).

We first need to ask ourselves what we should do if this were a direct relationship, i.e., where Ms. Smith and Dr. Jefferson had a mutual, loving relationship and no larger system / legal issues intruded. It seems clear to me that one could not refuse one's friend's request; I just don't see how one could look the other in the eye and say, “Yes, I care deeply for you and have profound respect for you as a moral agent, and oh – by the way – I'm going to let you die in agony despite your wishes.”<sup>10</sup>

You will surely have noticed that I am predicating my argument on what “seems clear to me” and thus assuming you agree. I don't even attempt to provide any ultimate justification to

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<sup>10</sup>What if the psychological pain Dr. Jefferson would experience after killing Ms. Smith be greater than her pain in dying? It seems to me that if killing her is morally justified, based on her own wishes, then the psychological pain is Dr. Jefferson's problem and not relevant to his moral obligations here. Ms. Smith's pain is objective; it doesn't arise from her choice. Dr. Jefferson's psychological pain arises from his own choice. By denying her the assistance she requests, Dr. Jefferson is essentially dumping off his own problems on her. There's no guarantee that doing the right thing will be painless; my point here is that we must be clear who is responsible for dealing with the pain.

I'm strongly reminded here of my experience in therapy groups, where I can observe people refusing to deal with their neurotic patterns, dumping them off on the people around them. Even if this dumping-off could alleviate their pain, which I don't believe it really does, it still prevents them from becoming authentic.

compel your agreement.<sup>11</sup> But this is not the logical problem one might think, since my goal is actual, not compelled, agreement. You can certainly say, “I don’t think you’ve provided any logical argument compelling my agreement”, but this is not the issue raised by my claim. The issue is, rather, whether you can say, “Regardless of the presence or absence of logical proof, I believe I should refuse Ms. Smith’s explicit request.”<sup>12</sup>

Some people will disagree with my contention on what I call “private grounds”, e.g., that people’s lives are God’s, not their own; or that God has said, “Thou shalt not kill”; and so on. “Private grounds” means grounds that claim a privileged access to moral truth – in the above cases, a personal knowledge of what God wants.<sup>13</sup> However, one needs to justify one’s entitlement to substitute one’s own moral judgment for the other’s. Dr. Jefferson is certainly entitled to try to persuade Ms. Smith of his point of view. If he cannot do so, however, he has no mutually agreed-upon grounds for overriding her choices. Once we admit the possibility of private knowledge, knowledge we can’t or needn’t convince others of, then all hell breaks loose

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<sup>11</sup>This would be a good place to remind my readers of the “Münchhausen trilemma”; it is a false trail to try to compel agreement through logic. My argument shows a different approach to justification: through inescapability and actual agreement, not logic. Philosophers are so used to being skeptical of arguments, probing their logic, that they can forget that they are also – maybe even primarily! – human beings capable of agreement and disagreement without logic. We shouldn’t confuse “failing to provide logical compulsion” with “being wrong”.

<sup>12</sup>By framing the issue thus, this approach avoids relativistic objections to moral grounding. I’m just asking whether the reader agrees with my opinion. I have met relativists who confuse “having my opinion” with “being able to logically prove my opinion”, so much so that they deny they have any opinions. But it is their *contrary* opinion that would undercut my claim, not their self-doubting lack of opinion.

<sup>13</sup>This would seem a rather blasphemous position to take (for Christians and Jews, at least), given the Third and Fourth Commandments’ prohibition of worshiping idols (i.e., one’s own opinion) or taking God’s name in vain (i.e., claiming God’s authority). I am indebted to Wogaman (19xx on free speech) for this line of argument.

as we each come up with our own reasons why everyone else's opinion isn't really important.<sup>14</sup> [I NEED TO STRENGTHEN THIS ARGUMENT, GIVEN THAT I SAY ELSEWHERE THAT MORALITY IS ABOUT PEOPLE'S COORDINATING THEIR ACTIONS IN TERMS OF THEIR VARYING SENSES OF THE GOOD.]

I will proceed under the assumption that you do in fact agree that in direct relationships, at least, it would not be moral to override Ms. Smith's wishes. We now need to consider the same issue in a mediated relationship. In the mediated relationship, Dr. Jefferson needs to consider not just Ms. Smith but also all others in society who could be affected by his decision. No longer is the issue simply between him and Ms. Smith; it involves many others – all others, in fact, once we recognize that his deliberate breaking of the law strikes against the rule of law itself, on which we all depend. So while our earlier consideration of the direct relationship clarifies Ms. Smith's strong moral claim, we have to recognize not just her claims but also the claims of all others. There are a good number of such other claims to consider here. Let me summarize them here so that in the subsequent discussion we don't lose track of what we're doing:<sup>15</sup>

1. Dr. Jefferson's fear of being punished.
2. Dr. Jefferson's family's fear of the consequences for them of his punishment.
3. Everyone's concern that this mercy killing will lead to people being railroaded by

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<sup>14</sup>I remain uncertain what role paternalism can play in this argument. My initial sense is that paternalism is never justified. If there are people unable to express their sense of the Good (e.g., babies, some developmentally disabled), then that takes care of itself. I recognize that this is not the only issue, but I cannot usefully present a comprehensive discussion here.

<sup>15</sup>This list is as complete as I can make it, but its completeness is not really the issue here. Instead, my aim is to show the various ways such claims are to be handled. I recognize that additional considerations may change my conclusion.

their relatives into “choosing” to die.

4. Everyone’s concern that this mercy killing will lead to a general lessening of respect for life, so that people’s lives cease to be ends in themselves and instead become means for others’ ends.
5. Everyone’s concern that this deliberate lawbreaking will undercut the rule of law.

We consider these claims one by one.

#### **A. Dr. Jefferson’s fear of punishment**

By performing the mercy killing, Dr. Jefferson puts himself at risk of punishment – his medical license suspended or revoked; fines; jail. Dr. Jefferson could claim (and might be correct) that his long-term suffering from these punishments is greater than Ms. Smith’s intense but brief suffering. However, there is a crucial difference between the two considerations. Ms. Smith’s suffering is *objective*, in that it is not caused by society and can’t be alleviated by it.

Dr. Jefferson’s suffering is *constructed*, a human creation, in that we – society – will have chosen to punish him.<sup>16</sup> In these circumstances, Dr. Jefferson’s course is to carry out the mercy killing and then face society with the claim that this is the only moral course he could take.<sup>17</sup> True, society may still choose to punish him, but that is society’s choice, not his. We may be unable to prevent unjust treatment, but we can still act morally ourselves. Society’s attitude toward Dr. Jefferson can be changed as we come to understand what is moral; the horrible but

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<sup>16</sup>I explicitly intend “constructed” to recall George Herbert Mead’s social construction theory.

<sup>17</sup>Assuming, of course, that his position passes all the other tests described after this.

impersonal ravages of cancer on Ms. Smith cannot be changed; they are the only real “fact” in this case.

This position may seem reckless of the consequences not just to oneself (which one is, after all, free to accept) but also on others. Here’s the way I look at it. Each of us has surely been treated unjustly in life. The natural reaction to this experience is to say, “I’ve been treated unjustly in life when I had no way to avoid it, so why should I deliberately put myself in line for more such treatment? Why can’t somebody else take the burden for once? Let this cup pass.” Since everyone faces points where shifting the moral burden in this way is a possible course of action, choosing to shift the burden means that we all become complicit in the injustice.

Oppressive systems are able to exist because people at each level in the hierarchy of oppression are trying desperately to stay in their place or move up, and are willing to treat others unjustly to do so. The only real way to end oppression is to refuse to participate in it. Trying to dump the injustice off on others only maintains the overall system of oppression.<sup>18</sup> I don’t think one can strategize one’s way out of such choices by, for example, trying to weigh harm against harm.

When the “lesser harm” arises out of a social construction, choosing that lesser harm perpetuates that harm’s existence for others to deal with.

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<sup>18</sup>I am not a Christian, but I see the crucifixion story as showing that Jesus took the same position. What was done to him was unjust, and he knew it, but he took no action to prevent his death but rather refused to harm or even condemn those who killed him. He stopped one strand of injustice, and in my view that is the eternal life granted him and others who follow that example: the meaning of their lives continues forever in the way that the resulting *absence* of injustice plays out forever.

**B. Dr. Jefferson's family's fear of the punishment's consequences for them**

With one exception, Dr. Jefferson's family's concerns are no different from his. Like him, they recognize the moral weight of Ms. Smith's desire to die; Dr. Jefferson's personal knowledge of Ms. Smith does not count in the moral calculations. Like him, they recognize that their punishment is a social construction and Ms. Smith's pain is not. Like him, they recognize that their punishment (via that of Dr. Jefferson) is unjust. Like him, they recognize that this injustice is theirs, not one to dump off on Ms. Smith.

We recognize, however, that Dr. Jefferson gets to choose his fate and his family does not. His argument is that the injustice is his, not one to dump off on Ms. Smith. But when the family is not given the right to consent, are they morally required to see the injustice as theirs and to take it on? I claim that their situation is no different from that of the rest of the society, since Dr. Jefferson is acting without the consent of all. So I will end the discussion here with the conclusion that the family has no special claim, and I will let the argument be decided in the section on the rule of law.

**C. Everyone's concern that this mercy killing will lead to people being railroaded by their relatives into "choosing" to die**

**D. Everyone's concern that this mercy killing will lead to a general lessening of respect for life, so that people's lives cease to be ends in themselves and instead become means for others' ends**

I lump 3 and 4 together, because they present us with the same moral issues. These issues must

then be applied to the different areas of concern, and so our conclusions may be different, but my attention here is not on the conclusions but on how we come to moral grips with these concerns in the first place.

Our initial impression is that these are legitimate considerations. If the stated effects in fact happen, then the moral weight seems just as great as Ms. Smith's agony. However, there are two moral counterweights. First, it is not clear that these effects will occur. In the face of Ms. Smith's very real and present agony, it seems perverse to give moral weight to an hypothetical, which may well be no more than people's irrational fears. Second, even if experience shows that this is indeed the effect, we must still ask whether that is society's choice or an unavoidable system effect. If this outcome is an unavoidable effect of system constraints, then the consequences are just as much a fact as Ms. Smith's agony, and we are again in the position of balancing effects. I would still give heavy weight to the moral claim immediately before us, because when we ignore Ms. Smith's agony because of some complex, invisible system effects, we harm the very value we are seeking to preserve. Nevertheless, even taking this last into consideration, we still need to draw the balance between these claims.

Dr. Jefferson's justification is certainly not one that justifies any disrespect for life; indeed, both he and Ms. Smith would assert that he is acting out of respect for Ms. Smith's dignity and moral autonomy. I xx

### E. Everyone's concern that this deliberate lawbreaking will undercut the rule of law

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## **VII Case Study: Capital Punishment**

“Capital punishment is our society's recognition of the sanctity of human life.”  
 — U.S. Senator Orrin Hatch, R-Utah [xx I need to get exact information on this.]

[Here's another note: The legal standard of insanity, at least as I understand it, is that people must be capable of knowing right from wrong. But what this means is, "... knowing *our* (society's) definition of right and wrong, regardless of what the person thinks." This rejects out of hand the existence of any other perspective. I'm not advocating that we allow murder if people think it's o.k.; all I'm saying is that to take their life for it is wrong.]

Under what circumstances, if any, should we support capital punishment? This question gives us the opportunity to lay out certain basic features of the ways of relating perspective.

First, we reduce the situation to its elementary characteristics, meaning prior to any specific form of human organization. The form of organization is what we're looking to establish: both the this form and the specific place of capital punishment within it.

Regardless of the form of society, our criterion is [the relational principle](#) (q.v.). We have to be able to say to the condemned man – call him Bob –, “I can find no social arrangement that will make you better off without someone else being made as badly off or even worse off than you.” We're claiming, in other words, that if we had a social system – any social system – in which Bob was not executed, someone else would have to be made as badly off as Bob (i.e.,

dead) or worse off (but it's hard to imagine anything worse than being dead, which is the loss of all possible Good) as a result. But under our current circumstances, we have the means to prevent Bob from killing someone else, so the only question is whether someone else gets killed because we don't kill Bob. Some people claim that executions deter murders. According to this theory, executing one person will mean we can anticipate that the number of murders will decrease more than one over what they would have been. (We are speaking of the "average" or "expected" number of murders, of course.<sup>19</sup>)

Let us first note the extreme contingency of that claim. There is no empirical proof of it. Studies purporting to show that capital punishment deters murder are contradicted by studies showing an opposite (or no) effect. But regardless of whether a study shows a deterrent effect or the opposite effect, the validity of all such studies is clouded by autocorrelation of errors, numerous confounding factors,<sup>20</sup> external factors simply increasing the error variance, small sample size, the normal variability of the outcome variable (number of murders) in the best of circumstances, and the increased variability arising from having to subtract one estimated amount (expected number of people murdered were capital punishment laws to be passed) from another estimated amount (the expected number of people murdered in the current circumstances). For all

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<sup>19</sup>Why a decrease of "more than one" instead of just "any decrease"? Because we value Bob's life too. His bad actions don't change that. Many people believe otherwise, of course, but it seems to me that whatever the sophistication of their arguments, they boil down to seeing revenge as a *moral* factor, that is, as relevant to the decision of how we are to treat others, instead of as only relevant to our own grieving. [See the thesis, ["Revenge Is Not a Moral Emotion, i.e., Has No Weight in Moral Decisionmaking"](#).]

<sup>20</sup>"Confounding factors" means factors not controlled for that may imply a different conclusion. For example, both the adoption of capital punishment laws and the number of crimes might be associated with the economy of the state, so that any positive association between the two comes from their mutual response to this underlying factor.

of these reasons, studies of the effect of capital punishment can produce only bogus conclusions. People's willingness to heed a study's conclusion arise from their basic intuitions; the studies don't produce the intuitions.

These intuitions can arise from two sources, it seems to me. Most legitimately, they can stem from a belief about how the world works, namely, that punishment deters behavior. We will critique later the accuracy of that belief,<sup>21</sup> but such thinking is at least morally germane. *Not* germane is the other source of those intuitions: the desire for revenge, which induces people to believe these things at least ostensibly – as a specious means of supporting capital punishment, as a fig leaf for the true motive of revenge.<sup>22</sup>

One might say that it really doesn't make any difference why people believe something; the fact is that they do, and even if they don't, it is only the belief's validity that matters. But [the means-ends thesis](#) applies here: if the actual reason for killing someone is revenge, then that is the *actual* relationship being set up, regardless of the validity of the other beliefs. And that actual relationship results in events beyond what we contemplate and thus reverberates forever. And if that relationship is not morally grounded, then what we bequeath, first to our future selves and our future world, and then to our children and their world, are the evil consequences of that evil deed. [xx I need to phrase this in terms of the relationship, not the deed.] The consequences may [flow underground](#) and change form, but whether direct or indirect, whether in the original form or

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<sup>21</sup>In our discussion of xx. For the general argument, see the Theses, [“The Means Are Ends in Embryo”](#) and [“No Matter What Goals We Pursue or Goods We Seek, All We Really Know Is How We've Treated Each Other in Pursuing Them”](#).

<sup>22</sup>xx I need to talk also about the emotion of frustration as a source of these intuitions – a need to do *something*. Kill the guy who caused the problem! This is a form of [the Parochial Fallacy](#), of course.

another, they represent part of [the moral burden](#) that we send to the future.

I believe that revenge is the true motive for capital punishment, and I invite people supporting it to examine their motives. Nevertheless, the argument cannot be refuted simply by impugning people's motives. So let's say that someone – “Yvonne” – wants Bob to be executed because she honestly believes that capital punishment saves lives. There remains the irreducible fact that Yvonne is killing Bob for . . . a hunch.<sup>23</sup> Look at the foreseeable results of Yvonne's wishes being carried out. On the one hand, we have the clear consequence that people will be executed. Today it happens to be Bob, tomorrow someone else, but someone is going to die. So when Yvonne supports capital punishment, her relationship with Bob is, “I'm killing you.” Set against that foreseeable death, we have a hunch, a fallible human belief, a belief assumed to be sufficient to support the gravest consequences even when each of us can see our past littered with beliefs we thought to be true and now think are false. The only thing we can *know* in this situation is the relationship we set up with Bob and others – that we are willing to kill based only on a hunch.<sup>24</sup> And so support for capital punishment puts us in the position of killing on a hunch

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<sup>23</sup>Is my phrasing here (“Yvonne kills Bob”) merely an inflammatory rhetorical device? After all, Yvonne doesn't make Bob kill someone, doesn't sit on Bob's jury, doesn't sentence him to death, and doesn't carry out the execution; her only involvement is support for a law and legal system under which Bob is executed. But this is a distinction without a difference. Yvonne is willing something to occur. If she supports the law and legal system, then she is supporting its foreseeable results. This is, of course, just a specific application of [the Relational Principle of Justice](#).

<sup>24</sup>I do not emphasize the additional uncertainty arising from the possibility that innocent people will be executed. The consideration is germane, but the *central* argument – the one presented here – is diverted into a morass of claims and counter-claims about the procedural protections that exist or that can be set up. The fact that such absolute protections are always in the future, always motivated by a – whoops! – wrongful execution (or near-execution) doesn't seem to dent death penalty supporters' happy faith that *this* time the system is perfect. [xx Find the LeCarré quote.]

that it will save lives, based on a hunch that this saving will be even greater than with incarceration. And if we are comfortable with that position, then how can we complain about others killing *us* on a hunch?<sup>25</sup>

### **VIII Case Study: The U.S. Prison System**

Prisons as now constituted are also inhumane; in the Stage 6 view they would exist only to sequester people, with rehabilitation nice if accomplished but not the primary point. Certainly rehabilitation would not be a condition of good treatment. [xx I was going to put a link to my essay on the penal system here, but I discovered I hadn't written it. So I'll just put the discussion directly here.]

[xx I need to put a comment here that other case studies appear in Chapter 6.]

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[I just realized that Stage 3 sees a breakup of a relationship differently than Stage 2; in Stage 3's vision, we continue with the relationship even as we protect ourselves against depredations, as I am doing in several situations. In Stage 2, the breakup becomes transformed into hostility.]

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If we justify capital punishment on the basis of saving lives, then wrongful execution is not necessarily a problem. If capital punishment has a deterrent effect, then it has that effect even if the executed are innocent, as long as we can pretend they're guilty or even if sufficient lives are saved even allowing for the execution of some innocents. And then what does *that* create as our relationship? That I'm willing to kill you just as a demonstration effect?

<sup>25</sup>This is the moral picture, but its practical significance will be diluted to the extent that the supporters of capital punishment are separated from its victims. Support for capital punishment is (xx I believe) strongly divided along class and race lines, as is (in reverse) the likelihood of being executed. Those with power in the society are those who most support capital punishment and least suffer from it.

[We trust other people just as we trust a benign universe.]

[Notes for later: Perhaps we would also require a “social impact statement” for each policy, evaluating its effect on the worst-off.]