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# Evil perpetrators or cultural victims? An examination of the relation between cultural membership and moral responsibility

Heather Elizabeth Libby  
*University of Iowa*

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EVIL PERPETRATORS OR CULTURAL VICTIMS? AN EXAMINATION OF THE  
RELATION BETWEEN CULTURAL MEMBERSHIP AND MORAL  
RESPONSIBILITY

by  
Heather Elizabeth Libby

An Abstract

Of a thesis submitted in partial fulfillment  
of the requirements for the Doctor of  
Philosophy degree in Philosophy  
in the Graduate College of  
The University of Iowa

December 2010

Thesis Supervisor: Professor Diane Jeske

## ABSTRACT

In my dissertation, I explore the connection between cultural membership and moral responsibility. In particular, I consider what sorts of mitigating excuses, if any, are available to perpetrators of what we take to be serious wrong action due to their unique cultural circumstances. I utilize real-life case studies, and apply various philosophical theories of moral responsibility to these examples.

One such theory—offered by Susan Wolf—suggests that these “cultural defendants” may not be responsible for their participation in morally wrong practices due to the possibility that they may have been rendered by their cultures unable to recognize and/or appreciate that these practices were in fact wrong. This would supposedly allow us to claim that they were not culpable for their resulting ignorance or for their morally wrong actions which resulted from acting in accordance with their (actually false) beliefs. I argue that this approach to understanding the relation between moral responsibility and cultural membership is seriously flawed, and provides us with counter-intuitive results about the case studies in question.

Consequently, I next examine theories of responsibility which suggest that responsibility may be mitigated not because of an alleged *inability* to recognize the truth, but rather due to the alleged *reasonability* of the beliefs of the perpetrators. Lawrence Vogel and Neil Levy offer versions of this strategy. They argue that, because certain morally wrong practices (such as slavery) were endorsed by the societies of certain individuals, their resulting beliefs in the propriety of their actions were epistemically reasonable. It is argued that these persons should not be considered culpable for holding their actually false beliefs or for acting in accordance with them. I argue that the strategy is in many ways preferable to Wolf’s inability thesis, yet it nonetheless suffers from ambiguity.

The final portion of my project explores the connection between the epistemic status of a belief and a person's moral culpability for holding and acting upon it. I outline the grounds upon which the subjects in the case studies can be held morally culpable for their epistemic mistakes and for their failure to develop and exercise epistemic virtues.

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Graduate College  
The University of Iowa  
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CERTIFICATE OF APPROVAL

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PH.D. THESIS

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This is to certify that the Ph.D. thesis of

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To My Family

Be good and have fun.

James W. Libby



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## TABLE OF CONTENTS

CHAPTER I: INTRODUCTION .....	1
Initial Intuitions.....	3
Methodology of the Project .....	12
The Philosophical Issues .....	14
Final Words of Introduction .....	21
CHAPTER II. CASE STUDIES AND THE CULTURAL DEFENSE .....	24
The Primary Characters.....	24
Franz Stangl.....	25
Charles Colcock Jones, Sr. ....	31
The Cultural Defense .....	35
Case #1: Fumiko Kimura.....	36
The Legal Distinctions .....	43
Considerations Against the Legal Cultural Excuse Defense.....	47
Case #2: Kong Moua.....	51
Case #3: Don Lu Chen .....	54
CHAPTER III. SUSAN WOLF AND THE CULTURAL INSANITY DEFENSE .....	64
The Deep Self View .....	64
The Sane Deep Self View.....	75
JoJo.....	79
Tony .....	80
Further Applications of the Sane Deep Self View.....	81
The Insane Deep Self View and Charles Jones .....	84
The Sane Deep Self View and Franz Stangl.....	91
Another Look at JoJo .....	104
Another Look at Tony.....	111
CHAPTER IV: THE LEGAL CULTURAL JUSTIFICATION DEFENSE .....	122
Chiu .....	127
Chiu’s Proposal for a Legal Justification Defense.....	135
Problems with the Proposed Outer Limits .....	136
The “Reasonability Clause”.....	143
Final Thoughts about the Cultural Justification Defense .....	150
CHAPTER V: LAWRENCE VOGEL’S CULTURAL EXCUSE DEFENSE.....	153
Vogel on Wolf .....	153
Vogel’s Characterization of Cultural Defendants.....	155
Real and Notional Possibilities .....	160
Further Exploring the Real/Notional Distinction.....	162
The Real/Notional Distinction Applied to Jones.....	164
The Difficulties in Changing Outlooks .....	168
More Considerations Towards Thinking Jones had a Real Option .....	172
Steps Between Outlooks and “Enlightened” Moral Intuitions .....	178
Noting a Problematic Ambiguity.....	182

CHAPTER VI: NEIL LEVY’S CULTURAL EXCUSE DEFENSE.....	187
Miasma Theory and the Nineteenth-Century Physician .....	189
The Alleged Nonculpable Ignorance of the Slaveowners .....	192
Comparing Vogel and Levy .....	193
Reexamining Levy’s Argument.....	197
Evidentialism as Presenting an Analysis of Appropriate Epistemic Attitudes .....	199
Evidentialism and the Doctor .....	205
Evidentialism and Jones .....	211
Franz Stangl’s Epistemic Mistakes.....	217
CHAPTER VII: IDENTIFYING THE GROUNDS OF MORAL CULPABILITY FOR FALSE BELIEF .....	225
Montmarquet and Strategy (A).....	228
Mary .....	229
Problems with Montmarquet’s Characterization of Mary’s Second Scenario .....	230
The Dinner Party Hostess.....	232
Jones and Strategy (A) .....	233
Montmarquet and Strategy (B).....	235
Judging Beliefs and Judging Believers .....	239
Moral Responsibility for our Intellectual Characters.....	243
Epistemic Conscientiousness.....	247
Returning to the Case Studies.....	250
A New Case Study: Othello.....	250
The Doctor.....	251
Franz Stangl’s Lack of Epistemic Care.....	252
Charles Jones’s Lack of Epistemic Care .....	255
The Moral Importance of Empathetic Identification .....	258
Returning to Strategies (A), (B) & (C).....	262
Our Moral Responsibility to Exhibit Epistemic Virtues .....	265
CONCLUDING REMARKS .....	270
BIBLIOGRAPHY .....	278

## CHAPTER I: INTRODUCTION

In my role as a philosopher, and more specifically in my role as an ethics instructor, I often find myself referring to the examples of moral failure provided to us by the Nazis of the 1930s and 1940s. Likewise, I often point to the slaveowners of the pre-Civil War American South when it is necessary to identify examples of moral mistakes. Unfortunately, philosophers' reliance upon such figures as we attempt to introduce and explore various ethical questions is often met by our audiences with a groan: "Not the Nazis, again," or "Really? We're going to talk about slavery again?" I believe that this sentiment of impatience often expresses an underlying belief that we have somehow put to rest questions about the moral mistakes and corresponding questions about the moral responsibility and culpability of these figures. Similarly, I believe that my audiences often think that, by using these persons as examples, I am somehow unimaginative, and cannot think of interesting and new examples which are nonetheless relevant to the philosophical discussion in which we happen to be engaged.

While I can understand their frustration—at least in part—I nonetheless think that this impatience is unjustified. As I develop this project, I hope that I will be able to convince my readers—just as I attempt to convince my students—that our assessments of these wrong-doers are far from complete. Questions about the degree of culpability of the "typical" Nazi or American slaveowner are, in my mind, far from settled. Furthermore, while I think that there *are* in fact a multitude of alternative examples of moral failure available to us, this fact alone does not give us reason to turn our attention away from these oft-cited examples. Sadly, there is a practically unlimited number of cases wherein people have committed moral crimes against one another, and wherein our exploration of the circumstances surrounding those moral crimes can provide us with insight into more general moral issues. Nonetheless, I use, and will continue to rely upon, the examples of the Nazis and the slaveowners for various reasons.

Discussing the Nazis and the American slaveowners can be particularly useful when considering questions relating to the impact of culture upon a person's moral responsibility for accepting the alleged propriety of, and subsequently engaging in, practices endorsed by their culture. A great majority of persons believe that it was, for example, wrong of the Nazis to participate in the genocide of millions of Jewish persons (as well as Poles, Slavs, gypsies, homosexuals and many others), and they likewise maintain that the American Southerners of the nineteenth-century were wrong to have kept slaves. However, this same majority of persons may also acknowledge that it was widely believed by members of these two cultures that these practices were morally acceptable. If we consider the possibility that it was highly likely, or perhaps even inevitable, that members of these cultures would have come to hold the beliefs they did, then we *may* want to alter our moral assessments about the guilt of those members who participated in these culturally-endorsed practices. Thus, it can be particularly helpful to explore the circumstances relating to these figures in an attempt to determine whether there are mitigating excuses available to these persons on the grounds that their actions were allowed by, and even encouraged by, their cultures.

Additionally, I think that continued use of the examples of the Nazis and the slaveowners is of merit insofar as we have available to us, in both cases, extensive historical records. A vast amount of research into these historical time-periods has been undertaken, and we have available to us an impressive body of documentation. If we are to arrive at as complete and accurate a moral assessment of the guilt of these perpetrators as we can possibly expect, then it is vital that we learn as much as possible about the details of their cultural environments, their beliefs, their motivations, and the nature of their alleged crimes.

However, our interest in these case studies is not solely focused upon the task of determining whether, and to what extent, they were responsible for their participation in these moral crimes. We should not take our sole objective to be the result that we can

point to a particular Nazi or a particular slaveowner and say “Yes, you are guilty/not guilty” (or fully responsible, less than fully responsible, etc.). While we may indeed want to be able to arrive at such judgments, a related, and just as important of a concern, is that we be able to identify the grounds upon which we think we can make such assessments. Thus, we will use our detailed understandings of the circumstances of these case studies to help us explore and test various theories about moral responsibility and culpability. If we think we know why Hitler (or some other Nazi) was responsible for his morally wrong actions, then we may be better able to identify what we should think is the correct and more general theory about moral responsibility. We will be able to hold various ethical theories up to our intuitive understandings of these case studies, and we will be able to see if these theories provide us with what we take to be the correct answers with regards to the responsibility or culpability of those case studies.

It is thus with these goals in mind that I continue to rely upon the examples provided to us by the Nazis and the slaveowners. Never wanting to assume that others, and in particular, my students, share the same moral intuitions as I, I typically begin my discussions with them by inviting them to share with me their more general thoughts about the moral status of these persons. Wanting to undertake a dissertation project which would directly tackle the question about the impact that culture has upon a person’s moral responsibility, and knowing that I would rely heavily upon case studies about Nazis and slaveowners, I began my research with such an invitation. Thus, I invited my students to share with me their moral intuitions.

### Initial Intuitions

I knew that I would most likely not encounter many students willing to praise the “typical” (if there is such a thing) nineteenth-century American slaveowner or the “typical” Nazi officer during World War II. I was, however, aware of the more common unwillingness to morally condemn these sorts of figures. Curious as to how others assess

the characters and actions of such individuals, I recently emailed former students and posed to them the following two questions:

1. Do you think that the typical American slaveholder was morally responsible for his/her participation in the institution of slavery (and the corresponding harm that was caused to the slaves)? If you think they weren't responsible, or that they were less than fully responsible, what factors do you think affect their degree of responsibility?
2. Do you think that the typical Nazi officer was morally responsible for his/her participation in the Holocaust (and the corresponding harm that was caused to the victims)? If you think they weren't responsible, or that they were less than fully responsible, what factors do you think affect their degree of responsibility?

My first response came from a particularly astute former student. Abe<sup>1</sup> asked for clarification: what did I have in mind when I asked about the “typical” slaveowner and Nazi? Did I have some generalization in mind, or did I want to know how he in particular construed such figures? As Abe rightly pointed out, these were two different things. I responded that I had purposefully left the questions rather open-ended, for I wanted to see whether others thought it necessary to provide more details prior to providing an answer to either of the questions. I suspected that there would be those for whom the questions made sense as presented. I was right. Many of the respondents were willing to make initial assessments of the generic characters mentioned in the prompts, though most likewise noted that particular individuals—given the variable factors of their circumstances, motives and behavior—would merit more or less blame.

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<sup>1</sup> I have provided pseudonyms for the students participating in this discussion.

I certainly did not chastise any of my students for their failure to think it necessary to provide more detail. Nonetheless, their overwhelming willingness to make moral judgments about generalized characters was quite telling. I mentioned above that I think it is important that, when attempting to make moral assessments about individual persons, and as we similarly attempt to identify what we take to be the correct moral theories which will allow us to draw the right conclusions about these persons, we ought to pay as much attention as possible to the details of the circumstances of those persons. Again, going into this project, I thought that the case studies provided to us by the Nazis and the slaveowners would be of particular merit to us insofar as we do in fact know quite a lot about the historical circumstances of their respective time periods. We also have extensive and impressive historical records relating to these persons in the form of reports, memos, diaries, first-person interviews, and many other such documents.

Unfortunately, however, it often seems to be the case that these records are not properly utilized. As I continued to talk to my students (and colleagues, friends and family), it became apparent that a general lack of understanding about the actual histories relating to these case studies abounds. Insufficient attention is paid to the historical record, and consequently, mischaracterizations abound, due in large part to mistaken beliefs about what we *think* happened. This in turn can lead many of us to make what we should think are suspect moral judgments about these persons. We condemn them too harshly, or view them with too much leniency, based on these erroneous assumptions about their circumstances. The result, then, will be that we cannot be as certain about our moral judgments of these persons, and that we likewise cannot be as certain that the moral reasoning we engaged in to arrive at these conclusions is sound. I will return to this point again as I delve deeper into my discussion of my chosen case studies. For now, however, I will return to the presentation of my discussion with my students.

Quite a few of the respondents were emphatic, stating rather simply that the slaveowners and/or the Nazi were fully responsible. For those who took this stance, the



justification for their answers tended to be the same. For these persons, the matter seemed to come down to choice. Below is a sampling of the responses concerning the slaveowner:

- I think the slaveholder was morally responsible for his actions because he had the choice to have slaves or not. No one was forcing him to use slaves, he made that decision himself. Obviously some slave holders treated their slaves better than others and they are responsible for the harm they caused to their slaves. (Betsy)
- ... I think that each individual American slaveholder was morally responsible for his or her participation in the institution of slavery. I believe that each person ultimately has their own choices that they make, no matter what kind of social environment they were in. (Chris)
- Yes. Choice is everything- they are entirely responsible. (Dave)

The issue of choice similarly factored in for some of the respondents as they considered the Nazi officer. For example, Chris reasoned along the same lines as he did when considering the American slaveowners: “I will say that each individual Nazi officer was also morally responsible for his or her participation in the Holocaust and other atrocities they caused. Each person has their own choices that they must make. And the officers made their choice to follow their society, and chose not to go against society.” Chris was not alone in asserting that the Nazi officer was wholly responsible and thus fully blameworthy; Dave, for example, proclaimed that the Nazi officer was “unequivocally” responsible for his participation in the Holocaust. Dave did not want to suggest, however, that he thought that the Nazi’s choices were always easy or that he himself was not subject to moral failings:

Just to clarify- I'm not saying this in an irrational out-lash against those types of people. In fact, I expect that every day I do things that are probably equally condemnable by other social standards. So- Yes [the Nazi was fully responsible] because there is something intrinsically wrong with treating other people in that fashion and because it is the individual's job to examine his/her life outside of their own perspective to the highest degree of their ability.

While I will testify that, so far as I know him, Dave is mistaken to suggest that his misdeeds can be compared to those of the Nazi officers I subsequently will discuss, his point was well taken by many of the respondents. I noted reluctance in many of the emails to make even an initial judgment regarding either figure. As mentioned before, some of this reluctance seemed due to the generality of the prompts (as noted by Abe). Without knowing all the details of each specific case, they thought it was not possible to make a “ruling”. This response basically claimed that there was no “typical” Nazi officer or slaveowner. It does not make sense—according to this line of thinking—to judge an imaginary, generic character. We must fill in the portrait before we can judge the figure.

Others, however, avoided taking a stance out of what I believe was a sincere desire to avoid being subject to what they thought would be charges of having presented an argument against the person, of the *tu quoque* variety. Dave, while providing a judgment, noted that he was no angel himself and was subject to negative moral evaluation. Others held back their condemnation, arguing that it would be unfair to judge: “I may have done the same if I had been in their shoes. Who am I to judge?” (Emmy). I think that Emmy was concerned that, if she argued that the Nazis were fully responsible, or that their actions were culpable, it would be pointed out to her that she too has done bad things in her life. I think that Emmy was concerned that she would be viewed harshly were she to have condemned the actions of the Nazis or the slaveowners. Perhaps she was worried that she would be labeled a hypocrite for pointing out the moral mistakes of others in light of the fact that she herself had surely committed her own mistakes. Though Emmy’s intentions may have been generous, she failed to see that if her audience did level this charge of hypocrisy against her, that charge would be fallacious. The fact that

Emmy has failed to perform all and only morally permissible actions is not logically relevant to her arguments attempting to establish that some other individual has done something morally impermissible. I left Emmy to think about this, and returned to my awaiting email inbox.

Just as many of the respondents thought that the issue of choice was central in their assessment of the slave-holders, so too did many think that choice was relevant as they considered the Nazis. Many respondents thought that the hypothetical Nazi officer should be considered less than fully responsible for his participation in the Holocaust due to what they took to be that officer's lack of choice. It was common to read that the Nazi officer essentially had no choice to refuse orders, or that at the very least, if the officer did have choices available to him, they presented limited and bad options: "Some officers were going along with what they were told because it was saving them and their families from persecution" (Frank). Likewise:

I don't think the typical Nazi officer can be held responsible for his actions. The Nazi officer was told to cause harm and if he did not obey, harm would be caused to him. Contrary to the slave owners who had a choice. I'm sure there are Nazi officers who enjoyed what they did and did it willingly and they would be held more responsible in my opinion. (Betsy)

It is indeed difficult to imagine how one might act were one's life or family threatened. Would I, for example, be willing to watch my child die as a result of my failing to report the location of hidden Jews in WWII? I do not know how to answer that question. I suspect I would not be able to sacrifice him. But of course, suspecting—or even knowing—that one would do horrendous things to innocent victims in an attempt to spare one's child, for example, is not to address the question as to whether one is morally justified in doing so. We may grant there are important differences between the two scenarios that I briefly sketched in my initial email to the students. Importantly, the slaveowners were not faced with the immediate threat of physical harm if they did not own slaves, although we do have to recognize and consider the fact that any white

Southerner who seriously contemplated fighting against the institution of slavery would have faced serious financial harm and persecution at the hands of their white neighbors.

With regards to the Nazis, however, I have learned as a result of my historical research that there were fewer cases of coercion than is commonly believed (certainly than was asserted by many of the respondents). Many of the most atrocious assignments of the Holocaust were on a strictly volunteer basis, and there were rarely threats of bodily harm to the soldiers/officers and/or their families<sup>2</sup>. If this really were the case, and if those involved did in fact know that the consequences of their not accepting assignments were relatively minor, then I would argue that a greater number of Nazis were fully responsible. However, this does not negate the suggestion that *if* a particular officer were threatened with harm (and indeed, we cannot deny that there were such cases), then that officer's situation varied in a morally significant way from the situations of persons who accepted assignments in the absence of threats. We must then ask ourselves what level of potential harm would justify the choice of an officer to, for example, round up Jews for extermination camps? If I were told that I would be punched in the face if I did not join the hunt, it does not seem crazy to suggest that I should take the punch. But what if I were threatened with a severe beating? The amputation of a limb? My life? Are we ever morally required to sacrifice our lives?

These were among the questions that I addressed to Betsy in my response to her initial email. I noted that they are tough questions, which is surely an understatement. I was not able to answer the question about the conditions under which I would be able to sacrifice my child, nor can I come up with an answer as to how much physical pain I would be willing or able to suffer. Again, however, these are observations about what I

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<sup>2</sup> See Christopher R. Browning's *Ordinary Men: Reserve Police Battalion 101 and the final solution in Poland*. Harper Collins Publishers: New York, 1992. Browning's arguments are not without controversy, but this text provides a good starting point for research on the subject of the extent to which men and women were forced to participate in Nazi crimes. See also Daniel J. Goldhagen's *Hitler's Willing Executioners*, New York: Alfred A. Knopf, 1996.

am psychologically able to do, and are distinct from questions as to what my moral obligations are. They are not, of course, unrelated, and I think that this is why so many of the responses I received illustrated the aforementioned reluctance to judge. The attitude I encountered in this subset of emails can be summarized as follows: *If I think that it is likely that I would have owned slaves had I been born into the American slave-owning South, then it is not appropriate for me to say that slaveowners were blameworthy.* Likewise, *If I think that I would have followed the orders of the SS, then it is not appropriate for me to blame those who did.* This raises the question: what factors would have led us to act as did the Nazi and/or the slaveowner? The most common answer to the question, aside from the unique cases of coercion with regards to the Nazi officer, had to do with cultural and societal influences of the times.

- All throughout child hood, children were raised to be opposed to the jewish/homosexual/"different" community, and were raised by the government to become S.S officers in a sense, in the case of the holocaust. The children did not know any better because they were being sent to these camps, quite similar to boy scouts. (George)
- The slaveholders did not question their values. Everyone around them accepted slavery. (Hannah)
- In terms of the government and slavery, it was society at the time. Our founding fathers had slaves, until Lincoln, slavery was a part of our lives and it was as much a way of life as computers are today. Everyone had them. Although they were not required, it was almost a necessity to have them in order to make sort of living back then. (George)

- The typical slave owner was in a sense going along with the fads of the time.  
(Frank)

With regards to the issue of slavery in particular, many of the respondents made mention of the degree of acceptability that they believed was attached to the practice at the time. George's above comment was typical of much that I read, and indicates what many of the students with whom I corresponded took to be an important, and sometimes mitigating factor: namely, the effect that an individual's culture has upon the development of his/her moral character. Many of the respondents observed that it was not altogether surprising that the "typical" slaveholder participated in the institution. Given the history of the region and the supposed acceptability of the practice, many asserted that it would have been more surprising to find an individual who thought that slavery was *wrong*. Of course the respondents were aware of the fact that opposition to slavery was common during the era, yet they insisted that such notes of dissent were in the minority. They claimed that for an individual born into the slave-owning culture of the deep South, it was quite predictable that s/he would grow into an adult whose system of values incorporated the acceptability of owning slaves. Such persons, it was argued, truly believed that what they were doing was not wrong. In turn, the formation of those beliefs was the result of the Southerners' entrenchment within their unique culture. Essentially, it was argued, it was not their fault that they thought owning slaves was morally permissible, and they were consequently less than fully responsible for any harm caused to the slaves.

Similar arguments were presented with regards to the Nazi officer. Students often attempted to imagine the situations faced by the young Germans of the late 1930s. They pointed out that, at least for some regions, anti-semitism was deeply entrenched. As Hitler rose to power, they argued, the political environment was complicated, unstable and confusing. The atmosphere of uncertainty and fear surely rose as the war progressed,

and it arguably became understandable that many of the Nazi officers acted as they did. Many of these officers, it was argued, did not know that what they were doing was morally wrong. They had internalized the messages of Hitler and had convinced themselves that they had no alternatives but to join the Nazi party (and/or the SS) and to follow orders. This “cultural indoctrination,” it was argued, nearly determined that the officers would come to have the beliefs they did and that they would act as they did. The suggestion was that such cultural influences serve as mitigating factors in the officers’ degree of responsibility for their wrong action.

While I am suspicious of this sort of defense, I was not surprised to read versions of it presented in the email responses. I think it is a commonly held belief that we perform many of our misdeeds out of a sort of “culturally-generated” ignorance. The supposition is that this ignorance is non-culpable, and that consequently, we are either not responsible at all for our misdeeds, or we are less than fully responsible. Furthermore, I think that it is commonly believed that this defense applies quite frequently. Obviously, I suspected that the defense would be applied to at least many (though certainly not all) of the offenders of WWII and the slave-holders of the American South. Given that this sort of “defense” is relatively common, I believe that it merits further examination. This dissertation will explore the common intuitions as expressed by my representative students, and will attempt to determine whether there are sound philosophical arguments available to support them.

### Methodology of the Project

In what follows, I will present and evaluate several philosophical theories of moral responsibility which address the connection between an individual’s cultural environment and that person’s degree of responsibility. Many of these theories come to conclude that the effects of a person’s culture may diminish or eliminate that person’s moral responsibility for wrong action. Various suggestions as to how cultures may affect

such influence are offered; among them is the claim that a person's entrenchment within a culture may render that person ignorant of certain moral and non-moral truths, supposedly through no fault of her own. Given that cultural concerns feature so prominently in non-philosophical assessments of moral blame, I believe that it is important to examine these philosophical theories with great care. This may seem like an overwhelmingly large project. As I have begun to outline it here, I concede that it is ambitious. I will attempt to narrow the project by focusing on those philosophical theories which concern themselves with the connection between ignorance, cultural membership and moral responsibility.

I have chosen to use real-life case studies as tools for understanding and testing these theories of moral responsibility for various reasons. Looking at the actions of real persons, and learning of their underlying motivations and beliefs via their testimony allows us to avoid some of the problems presented by hypothetical thought experiments. Philosophical thought experiments have their place, but they can often become *too* unrealistic; these fictional entities are often described as possessing absurdly unique characters and as living in extremely insulated environments. The end result is that our assessment of their moral responsibility fails to offer us much guidance with real-world cases. I am interested in how we ought to assess ourselves and those that have come before us. It is a complicated task, but one which I feel must be tackled if we take seriously our commitment to being morally responsible agents. We need to understand how and why we are morally responsible for our actions, and we then need to pass on these lessons. It seems only natural, then, to begin by looking at those real persons who have made real moral mistakes.

I will enter the project under the assumption that the individuals discussed in the case studies have committed wrong actions and are morally responsible for their actions. However, this assumption is not one to which I will be married. I will use the case studies to further illuminate the contending philosophical theories of moral responsibility, and



will show how each individual fares on the respective theories. If, upon examination, a particular theory seems to offer a plausible analysis of moral responsibility and concludes that Franz Stangl (I will introduce the reader to Stangl in the following section), for example, was not morally responsible, then so be it. This is not a conclusion which I anticipate—and I hope that this will become apparent as I outline the details of Stangl’s case—but it is one which I will accept if need be. On the other hand, I think that it is reasonable to start from the position which asserts that if anyone is morally responsible for his wrong action, then it would be a man such as Franz Stangl (again, I will offer my detailed reasons for making such a claim in the subsequent chapters). If a theory of moral responsibility suggests that Stangl was not morally responsible, then I believe this is reason to suspect that the theory is misguided. I will examine our intuitions about a man such as Stangl, and see if they can give us insight as to where and how the theory fails.

### The Philosophical Issues

Although there are clearly a myriad of interesting and important questions which arise upon the introduction of cases involving the Nazis and the American slaveowners, I will attempt to narrow the focus of this project as much as possible. In particular, I will focus upon the role that false values and beliefs (both moral and non-moral) play in our assessments of a particular individual’s moral responsibility for wrong action. As mentioned above, the case studies that will be discussed in this dissertation are all chosen with the assumption that the agent in question has performed a wrong action (or a series of wrong actions). With cases of wrong action, we typically judge that the persons have violated the moral law, committed an injustice, failed to meet their obligations, etc. However, a moment’s pause will bring to light the fact that the error generally does not *begin* with the performance of the wrong action.

In many cases, we will want to say that the mistake began further back with a mistake in *belief*. For example, we might say of a particular slaveowner that he held

slaves at least in part because he thought that doing so was morally permissible. Perhaps that slaveowner accepted, and thought that he had solid evidence supporting, the proposition that black slaves were less than fully human. Though this was certainly a false belief, we will recognize that the slaveowner in question may very well have been sufficiently convinced of the truth of this belief, and thus was likewise sufficiently convinced that he was acting in a morally permissible manner as he did his part to perpetuate the institution of slavery. When we examine these false beliefs, the following questions arise: Was it morally wrong of this slaveowner to hold these false beliefs about the nature of black slaves? If the slaveowner actually lacked the epistemic justification he thought he had in support of this belief, can we say that his belief—and his subsequent actions—were culpable? We may argue that the slaveowner had a moral obligation (which he failed to meet) to act in the best interest of the slaves, but may we also argue that he had a moral obligation to form particular beliefs, or to engage in the process of belief-formation in a particular way?

Our answers to these questions are further complicated as we note the aforementioned role that an alleged perpetrator's culture has to play in that person's belief and value formations. There is no denying that our upbringing and our culture has an incredible effect upon the development of our characters. So too do our respective cultures mold our world-views, and (arguably) help dictate the particular beliefs and values we come to adopt. Throughout this project, I will consider various possible answers to the list of questions outlined in the above paragraph. However, a large portion of the discussion will be devoted to the specific issue of the influence that a person's location within a particular time period and within a particular culture plays upon her belief and value formation.

Realizing that mistaken action is often a result of mistaken belief, it is only natural to undergo an investigation into the causal history of a particular person's false belief. With the particular cases I have chosen, the upbringings, education and cultural

histories of these men seem particularly relevant to questions regarding their alleged ignorance and subsequent wrong-doing. It is worth our time to consider whether it is possible that they were subject to cultural impediments such that we may want to reconsider the extent of their responsibility.

One current trend in the philosophical literature provides an exemption from moral responsibility for those persons who meet the criteria set out by what has been dubbed the “Inability Thesis due to Cultural Impediments”<sup>3</sup>. The thesis can be roughly stated in the following manner: a person’s upbringing within a culture can render her *unable* to know that certain actions are wrong (or, it can render her unable to recognize that certain claims about the world which may be relevant to our moral decisions are actually false). Acceptance of this thesis suggests that a person can become *handicapped* as a result of her entrenchment within a particular culture; this “moral handicap” then directly relates to questions about that person’s moral responsibility.

This thesis has become rather well-known in recent years, and has gained a fair number of proponents. A large portion of this project will thus be devoted to a critical examination of such theories, in particular, to that offered by philosopher Susan Wolf. As I outline her theory and then apply it to my selected cases studies, we will be forced to tackle some difficult philosophical questions. For example, as Wolf attempts to provide us with what she takes to be the necessary requirements for moral responsibility, she identifies as one such requirement the condition that our wills be free. While I will hold off on presenting Wolf’s particular interpretation of this requirement, I will point out here that we will have to spend some time attempting to define the philosophical terms “will” and “free will”. We will not only need to understand how it is that Wolf utilizes these terms, but we will also need to determine whether we think that her definitions seem

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<sup>3</sup> This phrase was coined by Michele M. Moody-Adams in the article “Culture, Responsibility, and Affected Ignorance”. *Ethics*, 104 (January 1994): 291-309.

correct. Additionally, Wolf's final analysis of moral responsibility suggests that we need to *be* a certain way in order to be considered morally responsible for actions. To jump ahead momentarily, she will argue that we need to be able to "cognitively and normatively recognize and appreciate the world for what it is" (145)<sup>4</sup>. In order to determine whether we think we ought to accept Wolf's analysis, and in order to determine how her analysis will apply to the case studies I have chosen, we will have to think carefully about what it means to say that we have the ability to recognize truths (both moral and non-moral), and concomitantly, what it means to say that we sufficiently appreciate them.

I have chosen to devote such a large portion of this project to an examination of Wolf's theory for more than one reason. One such reason is the fact that it is, on many fronts, quite intuitive. After all, if we are considering the question as to whether the hypothetical slaveowner mentioned above ought to be considered culpable for having formed and acted upon false beliefs and values, we ought to consider the question as to whether that slaveowner *could have* believed and acted otherwise. If we think that he genuinely lacked the ability to have done otherwise, then we quite understandably might think that it would be unfair (or harsh) to blame him for acting as he (arguably) had to have done. As I develop my discussion of Wolf's theory, it will become evident that I think we have reason to be suspicious that such an analysis will actually apply to these sorts of case studies, but it is nonetheless a possibility about which we ought to be concerned.

Yet another reason that I will focus significant attention upon Wolf's theory lies in the fact that she herself makes mention of the sorts of figures with whom this case study will be concerned. She writes:

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<sup>4</sup> Wolf, Susan. "Sanity and the Metaphysics of Responsibility," in *Responsibility, Character and the Emotions*, ed. F. Schoeman (Cambridge: Cambridge University Press, 1987).

...[t]his new proposal explains why we give less than full responsibility to persons who, though acting badly, act in ways that are strongly encouraged by their societies—the slave owners of the 1850s, the German Nazis of the 1930s, and many male chauvinists of our fathers' generation, for example. These are people, we imagine, who falsely believe that the ways they are acting are morally acceptable, and so, we may assume, their behavior is expressive of or at least in accordance with these agents' deep selves [this is a term which I will introduce and explain later]. But their false beliefs in the moral permissibility of their actions and false values from which these beliefs derived may have been inevitable given the social circumstances in which they developed. If we think that the agents could not help but be mistaken about their values, we do not blame them for the actions which those values inspired. (145-146)

Wolf does not draw any definitive conclusions about the actual moral responsibility of such persons, but even the suggestion that acceptance of her theory might result in our reaching these sorts of conclusions about the slaveowners and the Nazis is quite provocative. Wolf is insistent that her theory is only meant to provide us with the conditions which must be met before we can say that a person is fully morally responsible for her actions. She is not immediately concerned with telling us whether particular persons are or are not responsible for their wrong actions, but is rather concerned with helping us determine the grounds upon which we will make those judgments. However, she does think that we will be able to apply her theory to particular cases, and she does provide us with her hypothesis as to what those judgments might be. If it turns out that her theory provides us with counterintuitive results, then we may have reason to think that her analysis is mistaken.

As this project progresses, the reader will come to see (I hope) that Wolf's theory does in fact suffer from some serious problems. I will hold off on my presentation of those problems, but mentioning them here makes it obvious that other theories of moral responsibility will have to be considered. If we determine that we ought to reject those theories which focus solely upon a persons' *ability* to have believed otherwise, we will be looking for an alternative analysis. Thus, another large portion of this project will be

devoted to what I have labeled the “Reasonability Theses”. This project is concerned with the questions of responsibility and culpability of perpetrators whose actions were encouraged by their cultures. I will argue that, contrary to suggestions made by Wolf, it is not accurate to say of the figures in the case studies that they lacked the ability to have believed and acted otherwise. However, a separate, but related trend in the philosophical literature suggests that what distinctly sets these case studies apart is the alleged fact that their beliefs were highly *reasonable*, especially once we consider the respective cultural factors of the case studies.

For example, one such argument which I will discuss is that offered by Lawrence Vogel<sup>5</sup>. Vogel is similarly engaged in the debate about the connection between cultural membership, culpable ignorance and moral responsibility. While Vogel is concerned with the “cultural impediments” to which an individual may be subject, he veers away from the route of his contemporaries such as Wolf. Vogel is less concerned with persons who obviously seem unable to recognize and appreciate (whatever that amounts to) the truths about the world; rather, he is concerned with persons who, by all accounts, appear *able* to recognize (and appreciate) truths, but whose backgrounds and cultural influences suggest that it would be *unreasonable* to expect them to believe and act differently (133). Given these individuals’ causal histories, and because of the supposed level of difficulty that would have had to have been surmounted for them to have discovered and accepted the truth, Vogel argues that we might conclude that they should be exempted from moral responsibility.

Yet another reasonability thesis which I will discuss is that offered by Neil Levy<sup>6</sup>. Levy also thinks that the case studies presented by the slaveowners are special due to

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<sup>5</sup> “Understanding and Blaming: Problems in the Attribution of Moral Responsibility,” in *Philosophy and Phenomenological Research*, Vol. 53, No. 1. (Mar., 1993), pp. 129-142).

<sup>6</sup> “Cultural Membership and Moral Responsibility,” in *The Monist*, Vol. 86, No. 2, pp. 145-163.

special cultural considerations. In his defense of the view that some persons (such as the typical American slaveowner of the 1850s) might not be culpable for their moral ignorance (and thus for their resulting actions), Levy appeals to what he thinks is the coherentist structure of moral reasoning. Given his understanding of how moral reasoning functions, Levy makes the claim that the typical slaveowner of this period may have been “rationally compelled to reject the truth” (152). This would presumably be so if we consider the environment and culture in which this typical slaveowner had been raised. As a result of this slaveowner’s secular and religious educations, that slaveowner had a complex set of beliefs about black slaves and their role within the southern community. This slaveowner would certainly have been exposed to the (correct) views that blacks were fully human and that the institution of slavery was morally reprehensible; it is unlikely, for example, that we would be able to identify any adult slaveowner from this time period who was unfamiliar with the abolitionist message. However, Levy says that, in spite of our recognition that the typical slaveowner was surely aware of the opposing (and actually correct) moral view, that slaveowner was nonetheless rationally justified to have rejected these propositions in favor of those supported by the majority of the white Southern community.

As Vogel and Levy present their arguments, both employ and rely heavily upon epistemological terms and concepts. Vogel will argue that it may be “unreasonable” for us to have expected the Nazis or the slaveowners to have accepted the respective truths about the moral permissibility of their actions. Levy says that the slaveowners did not have “good reason” to accept the truth, and argues that they would have been “rationally compelled to reject” the truth, and that likewise, it would have been “irrational” for them to have accepted the truth. Our alleged recognition of these epistemological facts then supposedly provides these figures with a moral excuse for their wrong actions. Consequently, as we further study these theories, we will have to delve into deeper philosophical territory.

Just as the examination of Wolf's theory will force us to tackle particular metaphysical claims (such as how we ought to conceptualize a free will), so too will we be forced to address epistemological questions: What is it to say that a belief is reasonable? What is it to say that a belief is irrational? What does it mean to say that a belief is epistemically justified? For that matter, what counts as good evidence in support of a particular belief? How is it that we ought to conduct our search for evidence relating to particular propositions? Do we have epistemic responsibilities to believe in a particular way? Do we have epistemic responsibilities to engage in projects of critical self-reflection?

As we sort through these questions, the reader will soon realize that the metaphysical and epistemological questions are not separate from the moral questions. In particular, as the discussion focuses upon the reasonability theses, we will note that the epistemic issues are not divorced from the moral issues. Arguably, all of the men in the chosen case studies (which I will soon outline) can be assigned moral blame for their actions. They can also—I will argue—be assigned epistemic blame for in many cases forming their beliefs on insufficient or contradictory evidence. Noting that a particular belief is not epistemically justified will not automatically allow us to make claims about moral culpability, however. Rather, we will need to first obtain a clear understanding of the separate concepts of epistemic and moral responsibility. We will then need to determine how the two concepts are related. A separate, and final, portion of this project will thus be devoted to this task.

#### Final Words of Introduction

I hope that the task at hand, and my reasons for undertaking it, are fairly clear. There is certainly much to be accomplished, and I will do my best to present the issues carefully, and to likewise define the issues and corresponding philosophical questions in a similarly careful manner. It is difficult in such a task to refrain from equivocating as we



bandy about such terms as “guilty,” “culpable,” “responsible,” “reasonable,” and “rational”. The reader may already have wondered, for example, in what sense it is that I am using the terms “culpable” and “responsible”. Indeed, insofar as I am exploring the impact that culture has upon moral responsibility, I will need to provide as clear a definition as possible for each of these relevant terms. Thus far, I have used them rather loosely and somewhat interchangeably, as often happens in normal discourse. While each theory that we will critically examine can be seen to use the respective terms in slightly different ways, I will proceed in the next chapter to provide us with an initial, and working, definition of the term “moral responsibility”. I will likewise explain how I think the corresponding terms of “culpability” and “blame” are related.

Additionally, insofar as I have indicated that I will be using the examples provided to us by real-life case studies as a means to present and critically examine various theories of moral responsibility, I will briefly introduce the two major case studies of this project in the next chapter. Most of this project will be concerned with the examination of what can be labeled philosophical cultural defenses. These are all attempts to explain why certain cultural considerations may provide certain defendants with mitigating excuses for their wrong actions. I do not want my reader to think that this issue remains purely at the theoretical level of philosophy, however. Indeed, our philosophical concepts of moral responsibility have an important, direct and practical impact upon our daily lives and practices. Just as we can identify a philosophical cultural defense, so too can we identify a *legal* cultural defense. This legal defense is one which is currently debated within legal spheres, the implementation of which would have a resounding effect upon how we view and treat individuals who engage in what we take to be morally questionable practices which are nonetheless encouraged by (or even required by) their respective cultures. Ideally, we should be able to assert that our legal practices are supported by solid and carefully conceived legal theories. Those theories, in turn, tend to be supported and justified by our more general philosophical theories about responsibility. Consequently,

after introducing the major case studies of this project, I will turn to a discussion of the legal cultural defense as it is currently unfolding in the courts.

## CHAPTER II. CASE STUDIES AND THE CULTURAL DEFENSE

### The Primary Characters

In what follows, I will introduce the primary case studies of this project, Franz Stangl (a Nazi death-camp commandant) and Charles Colcock Jones, Senior (an American slaveowner of the nineteenth century). These are both perpetrators of what I think we can agree are serious moral crimes. Nonetheless, their situations were both characterized by unique cultural considerations. I have already indicated how we might think that this fact about their situations might cause us to reconsider our judgments about their degree of moral responsibility for their participation in these morally wrong practices. An important premise of my final argument will be that, when we attempt to answer questions about the moral responsibility of individuals, it is essential that we consider carefully the details of the situations. I will explain to the reader why it is that we must avoid making sweeping generalizations, why we must define our concepts such as “culture”, and why we must consider not just what *most* members of a particular group believed or did, but what we can reasonably think *particular* members believed or did. The details provided by the case histories of these two men will thus be helpful as we attempt to determine whether any of the upcoming philosophical theories of moral responsibility seem plausible.

The use of detailed, real-life case studies will be helpful insofar as they will “bring to life” the philosophical theories which I will introduce. Applying these theories to the case studies will allow us to obtain a deeper understanding of the premises of the theories, and will allow us to predict the practical implications of accepting a particular philosophical theory. I have chosen these particular case studies in part because several of the philosophers who I will introduce make explicit mention of these sorts of individuals. They suggest, for example, that their theories may explain why many Nazi officers and

why “typical” members of slaveowning communities were allegedly less than fully responsible for their wrong actions.

These philosophical theories are meant to provide us with the necessary and sufficient conditions of moral responsibility. If it turns out, then, that a particular theory will (or will not) provide us with the answer we expect regarding the moral responsibility of a particular person, we should not think that the theory itself is necessarily implausible. Nonetheless, because our theories do in fact have practical implications, I think it worth our time to test the predictions of these philosophers.

The second part of this chapter is devoted to a presentation and discussion of the legal cultural defense. Legal cultural defendants are persons who violated the law, yet who were acting in ways encouraged by, or even required by, their cultures. I discuss these cases in order to demonstrate that theoretical questions of moral responsibility (of which most of the project is concerned) relate directly to practical matters.

### Franz Stangl

Franz Stangl earned the ignominious title of being the best Nazi camp commander during WWII. An Austrian citizen, born in 1908, Stangl served in three positions which were each in their own way integral to the implementation of Hitler’s final solution.

A military veteran, Stangl’s father apparently reigned over the family; Stangl claimed to have been “frightened to death” of him (25)<sup>7</sup>. Suffering from malnutrition, his father died at the beginning of WWI. His mother soon remarried; Stangl and his sister were introduced to two new step-siblings, to whom one of them—Wolfgang—Stangl became exceptionally close. Among Stangl’s early interests were playing the zither—he

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<sup>7</sup> All of the references to Franz Stangl made in this project are attributed to the following source: *Into That Darkness: An Examination of Conscience*, by Gitta Sereny. New York: Vintage Books, 1974.

was a member of the zither club—and weaving. He became an apprentice weaver at age fifteen, and at eighteen and a half he became the youngest master-weaver in Austria. He was quite proud of this accomplishment, but lamented that there was no room for advancement within the career. Speaking to his interviewer Gitta Sereny, Stangl commented:

Without higher education I couldn't get further promotion. But to go on doing all my life what I was doing then? Around me I saw men of thirty-five who had started at the same age as I and who were now old men. The work was too unhealthy. The dust got into your lungs—the noise ....I had often looked at young policemen in the streets: they looked so healthy, so secure....And so clean and spruce in their uniforms.... (27)

While Stangl expressed mixed motives for abandoning his career as a weaver, it is significant to note the presence of ambition as a driving force behind his subsequent decision to join the Austrian police force at age twenty-three; this is a theme to which I will return later in the dissertation. Stangl excelled on the force, quickly earning promotions. By the fall of 1935 he was transferred to the political division of the CID (Criminal Investigation Department). During that same autumn, he was also married to his wife, Theresa, with whom he would have two daughters and to whom he would remain remarkably devoted over the remainder of his life.

There is some controversy surrounding the question of Stangl's membership within the Nazi party. Prior to the *Anschluss* (the German annexation of Austria in March of 1938), the Austrian police force was opposed to the Nazi party; part of Stangl's job was to "...ferret out anti-government activities by anyone: Social Democrats, Communists *and* Nazis" (29). Indeed, Stangl made much of an award he received—The Austrian Eagle—in the summer of 1934. Stangl had found a cache of Nazi arms in a forest and was in turn awarded this medal. At this time, to have been a member of the Nazi party would have been illegal. As it became increasingly obvious that Austria would soon fall to Germany, however, it seemed a prudent choice to align with Hitler. Stangl

feared that his having won the Eagle would put him at great risk with the Nazis; he thus claims to have taken measures to get his name put on the illegal Nazi party list retroactively for the two years prior to the Nazis' rise to power.

Stangl maintained that he honestly feared that he was "marked" because of this medal, and that he and his family were in danger. Consequently he dared not make waves; he instead accepted the assignments and postings given to him by Nazi officials (30-31). Stangl's interviewer Sereny reports that several of his surviving colleagues from the period, and notably his wife, believed that he had in fact sympathized with the Nazis and had been an actual Nazi party member (32-34). Either way, once his name appeared on the list, he found himself in an advantageous position with regards to the Nazis.

After the *Anschluss*, the political (security) branch of the Austrian police force was absorbed into the Gestapo (36). Stangl's new rank was that of a Kriminalassistent; apparently, this was a demotion of sorts from his previous Austrian rank. Stangl "...wasn't having it..." (36); he protested and was duly given the rank of Kriminal oberassistent, which amounted to a promotion. It was here that Stangl was under the command of Georg Prohaska, a man with whom Stangl would clash. Prohaska apparently was not impressed with Stangl's forwardness: "But Prohaska...had found out that I wasn't somebody who'd allow himself to be pushed around, and he hated me from that moment on and made my life a misery" (37). The subsequent year and a half of Stangl's career appears to have been relatively uneventful, though he did continue to receive promotion. The fall of 1940, however, proved to be pivotal. It was then that he was ordered by Himmler to Berlin, where he was offered a transfer.

This—his first significant war-time assignment as an SS officer—was as the police superintendent of the Euthanasia Institute, Schloss Hartheim. The Institute was administered by the General Foundation for Institutional Care, headquartered at Tiergartenstrasse 4 (T4) in Berlin-Charlottenburg. T4 was one of the most secretive centers of the Third Reich; it oversaw the Euthanasia program beginning in 1939, which

carried out the “mercy-killing” of the mentally ill and physically handicapped. T4 would later direct the infamous “Final Solution” (49). Stangl reported his commanding officer Kriminalrath Werner as explaining to him that “... both Russia and America had for some considerable time had a law which permitted them to carry out euthanasia—‘mercy killings’—on people who were hopelessly insane or monstrously deformed” (50). Stangl was told that Germany would soon follow suit, but in the meantime, the operation would be undertaken in secrecy so as to protect the general population’s “sensibilities” (51). Stangl was told that the affected patients were examined by nurses and doctors and subjected to a series of four tests before being subjected to a “totally painless death” (51). Sereny reports that this screening procedure was rarely followed, and that, likewise, the patient base was not so restricted:

Although the “medical commission” did travel to some institutions, such careful medical examinations were by no means the rule. Most decisions of life or death were much more routinely made at T4, purely on the basis of a questionnaire which had been sent out by “Amt IVg”—subsection for institutional care—of the Ministry of the Interior to all mental institutions, asking for details of all patients who were senile, retarded or suffering a variety of other mental debilities: criminally insane, under care for five years or more, of foreign or racially impure extraction, incapable of work or capable of only routine mechanical tasks such as peeling vegetables. This was sent out on the pretext of gathering information to assist in economic planning... but photocopies were then turned over to T4 “medical staff”, who marked each case with a plus or minus sign: Life or Death. (footnote, 51)

As the Police Superintendent, Stangl’s duties were vaguely identified as to “keep law and order” (51). He remained at Schloss Hartheim from November 1940 to February 1942.

The T4 personnel would come to serve as the primary workforce for the four camps (all located in Poland) which were designed specifically as extermination camps: Chelmno, Belsec, Sobibor, and Treblinka. A conservative estimate is that approximately 2,000,000 Jews and 52,000 gypsies were killed at these camps during their respective operations; only eighty-seven people survived (100). Stangl was to become a key player

in the macabre success of the extermination program. Upon the winding-down of the euthanasia project in February of 1942, Stangl was offered the choice between either returning to Linz where he would be under the direction of Prohaska, or traveling to Lublin, Poland for an unnamed posting. He chose the latter option, and reported to the SS Polizeiführer, Brigadeführer Globocnik (78-9).

It was there that Stangl learned that he would be posted at Sobibor. He claimed not to have been told by Globocnik what his specific duties were to be at this “supply camp”. Supposedly, he was told only that he would be “directing construction”; he did not know initially to what end that construction was designed. He was soon to find out, however. It was not long after his arrival at Sobibor that the purpose of the camp became known: the sole function of the facility was to receive transports of prisoners—the primary constitution of which was Jewish prisoners from throughout the German-occupied territories—confiscate their belongings, and subsequently kill them<sup>8</sup>. During Stangl’s tenure from March 1942 to September 1942, it is estimated that 100,000 people were killed. What is remarkable is that these victims were killed in a period of only two months: The camp became operational in mid-May; in July, the machinery broke down and was not repaired until October, by which time Stangl had been transferred (114).

Stangl claimed to have been horrified upon learning of the camp’s purpose. He “...schemed and schemed and planned and planned...” in an effort to find a way out of the situation. Among his efforts were at least two transfer requests; he likewise enlisted the help of Globocnik’s aid, Sturmbannführer Höfle, asking of him to bring his request to

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<sup>8</sup> It is questionable as to how much importance was indeed placed upon the seizure of the Jewish prisoners’ money and personal possessions. Overwhelming historical evidence indicates that the primary purpose of the facility was to bring about the extermination of the Jewish race and other such “undesirables”. With this as the primary objective, the resulting monetary gains to the Nazis would have been a “bonus” of sorts. It is similarly argued that this primary objective was well-known among those in the Nazi organization. Far less likely is the suggestion that the death camps were employed principally as a means to obtaining the money of the victims. I make this note here insofar as this is the line that Stangl took throughout his interviews with Sereny.



Globocnik's attention (114). The request was ignored. In the meantime, Stangl continued performing the objectives of his assignment. He was not involved directly in the gassings of the prisoners, and reported being able to "...avoid seeing almost all of it" (114).

Near the end of the summer, Stangl was granted a leave, and his wife and children were granted a visit to Poland. During that time, he was called to report to Globocnik in Warsaw. Leaving his family in their rented rooms near Sobibor, Stangl traveled to Warsaw, whereupon he learned that he was being transferred yet again, this time to Treblinka, the largest of the death camps. He accepted the assignment. Sereny questioned his acceptance, asking why he did not, at that point, inform Globocnik that he could no longer go on with such work. She pointed out that it was not policy to kill men for rejecting such assignments. Stangl rejected her suggestion, and cited the following reasons:

Don't you see? He had me just where he wanted me; I had no idea where my family was. Had Michel [Stangl's colleague and friend at Sobibor] got them out? Or had they perhaps stopped them? Were they holding them as hostages? And even if they were out, the alternative was still the same: Prohaska was still in Linz. Can you imagine what would have happened to me if I had returned under those circumstances? No, he had me flat: I was a prisoner....I knew it *could* happen that they wouldn't shoot someone. But I also knew that more often they *did* shoot them, or send them to concentration camps. How could I know which would apply to me? (134)

Convinced that he had sufficient justification for his decision, Stangl arrived at Treblinka in September of 1942. He claimed to have once again put in for a transfer, which was again ignored by Globocnik (160). Despite his reported reluctance to accept the position, once having assumed the role of a death-camp director, Stangl performed the corresponding responsibilities with remarkable efficiency. Indeed, it was in response to his work ethic and the clock-work-like precision with which his camp was run that he earned the commendation for "best camp commander in Poland" (228-9). The conservative estimate—the number based upon which Stangl was ultimately sentenced—of those killed at Treblinka is 900,000 (250). Stangl remained at Treblinka until August

of 1943. At the end of the war, he managed to escape to Syria on a Red Cross passport. He remained there with his family until 1951, at which time he moved to Brazil. He was arrested in 1961 and extradited to West Germany. Found guilty for the deaths of nearly a million persons, he was sentenced to life-imprisonment and died of heart failure while in prison on June 28, 1971.

There is much that I have left out in this admittedly brief sketch of Stangl's biography. For example, much more can be said about Stangl's day-to-day duties as a death camp director. I have not outlined the extent to which Stangl was directly involved in the killings (however we define 'directly'), nor have I said much about what Stangl claimed to have felt about his participation in the Holocaust. I have given a small sample of how he justified his acceptance of his position at Treblinka, but there is much more to be said on this matter. How did he view his role? Did he believe that he was doing anything wrong? Did he honestly think that he had good justification for accepting his assignments and for fulfilling them so competently? Did the reasons he acted upon provide him with *actual* moral justification for his choices? Did the environment in which he found himself make it either impossible, or less likely, that he would have been capable of recognizing that his participation in the Holocaust was morally impermissible? The answers to these questions will be addressed in turn in subsequent chapters. For now, we have the basic outline of the first major case study. Below is the introduction to our second.

Charles Colcock Jones, Sr.

Another case study that will be examined is that provided by Charles Colcock Jones, Sr. (1804-1863)<sup>9</sup>. Jones was a Presbyterian clergyman and plantation owner in

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<sup>9</sup> All of the references to Charles Colcock Jones made in this project are attributed to the following reference: *Dwelling Place: A Plantation Epic*, by Erskine Clarke. New Haven & London: Yale University Press, 2005.

Liberty County, Georgia. He was also a self-proclaimed missionary to the slaves of Liberty County. Born into an established and well-off family, Jones was orphaned at a young age, though by no means abandoned. His father having been killed in a riding accident before his birth, and his mother having died in childbirth a few years later, young Jones was raised by his aunt. His paternal uncle Joseph Jones served as his father figure, and remained a highly influential figure throughout Charles's life.

Jones was privileged to receive an exemplary education, studying at Phillips Academy, Andover Theological Seminary and Princeton Theological Seminary. As a young man—and particularly during his studies in the North—Jones struggled with the issue of slavery. Even though he had been born into a slave-owning family, the moral status of the institution was not taken for granted. For example, among the questions posed to Charles and his primary school classmates was the following: “Would it be beneficial to the United States to abolish slavery?” (39). While we do not know how Charles in particular answered that question, we do know that he did not abandon the question as he advanced in his studies. Indeed, he considered the morality of slavery to be a question of the greatest moral importance, and seemed quite earnest in his desire to determine whether the institution could be justified on religious and ethical grounds. He was likewise concerned with determining exactly what his obligations to the black slaves were. With these interests in mind, he formed and presided over “A Society of Inquiry Concerning Africans” in 1830 while at Princeton.

Describing the objectives of the society to his then-fiancé (and first cousin) Mary, he wrote that the society would collect

[i]nformation respecting the condition and prospects of enslaved and manumitted Africans throughout the world, but more particularly those of our own country; to collect information respecting all benevolent societies designed to meliorate the condition of the neglected and degraded portion of the human family. (88)

While Jones expressed a desire to identify and promote the best interests of the Africans, he noted that the Society would serve a further function for its white members. He thought it extremely important that white Southerners such as himself should become as knowledgeable as possible about the subject of slavery. Given that he anticipated a career as a planter, Jones thought it necessary that he (and others like him) understand as best as possible how the subject of slavery “may be approached”, and he likewise sought to identify the “course of conduct” which would secure the “approbation” of the Southern white population (88-89). Jones seemed optimistic that there was one such course of conduct which could concurrently promote the ends of both the whites and the black slaves over whom they ruled.

Consequently, Jones devoted serious thought to contemplation of this question. For a time, he supported the efforts of the American Colonization Society, which sought to return the black population to West Africa, where the republic of Liberia had been established to colonize former American slaves (89). Jones’s commitment to the goals of this organization was relatively short-lived (perhaps because such a plan did not seem to further the interests of southern planters).

As his graduation from Princeton drew near, Jones was still uncertain as to how he would lead his adult life. He wrote to Mary of his indecision: one of his options—the one which was perhaps most appealing to him—would be for him to return to Georgia upon his graduation and do there what he could for the slaves. Were he to return to Liberty County, he would work among the slaves, and devote himself to preparing them for what he hoped would be their eventual emancipation. Alternatively, Jones told Mary that he wondered whether he ought to remain in the North and continue his work with the Colonization Society, or “in some other manner” (89). Jones thought that forsaking his plans to return home—painful though it would have been to remain separated from his friends and family—might have been the course of action which would have best allowed him to meet his moral obligations.

Jones's indecision was not long-lived, and he returned to Liberty County shortly after his graduation. Jones and Mary were married in December of 1830. Mary brought twenty-two slaves to their marriage, and her father (Charles's uncle) purchased a plantation for the newly-weds, which they named Carlawter. Jones then began his work as a missionary to the slaves of Liberty County, wherein his goal was to work towards a benevolent reform of slavery from within the institution. Early in his efforts as a missionary to the slaves, Jones still professed that slavery was morally reprehensible, and that it needed to be abolished. He nonetheless thought that the slaves, in their current condition, would not have fared well on their own, and thus needed to receive religious and moral education prior to the prospect of their freedom. Jones thought that it was his obligation (as well as the obligation of his fellow white planters) to provide the slaves with this necessary education.

Jones's career and the specifics of his beliefs regarding the nature of the black slaves and the moral permissibility of the institution varied over the course of his life. I will thus not provide a more extensive biography of either his life or his beliefs here; those details will be provided throughout the remainder of this project. At this early stage, I will only report that Jones never did abandon his role as a slaveowner; he never publicly advocated on behalf of plans for the eventual emancipation of the slaves; he never permanently relocated away from the slave-holding South; and he owned slaves until his death in 1863. As this project develops, we will examine Jones (and his beliefs and actions) from several perspectives. In one way or another, however, all of those perspectives are concerned with the impact that a culture such as Jones's—wherein the practice of slavery was thought by many to be morally acceptable, and wherein the practice was encouraged—has upon his moral responsibility for engaging in what we take to be an actually morally wrong practice.

### The Cultural Defense

It would be naïve to suggest that a person's culture has no significant effect upon the kind of person she will become. Our cultural heritage is one of the most powerful factors which—to use a familiar metaphor—works to mold our characters. If you were to be given an anthropological report summarizing the traditions, values and belief-systems of a particular culture, you might feel justified in predicting that individual members of that group would exhibit behavior consistent with those traditions, act in accordance with those values, and express views reflective of the culture's belief system. You would of course be aware that particular individuals would vary from the norm, but recognizing the formative impact that culture has, you would certainly not be surprised to find individuals who have embraced their heritage—individuals who are, in effect, products of their culture.

Our culture can give us a sense of belonging, an identity, and importantly, a way of understanding and interpreting our world and our place in it. These cultural gifts can bring great advantages, and can lead us to do great things. It is a great thing, for example, to be part of a culture which embraces the equality of the sexes and which values the intellectual contributions of women. The darker side of the coin, however, is that our culture can present us with bad values, harmful traditions and false beliefs, the internalization of which can lead us to perform morally questionable acts. When this is the case, an interesting and important philosophical question arises: to what extent is our responsibility for our behavior affected by the influence of our culture? Philosopher Tracy Isaacs has formulated the query in the following precise manner:

Social conditions of acceptance can put agents at moral risk, that is, at risk of doing what is wrong where they do not intend any wrongdoing. Assuming that cultural acceptance of a practice is not sufficient to make the practice morally permissible, but granting that cultures influence the values and behaviors of individuals, what impact does cultural influence have on the moral responsibility of individuals, particularly their responsibility for

their part in wrongs that fit into a scheme of culturally accepted practices?<sup>10</sup> (670-671)

Later in this chapter, I will explore various philosophical theories which attempt to address this question. Before heading down that road, however, I will first discuss some relatively recent court cases which have dealt with the issue of cultural influence and the notion of criminal responsibility. While the legal concept of criminal responsibility (or liability) is distinct from the philosophical concept of moral responsibility (a distinction upon which I will later elaborate), the two concepts nonetheless share some important similarities. They are furthermore importantly related, insofar as we think that ideally, our concept of legal responsibility is justified by our accepted concept of moral responsibility. A brief discussion of how an individual's cultural background does or does not factor into consideration of her criminal liability can serve as an interesting and fruitful starting point for our later philosophical discussion.

#### Case #1: Fumiko Kimura<sup>11</sup>

In 1985, California resident Fumiko Kimura learned that her husband had been unfaithful. Deeply ashamed, Kimura attempted the Japanese custom of *oyako-shinju*, or parent-child suicide. Believing that the only way to rid herself and her children of the shame of her husband's affair was to die, Kimura walked into the Pacific Ocean with her four-year-old son Kazutaka and six-month-old daughter Yuri. Bystanders were able to pull Ms. Kimura from the ocean, but they were unable to save her children. Ms. Kimura was subsequently charged with first degree murder in the deaths of her children.

In his discussion of the case<sup>12</sup>, John Lyman observes that "Ms. Kimura's behavior, if not originating in her cultural background, was at least directed and guided

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<sup>10</sup> Isaacs, Tracy. "Cultural Context and Moral Responsibility," in *Ethics*, Vol. 10, No. 4 (Jul., 1997), pp. (607-684).

<sup>11</sup> *People v. Kimura*, No. A-091133 (Los Angeles County 1985).

<sup>12</sup> Lyman, John C. "Cultural Defense: Viable Doctrine or Wishful Thinking?" in *Journal of Criminal Justice*, 87: 1986.

by it” (91). He explains that Ms. Kimura saw her children as an extension of herself, and believed that if they were to survive, they would carry the overwhelming burden of her shame. It would seem, then, that Ms. Kimura did not intend to perform what she thought was a morally wrong act. Given her background, and within the context of her cultural traditions, she believed that—however difficult it must have been for her—that she was doing what she had to do to save her children. She essentially thought that, not only was her act morally permissible, but that it was required, given her particular circumstances. In her mind, her act was not one of malevolent murder, but was rather meant to be a benevolent act, intended to save her children.

A large percentage of the Japanese-American community apparently agreed with this interpretation of events. Lyman reports that a petition was signed by 4000 Japanese-Americans, pleading to the prosecutor that Ms. Kimura be granted leniency. The petitioners argued that Ms. Kimura’s actions would not be considered murder in Japan; they asked that she be tried under modern Japanese law and suggested that she be charged with involuntary manslaughter. The petition was rejected by the prosecution, and Ms. Kimura pled guilty to voluntary manslaughter<sup>13</sup>. (Lyman, 91-92)

Those petitioners arguing on Ms. Kimura’s behalf were suggesting that her criminal responsibility be severely mitigated because of cultural considerations. They were in effect suggesting that she be allowed to use what has been dubbed a “cultural defense”. This is a defense which, though not traditionally accepted by the courts, is one which currently has many proponents. Those who support the defense advocate that it be recognized as a line of argument available to particular defendants. Lyman provides us with a definition:

A cultural defense will negate or mitigate criminal responsibility where acts are committed under a reasonable, good-faith belief in

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<sup>13</sup> I will return to explain why Ms. Kimura received a lesser conviction.



their propriety, based upon the actor's cultural heritage or tradition.  
(88)

The premise behind this sort of defense suggests that "...a person should be held blameless if acting pursuant to a good faith belief in the validity of his conduct as guided by his cultural belief or customs" (103). In Ms. Kimura's case, the application of this defense would suggest that because of her upbringing within Japanese culture, her belief that *oyako-shinju* was an appropriate response to her unfortunate marital circumstances was entirely understandable. If the custom were generally embraced, and if it was not illegal (or if it did not constitute murder) in Japan, then given Ms. Kimura's perspective from within her culture, her supporters would argue that she should not be found criminally responsible for murder.

Notice that the cultural defense as stated is restricted to the domain of *criminal* responsibility, which is a legal concept. A cultural defense would provide an excuse for actions which, though illegal, were performed by the accused under a good faith belief in their propriety as a result of unique cultural concerns. The inclusion of the condition that the action be performed "in good faith" may present some ambiguities; what, after all, does it mean to say that Kimura, for example, had a "good faith" belief in the propriety of *oyako-shinju*? While a complete analysis might be beyond the scope of the project at this early stage, I take Lyman to mean that, if such a cultural defense were to be accepted in a particular circumstance, it would have been ruled out that Kimura, for example, was not truly convinced of the propriety of her actions. Were we to think, for example, that she were lying to the court when she claimed that she thought she was doing what she morally had to do, then obviously her plea would have been rejected. In colloquial terms, "good faith belief" seems to be being used in the sense that the accused honestly thought that their actions were either morally, or perhaps even legally, permissible. Furthermore, the use of "good faith belief" seems to suggest that, had it been pointed out to the accused that their actions were in fact illegal—or had we been able to convince them of some flaw

in their moral reasoning—then *perhaps* they would not have performed the act in question.

As I have begun to discuss the Kimura case, the reader may have noted a further ambiguity. Proper application of the cultural defense requires that the defendant had a good faith belief in the propriety of their behavior. The term “propriety” can also be understood in more than one way; namely, we can take it to suggest that the defendant believed in the *moral* propriety of their behavior, or alternatively, that they believed in the *legal* propriety of their behavior (or, of course, both). Quite often, defendants looking to make use of such a defense will argue that they did not know that their actions were in fact illegal in the locale in which they performed these actions. Given the defendants’ cultural background, and given their knowledge of the action’s legality within their “home” society, they may have erroneously assumed that the action was similarly legal within their “new” or “foreign” culture. Thus, someone like Kimura, in offering a cultural defense, would have argued that they did not know that the act of *oyako-shinju* would be considered to be a case of murder in the United States. Even though the practice was not legal in Japan, individuals committing it would almost never be charged with first-degree murder. Perhaps Kimura thought that it constituted a similarly lesser crime in the United States.

If this cultural defense is to have any chance of becoming an accepted defense within the US criminal justice system, however, it must present the defendants as being ignorant of more than just the illegality of their actions. Ignorance of the law is very rarely allowed as a defense, and the proposed cultural defense is not meant to be reduced to this sort of argument. Rather, as indicated above, the cultural defense is meant to suggest that the defendants believed in the *moral* propriety of their actions. Perhaps some of the individuals seeking to avail themselves of this defense could lay honest claim to the suggestion that they did not know that their actions were illegal; however, that claim certainly would not be true of all of the hopeful cultural defendants, and as noted,

regardless of any actual ignorance of the illegality of their actions, any claim that their criminal liability be reduced solely on the grounds of this ignorance would likely be rejected. Kimura, for example, probably knew that drowning one's children would result in the arrest and pressing of criminal charges against the parent committing such an act. Prior to walking into the ocean, Kimura probably knew that, if she survived and her children did not, she would probably be charged with murder (as she in fact was).

The point is, Kimura *did not care* that she faced these consequences. She of course planned to die, but the prospect of her facing homicide charges on the chance that she did not succeed in killing herself would have been unlikely to have deterred her from implementing her plan. Even if Kimura had known that US law thought that *oyako-shinju* was an example of first-degree murder, Kimura *did not* think that she was murdering her children. Rather, Kimura believed in the moral propriety of her behavior, which suggests that she thought she was morally justified in attempting parent-child suicide. Perhaps she knew that her actions were illegal under US law, and perhaps she did not. Either way, Kimura's actions were motivated not by her knowledge of the *legal* status of her actions, but rather by what she thought was their moral status. Because she thought that her actions were morally justified, Kimura thought that her actions were not constitutive of murder, but were rather a justified instance of killing.

Our recognition of this fact brings to the forefront a related point which requires further distinction. The cultural defense that is being discussed here is presented as an *excuse* defense, as opposed to a *justification* defense. Various sorts of excuse defenses are currently accepted by the courts. In her article "Culture as Justification, Not Excuse,"<sup>14</sup> Elaine M. Chiu explains that excuse defenses such as insanity, duress or extreme

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<sup>14</sup> *American Criminal Law Review*, Vol. 43, 2006: 1317-1374.

emotional disturbance<sup>15</sup> all share the general assumption that the blame for the wrong action may appropriately be shifted away from the actor. In an excuse defense, the defendant is still considered to have acted wrongly insofar as it is not contested that the defendant committed an illegal action. Nor is it argued that the defendant was justified in acting as she did. It is not claimed in an excuse defense that, given the defendant's particular circumstances, the court ought to recognize a valid exception to the rule which would normally forbid the action-type performed by the defendant.

Rather, if an excuse defense is successful, we will conclude that she is not to be blamed—or that she is to be blamed less—for she has suffered from some sort of disability. The blame for the wrong action is thus shifted onto the disability. The disabilities at fault may include, but are not limited to, intoxication, duress, automatism, somnambulism and mental illness (1327). In each case, the disability in question allegedly exerts its influence in a way that sets the defendant apart from “the general law-abiding population” (1327). The disability may make it the case that the actor cannot control her behavior, or it may make it exceptionally more difficult for the actor to control her actions. Alternatively, the disability may affect the cognitive abilities of the defendant: it may make it the case that she does not know what she is doing, or that she does not understand the moral nature of what she is doing (1327).

The cultural excuse defense that we have been considering here suggests, then, that the individual's culture plays a pivotal role in making it the case that the defendant came to believe in the propriety of her (actually illegal) behavior. The cultural excuse defense would argue that, though the defendant, by her own admission, performed an action which was illegal, the court ought to consider that she is less than fully blameworthy due to the role that her cultural background had to play in her value and

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<sup>15</sup> There are many more excuse defenses. See page 1327 for a further list. Those listed above are merely a representative sample, though they are among the most common excuse defenses utilized in cultural cases.

belief formation, which in turn prompted her behavior. If a cultural defense is meant to serve as a *justification* defense, on the other hand, it would be argued that the defendant had actual justification for acting as she did. A justification defense would argue that, while the type of action performed by the defendant would normally be considered illegal, because of particular facts unique to the defendant's circumstances, the courts ought to accept that the defendant acted properly—in this case legally—when acting as she did. Thus, for example, while stabbing a person to death may typically result in homicide charges being brought against a person, if it is accepted that the stabbing provided the defendant with the only means to avoid escaping death at the hands of a home-intruder, the courts may declare that the stabbing was an act of justified homicide. In such a case, the courts would have concluded that the defendant did not violate the law, but acted in a legally permissible manner.

Later in this project, I will return to Chiu's article, where she argues that a justification cultural defense ought to be allowed by the courts. For the time being, however, our focus will remain on the excuse cultural defense. An excuse cultural defense is in many ways less extreme than a justification defense, and it certainly has many more proponents on its side. Additionally, most of the philosophical theories of moral responsibility with which this project will be concerned themselves offer what can be described as excuse cultural defenses. These philosophical theories are concerned about how we ought to assess the moral responsibility of persons who engage in behavior which we think is objectively morally wrong, yet which we recognize is encouraged by, or even required by, their respective cultures. Because of this, these theories suggest that moral *excuses* may be available to these perpetrators.

We will soon turn our attention towards these philosophical theories of moral responsibility to determine whether they actually provide us with what we take to be genuine mitigating excuses for the perpetrators of the chosen case studies. Given the many similarities between our moral and legal theories of moral responsibility, we will

first continue to explore the topic as it is approached in legal discussions. Lyman, for example, will argue (convincingly, I think) that the excuse cultural defense as it is currently being advocated, is subject to serious objections. Acceptance of the claim that the defense is inadequate in its current form would suggest either that it ought to be rejected as a potential excuse defense, or that it ought to be revised. Our subsequent examination of philosophical theories of moral responsibility might then provide us with an idea as to which of these options we ought to consider.

### The Legal Distinctions

In order for a person to be considered criminally liable for an action, the state must prove both the *mens rea* (the specific state of mind identified as criminal intent) and the *actus reus* (the particular illegal act). The (excuse) cultural defense as explained above is concerned with the *mens rea*, or intent, component of a crime. While the word “intent” may have many different uses and senses (for example, it is often equated with the concept of “motive”), its legal definition is narrow. Lyman explains the current accepted definition of criminal intent:

[i]t involves an intent to do that which, whether the actor knows it or not, constitutes a violation of the law. Intent looks to those consequences which the act is done to accomplish or those consequences which the actor knows (or should know) are substantially certain to result. (98)

If the prosecution can prove that a defendant’s action was performed “purposefully, knowingly, recklessly or negligently” then criminal culpability will have been established (99). In this legal context, the person’s particular motives for performing the illegal act are not factored into the determination of criminal liability. Attention is often paid to motive, however, insofar as identifying an individual’s motives for performing a particular action can often provide us with insight into that individual’s intent. In order to be considered criminally liable, it must be established that the accused intended to that which was actually against the law, whether she knew it was illegal or not. Knowing *why*

the person did what she did can help us determine exactly what it was she thought she was doing. This then, can help determine the question of intent.

For example, let us consider an example of two defendants, both of whom can be described as having the same intent, but who possess different motives. In this example, my advisor and I both intend to kill my husband. In my case, I form the intention to stab my husband after suspecting him of infidelity. My motive for stabbing him relates to my jealousy and rage. Let us imagine that he survives the attack, and upon his release, my advisor similarly decides to stab him. In our respective crimes, the *actus reus* is identical: we both stabbed my husband<sup>16</sup>. Likewise, our intentions were the same: we both intended to stab (and hoped to kill) my husband. However, my advisor's motives for stabbing my husband differed from mine, for she attacked him thinking that it was necessary in order to allow me the time and freedom from distractions necessary to complete my dissertation.

In this example, the investigators and prosecutors would be interested in identifying our motives for committing our crimes. In both cases, correctly identifying the motives for our actions lent insight into the matter of our intent, or *mens rea*. Knowing that I stabbed my husband because I was outraged at the thought of his infidelity, and knowing that my advisor stabbed him because she thought I could finish if he were out of the way, would lead the prosecutors to conclude that both of us really did intend to stab him (that we really did intend to perform an action which was against the law). Identifying our motives helps the prosecution rule out the possibility that, for example, either of the stabbings was an accident, in which case they may have concluded that we did not possess the requisite *mens rea*.

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<sup>16</sup> I would like to thank my advisor, Diane Jeske, for this example. I should also note that neither of us harbor such malicious feelings towards my husband.

Furthermore, insight into a defendant's motives may be relevant as the prosecution decides exactly which charge ought to be brought against the defendant, and it can quite often be relevant in sentencing matters. Nonetheless, it is important to remember that correctly identifying the motives for a crime will *not* determine the question of *mens rea*. The legal issue of *mens rea* is only concerned with intent, yet the lesson to be retained is that insight into motive can provide us with insight into intent.

In contrast, a person's motives may or may not be a consideration when determining whether she ought to be considered *morally* responsible for her wrong behavior. There are many competing interpretations of the concept of moral responsibility. As the dissertation progresses, I will attempt to provide a more detailed analysis of the concept. For now, however, I will borrow the rough definition offered by Andrew Eshleman<sup>17</sup>: "...to be morally responsible for something, say an action, is to be worthy of a particular kind of reaction—praise, blame, or something akin to these—for having performed it" (1). From this initial definition, however, we should not conclude that there is a necessary connection between an individual's moral responsibility for a particular action and the reactive attitudes which we may level against that person. There are, in fact theories which would assert this. Peter Strawson<sup>18</sup>, for example, presents a rather complicated argument to the effect that the reactive attitude to a person's action is constitutive of that person's moral responsibility for that action. This is a rather extreme position, and it does not seem to be held by the majority of the philosophers with whom this project will be engaged. Rather, a more intuitive (for many of us) understanding of moral responsibility suggests that we determine independently whether a person is or is not responsible for a particular action (or whether she is less than fully-

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<sup>17</sup> Eshleman, Andrew. "Moral Responsibility" *Stanford Encyclopedia of Philosophy*, 2004. <http://plato.stanford.edu/entries/moral-responsibility/>

<sup>18</sup> Strawson, P. F. *Freedom and Resentment and Other Essays*. Routledge: New York, 2008.



responsible). Once this matter has been settled, we will then turn to the question as to what sort of reactive attitude we feel is merited in the situation. This approach does not suggest that our answer to either one of these questions determines our answer to the other. Among the sorts of reactions we may feel are merited may be praise, blame, condemnation, etc., and of course, these may be followed by the implementation of what we feel is appropriate reward or punishment.

As we are attempting to determine how we ought to respond to particular persons, we will want to consider whether we think that they were fully responsible for what they did. We may for example, think that we should withhold harsh punishment when it has been determined that the perpetrator of a crime was not fully responsible. We may also, however, decide that we ought to withhold harsh treatment even *if* we have reason to think the person in question was fully responsible. She would be fully responsible, perhaps, if we thought that she knew exactly what she was doing, she intended to perform the particular action, she was free to perform the action, and that she was not subject to mental illness, coercion or delusion. Even under these circumstances, we may decide, upon reflection, that it would do no good to chastise this person, or that perhaps punishment would not serve to deter her (or anyone else) from acting similarly. Perhaps, for example, if the accused is on her death bed we may think that there would be no point in blaming her for her moral error. This is not, of course, to say that she does not *deserve* blame, only that we have chosen not to blame her—in spite of the fact that we think she was fully responsible for her immoral behavior.

It is no small task to determine the conditions under which a person ought to be considered morally responsible for her behavior, and it is likewise a daunting task to outline the conditions which may mitigate or negate her moral responsibility. There may be a myriad of factors which could affect a person's degree of moral responsibility. However, as noted above, the likelihood that a person's culture will significantly influence—or, as some will suggest, determine—her behavior, indicates that a full

analysis of the concept of moral responsibility will require an exploration of this relationship. If cultural concerns have a role to play in determining the narrow concept of criminal responsibility, then it would stand to reason that they would likewise be a factor in determining moral responsibility. Indeed, the first philosophical theory of moral responsibility we will examine suggests that an individual's culture may make it the case that she cannot recognize or appreciate certain important truths about the world. This theory suggests that a person's culture can affect her in such a way that she lacks an important cognitive ability to be able to recognize or understand that particular actions are morally wrong. As we return to the case of Ms. Kimura, and as we look at additional cases in which it has been suggested that a cultural defense may have been appropriate, we will look to see what arguments are given for or against the defense. If the arguments are in any way convincing, we will look to see whether the philosophical theories of moral responsibility may help explain this. If the legal theory seems right, then we may be able to identify the philosophical theory which supports it, and we would then have good reason to think we have identified a convincing theory of moral responsibility. Alternatively, the legal arguments may be inadequate; this could suggest that either the philosophical theory supporting the legal theory suffers similarly, and/or that any similar philosophical theories ought to be approached with suspicion.

#### Considerations Against the Legal Cultural Excuse Defense

Recall from above that the petition on behalf of Ms. Kimura was rejected—perhaps not unsurprisingly—by the prosecution. Slightly surprising, however, is the fact that Ms. Kimura's own defense attorney rejected any attempt to utilize a freestanding cultural defense. A *freestanding* defense would attempt to argue that the defendant's criminal liability ought to be reduced or negated *solely* in virtue of the fact that the defendant believed in the propriety of her act because of her cultural heritage. Ms. Kimura's attorney apparently felt that undertaking such a defense strategy would be akin

to opening a “Pandora’s Box” and had no chance of success (Lyman 92). Instead, the defense chose to argue that Ms. Kimura was mentally ill and that “...therefore she lacked the intent required for first degree murder since she lacked malice” (92). This explains Kimura’s plea bargain, wherein her charges were reduced from first-degree murder to voluntary manslaughter.

The fact that Ms. Kimura believed that what she was doing was both the morally and legally correct thing to do surely factored into the defense’s ultimate strategy. Given that she believed she had to save her children from her shame, and given that she allegedly believed that *oyako-shinju* was the only way to protect them, her act clearly was not performed with the malice that is required for a first-degree murder charge. No further details are given by Lyman as to why Ms. Kimura’s lawyer rejected a cultural defense beyond those cited above. Lyman, however, clearly thinks that a freestanding cultural defense would not have been appropriate in this case, nor does he think that it is ever a “...viable substantive doctrine in U.S. criminal law” (89). His reasons for concluding this are varied.

Perhaps his most straightforward argument against allowing a freestanding cultural defense is that a person’s cultural heritage will inform her beliefs and actions in ways which will affect her motives (99). As already established, however, an individual’s motive is not an element of criminal responsibility. Criminal intent is established once it is determined that the individual knew, or should have known, of the foreseeable consequences of her actions. Given this definition, Ms. Kimura’s belief in the propriety of her act could not have obviated her criminal liability. Ms. Kimura knew what the consequences of walking her children into the ocean would be. She knew (or had good reason to believe) that her children would die; that was indeed her purpose in performing *oyako-shinju*. Given that Ms. Kimura had clear knowledge of the consequences of her action, criminal intent could have been established easily by the prosecution. The prosecution would have argued that Kimura knew what she was doing and that she knew

what would result; indeed, she *aimed* at the consequences. Given that they would have been able to argue along these lines, it was thought that they would have established the requisite *mens rea*, or intent. Criminal liability is not concerned with whether the accused thought that what she was doing was permissible or whether she thought the consequences were desirable.

A defendant's degree of criminal responsibility is likewise almost never reduced because of the defendant's supposed ignorance of the law. Even if we were to accept that Ms. Kimura did not realize that the actions constituting *oyako-shinju* would be considered criminal murder under U.S. law, her ignorance would not provide for her a justification. Lyman explains: "The general rule in criminal law is that a mistake of fact will not constitute justification if the prohibited act is deliberately and intentionally committed" (104). Ms. Kimura's successful attempt to drown her children was both deliberate and intentional. Kimura's defense team seemed convinced that the prosecution would have been able to establish this, which then would have put her in danger of facing homicide convictions. Consequently, they rejected any attempt at arguing a free-standing cultural excuse defense, and prior to reaching a plea agreement with the prosecution, they presented a temporary insanity defense.

By the M'Naughten test (which is the test used by California at the time of Kimura's arrest, and which is currently used in the majority of states), a defendant is deemed legally insane if at the time of the alleged crime, she did not understand the nature and quality of her action, or if she did not understand that her action was wrong. Had the case proceeded to trial, the defense would have argued that, because of Chiu's unique cultural background, she was rendered unable to know that what she was doing in killing her children was morally wrong. Thus, even though the prosecution would have arguably been able to establish that her actions were deliberate and intentional, the defense would have claimed that she suffered from a disability (temporary insanity) which rendered her unable to recognize or appreciate the fact that her action was morally

wrong. The inability would have allegedly been caused by her cultural factors, but this defense strategy does not assert that she ought to be excused from responsibility merely because her beliefs were in accord with her cultural background (as would the freestanding cultural defense).

This temporary insanity defense does not constitute what Lyman has been referring to as a freestanding excuse cultural defense. Rather, the temporary insanity defense as applied to “cultural” defendants like Kimura moves such defendants into a subcategory of the insanity excuse defense. I will return in a later section of this project to the issue of Kimura’s defense team arguing that she suffered from temporary insanity. Elaine Chiu (mentioned above) will argue, for example, that it was a “travesty” of justice that her counselors thought this her best legal strategy. While Lyman will continue to argue here that a freestanding cultural defense is problematic, and should not be allowed into legal doctrine, Chui will argue not only that such a defense is *not* problematic, but that cultural defendants should be allowed not just an excuse cultural defense, but a justification cultural defense strategy.

First, however, we will return to the issue of a freestanding excuse cultural defense. Lyman thought that a freestanding cultural excuse defense would not have been appropriate for Kimura due to the fact that her actions were performed deliberately and intentionally (thus establishing *mens rea*), and due to the fact that any potential claim she made to alleged ignorance of the illegality of her action would have been rejected. Lyman told us that recognition of Kimura’s cultural background, and recognition of her accepted values gave us insight into her motives. That is, we were able to acknowledge that Kimura thought she was doing what she (sadly) had to do. There is a sense in which we could say that her motives were good: she wanted to save her children from shame and rejection, and she did not want to abandon them to what she thought would be a painful existence without her. But given that *mens rea* is not concerned with whether a person’s motives, but only with whether they intended to perform an action that was forbidden by

the law, recognizing that her motives were informed by her acceptance of traditional Japanese values would not have been able to negate intent. The next case we will examine involves what can be described as a mistake of fact due to cultural factors which did result in the defendant's being charged with a lesser crime<sup>19</sup>. As we will see, however, the appropriateness of a freestanding cultural defense for this case is similarly weak.

#### Case #2: Kong Moua<sup>20</sup>

Also in California in 1985, Kong Moua was arrested and originally charged with false imprisonment, kidnapping and rape. Moua was a member of the Hmong, a Laotian mountain tribe with a large immigrant population in California. Among the marriage customs of the Hmong is that of *zij poj niam*, or marriage-by-capture. In this practice, the Hmong man abducts his chosen bride; the marriage is consummated and considered to be legitimate once intercourse takes place. The captured bride is expected to resist the sexual advances in order to demonstrate that she is virginal and virtuous. Once sex has occurred, she is considered to be unmarriageable by other Hmong men. This practice of *zij poj niam* has continued even after the emigration of the Hmong from Laos to California. The result has been that a number of Hmong men have been charged with kidnapping and rape, Kong Moua among them.

What is interesting about Moua's case is that the original charges of kidnapping and rape were dropped, specifically because of cultural factors relating to his beliefs about *zij poj niam*. Moua's actions in capturing his victim and forcing her to submit to sexual intercourse clearly constituted the illegal actions of kidnapping and rape, and it was not argued that Moua believed that either kidnapping or rape were legal actions in

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<sup>19</sup> As opposed to Kimura's case, which ultimately was described as one of reduced responsibility due to mental illness.

<sup>20</sup> *People v. Moua*, (No. 315972-0, Fresno County 1985).

the U.S. He knew that rape was illegal; what was argued, however, was that Moua did not believe that what he was doing was rape. Because of his acceptance of the practice of marriage-by-capture—which itself resulted from the general acceptance of the practice within his community—Moua did not think that his victim’s protests were sincere.

As Lyman explains, “...if a reasonable, good faith belief in the woman’s consent was evident, it would not constitute rape” (93-4). In Moua’s case, the prosecutor apparently accepted that Moua believed his victim’s protests were insincere. This false belief did not excuse his criminal conduct, but it was allowed into evidence to establish Moua’s state of mind, which related to the issue of *mens rea*; given that his conduct was motivated by his cultural heritage, examination of his belief could help establish whether he acted with the requisite criminal intent (Lyman 94). The prosecutor determined that Moua was genuinely and reasonably mistaken in thinking his victim actually consented to intercourse; this then led to the dropping of the kidnapping rape charges. Moua was allowed to plead guilty to the misdemeanor charge of false imprisonment.

Even though Moua’s charges were reduced, it is important to note that he did not employ what we have been calling a freestanding cultural excuse defense. For this to have happened, his lawyers would have had to argue that, given Moua’s heritage and his acceptance of the supposed propriety of the practice of marriage-by-capture, it would have been unreasonable to have blamed him for participating in the practice. Such a defense would have essentially asked for a pass for Moua and other Hmong who have been taught that *zij poj niam* is a legitimate practice and who subsequently embrace the practice. Moua’s lawyers, however, recognized that such a defense had little hope of succeeding.

The cultural defense as stated implies that it would have been unreasonable to have expected Moua and others like him to have known that the actions for which they were arrested were illegal (or morally wrong). There are two points relating to this: (1) it is highly unlikely that Moua (and other Hmong) believed that it was legal in the US to

capture a young woman and force her to submit to sex; (2) even had Moua pled such ignorance, it would have been highly unlikely that the defense could have persuaded the judge and jury that such a mistake was reasonable. As already mentioned, ignorance of the law is rarely allowed as a defense. The real mistake, however, and the one for which Moua *was* granted some leniency, was that Moua thought he was doing something other than that for which he was arrested.

The marriage-by-capture custom, as Moua understood it, suggests that the “capture” and the “forced” sex are feigned. The custom—however misguided—suggests that any protests on the part of the woman are not genuine, and that she is actually a willing participant in the marriage “ceremony”. Moua’s defense team were thus able to argue not that he thought that it was legal or acceptable to kidnap and rape a woman, but rather that he thought he was doing something entirely different. He allegedly thought that he was performing the ritualized steps of a marriage ceremony to a willing bride; it was reasonable for him to think that this series of action was legal in the U.S. Consequently, even though Moua’s actions were performed deliberately and intentionally, criminal intent was not established. Given how he conceptualized and described his actions, his mistake of fact about the situation made it such that he thought he was having consensual sex and not committing rape. Moua intended the consequences of consensual sex, not those of rape. Furthermore, because his mistake of fact (in his incorrect assumption that his victim’s protests were not real) was considered to be reasonable, it was determined that he did not act with recklessness or negligence (Golding 148)<sup>21</sup>.

Thus, in the case of Moua, cultural tradition served as the basis for what was determined to be an honest and reasonable mistake of fact. It is in a relatively narrow sense, then, that the case be described as utilizing a cultural defense. Lyman, however,

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<sup>21</sup> Martin P. Golding, “The Cultural Defense”. *Ratio Juris*. Vol. 15 No. 2 June 2002 (146-58).



contends that circumstances such as those present in *Moua* are rare and “too narrow” as to allow “a substantive cultural defense” predicated upon the premise that culturally-generated ignorance or mistake of law may excuse from criminal liability (105). The significant difference between the case of *Moua* and that of *Kimura*, for example, lies not with the defendant’s belief in the propriety of their actions. Given their cultural heritages, both defendants thought that what they were doing was appropriate. The difference between the two cases is that Moua’s acceptance of his cultural traditions led him to mistake protest for consent. Kimura knew that she was drowning her children; Moua did not know that he was raping his victim. Mistakes such as Moua’s are (hopefully) uncommon.

The next case that I will discuss is one in which cultural factors were similarly a concern, and one in which a cultural defense of sorts *was* allowed; the appropriateness of this choice, however, was vehemently called into question.

### Case #3: Don Lu Chen<sup>22</sup>

In the fall of 1988, Don Lu Chen—a recent immigrant from China—learned of his wife’s affair. Two weeks after this event, Chen smashed her skull repeatedly with a claw hammer, killing her. As part of his defense, anthropological testimony was introduced, suggesting that in traditional Chinese culture, a wife’s infidelity is “highly shaming for the husband” (Golding, 149). Chen was found guilty of second-degree manslaughter after the court determined that he was “driven to violence by traditional Chinese values about adultery and loss of manhood” (Golding, 149). Chen received five years probation for killing his wife.

The fact that Chen was not charged with first-degree murder, and that he was allowed to present a form of the culture defense which led to his light punishment caused

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<sup>22</sup> *People v. Chen* (No. 87-7774, Sup. Ct. N.Y. County, Dec. 2, 1988).

significant controversy and uproar. The issues presented by this case were both theoretical and practical in nature. In his discussion of the case, Martin Golding points out that whenever a case relies heavily upon the consideration of cultural evidence, the difficult task of defining and describing a culture presents itself. It is often the case, Golding asserts, that a particular culture is characterized in “a questionable way” (150). Those attempting to present cultural defenses will make generalized claims about “traditional values” with the implication that these values are embraced by all those raised within the culture. However, Golding suggests that other, deeper questions must first be asked: “What is a culture, and how homogenous does it have to be for the cultural evidence to count?” (150). If these questions were to be addressed, the assumption that the “traditional values” in question were widely embraced often would be proven faulty.

A cultural defense asserts that the widespread cultural acceptance of a practice (though actually illegal in this person’s “new” or “foreign” culture) makes it such that an individual forms a reasonable belief that it is legally permissible for him to engage in this practice. To be able to apply this defense, however, one must first identify the particular culture to which it is that the individual is said to belong. Chen, though admittedly a recent immigrant from China, had settled into life in America (similar comments can indeed be made about all of the defendants discussed). Though he had perhaps not been a *long-standing* member of U.S. culture, an argument could be put forth that he was nonetheless a member and had certainly adopted some of what may be called American values. This observation points to the fact that an individual can rarely be said to belong to only one culture (however we draw the line around distinct cultures).

Even so, defenders of the cultural defense might argue that mere membership in multiple cultures, some of which may endorse conflicting values, does not entail that the individual identifies with or embraces all of the values of each of the cultures. Thus, even if it could be argued that Chen was a member of U.S. culture and that he was aware of U.S. sentiments against this sort of “practice”, defenders of Chen could assert that he was

at heart a member of Chinese culture. They would argue that, although he participated in various cultures, his background and history were firmly entrenched in Chinese culture. According to his defenders, it would only make sense that Chen would reject values which would contradict what he believed was a husband's right to preserve his honor and avoid the shame of divorce.

Setting aside the fact that the presiding judge in the case was persuaded by this line of thinking, Golding points out an inherent flaw in the argument, noting that it was admitted during testimony that the practice of a husband taking violent retribution against his adulterous wife was not widely accepted within Chinese culture (150). The court determined that Chen had been "driven to violence by traditional Chinese values about adultery and loss of manhood" (Golding 149). The suggestion was that, as a member of Chinese culture, it was reasonable for Chen to adopt these values and to act in accordance with them<sup>23</sup>. What was seemingly overlooked, however, is the fact that many individuals from *within* this culture have rejected these values. This would suggest that it is by no means a foregone conclusion that membership within a particular culture or exposure to certain values will determine that an individual will adopt and act in accordance with these values.

Yet another worry prompted by the court's decision to accept the claim that Chen was "driven" to violence as a result of his acceptance of traditional Chinese values is the possibility that an unwanted precedent has been set. If we accept that acceptance of certain values and beliefs in the propriety of suspect customs is reasonable because these values and beliefs are held by a large percentage of a subculture, and that this can then excusably "drive" one to act in accordance with these suspect values and beliefs, we have no reason not to further expand the defense to be available to members of other

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<sup>23</sup> We will not worry for the time being about the metaphysical puzzles involved in the claim that values can 'drive' one to violence.

subcultures. The cases thus far examined as examples of “cultural” cases have been examples of immigrant defendants, of whom we would say that “American” culture was not their first, or “home” culture. However, we have already noted the distinct difficulty that arises when attempting to identify the particular culture to which an individual belongs, or the distinct culture which we would say is an individual’s “primary” culture. Kimura may have most identified with traditional Japanese culture, and Chen with traditional Chinese culture (though even these distinctions are vague). Even within American culture, however, we can easily identify numerous and distinct subcultures. If not a first-generation immigrant to American, we can nonetheless say of a particular person that he is a member of a gang culture, or of a fundamentalist religious culture, in which traditionally (for example), it is thought that a man has complete authority over his partner or spouse. There are certainly subcultures within American culture which endorse practices which we consider to be sexist, misogynistic or racist. It is unlikely that proponents of the excuse cultural defense, as it is being advocated for here, mean to suggest that this defense be available to members of American subcultures such as neo-Nazis. It is hard to see, however, how it would not apply just as aptly to the neo-Nazi who was arguably “driven” to violence against his Jewish neighbor as was the recent immigrant “driven” to violence against his adulterous wife.

A related point that seems to have been overlooked in all of these cases is that the perspectives of the victims, who importantly were members of the cultures in question, were overlooked. It is certainly significant that Chen’s reaction to his wife’s affair was not one which would be endorsed by all Chinese men who found themselves in similar situations. It is just as significant, however, that the traditional values referred to in Chen’s trial were not accepted by the Chinese *women* who potentially faced such violence at the hands of their husbands. Golding reports that the Chinese women of New York were deeply concerned at the outcome of Chen’s trial; they feared that his

successful defense would give their husbands *carte blanche*, and would in effect license violence against women (150).

Similar concerns are raised if we once again consider the *Moua* case. Though it was determined in this case that Moua's beliefs about the practice led him to make a (supposedly) reasonable error which led to a reduction in his charges, it can be argued that a dangerous precedent has been set in allowing this much of a cultural defense to succeed. If Hmong men are taught that a woman's protests are not genuine, and if they furthermore are aware that they have a legal recourse to avoid rape charges, the Hmong women—many of whom are unwilling participants in *zij poj niam*—are put at risk.

While there may be many purposes to the criminal law, one of its most important purposes is to protect potential victims. A defense which would rather easily allow perpetrators of crimes recourse to an excuse on the grounds that their actions were in accord with a culturally accepted tradition fails to take into proper consideration the fact that those traditions may be particularly harmful to a subset of individuals within that culture. The freestanding cultural excuse defense in effect seeks to protect the individuals who accept and perpetuate these cultural traditions, and is not concerned with protecting the individuals who are negatively affected by those practices. This defense essentially argues that, so long as a particular practice is widely accepted by members of a particular culture, then the perpetrator's belief in the propriety of that practice is allegedly reasonable, and that they should thus be excused from participating in that practice, even if it results in the infliction of serious harm (death, rape, etc.) to other individuals of that culture (Kimura's children, Moua's "bride", and Chen's wife). This defense does not ask of the defendants that they critically examine the practice themselves, or that they consider the perspective of their potential victims. It does not require that the defendants determine for themselves whether the tradition is one which has objective moral reasons in support of it, or whether the tradition is worth perpetuating.

Thus, not only does this defense fail to take into proper consideration the perspective of the potential victims of these “cultural” practices (thereby leaving them at risk), the defense also creates a dangerous shift away from recognizing the importance of individual responsibility for one’s actions. This defense deemphasizes the importance of requiring of individuals that they examine their beliefs, that they critically evaluate their cultural traditions, and that they educate themselves regarding the customs and laws of their “new” cultures. Golding comments: “Especially with immigrants, who are aware of the many discrepancies between their original culture and their new home, should make the effort to find out the legalities and illegalities of what they propose to do” (154). The perpetrators whom we have been discussing failed to do this; however, it is telling that the victims of these cases were not so ignorant.

Moua’s victim, though herself a member of the Hmong tribe, was not a willing participant to the practice of marriage-by-capture. Furthermore, though she had been raised in a culture which endorsed such a practice, she was aware that it was not legal in American culture (which, as from above, it could be argued was also her and Moua’s culture). Lyman reported that a number of Hmong women have been “turning to American law to protect them” (93). I contend that it is significant that in so many of these cases which attempt to present some sort of cultural defense, the perspective of the victim is overlooked or discounted entirely. The victims, such as Chen’s wife and the Hmong women who are kidnapped and raped, belong to the culture of their abusers. Presumably, they have been exposed to the same “traditional” values and had been witness to the customs in question. They had, in most cases, been expected to embrace these values and participate without protest in these customs. Nonetheless, the victims regularly protested against their cultural heritage; once they found themselves within a culture wherein such activity was prohibited, they took advantage of the law to come to their aid. This surely suggests that it is not unreasonable to expect individuals to investigate the legal status of these customs.

The freestanding cultural excuse defense fails to require that individuals facing prosecution for their participation in cultural traditions investigate the actual legal status of their actions, and it similarly fails to require of defendants that they be responsible for their own beliefs and actions. Underlying the defense strategy is the supposition that the “culture” at large is somehow to blame for the harmful practice, and not the individuals who accept and engage in the practices. The defense seems to assume—without adequate supporting argument—that cultural “forces” can render individuals unable to know or to appreciate the consequences of their actions. According to critics of the defense, this results in the inappropriate shift of focus away from the individuals engaging in these practices onto the culture itself. Lyman explains:

If a person’s subjectively held cultural beliefs are to be allowed to negate his criminal liability, this would be to equate the expression of such beliefs with the operation of the other “excuse” defenses of immaturity or mental defect. Such would be to suggest that subjectively held beliefs inhibit the capability of an individual to know or to appreciate the consequences of one’s own conduct. Such would serve to put the culture itself on trial as much as the individual. This certainly is not the purpose of a criminal trial nor the objective of the criminal law. (101-102)

As a *legal* defense, Lyman thinks that the cultural excuse defense has no hope of being adopted insofar as the underlying assumption that a culture can inhibit an individual’s ability to know or appreciate the consequences of her behavior is suspect. Criminal liability is concerned with intent: did the accused intend to do that which, whether they knew it or not, was against the law? It is extremely unlikely, Lyman thinks, that the cultural defense could convince the courts that, for example, Kimura’s belief in the propriety of parent-child suicide made it such that she did not know that when she walked her small children into the ocean that they would drown. Similarly, the defense would be unlikely to convince the court that Chen, because of his acceptance of traditional Chinese values, did not know or understand that when he struck his wife’s head with a hammer she would be seriously injured (and die). If we were to accept a cultural defense, we would no longer be focused upon the individual, attempting to determine what it was she

intended to do. Rather, we would be focusing upon the culture in question, and attempting to determine whether that culture had the power to render its members unable to predict the consequences of their actions. As Lyman points out, we would be putting the culture on trial, and this is certainly not the point of criminal trials.

Criminal liability is concerned with the state of the defendant's mind, but, Lyman contends, "[t]he operation of a cultural defense would tend to focus blame for the result of an individual's conduct on the culture or the tradition rather than on the individual's state of mind" (103). It does not matter to the court how it was that a defendant came to adopt a particular belief which may have led him to perform an illegal act. The individual may have simply adopted this belief or it may have been socially inculcated. The distinction is not of concern to Lyman, for he contends that "[t]he 'source' of the belief is of no importance as regards an individual's capacity to know or to appreciate the consequences of his conduct" (102). The state certainly is interested in knowing if a defendant possessed the ability to know and appreciate the consequences of his actions at the time of the alleged crime, but whether that defendant's culture had a role to play in determining how the defendant came to have the particular ability is not a question with which the court is concerned. It is taken as a given that only in rare instances would we say that an individual's culture is able to handicap her in such a way that she could no longer know and appreciate the (physical) consequences of her actions.

As we have already noted, the freestanding cultural excuse defense is being proposed as a new form of excuse defense. Its advocates do not intend for it to be a variation of one of the already existing excuse defenses such as temporary insanity or duress. Considered as a separate and distinct excuse defense, the freestanding cultural excuse defense suffers from many difficulties, and is unlikely to be adopted. Lyman and Golding presented several arguments in support of this claim. Lyman, in particular, argued that the cultural factors affecting a defendant could only provide insight into motive, and would be unlikely to affect issues of intent. He has argued that, even if an



individual's beliefs were socially inculcated—even if it were a foregone conclusion that an individual would come to have those beliefs—those beliefs will inform the person's motives for performing particular actions. But motives are not relevant to the determination of an individual's criminal intent, and we furthermore have little reason to think that a person's culture would make it the case that she would be unable to know or understand the physical consequences of her actions.

However, Lyman concedes that it may be possible that person's culture could inhibit her ability to know or understand the *moral* nature of her actions. If this were the case, then it would be possible that the cultural excuse defense could be allowed as a type of one of the existing excuse defenses. Recall that the insanity defense, when applied, argues that the accused was unable to know or understand that what she was doing was *morally* wrong. Lyman concedes that a person's culture may in fact affect her cognitive abilities in this sort of way:

The “source” of the belief is of no importance as regards the individual's capacity to know or appreciate the consequences of his conduct. The distinction would, however, be of crucial importance if the concern were to the individual's capability to know or appreciate the moral “rightfulness” of his act: that is, if his conduct is morally “right or wrong”. (ft102)

Lyman does not develop this thought, but in what follows, we will further examine this claim. Recall that this entire discussion of the proposed appropriateness of a legal cultural defense was meant to highlight parallel concerns within the realm of philosophical moral responsibility. Lyman has suggested that it may be possible that a person's culture can make it such that she cannot recognize or appreciate that certain actions endorsed by that culture are in fact morally wrong. The first philosophical discussion of moral responsibility, offered by Susan Wolf, takes up this line of thinking. Wolf presents an “Insanity Defense” of sorts for cultural defendants. She will argue that cultures can indeed have this sort of detrimental effect upon a person's cognitive abilities, which would then allegedly provide them with a mitigating excuse for engaging in actually

morally impermissible behavior. If Wolf's arguments are successful, this could suggest that, while we still have reason to think a freestanding legal cultural excuse defense is problematic, perhaps a cultural *insanity* excuse defense ought to be accepted into legal doctrine.

### CHAPTER III. SUSAN WOLF AND THE CULTURAL INSANITY DEFENSE

As I indicated at the conclusion of the previous chapter, Susan Wolf offers an account of moral responsibility which offers a mitigating (in some cases, negating) excuse for moral responsibility to certain individuals subject to unique cultural concerns. Wolf suggests that some individuals may be ignorant of certain important facts about the world (either moral or non-moral), or that they might not recognize as being correct certain important moral values. This ignorance would in turn lead these persons to perform morally impermissible actions, but if we determine that they are not culpable for their ignorance, then they would not be culpable (or morally responsible) for their resulting actions. One way in which these persons might not be fully responsible for their ignorance would be if we think that they lacked the ability to recognize these important truths about the world. Wolf suggests that a person's culture might be responsible for her inability, and consequently, we ought to reconsider questions about the extent of her moral responsibility.

#### The Deep Self View

In her article "Sanity and the Metaphysics of Responsibility"<sup>24</sup>, Wolf sets out to identify the necessary conditions for moral responsibility. In doing so, she is inspired by other accounts; notably, those offered by Harry Frankfurt, Gary Watson, and Charles Taylor. Wolf thinks that all of these accounts correctly identify at least some of the necessary conditions of moral responsibility, yet she will argue that they nonetheless fail to provide us with a complete analysis. She will thus amend the theories in her effort to provide us with what she believes is a final and complete analysis of moral responsibility.

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<sup>24</sup> "Sanity and the Metaphysics of Responsibility," in *Responsibility, Character and the Emotions*, ed. F. Schoeman (Cambridge: Cambridge University Press, 1987).

While she thinks that all three of these theories share common features, her discussion is focused primarily on Frankfurt's account.

Central to Frankfurt's<sup>25</sup> account—and Wolf's as well—is the distinction between freedom of action and freedom of the will. A person has freedom of action if she has the ability—or the freedom—to convert her desires and wants into action (Wolf 138). Freedom of action is the freedom to do whatever one wants to do. In other words, if we are to say that a person's actions are free, it must be the case that a person has control of her body, and that she is efficacious in choosing what actions she will perform. If, for example, Sally<sup>26</sup> is subject to involuntary arm spasms we would not say that her arm-actions are under the command of her will. She has no control over her arm spasms, and if Sally consequently knocks a friend's vase off the shelf, we would not say that she is responsible for having broken the vase. She is, of course, in a strict sense *causally* responsible for having broken the vase, but it would seem inappropriate to deem her *morally* responsible for breaking her friend's possession, and we may determine that we have little reason to blame her or subject her to harsh punishment. It may be objected: but surely if Sally were aware of her condition, then her standing near the fragile, valuable object constituted a form of negligence. If she knew that she was subject to arm spasms, then she should have foreseen the possibility that she might cause damage to her friend's vase. Given these circumstances, it seems as though Sally is indeed morally responsible and subject to blame.

This objection, however, does not in fact deny that control over one's actions is a necessary condition for moral responsibility<sup>27</sup>. As outlined, the objection does not deny

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<sup>25</sup> Harry G. Frankfurt, "Freedom of the Will and the Concept of a Person," in *The Importance of What We Care About*. Cambridge: Cambridge University Press, 1988.

<sup>26</sup> The example of Sally is my creation—meant to provide clarification for various of Wolf's claims.

<sup>27</sup> Wolf takes Frankfurt to be arguing that freedom of action is necessary for moral responsibility. She will also claim that he believes that freedom of the will—which we have yet to

that Sally does not have control over her arm-movements. Rather, it points out that Sally's awareness of her limitations is an important factor to consider. If Sally knows that she does not have complete control over the movement of her arms, and if she furthermore knows that her spasms are unpredictable, then she is responsible not for her inability to control her arm-movements, but for other of her actions. She can stand near a table full of fragile knick-knacks and *hope* that she will not suffer a spasm, but that indeed would be a negligent choice. What Sally *does* have control over, however, is where she chooses to stand. Thus, even though Sally does not have control over one subset of her actions (her arm-movements), given that she does have control over where she will stand at the party, were she to place herself within arm's reach of the vase, she would potentially be morally responsible for any subsequent damage caused to the vase as a result of a spasm. If, on the other hand, Sally arrived at the party with no history of arm spasms and was suddenly afflicted as she moved to set her drink upon the knick-knack table, then we would not say that she should be considered morally responsible.

Wolf points out that this Frankfurtian account of freedom of action is not by itself sufficient to guarantee that a person with such freedom can be considered morally responsible for her actions. Wolf explains that “[e]ven a person who has freedom of action may fail to be responsible for her actions, however, if the wants and desires she has the freedom to convert into action are themselves not subject to her control” (138). Sally possessed freedom of action with regards to most of her actions because, for example, if she wanted to walk across the room to greet a friend, she was able to act upon this desire. She was able to convert her desire to move her body into a corresponding

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discuss—is a necessary requirement. However, her reading does not seem to be accurate. Frankfurt explicitly says that freedom of action is neither necessary nor sufficient for freedom of the will (Frankfurt, 1988, pg 20), and he furthermore says that moral responsibility does *not* require freedom of the will (pg 23). I will return to discuss other ways in which Wolf mischaracterizes Frankfurt's argument. However, we should keep in mind that her purpose in discussing Frankfurt's view is to eventually amend it, so even if her presentation of his view is inaccurate, we will ultimately assess Wolf's theory on its own merits.

action (or series of actions). A person who is bound and who is dragged kicking and screaming from a room, however, does not have freedom of action (for she does not have the freedom to convert her desire to remain where she was into action) and consequently is not held morally responsible for the scuff marks left on the floor. But what do we say about those who do indeed have freedom of action—who are in control of their actions and who are able to act upon their wants and desires—but who do not have control over their wants and desires?

The hypnotized subject<sup>28</sup>, for example, might describe her actions under hypnosis as being under her control. She wanted to bark like a dog, and thus did so. That desire to bark like a dog, however, is in an important sense, not under her control. If the hypnotized subject suddenly barked during an examination, thereby disturbing her classmates, we may think that we should excuse her from moral responsibility upon learning that she had been hypnotized and was responding to a “prompt” word she read on the exam. Even though, upon reading the word, she formed the desire to bark and was able to translate that desire into action, there is an important sense in which her having that desire is not up to her. Wolf would say that the hypnotized subject lacks freedom of the will.

Freedom of the will, according to Frankfurt, is the freedom to will whatever one wants to will (Wolf 139). The hypnotized subject is not responsible for her barking (and disturbing her classmates) because she lacks the ability—in her hypnotized state—to act upon the desires that she wants to act upon. Frankfurt makes a key distinction between two sorts of desires as he explicates the distinction between freedom of action and freedom of the will. First-order desires are, Wolf explains, “desires to do or to have various things,” whereas second-order desires “are desires about what desires to have or

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<sup>28</sup> Wolf briefly mentions hypnotized subjects as providing us with examples of individuals who lack freedom of the will. I have thus expanded the example in order to further explore her claims.

what desires to make effective in action” (139). Wolf does not provide us with an explicit definition of the term “will” in her piece, but Frankfurt’s special definition is as follows:

An agent’s will... is identical with one or more of his first-order desires. But the notion of the will, as I am employing it, is not coextensive with the notion of first-order desires. It is not the notion of something that merely inclines an agent in some degree to act in a certain way. Rather, it is the notion of an *effective* desire—one that moves (or will or would move) a person all the way to action. (Frankfurt, 1988, pg 14)

Central to Frankfurt’s conception of freedom of the will is the notion of second-order volitions. Our second-order desires are those of our desires which take as their objects various of our first-order desires; they are our desires to want to do or have certain things. Frankfurt explains that we may have different types of second-order desires: we may have a second-order desire simply when we want to have a certain desire of the first-order, or we may have a second-order desire when we want a certain first-order desire to be our will. This kind of second-order desire—which Frankfurt calls a second-order volition—is the desire that a certain first-order desire be efficacious. It is *this* kind of second-order desire which will be key to having freedom of the will<sup>29</sup>. (Frankfurt, 1988, 16)

To return to our example, the hypnotized patient has the first-order desire to bark like a dog. She may also have a first-order desire not to bark, and she may even have a second-order desire that her desire not to bark be her will (that *that* desire be efficacious). However, she will not have freedom of the will if this second-order desire is not efficacious (that is, if her second-order desire is not a volition). The hypnotized patient may want to bark like a dog when she reads the prompt word, but even if she wants *not to have* this desire, her higher-order desire is not efficacious. She is unable to make her

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<sup>29</sup> Again, Wolf does not make particularly clear the distinction between the two types of second-order desires. She does, however, talk of the importance of effective second-order desires (which are second-order volitions). Thus, on this point, she does not necessarily misinterpret Frankfurt, but her exposition can be a bit confusing.

opposing first-order desire to not bark be her will. She is essentially at the mercy of her first-order desire to bark. Because she is unable to will as she wants to will, Frankfurt (and Wolf) would say that she lacks freedom of the will.

Wolf argues that if we are to be morally responsible for our actions, we not only must have efficacious first-order desires, but that we must also have second-order volitions<sup>30</sup>. I cannot be considered a morally responsible agent if all that can be said about me is that I possess freedom of action. I am subject to many of what we may call first-order desires, and I possess the ability to translate any of these into action. For example, among my first-order desires is my current desire to continue typing this thought, my desire to take a sip of my coffee, and my desire to go back to bed for a rainy-afternoon-doze. I am able to translate any of these desires into action. Thus, we can say that I have the freedom to do what I want to do—I have freedom of action. If I most want to drink my coffee, I will do so, and my action of raising the cup to my lips is the result of the efficacious first-order desire I had to drink the coffee.

Beyond these first-order desires, I have a set of second-order desires. Perhaps, as I sit here, my first-order desire to go back to bed is particularly strong. However, among my second-order desires is the desire to not have desires which, if acted upon, would impede my progress towards completing this project. Thus, even though I want to go take a nap, I can be described as wanting *not to want* to nap. This is a second-order desire, and my will is free if I have the ability to have the will I want to have. I have the ability to have the will I want to have if my second-order desires are volitions, and if I consequently have the ability to make certain of my first-order desires be effective. I may be considered responsible for continuing to work (or for going back to bed) because,

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<sup>30</sup> Wolf also seems to attribute this claim to Frankfurt, though I have indicated that closer reading of his essay does not suggest that he accepts these claims about freedom of action and freedom of the will as they relate to issues of moral responsibility.



not only are my actions under the control of my will, but in an important sense, because my will is *under my own control*.

I am subject to all sorts of desires and impulses, but I am able to reflect upon these and choose which of them I want to have, and I have the ability to make these be effective—to make them my will. In this case, my second-order desire which wants to not have first-order desires which would be detrimental to my long term plans wins out. My second-order desire was thus an effective volition. I was able to continue typing (for in Frankfurt's terms, I made the desire to continue typing be my will) and I was able to ignore the desire to take a nap. Now, according to Wolf, I am on my way towards being responsible for my behavior.

Consequently, Wolf argues that two necessary conditions of moral responsibility are that we possess both freedom of the action and freedom of the will<sup>31</sup>. According to Wolf, any adequate account of moral responsibility will include these two requirements. Frankfurt's view, in Wolf's opinion, gets it right insofar as he demands we have a special kind of control over our wills. Frankfurt, Watson and Taylor (whose accounts she mentions briefly) all note the importance of this special kind of control. Namely, Wolf observes that they all indicate that our wills be under the control of our *deeper selves*. She explains:

All share the idea that responsible agency involves something more than intentional agency. All agree that if we are responsible

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<sup>31</sup> Wolf claims that these are two necessary requirements for moral responsibility on Frankfurt's account, but I have indicated that he would not accept this claim. Take for example, the following: "It is not true that a person is morally responsible for what he has done only if his will was free when he did it. He may be morally responsible for having done it even though his will was not free at all" (1988, 23-24). Frankfurt argues that as long as a person has the will that s/he wants to have, then that person is a candidate for moral responsibility. See his discussion of the willing addict (24-25) for his defense of this claim.

Even though I assert that Wolf has misinterpreted Frankfurt on this point, I will once again point out that, given that her goal is to *amend* Frankfurt's view, we are ultimately only concerned with critically evaluating Wolf's final product. This will be in spite of the fact that it will share less in common with Frankfurt's view than she may think it does.

agents, it is not just because our actions are within the control of our wills, but because, in addition, our wills are not just psychological states *in* us, but expressions of characters that come *from* us, or that at any rate are acknowledged and affirmed *by* us. (140)

Wolf explains that these theories all demand that, in order to be a responsible moral agent, our wills must be within the control of our deep selves<sup>32</sup>. Due to their (alleged) shared reliance upon the notion that having this special kind of control is necessary for moral responsibility, Wolf labels them the “Deep-Self View” (140).

According to Wolf, our deep self (or “real self”—a term which she sometimes substitutes for “deep self”) is the self with which we identify. Once we have reflected upon our set of first-order desires, we endorse particular desires, and we come to want to have certain of those desires, and we want not to have certain of them. The product of this reflective process is our set of second-order desires, and they are volitional if they reflect the wills we want to have. They reflect our deep selves if they allow us to have the wills we want to have, and if, as Wolf writes, these wills “...are not just psychological states *in* us, but [are] expressions of characters that come *from* us” (140). If our wills are ruled by our second-order volitions, then they really are the wills we want to have, for they are expressions of our characters. According to Wolf, we can then say that we are ruled by our deep selves.

Wolf thinks that the Deep Self View of moral responsibility correctly explains many of our intuitions about problem cases, or cases in which we think that a person’s responsibility is mitigated or negated due to special features of her circumstances. For example, Wolf thinks that we would agree that the hypnotized subject mentioned above should not be considered morally responsible for barking and disturbing her classmates, even though we must admit that she possessed freedom of action. Wolf says that the person acting under posthypnotic suggestion, like kleptomaniacs and victims of

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<sup>32</sup> The theories do not use the term “deep self,” but Wolf claims that concept is nonetheless shared by all three.

brainwashing, is in a special sense *alienated* from her actions. Though these individuals are responding to their own desires when they act (the hypnotized patient wants to bark, the kleptomaniac wants to steal, the brainwashed individual wants to obey her leader), Wolf says that their wills are not governed by their deep selves. These individuals are not acting as they want to act. They do not have the wills that they want to have. Rather, Wolf thinks we will agree that their wills are governed by “forces external to and independent from them” (140). Wolf also thinks that the Deep Self View correctly explains why we think that young children and lower animals are similarly not responsible for their behavior. This is not because the wills of these individuals are alienated from their actions; rather, we think they are not responsible because we have reason to think that they lack deep selves. Young children and lower animals are at the mercy of their first-order desires. They do not have efficacious second-order desires, which leads Wolf to claim that they “don’t have the sorts of selves from which actions *can* be alienated, and so they don’t have the sorts of selves from which, in the happier cases, actions can responsibly flow” (141). Thus, Wolf thinks that our final theory of moral responsibility ought to be modeled upon the Deep Self View. Even so, she does not think that the view correctly identifies all of the necessary requirements of moral responsibility.

We may agree that, if we are to be considered responsible for our actions, our actions must be under the control of our wills and that our wills must be under the control of our deep selves. However, this quickly leads us to questions about our deep selves. My first-order desires may be under the control of my deep self, but what can we say of my deep self? How did I get it? How is it that I came to have the particular set of second-order volitions that I have? I may have reflected upon my first-order desires and in doing so, my deep self may have reacted in such a way that I endorsed those desires which, if acted upon, would help me complete my project. Those were the desires that I *want* to have, and I am able to make these desires be my will.

I also have the second-order desire to not have first-order desires which I think are malicious or selfish (desires which, if acted upon, could cause unjustified harm to other people). I am able to translate this second-order desire into a volition because I am able to have the will that I want to have: I am able to make other of my first-order desires (those which *do not* lead to harm when acted upon) be my will. This is an expression of my deep self—of my deep character. But on what grounds can I think that I am responsible for coming to have this particular deep self (a deep self which allows me to have the will that I want to have—a will which, it seems like, is a *good* will)? We may worry that the particular deep self I have is an unavoidable fact about me. If this is the case, then we may question the propriety of our practices both of labeling individuals as being responsible agents, and of responding to them with particular reactive attitudes.

On the current Deep Self View, we would say that I am responsible for my actions both because I possess freedom of action and because my will is within the control of my deep self. This claim would also be true, however, of a person whose deep self is, in one way or another, “bad”. My efficacious second-order desires (at least in the examples provided) lead me to perform morally permissible actions. But if we consider an evil tyrant, we might think that he is just as responsible for his actions because, not only is he acting upon his own first-order desires when he rapes and kills, but also because we have reason to think that his will is under the control of those of his second-order desires which are desires to have those first-order desires. Perhaps this evil tyrant has reflected upon his desires and has decided that acting upon them expresses his true character—the character that he thinks it is good to have. He may think that a strong and noble character is one which displays absolute power and which is able to conform the world to his will. He thus sees no problem with being subject to desires to rape or torture, for he thinks that acting upon them will only further his goal of becoming a powerful and feared man.

Consequently, on the Deep Self View, the tyrant and I are equally responsible for our actions. In most cases, I will be the recipient of praise, whereas the tyrant will be subject to condemnation. However, we may have reason to think that I could not control the ways in which I came to have my second-order desires (and volitions). I am after all, a product of my environment. I was lucky enough to be raised by kind and good parents, and was taught that I ought to shun desires which would lead to the infliction of harm towards other people. This tyrant, however, is also a product of his environment. He too (in this hypothetical situation) was taught that he ought to *endorse* these desires. He was taught that he needn't be concerned with being a moral man, but rather that he should be concerned with being a powerful man. If neither of us has control over our deep selves, then why, we might wonder, would *either* of us be considered morally responsible for our actions?

Wolf takes this worry seriously. Ultimately, she says, we are *not* in control of our deep selves (142). My current character is a product of many influences: I was born to a particular set of parents, in a particular state and country, in a particular period of history. None of this was within my control. My childhood education and religious upbringing were furthermore beyond my control, and likewise did much to help form my character. We may say that once I reached a more mature age I was able to reflect upon my character and values (the ones that were “given to me” or “instilled in me” by my parents and teachers) and decide whether these were the values I really wanted or whether this was *really* who I wanted to be. But Wolf points out that “...the ‘I’ that steps back will itself be a product of the parents and teachers I am questioning” (142). Thus, while we may think that I must possess the ability and willingness to reflect upon my desires and values if I am to be a responsible moral agent, we do not have reason—according to Wolf—to think that I am in control of whether or not I possess this ability. It cannot be argued, Wolf maintains, that we are fully responsible for our deep selves. Whether our characters are determined by our DNA and/or our environment, and regardless of the

extent to which we can revise our own characters, we are literally (in a metaphysical sense) incapable of creating ourselves.

### The Sane Deep Self View

Wolf argues that the issue of moral responsibility will not boil down to having control over all aspects of our characters and actions; that is metaphysically impossible. Rather, she says that “[w]e may need simply to *be* a certain way, even though it is not within our power to determine whether we are that way or not” (144). The way that we ought to be, she argues, is responsive to and appreciative of the way things are. This leads Wolf to suggest that the Deep Self View be revised to include an additional requirement. Wolf’s proposed theory of responsibility is the “Sane Deep Self View”. According to Wolf, not only must we possess freedom of action and freedom of the will, our deep selves must also be “sane”. A person with a sane deep self is said to have a “minimally sufficient ability to cognitively and normatively recognize and appreciate the world for what it is” (145). If I have a sane deep self, it means that in some fundamental sense I have the ability to get things right. I am able to recognize important truths about the world, and I have the ability to form beliefs which accurately reflect the way the world really is. If I have a sane deep self, it means that I have the ability to recognize and appreciate *both* the moral and non-moral features of the world. For example, a person with a sane deep self has the ability to recognize that her student is a sentient being (this would be a non-moral feature of the world). Furthermore, that sane person would be able to recognize that torturing her student for her own amusement is morally impermissible (this would serve as an example of a moral feature of the world).

But what does it mean to say that a person with a sane deep self *appreciates* these features? Wolf does not provide an extended discussion on this point, but I think that a

charitable reading suggests that she means one is *prima facie* responsive to these truths<sup>33</sup>. If I were to recognize that my student is sentient and that it is objectively wrong to torture her merely to amuse myself, but if I were to care nothing about those facts, I think that Wolf would argue that I do not sufficiently appreciate those truths. To say that I am *prima facie* responsive just means that, upon recognizing a particular moral truth, I have some inclination to act accordingly. I may find overriding reasons (justified or not) which would lead me to act against the moral truth, but insofar as I recognize that something *is* a moral truth, I feel some inclination to act accordingly.

Thus, according to Wolf, moral responsibility requires more than the ability of a person to act according to her own desires; it likewise requires more than the ability to have her desires under the control of her will. When we begin to address the question of an individual's moral responsibility, we will look to see whether her beliefs and values are correct or not. The answer to this question will not tell us whether she is or is not responsible, however. For that, we will need to attempt to establish whether she had the requisite ability. If she happens to hold false moral beliefs, we must ask ourselves whether she *could have* believed differently; do we think she has the ability to recognize the moral truth? If the answer is 'No,' then Wolf believes that we ought to conclude that the person does not have a sane deep self and should not be considered morally responsible for her wrong action.

Likewise, it may be the case that an individual does in fact have the correct moral beliefs, but because of false empirical beliefs, that person's moral deliberations result in "incorrect" conclusions. For example, let us consider Charles Jones. By all accounts, Jones accepted the moral truth expressed by the principle "All other things being equal,

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<sup>33</sup> I want to be clear that am hypothesizing about Wolf's characterization of the term "appreciate". She does not provide us with much elaboration, and we need to obtain as much of an understanding of the concept as we can. Her failure to elaborate may eventually become particularly problematic, but for now I will try to come up with a plausible explanation.

all persons deserve equal respect and consideration”. (For the sake of the argument, let us assume that this principle does indeed express a moral truth.) Thus, we would say that Jones had a true moral belief; however, Jones also believed that blacks were incapable of self-government. Arguably, this was not a moral question, but rather an empirical matter. The slaves either had the basic intelligence, wisdom and foresight (and whatever other skills are necessary for independence) required for self-governance or they did not. I would argue that they did in fact possess these qualities (I will provide a defense of this claim in a subsequent chapter). Thus, Jones’s belief about their basic capabilities was false. However, given his true moral belief, but false empirical belief, Jones reasoned that it was permissible to keep the blacks in bondage. He reasoned that, so long as they remained in the United States<sup>34</sup>, it was in their best interest to remain under the protection of their “benevolent” white masters.

Clearly, this is a false moral conclusion, but at this point, Wolf would tell us to ask ourselves whether Jones had the ability to recognize and appreciate the truth about the basic capabilities of the African slaves. Why did Jones believe as he did? Did he have the ability to have believed otherwise? Wolf would argue that if we determine that Jones lacked the ability to see the Africans for what they were, then we ought to conclude that his deep self was not sane. Jones would then not be considered morally responsible for his role as a slave owner. We will return to this example in a later section and attempt to determine whether the defense applies specifically to Jones. For now, it serves as an illustrative example as to how Wolf’s “Insanity Defense” might come into play.

It is no coincidence that Wolf’s excuse defense for certain “cultural” defendants is known as the “Insanity Defense”. In her discussion of the condition of sanity for moral responsibility, Wolf makes explicit mention of the legal M’Naughten Rule for insanity.

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<sup>34</sup> For some time, Jones supported the position of the American Colonization Society, which advocated the emigration of the US’s black population to West Africa. (Clarke, 89)



According to the M'Naughten Rule, we will conclude that a person is sane if she both knows what she is doing (she understands the nature of her action) and if she also understand the moral nature of her action (she recognizes and understands that what she is doing is either morally right or morally wrong). Wolf analogizes the notions of legal sanity as it relates to legal responsibility with her discussion of moral responsibility:

Insofar as one's desire to be sane involves a desire to know what one is doing—or more generally, a desire to live in the Real World—it is a desire to be controlled—to have, in this case, one's *beliefs* controlled—by perceptions and sound reasoning that produce an accurate conception of the world rather than by blind or distorted forms of response. The same goes for the second constituent of sanity—only, in this case, one's hope is that one's *values* be controlled by processes that afford an accurate conception of the world. (144-145)

Thus, just as we might think that some legal defendants are rendered unable to cognitively recognize and appreciate the nature of their actions due to factors beyond their control, so too does Wolf think that this might be true of individuals who commit morally impermissible actions. Though we may think that they acted freely upon their own desires, and though we may think that their actions were expressive of their “deep” selves, Wolf thinks we may conclude that they were non-culpably unable to recognize or appreciate that their deep selves were flawed.

While various factors beyond our control might render our deep selves insane, Wolf suggests that one such handicapping factor might be the culture in which a person is raised. If Jones lacked the ability to recognize the non-moral truths about the slaves, one possible explanation for such a handicap would be that his upbringing within a slave-holding society rendered him blind to such facts. In defense of her view, Wolf provides us with two examples of individuals with what she considers to be insane deep selves. The first example is that of “JoJo”, a hypothetical character whose insulated upbringing has allegedly rendered him unable to recognize and appreciate the correct moral values.

In her book *Freedom Within Reason*<sup>35</sup>, Wolf similarly discusses the case of Tony, a character she thinks we will agree is not responsible for his actions due to his supposedly insane deep self. Wolf thinks that JoJo and Tony provide us with paradigm examples of individuals with insane deep selves, whose deep selves were allegedly rendered insane due to factors beyond their control.

### JoJo

JoJo is the son of a sadistic dictator. While his father (Jo) is a tyrant, whose capricious will strikes terror in the hearts of his subjects, JoJo idolizes the man. JoJo is the pampered, indulged son, and his father teaches him that their wills reign supreme. It is consequently no surprise, Wolf says, that JoJo grows up to be just like his father. JoJo, she argues, is incapable of recognizing that virtues such as charity and kindness are correct values that he ought to adopt. When JoJo causes violent harm to those who oppose his will, Wolf argues that we ought to consider the possibility that he is not morally responsible for his actions. The justification for this claim would *not* be that JoJo's actions were not freely undertaken, or that he did not endorse his behavior. Indeed, JoJo was not coerced, or forced to act violently. He had complete freedom of action insofar as he was able to translate his desire to cause harm into the corresponding action. Furthermore, JoJo's "deeper self" was in control of his actions: JoJo acted upon the desire that he *wanted* to act upon. In considering his options, he recognized that granting mercy to his victim was a possible course of action. He rejected this option, however, because doing so was not in line with his values—with the values that he endorsed. JoJo, as a result of being raised by his father and as a result of having his every whim catered to, had come to accept and embrace the wrong moral values. These, in turn, led him to cause tremendous harm.

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<sup>35</sup> Oxford University Press, New York: 1990.

Wolf claims that JoJo is not responsible because she thinks that JoJo could not help but have these mistaken values: “In light of JoJo’s heritage and upbringing—both of which he was powerless to control—it is dubious at best that he should be regarded as responsible for what he does” (143). His unfortunate upbringing has rendered him unable to appreciate the moral truth. Because this inability is not his fault, she claims that his deep self is insane.

### Tony

In her book *Freedom Within Reason*, Wolf introduces the case of Tony, the son of a mafia don. Tony (an adult) is contemplating his future, and is attempting to choose between taking over the family business and the option of leaving it all behind to become an honest schoolteacher. Tony believes that he can make this decision freely, and he outlines what he takes to be the pros and cons relating to both of his options. After much deliberation, he decides to stay in the mafia. Among his reasons for staying is the knowledge that if he were to leave, his more ruthless and less intelligent brother will take over in Tony’s stead. Additionally, he fears that his mother’s heart would be broken were he to break with the family. Choosing to stay, he nonetheless believes that it is still, and always was, within his power to decide to become a teacher.

According to Wolf, however, Tony’s confidence in his ability to choose freely is an illusion. What Tony is either unaware of, or unwilling to acknowledge, is that his deep fear of his father’s wrath prompted him—indeed, according to Wolf, compelled him—to make the decision to stay. She describes the situation in the following manner:

In fact, Tony’s fear...was greater than Tony, or anyone else, knew, and had the unconscious effect of shaping his deliberative processes, making him attach inordinate weight to certain factors and inordinately little to others so as to produce a rationalized decision that his uncontrollable unconscious fears compelled him to reach. (112-113)

Because of this alleged underlying cause for Tony’s behavior, Wolf argues that Tony should not be understood as being fully responsible for his decision (and presumably, for

the subsequent harm that would result from his actions as the newest mafia don). She explains:

...it seems to me that Tony was not fully responsible, and this because he wasn't *really* able to choose anything else, in a sense that is relevant to assessments of freedom and responsibility. Note, however, that this sense is a sense that is captured at the psychological level of explanation. For, despite what Tony and everyone else thinks, it is not really compatible with Tony's psychological history and all the psychological laws that apply to him that he choose to break with his family. (113)

Insofar as Wolf argues that Tony was unable to choose otherwise, and insofar as she suggests that this is due to the overwhelming fear that resulted from his being the son of a ruthless mafia don, Wolf seems to be arguing that Tony's deep self was insane. Wolf thinks that Tony was unable, in this case, to act as he morally ought to have, and she indicates that this is because of the effect that Tony's upbringing had upon him. I will return at a later point in this chapter to critically evaluate Wolf's characterization of the situations of JoJo and Tony. For now, we should understand that she takes them to be paradigm cases of individuals who we should not consider to be fully morally responsible for their actions. Wolf thinks that we will share her intuitions about JoJo and Tony, and thinks that her Sane Deep Self View explains and justifies our intuitions.

#### Further Applications of the Sane Deep Self View

Wolf maintains that there are many advantages to her Sane Deep Self view of moral responsibility. Among other things, and perhaps most importantly, she believes that her view helps explain and justify many of our ordinary intuitions about when and why persons are, or fail to be, responsible<sup>36</sup>. For example, it is not uncommon for the racist comments made by some elderly persons to be explained away in the following sort of manner: "They were raised in a different time, and were taught different lessons.

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<sup>36</sup> I am not endorsing these intuitions; rather, I am simply noting that they are common.

Grandma doesn't mean any harm". The implication behind such an attitude is that Grandma is not, in some important way, *responsible* for her bad behavior. Grandma's values are mistaken, but if she could not help but be mistaken, then she should not be blamed for any resulting wrong actions. Wolf comments on this consequence of her view:

...[t]his new proposal explains why we give less than full responsibility to persons who, though acting badly, act in ways that are strongly encouraged by their societies—the slave owners of the 1850s, the German Nazis of the 1930s, and many male chauvinists of our fathers' generation, for example. These are people, we imagine, who falsely believe that the ways they are acting are morally acceptable, and so, we may assume, their behavior is expressive of or at least in accordance with these agents' deep selves. But their false beliefs in the moral permissibility of their actions and the false values from which these beliefs derived may have been inevitable given the social circumstances in which they developed. If we think that the agents could not help but be mistaken about their values, we do not blame them for the actions which those values inspired. (145-146)

Wolf acknowledges that it is an empirical question as to whether such persons were in fact unable to help having mistaken values. The examples which she has cited above may very well fail to stand up to her test. If we determine that any of these individuals *could* in fact have believed differently—if we are able to determine that they were in fact able to recognize and appreciate the relevant moral and non-moral facts, then we would determine that they had sane deep selves and should be held morally responsible. Wolf's Sane Deep Self view is expressed as a conditional:

My point here is simply that *if* we believe that they are unable to recognize that their values are mistaken, we do not hold them responsible for the actions that flow from these values, and *if* we believe that their ability to recognize their normative errors is impaired, we hold them less than fully responsible for the relevant actions. (ft 7, pp 150-151)

There is an element of luck embedded in Wolf's theory. A person is to be considered morally responsible when she both has the ability to be controlled by her deep self *and* when her deep self is sane. We must recognize, of course, that whether or not we have sane deep selves is not a matter which is up to us; it is beyond our control whether or not we have sane deep selves, in a manner analogous to how it is beyond our control as to

whether or not we are subject to mental illnesses such as schizophrenia. If we are lucky, we will have been born with the ability to know right from wrong. This, coupled with our ability to revise our characters based upon our apprehension and appreciation of the truths about this world, will make it such that we will be lucky enough to be called responsible moral agents. Wolf thinks that we cannot help but have the deep selves we have; if we happen to have sane deep selves, then we (luckily) have within us the resources for self correction which are necessary for moral responsibility. (147)

So how is it that we can determine whether we—or the American slaveholders, the Nazis, Grandma, or JoJo—have sane deep selves? According to Wolf, if we are considering whether a person is morally responsible for her actions, we must first attempt to determine whether she has a sane deep self. But how are we to do this? We must, of course, first look at an individual's actions. If we note that she has clearly acted immorally, but if we determine that she *believed* that what she was doing was not in fact wrong, and was in fact in accord with her (false) values, we will then begin to question whether she had a sane deep self.

Because Wolf has specifically suggested that her Sane Deep Self View can help us determine, and make sense of, the moral responsibility of certain “cultural” defendants such as the Nazis and the American slaveowners of the nineteenth century, it seems quite fitting to apply her theory to the case studies presented by Charles Jones and Franz Stangl. Wolf did not make any definitive conclusions about particular persons from these eras, but she nonetheless seemed rather confident that her theory would help us settle questions about their moral responsibility, and she similarly thought that the answers would most likely align with our natural intuitions. I will thus take her up on this challenge. As we apply Wolf's theory to the cases of Jones and Stangl, our first task will be to determine whether we think that they had sane deep selves. That is, we need to determine, as best we can, whether it is likely that they had a minimally sufficient ability to cognitively and normatively recognize and appreciate truths about the world. If we

conclude that their moral mistakes resulted from false moral and/or non-moral beliefs, we will have to consider whether we think their mistakes were likely due to a non-culpable insensitivity to these truths. Even though Wolf has indicated that we may very likely determine that they were non-culpably ignorant of important truths due to the alleged fact that their deep selves were insane, I will argue that the case for these two does not look good.

### The Insane Deep Self View and Charles Jones

We will begin with Jones. Wolf indicated that the slaveowners of the 1850s may have been viable candidates for the insanity defense. As a representative figure from that era, Jones can certainly be described as having false beliefs and as having made moral mistakes. As mentioned above, among Jones's false beliefs was his view that blacks were incapable of self-governance. In reviewing his correspondence and writings, it is evident that Jones's view of the nature and characters of the black population was often quite mistaken.

From an early age, Jones was troubled by his involvement in the institution of slavery. As a young man of twenty-five, Jones was studying at Princeton and anticipating his return home to Georgia. He wrote his then fiancé, Mary, to learn of her views on the subject. Did she, like he, feel conflicted as to the morality of their participation in slavery? Mary responded in the following manner: "In many respects my feelings are not unlike your own. With you I think it one of the greatest curses any nation or people should have to contend with" (Clarke, 85). Accordingly, Mary asserted that the only true solution which would rid them of the great evil of slavery was total abolition. She did not, however, believe that such a goal could be accomplished readily or with any measure of ease. Her explanation for such a claim reveals her views on the nature of the slaves—a view which we will soon see was shared at least in part by Jones:

Neither do I think it would at all promote the slave's interests to liberate him in his present degraded state. You might almost as

soon contend for the emancipation of that horde of corruption pent within our common prisons as the general mass of Negro slaves. I am sure I know not a dozen that I could unhesitatingly say I thought capable of self-government—devoid of every principle of moral rectitude, divested of all the finer sensibilities of our nature; the master's *scowl* or the master's *rod* form the only barrier to the commission of crime the most atrocious. In their present state what might not be the consequences if unrestricted by the laws of man; and ignorant and fearless of the commands of God, they were permitted equally with ourselves to enjoy the rights of freemen? (Clarke, 85-86)

Mary's point was rhetorical: the consequences of freeing the slaves and having them remain in the United States would be, in her opinion, disastrous. The effects would clearly be deleterious to the white population: She acknowledged that she relied upon the slaves for her comfort and well-being, and thus recognized that emancipation would alter her comfortable lifestyle and societal position. Furthermore, beyond thinking that emancipation would let loose the unrestrained "vice" of the blacks (thus placing white citizens in harm's way) she believed that the emancipated blacks themselves would be at an extreme disadvantage. They would be incapable of caring for themselves, and would flounder in their freedom. Accepting the supposed impossibility of manumitting the slaves in any timely fashion, Mary's proposed solution would be to provide the slaves with a religious education:

...it seems a greater kindness and a more Christian act rather than liberate them, whilst so closely bound by the shackles of innate vice, to seek to raise them first in the scale of moral excellence by a different mode of treatment from what has been adopted hitherto, by treating them more as rational beings and trying to instill into them virtuous principles.... Teach them to feel that they are immortal, accountable beings. Teach them the need of a Saviour and whilst your slaves, teach them the duty of obedience from higher motives than earthly displeasure—from Christian principles that which the Bible inculcates. I cannot say what would be the result of the experience of such a mode of treatment. Many would say it was altogether chimerical and never would accomplish the desired end. I cannot affirm that it would be otherwise, but I should be pleased to see it tested. (Clarke, 86)

Mary's suggestion that their efforts towards bettering the condition of the slaves be focused upon their religious education was one to which Jones was amenable. However, he was not quick to accept immediately that this proposal of benevolent reform would be



the course of action which would best help him meet his obligations to the black population. He first considered more seriously other possibilities. In a letter to Mary dated from September of 1829, Jones lamented his continuing connection with slavery:

How often do I think of the number of hands employed to furnish me with those conveniences of life of which they are in consequence deprived—how many intellects, how many souls perhaps, withered and blasted forever for this very purpose!...What I would not give if our family were not freed of this property and removed beyond its influence! (Clarke, 96)

By the end of that academic year, Jones was nearing the completion of his studies at Princeton. Clearly, he had continued to ruminate on the topic and had considered various ways in which he might extricate himself from the practice of owning slaves. In a letter to Mary dated May of 1830, Jones admitted to having contemplated seriously the possibility of not returning to Georgia upon his graduation. His plans had been to return to Georgia, marry Mary, and begin his life as a minister. Whatever his specific career would eventually be, he remained committed to bettering the condition of the blacks in America. Nonetheless, it was certain that if he were to return to Georgia, he would return as a slaveowner. Given that he too believed that emancipation was the ultimate right course of action, perhaps, he wondered, whether he instead ought to remain in the North and work on behalf of the slaves in some other capacity:

I have always been deeply interested for the Coloured population in slavery in the United States. How it has long been a doubt in my mind whether I ought to return to Georgia and endeavor to do what I can for them there, and also where as God shall give me opportunity, or devote myself at once to them, in some special efforts in connection with the Colonization Society, or in some other manner....[it is] high time that our country was taking some measures of the sort whose ultimate tendency shall be emancipation of nearly three million of men, women, and children who are held in the grossest bondage, and with the highest injustice. (Clarke, 89)

We cannot know the extent to which Jones agonized over his choices, nor can we know how close he came to renouncing his position in society as a slaveowner. What we do know is that by the end of that summer, Jones had come to a decision. Ultimately, Mary's

proposal of benevolently reforming slavery from within the institution by means of religious instruction was the plan to which Jones became committed. Upon his graduation, he would return to Georgia, whereupon he would devote his life to missionary work among the slaves of Liberty County. (95) He and Mary were married on December 21, 1830; she brought twenty-two slaves to the marriage. Jones likewise had several slaves from his inheritance by his mother and father. The couple made their home at Carlawter Plantation, a wedding gift for the couple provided by Joseph Jones, Charles's uncle and Mary's father. (100)

Having resettled in Liberty County, Jones threw himself into his missionary work. Shortly after having returned home, he founded the Liberty County Association for the Religious Instruction of the Negroes. This was to be an association of slave-owning planters. Jones hoped to convince the planters to allow voluntary white teachers to visit their plantations once a week in order to provide the slaves with religious instruction and opportunity for guided worship. Jones was clear that the instruction to be provided would be delivered orally, as it was illegal to teach slaves to read. The curriculum would be provided by an overseeing missionary to be appointed to supervise the efforts of the teachers. Jones, not surprisingly, was granted that missionary position. The teachers would be instructed not to meddle in the business of the planters, nor would they engage in gossip about the owners. (103-105)

Speaking before planters in Liberty and M'Intosh counties, Jones delivered a sermon urging his fellow white ministers and slaveowners to attend to the spiritual and religious needs of the black population. He argued that not only was providing the slaves with a religious education the white masters' Christian duty, but that fulfilling this obligation would provide the slaveowners with practical benefits. As he outlined his premises, he described what he took to be the current condition of the slaves and free blacks. Jones referenced the Apostle Paul's description of the heathens, noting that the

portrait would "...apply, with very little abatement, to our Negroes" (6). Of the black slaves, he reported that:

They lie, steal, blaspheme; are slothful, envious, malicious, inventors of evil things, deceivers, covenant breakers, without understanding and grossly immoral. Chastity is an exceeding rare virtue. Polygamy is common, and there is little sacredness attached to the marriage contract. It is entered into for the most part without established forms, and is dissolved at the will of the parties: nor is there any sacredness attached to the Sabbath. It is a day of idleness and sleep, of sinful amusements, of visiting, or of labor. They are generally temperate through necessity; when ardent spirits can be obtained, they will freely drink it. Numbers of them do not go to church, and cannot tell us who Jesus Christ is, nor have they ever heard so much as the Ten Commandments read and explained. Of the professors of religion among them, there are many of questionable piety who occasion the different churches great trouble in discipline, for they are extremely ignorant, and frequently are guilty of the grossest vices. (Jones, 1832, 6-7)

It is difficult to know what to say of this description of the slaves. There seems to be so much about which Jones was mistaken, that one begins to wonder whether a cultural insanity defense such as that provided by Wolf will apply. Nothing that Jones says about the moral condition of the slaves is particularly surprising coming from a white slaveowner. Jones has just described the black population as being deceitful, immoral and ignorant, among other things. This was surely not a shocking description to those of his audience. If Jones had been born into a culture which thought that blacks were inherently inferior, both intellectually and spiritually, perhaps it was inevitable that he would endorse such a view himself.

Recall that Wolf suggested that if a person is unable to cognitively and normatively recognize and appreciate both the moral and non-moral features of the world then that person's deep self is insane. Consequently, she would not be considered morally responsible for any subsequent wrong actions if we have reason to think that it was not her fault that her deep self was insane. Here, we have what may be construed as an instance of a nineteenth century slaveowner who has a false non-moral belief about the nature and capabilities of African slaves. Believing that these beings were immoral and

stupid, Jones concluded that they would not do well on their own. While his view that slavery was morally permissible was supported by various arguments and reasons, this (false) belief of his served, in his mind, as a justifying reason for keeping the African race enslaved. If we take seriously the suggestion that Jones's view of the Africans was the result of cultural indoctrination, then we have to take seriously the suggestion that Jones simply *could not* have come to any alternate conclusion.

Unfortunately for Jones, however, such a defense does not look promising. To begin, to say that Jones thought the slaves were inherently inferior to the white race seems to be an inaccurate description of his beliefs. While it was certainly not unheard of to encounter contemporaries of his who held such views (recall Mary's earlier letter in which she referred to their "innate vice"), Jones's views were more nuanced. He thought that the current state in which the black slaves were found in the early 1830s was one of moral degradation, but the very fact that he put such efforts into advocating on their behalf suggested that he thought they were capable of a level of moral excellence. Indeed, within the same address delivered to the planters, he argued that not only were the slaves capable of exhibiting virtue, but that they had sufficient intelligence to understand and appreciate the missionaries' message:

Nor can we excuse ourselves by saying—*that they are incapable of receiving Religious Instruction*. It is customary amongst us to entertain very low opinions of the intellectual capacity of the Negroes. Whether this be right or wrong, we leave every man to judge for himself, and to judge likewise whether their mental weakness is to be attributed to the circumstances of their condition, or to any difference as made by the Author of their existence between them and other men. But to suppose them too ignorant to comprehend the plainer and more essential doctrine of Christianity, is certainly to disregard the testimony of God's word, as well as the testimony of facts. (Jones, 1832, 13)

To be sure, Jones's endorsement of the intellectual capabilities of the slaves is not glowing here. His claim is only so strong as to suggest that they can surely understand the simple and plain concepts of the Christian sermons. Nonetheless, even though Jones fails to take a stance in this passage as to whether their supposed lack of intelligence was due

to their nature or their circumstances, it becomes clear that he himself thought the latter provided the best explanation. On the next page of the sermon, he says as much: “...We must believe that their general ignorance on Divine subjects is wholly owing to their want of proper instruction, and not at all to any natural defect of mental constitution” (14). The remainder of the sermon backs off from this claim, but Jones’s biographer Erskine Clarke reassures us that Jones did not endorse the claim that blacks were innately inferior:

“Charles resisted any racial assumptions about differences between blacks and whites. The differences—and he thought they were great—were a matter not so much of race as of class” (103). So it appears that Jones did not hold the false belief that the blacks were inherently inferior to whites. Furthermore, it seems as though what he did believe was closer to the truth. While we might argue that the slaves were not in fact less intelligent than whites<sup>37</sup>, Jones’s belief that what he perceived as a lack of intelligence was a result of their degraded position within American society surely had some truth to it. The slaves were kept often in terrible conditions, given pitiful housing, inadequate nutrition and subjected to constant fear and uncertainty. They were barred from receiving formal education and forced to perform the most menial tasks and the most demanding physical labor. All of this would certainly comprise significant obstacles to the development of more intellectual talents. Jones, it appears, was able to recognize this fact.

Concomitantly, Jones got a lot more right. To begin, we have already noted that Jones recognized that slavery was a morally charged issue. Had Jones’s deep-self been insane, we may have suspected that he would have failed to appreciate that the morality of the institution was a concern to which he ought to have given serious thought. On the contrary, he spent significant time and effort over the course of his life studying this

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<sup>37</sup> For example, Jones did not seem to consider the possibility that the slaves had motives for hiding from the whites just how intelligent and/or skilled they were. Likewise, Jones and his contemporaries failed to acknowledge unique skills possessed by the African slaves as being indicators of intelligence.

question and exposing himself to alternate antislavery views. Furthermore, Jones recognized that the slaves were humans, with rational minds, and in his view, with immortal souls (Jones, 1832, 8). Likewise, he recognized, and surely appreciated, that he had obligations towards the slaves. Beyond arguing that the white masters had a moral obligation to provide their servants with a religious education, Jones was adamant that the slaves' living situation be improved: He recognized that the slaves required durable clothing; he argued that they ought to be provided with secure, and importantly, private, housing; he troubled himself that the slaves be provided with sufficient nutrition; and he argued that families ought to be kept together whenever possible.

As we will see in our extended discussion of Jones, his view on what met the conditions of "whenever possible" was woefully inadequate, certainly from the perspective of the slaves. Nonetheless, the point remains that Jones had the ability to see that the slaves deserved more and better from the white Americans. Insofar as he failed to reach the correct moral conclusion that the slaves ought not to have been kept in bondage, he was wrong as to how much more and how much better they deserved. Nonetheless, he did seem to possess the ability to recognize the fact that he stood in a relation of obligation towards them. Wolf's insanity defense will only provide Jones with an excuse for moral responsibility if we think that he lacked the *ability* to cognitively and normatively recognize and appreciate the truth. It does not seem accurate to say that he possessed such an inability; his failure to *exercise* his ability is not sufficient cause to label his deep self insane. He thus remains a plausible candidate for full moral responsibility even on Wolf's view.

#### The Sane Deep Self View and Franz Stangl

Jones, it appears, does not seem to be a good candidate for Wolf's cultural insanity defense. But what of Stangl? Several of my students earlier suggested that some of the Nazis may not have been morally responsible for their actions due to cultural

concerns. Wolf likewise suggested that some of the Nazis of the 1930s may have been viable candidates for such a defense. She suggested that their false beliefs in the moral permissibility of their actions could have resulted from false, yet inevitable—due to their particular social circumstances—values. If their acceptance and internalization of these false values was truly inevitable (as Wolf explicitly suggested they may have been), then Wolf would say that their deep selves were insane. Perhaps this is true of Stangl.

However, as with Jones, I will argue that we do not have sufficient evidence to think that Stangl suffered from an insane deep self. In fact, I will argue that all evidence points to the contrary: we should conclude that Stangl had a sane deep self. Doing so will lead us to look for alternative explanations for his morally reprehensible behavior, hardly any of which will provide him with any mitigating excuses from moral responsibility. The following questions will be relevant as we attempt to determine whether the cultural insanity defense applies to Stangl: Did he have any false moral beliefs and/or values? If so, were these false beliefs and/or values inevitable, given his particular circumstances?

While the above questions are straight-forward, we will see that the answers themselves are not particularly simple. In his positions as a Nazi officer, Stangl performed morally reprehensible acts. This seems like an obviously true claim to most people. However, if Stangl had claimed that he honestly believed that what he was doing was morally permissible, we may wonder how he could have possibly believed such a thing. Perhaps we would think to ourselves that only a crazy, or insane, individual could convince themselves that overseeing the deaths of thousands of people could in any way be morally justified. The honest acceptance of such a radically false moral belief might serve as evidence that something is not “right” with that individual. This is, of course, what Wolf has suggested to us: she thinks that false beliefs of this sort may be evidence that the individual in question has an insane deep self.

In his testimony and in his interviews with Sereny, Stangl did indicate that he believed his participation in the Holocaust was morally justified. Sereny reports that

when she first met Stangl, he rehearsed for her the arguments that he and his co-defendants had presented during their trials:

The arguments, the phraseology, the very words he used were gratefully familiar from his and other trials for Nazi crimes: he had done nothing wrong; there had always been others above him; he had never done anything but obey orders; he had never hurt a single human being. What had happened was a tragedy of war and—sadly—there were tragedies of war everywhere... (22)

Reading this account suggests that Stangl believed that he had not committed any moral wrongs. But of course, we must consider the possible motives that Stangl (and others in his position) would have had for making such a claim. When he first presented these arguments in court, he was hoping to obtain leniency. The best legal defense offered the following strategy: to assert that one was as low down the chain of command as was believable, and to likewise argue that one had as little to do with the direct machinations of the Holocaust as was believable. The strategy was not particularly advantageous for Stangl, insofar as he received a life sentence. Nonetheless, at the time of his interviews with Sereny he was still hoping for his sentence to be overturned and/or reduced.

Similarly, we must recognize the motivating factor to be found in Stangl's concern for how he would be perceived and remembered, particularly by his surviving family members. Even were his sentence to stand (which it did; he died of heart failure in prison) it is reasonable to think that a man accused of such horrendous crimes would be concerned to hide the full extent of his responsibility from those about whose opinion he most cared. If he had known that what he was doing was wrong, and if he knew that he could have acted otherwise, then to have continued to have accepted and followed orders would have made him a monster. This was not a description of himself which he could allow himself, let alone others, to accept.

And so it looks as though we are faced with the daunting task of sorting through dubious testimony: how are we to know what Stangl did and did not believe, given that we are aware of his reasons for being deceptive? We can of course never know with



complete confidence when Stangl was and was not telling the truth. Sereny, however, has done a marvelous job in her research, going to extreme lengths to verify as many claims as she can. She points out any obvious contradictions, and provides us with first-hand accounts verifying (or disconfirming) contentious points. Furthermore, her extended interviews with Stangl allowed her insight into his demeanor and mannerisms. Over time, she began to feel confident in her ability to recognize Stangl's cues for honesty and deception.

For example, Sereny was convinced of Stangl's veracity when he confessed to being guilty for having stayed within the ranks of the Austrian police force after it was absorbed by the Gestapo in 1938. Discussing with Sereny the changed atmosphere of the time, his up-to-then calm demeanor changed and he burst out: "...I hate the Germans...for what they pulled me into. I should have killed myself in 1938...That's when it started for me. I must acknowledge my guilt" (39). As Sereny reports, Stangl's admissions of guilt or direct responsibility were few and far between. She too recognized his motives for hiding from the public and himself facts about his involvement in the Holocaust. She likewise recognized the psychic difficulties that would accompany such an admission on his part:

This, on the second day of our talks, was the only time Stangl acknowledged guilt in a direct way until almost the end....When he volunteered an acknowledgement of guilt for his comparatively harmless failings at this stage of his life, it was—I felt—because he wanted and needed to say "I am guilty" but could not pronounce the words when speaking of the murder of 400,000, 750,000, 900,000, or 1,200,000 people (both official and unofficial figures vary, depending on the source). Thus he sought to find an acceptable substitute for which he could afford to admit guilt. Except for a monster, no man who *actually participated* in such events (rather than "merely" organized from far away) can concede guilt and yet..."consent to remain alive". (39)

Thus, even though Stangl clearly had reason to avoid acknowledging his guilt, we can see throughout his interviews incidents and confessions which suggest that he was well-aware of his culpability. This brings us back to our first question: Did Stangl have any

false moral beliefs? In this situation, the relevant beliefs would be those pertaining to his work with the Nazis: did he believe that what he was doing was morally permissible?

Sereny asked Stangl whether he knew that what he was doing was wrong when they were discussing his initial appointment to Sobibor. He responded in the affirmative: “Yes, I knew... But we also knew what had happened in the past to other people who had said no” (113). Throughout his interviews, Stangl repeatedly claimed that he could not have refused his assignments, for doing so would have put him at risk of being sent to a concentration camp, or worse yet, killed. In his mind, this supposed consequence provided him with a justifying reason for accepting and performing the assignments given to him. I write “supposed”, for Sereny calls into question whether Stangl actually feared such results. Most accounts point to it being the case that officers in positions similar to that of Stangl’s were not forced to accept these sorts of assignments, nor were there harsh consequences for asking for reassignment. Sereny also suggests that this was not secret; that is, she gives us good reason to think that Stangl probably did not really fear that his life would have been in danger had he refused his posting. Nonetheless, whether he actually feared for himself in such a way, or whether he had good reason to believe such is beside the point here.

Recall that we are entertaining the suggestion that a Wolfian cultural insanity defense may apply to Stangl. If Stangl had an insane deep self, we would expect him to have shown signs of being cognitively and normatively unable to recognize and appreciate particular facts about the world. Perhaps Stangl honestly thought that his refusal of the Sobibor job would have resulted in his being sent to a concentration camp. Perhaps he believed this even though he did not have sufficient evidence to make this a justified belief. Or perhaps his evidence *did* in fact support his belief. None of that matters here. What matters is that he admits to recognizing that the murder of the Jews at Sobibor was wrong. This would likewise indicate that he had the ability to recognize this sort of moral fact, which would in turn begin to suggest that his deep self was not insane.

There are other incidents which suggest that he was able to recognize moral facts. For example, Stangl would often oversee the incoming transports to Treblinka. He related to Sereny an incident with one of the Jewish prisoners which he thought illustrated his rigid values: Recognizing Stangl as being in charge, the prisoner approached Stangl and asked to lodge a complaint. Apparently, one of the Lithuanian guards had promised the man a drink of water in exchange for his watch. Upon handing over the watch, the guard failed to provide the man with water. Stangl reported having been incensed, and made all of the guards turn out their pockets in search of the missing watch. He had been warned not to do so by his colleague, for there were officers among the Lithuanian guards whom it would not have been prudent to insult. Stangl, however, proudly pronounced: “I am not interested what sort of uniform a man wears. I am only interested in what is inside a man.” This was, in his view, a radical thing to declare, but he cared not: “Don’t think *that* didn’t get back to Warsaw in a hurry. But what’s right is right, isn’t it?” (169). Stangl was correct: what’s right *is* right, but one might want to protest that he missed the point.

The guard should not have taken the man’s watch without having provided him with water. But of course, the guard should not have made the deal in the first place. A marginally better thing for the guard to have done would have been to have offered the prisoner water simply because the prisoner was thirsty. But once again, this too is missing the point. The guard should not have *been* a guard herding thousands of innocent victims to their deaths. Stangl, too, in doing what was “right” by searching for the stolen watch failed to do what was really right: he should not have sent the prisoner on to his death, and he of course should not have been a death camp commandant in the first place. *That* was certainly not “right”.

So even if we admit that Stangl had this minimal ability to recognize *some* moral truths, we must admit that he either failed to recognize or failed to appreciate the more significant moral truths such as “one ought not efficiently organize the death of thousands of innocent victims”. Maybe—one might think—he honestly did not get that the

systematic murder of so many people was wrong. The very fact that he continued to accept his wartime assignments suggests that he either did not “see” that this was wrong or that he did not “appreciate” that it was wrong. How—one might ask—could anyone truly appreciate this fact and continue to be involved? Indeed, even if we consider the suggestion that Stangl’s life truly was in jeopardy, and if we concede for argument’s sake that this provided him with a justification for accepting his assignments, we cannot ignore the fact that Stangl performed his job so excellently. Surely one who “appreciates” the fact that the Holocaust was wrong would not participate so enthusiastically, even if that person honestly thought they were coerced to participate.

It seems obvious that Stangl could have done his job less efficiently. Perhaps he could have stalled some of the executions or sabotaged the machinery. Even if he had thought that this would have been too risky of a plan, it seems as though he could have done something to *slow* the execution process, thereby resulting in fewer overall victims. When Sereny posed this question to him (she asked him if he could have done his work a little less “superbly”), however, he seemed truly angry: “Everything I did out of my own free will...I had to do as well as I could. That is how I am” (229). This response leads us to think that it had either not occurred to Stangl that he had the option to perform his duties at a sub-par level, or that he did not *truly* appreciate that it was a real option, insofar as he so readily dismissed it. If he did not recognize or appreciate what seem to be so obviously true and easily recognizable moral facts, it makes us wonder whether he possessed the basic ability to recognize and appreciate these sorts of truths. If we think that he lacked the ability, we must then consider whether this “moral handicap” was one for which he was responsible.

I concede that it is possible that Stangl’s deep self was insane insofar as it seems as though he did not appreciate some important moral facts (this is working under the assumption that to appreciate a moral fact means that one is *prima facie* moved to act in accordance with that fact). I will return to this point momentarily; however, I would first

like to present the hypothesis that Stangl's deep self was indeed sane. I think that this description most likely provides the best explanation of Stangl's behavior.

As we have already noted, Stangl seemed to have known that the systematic murder of so many millions of innocent victims was morally wrong. He likewise seemed to have known that his participation was morally wrong. On the last day of his talks with Sereny, Stangl came as close as he apparently could to admitting this. He began the day by repeating his familiar mantra that his conscience was clear; he claimed to have never intentionally hurt anyone, and this, in his mind, meant that he had done nothing wrong (364). This time, however, Stangl faltered in his certainty. Sereny reports that upon meeting her silence, Stangl's stony exterior crumbled:

“But I was there,” he said then, in a curiously dry and tired tone of resignation....” So yes,” he said finally, very quietly, “in reality I share the guilt....Because my guilt...my guilt...only now in these talks...now that I have talked about it all for the first time....” He stopped.

He had pronounced the words “my guilt”: but more than the words, the finality of it was in the sagging of his body, and on his face.

After more than a minute he started again, a half-hearted attempt, in a dull voice. “My guilt,” he said, “is that I am still here. That is my guilt.”.... “I should have died. That was my guilt.” (364)

Perhaps Stangl really did believe that he had done nothing wrong and was only here trying to appease his interviewer; perhaps he was hoping that in admitting his guilt, he would be remembered a bit more favorably, a bit less harshly by the public that would inevitably look for his confession. On the other hand, we must consider the real possibility that in this “confession” Stangl's true beliefs and attitudes were revealed, both to Sereny and himself.

I think that a highly plausible description of Stangl's situation is that he did indeed know that his continued participation as a death camp commandant was not morally defensible. I think that he likewise knew this—deep down—and that he likewise

acknowledged his guilt—again, deep down. I repeat that this recognition occurred deep down for I think that Stangl did a marvelous job of repressing this truth. This explanation of Stangl's behavior asserts that Stangl indeed had the ability to recognize the moral truth, and he likewise had the ability to appreciate it. That is, he did in fact see that his participation in the Holocaust was not morally justified; likewise, he *could have* acted upon this recognition. He certainly possessed the ability to be moved by his recognition of other moral truths, such as his recognition that he had obligations to protect his family. This explanation asserts that Stangl had a minimal ability to recognize and appreciate truths about the world; he simply failed to *exercise* this ability when he ought to have.

I have already noted instances of Stangl's recognition of some moral facts. And what shall we say of the other blatantly obvious truths that he seemingly failed to recognize and/or appreciate? I assert that Stangl *chose* not to acknowledge them. Doing so would have put him in the position where he would have had to have made difficult choices, and where he would have potentially put himself in danger. To have acknowledged and to have acted upon the truth would have required significant strength of character and would have likewise required serious sacrifice on Stangl's part. Acting morally is certainly not always easy. I think that the best explanation for Stangl's behavior is that he had other self-interested reasons to ignore his moral duties. While these reasons were not justifying in the sense that they did not make it the case that he was morally justified in retaining his post and executing it so excellently, Stangl allowed himself to (falsely) believe that they were. That is, Stangl wanted to believe that he was committing no moral wrong in acting as he did, for performing his Nazi duties brought him significant personal benefit, and conversely, failing to perform them would have brought him serious loss. Had Stangl rejected his assignments or completed them less excellently, he would not have been subject to as much praise, reward and material comfort. Understanding this, I think that Stangl refused to allow himself to acknowledge

his overriding moral duties to humanity even though he was perfectly capable of recognizing and appreciating them.

There is much more that can be said on this topic. As I have indicated, I think that we easily will be able to identify instances wherein Stangl engaged in self-deception and affected ignorance with the goal of avoiding acknowledging his moral failures. As the project continues, I will provide several specific examples of self-deception, affected ignorance, and epistemic evidence at work in the cases of both Stangl and Jones. I am convinced that I will be able to support my claim that this provides the best explanation of these men's morally questionable behavior. If Stangl and Jones *chose* not to recognize and/or appreciate their moral duties and engaged in self-deceptive measures to ensure their ignorance, we no longer have cause to suspect that their deep selves were insane. Again, I think that this is most likely the case, but before moving on to develop that claim, we must first address the more remote possibility that Stangl's deep self was indeed insane.

Even though I have argued that we should conclude that Stangl possessed a sane deep self, we cannot ignore instances wherein it appears as though his moral faculties really were degraded by the time he accepted his assignments as commandant of Sobibor and Treblinka. For example, Stangl seemed to think that his actions in the following incident were admirable; his pride in relating this story arguably underscores his extreme error: While at Treblinka, Stangl had fairly regular contact with the work Jews, one of whom, Blau, he appointed as a cook. One day Blau came to see Stangl, looking terribly upset. When questioned by Stangl, Blau confessed that his aging father had just arrived on a transport and was in line for the gas chamber—could Stangl do anything? Stangl allowed the man to take his father to the kitchen, where Blau could provide his father with a meal before taking him to the *Lazarett* to be killed (the *Lazarett* was essentially a shed where victims sat upon a low wall, were shot, and fell back upon a constantly-burning crematory). Stangl related that later that afternoon Blau returned to report that it

was all over; he supposedly thanked Stangl with tears in his eyes. Stangl remembered saying to him, “Well, Blau, there’s no need to thank me, but of course if you *want* to thank me, you may.” When Sereny asked what had happened to Blau and his wife, Stangl claimed not to have known. (207-208). They of course had been killed at Treblinka, a fact which surely Stangl knew, or easily could have known.

That Stangl related this story with pride, that he offered it as evidence of his benevolent nature when he ought to have felt incredible shame, is nearly incomprehensible. What sort of man could fail to see that he offered Blau no true gesture of kindness? Stangl honestly did not seem to allow himself to consider the possibility, either then or at the time of his interviews, that he had been in a position to help Blau and his father. Even granting that he could not have saved all of the prisoners, it seems quite likely that Stangl could have finagled some method by which he could have saved Blau’s father, or Blau himself. Perhaps the fact that Stangl did not recognize this, and perhaps the fact that Stangl seems to think he acted benevolently is evidence that he was not able to see such facts. Perhaps he really did not have this ability. As Sereny noted with regards to this incident: “[t]his story and the way it was told represented to me the starkest example of a corrupted personality I had ever encountered and came very near to making me stop these conversations” (208). If Sereny is correct, and if Stangl’s personality truly was corrupted, perhaps it was corrupted in the sense that someone with an insane deep self may exhibit a corrupt personality.

I will concede that this is a possibility. We should certainly consider the possibility that Stangl’s many and extreme moral mistakes underscore an inability to recognize and appreciate moral truths. The question then presents itself: how did Stangl’s deep self *become* insane? If it was through no fault of his own, then according to Wolf, we should not hold him morally responsible for any resulting moral failings. If, however, Stangl himself was responsible for the ruination of his deep self, then he would remain



fully responsible. This latter scenario, I believe, provides the more likely description of events (granting that his deep self was insane, which I have above argued was not likely).

We must recall that Stangl was not raised from infancy in a culture which encouraged and supported Nazi ideals. Stangl was an adult when he entered the Nazi party. Prior to his work with the Nazis, he had displayed no behavior which would have suggested that his deep self was insane. He had no criminal record, he formed loving relationships with other people, he displayed no signs of extreme anti-Semitism or hatred of others. He was by all accounts an ordinary, albeit ambitious, young Austrian man.

Stangl was not particularly reflective or inquisitive, insofar as he failed to question seriously his moral obligations, yet this failing is not sufficient evidence of an insane deep self. While Stangl reports having been “horrified” by the existence of the extermination camps, and while he likewise reports to have “schemed” to identify a safe way to extricate himself from the awful business of the death camps, his efforts to actually identify a feasible plan of escape seem to have been minimal. He similarly did not seem to allow himself to reflect upon his involvement for significant periods of time. In short, he became adept at allowing himself to be swept up by the surrounding events. He essentially buried his head in the sand by focusing upon his work and by avoiding thinking about the horror in the extermination chambers. As we continue to discuss Stangl throughout this project, further instances which detail and support this claim will be outlined. My point here is that, granting that this is indeed how Stangl coped with his situation, these sorts of evasive techniques could plausibly have led to his eventual “corruption”.

We have no evidence to think that Stangl’s deep self was insane at the start of war; however, it is conceivable that the evasive, self-deceptive techniques which he employed to allow himself to avoid confronting his guilt eventually damaged his moral faculties such that he was no longer able to recognize and appreciate the moral truth. I have not provided much support in defense of this claim, and will attempt to do so in

subsequent chapters. Regardless, the point still stands that, even if Stangl's deep self really was insane as a result of his negligence, he was responsible for allowing his deep self to reach that state. Given this, he will not be eligible for a Wolfian insanity defense. By Wolf's own account, Stangl would be considered morally responsible.

I will next turn my attention to Wolf's paradigm case of an insane deep self: JoJo. I have argued that neither Jones or Stangl appear to be candidates for an exemption from moral responsibility on Wolf's theory. This in and of itself is not particularly damning to Wolf; she made no assertions about particular individuals. Rather, she merely suggested that the typical Nazi or the typical American slave-holder *might* have had insane deep selves, and thus, *might* not have been fully morally responsible. Thus, even though I have argued that this plea will not hold for Jones and Stangl, Wolf could assert that they were not typical representatives. Perhaps the defense still applies to *other* individuals in similar circumstances.

However, as this project progresses, I will present arguments which will suggest that this counter will not work. That is, I will argue that the defense will likely *not* apply to most other Nazis and slaveholders. Furthermore, I will next argue that, of immediate concern to Wolf's theory, is the fact that Wolf's paradigm cases of JoJo and Tony should *not* be described as having insane deep selves. If Wolf's archetypal characters are more aptly described as having sane deep selves, then the plausibility of the theory is seriously undermined.

Additionally, we must not forget that our examination of Wolf's theory was prompted by her prediction about the result that it would provide for cultural defendants in real-life cases. Her theoretical claims about the necessary conditions of moral responsibility may stand, yet she indicated that acceptance of her theory would have serious, and indeed, helpful, practical implications. We have been utilizing these real-life case studies because they—as representatives—are the sorts of individuals in whom we are interested; they are the sorts of people who we think are affected by unique cultural

circumstances, and we need to know how those circumstances affect their moral responsibility. If Wolf's theory will only provide us with clear answers about the moral responsibility of bizarre case studies like JoJo, but if it is not helpful in the real cases, then it is not, in the end, useful to us.

#### Another Look at JoJo

JoJo, as we remember, was the privileged son of the tyrannical dictator; JoJo himself unsurprisingly—and Wolf would argue, unavoidably—matured to become a similarly despotic man. Explaining why we ought to consider JoJo to possess non-culpably an insane deep self, Wolf writes:

...in the cases of JoJo and the others [the slaveholders, et al], there are certain features of their characters that they cannot avoid even though these features are seriously mistaken, misguided, or bad. This is so because, in our special sense of the term, these characters are less than fully sane. Since these characters lack the ability to know right from wrong, they are unable to revise their characters on the basis of right and wrong, and so their deep selves lack the resources and the reasons that might have served as a basis for self-correction. (147)

Even though JoJo is a thought-experiment and Wolf has stipulated the details of his situation, I would argue that this characterization of JoJo is not the most apt available. Even someone brought up in as insulated an environment as that described by Wolf would plausibly have been *capable* of turning out otherwise—certainly if this individual had available to him all the education and opportunities as did JoJo. JoJo, we must not forget, was a rich and privileged child. He was not deprived of any physical comforts, nor was he abused or neglected, either physically or mentally. Being wealthy and subject to promising prospects is of course not a prerequisite for being a responsible moral agent; neither, for that matter, is being lucky enough not to have suffered from abuse. But that JoJo was subject to these advantages certainly puts him in a better position than most. There are few mitigating circumstances present that would make us think that perhaps the adult JoJo would not be morally responsible for his bad behavior.

Wolf may counter that, while JoJo's formal education was exemplary, his moral education was nonetheless erroneous: JoJo was taught the *wrong* values, and because of that, he was unable to recognize the correct moral values, and was unable to reach the correct moral conclusions about how he ought to treat others. Perhaps Wolf might argue that the situation is analogous to someone receiving incorrect instruction in formal logic: If JoJo had been taught incorrect rules of inference, we would naturally expect the conclusions of his proofs to be similarly incorrect. Even if JoJo had correctly applied, for example, the rules of replacement within his proofs, if he had been mistakenly instructed that one may legitimately deny the consequent of a conditional statement if the antecedent has been denied, then any such application of this "rule" would result in an invalid proof.

I do not offer this example in an attempt to set up a strawman against Wolf. While Wolf admittedly did not offer this explanatory analogy, I do feel that it supports her view on what an insane deep self is and how it gets that way. Furthermore, I think that this sort of analogy provides a charitable interpretation of Wolf's view. Nonetheless, I think that further reflection upon the logic example and upon the case of JoJo's moral failings will highlight the inadequacies of this view. While we would certainly be sympathetic towards the logic student (JoJo) who believes that denying the antecedent is not a fallacy, and while we might expect him to fail to derive valid proofs, we do not have sufficient evidence to conclude that he is *incapable* of understanding formal logic or ultimately, of being able to derive valid proofs. He is certainly at a disadvantage when compared to other students who have been provided with competent logic instructors. Nonetheless, barring any further evidence that he has other mental defects that would preclude his comprehension, he should by all means still be capable of recognizing and comprehending the truth when confronted with it. We can acknowledge that if JoJo's instructor's rival were to intercept him and attempt to illustrate the validity of *modus ponens*, JoJo would very likely dismiss this new information. JoJo, after all, trusts his

instructor and trusts those people (such as his father) who assure him that the instructor is the best. Nonetheless, saying that we would *expect* JoJo to dismiss the truth is not the same as saying that he is *incapable* of recognizing the truth as being the truth.

By all accounts, Wolf has described JoJo as being the sort of individual who, if given sufficient time and reflection, would be able to see that he has been mistaken. The nature of logic is such that it is self-evident. There is no proof for *modus ponens*; one may demonstrate the validity of the argument form by identifying instances wherein the conclusion follows from the premises with certainty, but one will eventually come to realize that whenever an argument takes the form of *modus ponens* the conclusion is logically entailed by the premises. The actual structure of the argument form demonstrates this; the proof is contained within the form itself. Thus, even though it might be more difficult for JoJo given his false start, assuming that he has normal cognitive abilities, he has within himself all that is needed for him to recognize that *modus ponens* is valid and denying the antecedent is invalid. Even if JoJo dismissed his first encounter with *modus ponens*, we would have to imagine that this conflicting information was registered by JoJo as *being* conflicting information. He at first dismissed it, but when he inevitably encounters someone else claiming that *modus ponens* is a valid argument form, he would surely recognize this as yet another conflict with his belief. The resulting cognitive dissonance would hopefully serve as evidence that JoJo ought to reexamine his beliefs and sort them out: if *modus ponens* cannot be both valid *and* invalid, which is it? Even if JoJo time and time again dismisses conflicts, we should not claim—as Wolf does—that he is *unable* to recognize the truth.

I argue that we should reach a similar conclusion regarding JoJo's moral beliefs. Even with his unfortunate education in logic, JoJo's reasoning abilities remain intact. I have argued that because of the self-evident (but certainly not obvious) nature of logic, JoJo has all the evidence he needs to determine, on his own, that certain logical inferences are valid. However, the example need not be confined to self-evident truths.

Even if certain logical truths were not self-evident, I have argued that JoJo's inevitable conflict as he interacts with other people will serve as evidence that something among his belief set is amiss. In subsequent chapters I will argue that certain moral truths are self-evident, and that regardless of what one has been taught, one has, upon contemplation of particular moral principles, sufficient evidence to determine that those principles are true. This is a contentious claim, and I will do my best to defend it in that chapter.

Nonetheless, as with the logic example, my argument here does not depend upon this claim about what I take to be the self-evident nature of certain moral truths.

Wolf does not present JoJo as living in such an insulated environment that he has never been confronted with alternative, and correct, views on what morality demands. Minimally, those subjects of his who he tortures at his whim must have voiced their protest and tried to convince him that his actions were not morally justified. According to Wolf's description of JoJo, he is aware that others think his behavior is wrong; he simply fails to care. JoJo is the man he wants to be; he embraces his false values (though he of course does not think they are false), feeling perhaps that they reflect and reinforce his powerful status, which is what he truly values. In saying that JoJo fails to care, however, Wolf means not only that JoJo dismisses the dissenting voices, but that he is *incapable* of recognizing this dissent as properly serving as evidence which would successfully counter his morality. In order for JoJo to get things right, he would have to have certain character traits which would allow him to reflect upon and revise his character. Presumably, such traits would include conscientiousness, honesty, and persistence: JoJo would need to carefully examine his character, his values and his behavior; he would have to be forthright with himself in acknowledging his flaws; and he would have to be perseverant in undertaking whatever steps were necessary to transform him into a good man. And of course, JoJo would need to be equipped with the virtue of sympathy if he were to be able to recognize and respond to the pain he has inflicted in his victims. Wolf argues that JoJo's upbringing has left him empty-handed with regards to these virtues. If

these are the necessary tools for his character-revision, he has been left ill-equipped, supposedly through no fault of his own.

The question then becomes the following: Must one have been taught explicitly that one ought to be sympathetic, honest, sincere, etc if one is to subsequently be held accountable for one's failings to exercise these virtues? Likewise, if one has *not* been taught explicitly these virtues, and if they have not been continually reinforced and correctly exemplified by one's intimates, then may we conclude that one is *unable* to recognize these values and virtues as being correct? Wolf seems to be arguing in the affirmative on both accounts. That is, JoJo's father never taught him that he needs to be sympathetic (for example); likewise, JoJo's father never demonstrated sympathy such that JoJo could see how it works and recognize that it is a virtue which one ought to adopt. From this, Wolf has concluded that the adult JoJo is *unable* to recognize that he is not the man he ought to be, and that he is unable to become the man he ought to be. I assert that Wolf has not provided us with sufficient reason to accept this conclusion. At a minimum, she needs to provide us with guidelines for distinguishing between those persons who *cannot* see what is right, and those who simply do not *care* about what is right.

Plenty of people have been raised in situations similar to JoJo's, or have been raised by parents who possessed and exercised many vices, yet those children matured to become virtuous adults. These individuals are certainly able to recognize and appreciate the truths about the world, and they are concerned with getting things right. They are concerned with the task of doing what they objectively ought to do and with being the sorts of persons that they really ought to be. On the other hand, there are plenty of individuals of whom we say that they are *able* to sort out these matters if they were only willing to do so, yet they do not have the motivation to do so. They do not care about getting things right or being good persons. Among these individuals we will find persons who have simply identified selfish reasons for remaining ignorant of the moral truth.

JoJo, it seems to me, could very likely be one of these persons. What reason does JoJo have to change his behavior? From his point of view, he has things pretty good. His power is well-established and is not subject to significant threats. His every whim is catered to; he never suffers an unfulfilled desire, and by all accounts, his future tidings are more of the same.

As with Stangl and Jones, I argue that JoJo could easily be described as engaging in self-deceptive techniques in order to convince himself that his behavior is acceptable and that he need not change. For JoJo to change would be for him to forgo significant comforts and conveniences. He clearly has self-interested (though again, not justifying) reasons for avoiding the task of examining his behavior with any real scrutiny. We have no reason at this point to conclude that JoJo *cannot* undertake this task; rather, it looks as though he simply does not want to. I am not alone in making this observation about Wolf's paradigmatic figure. Of JoJo, Lawrence Vogel has written:

I do not see, in principle, how [Wolf] could show that JoJo did not know better rather than that he just did not care enough about the plight of his victims. Even if JoJo is sadistic and not just weak-willed, I would hold him responsible for having allowed himself to become so oblivious to moral considerations that he may actually look like a man who does not, and even could not, know any better. (132)<sup>38</sup>

The reader will note the similarities between this commentary on JoJo and observations I put forth earlier regarding Jones and Stangl. I hypothesized, for example, that Stangl could plausibly have been described as a moral monster, incapable of recognizing that he had committed atrocious moral wrongs. If this description fit, however, I argued that Stangl was responsible for having allowed himself to become such a man, and was consequently morally responsible for his actions. The broader point here, though, is that

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<sup>38</sup> "Understanding and Blaming: Problems in the Attribution of Moral Responsibility," from *Philosophy and Phenomenological Research* 53 (1993); pp.129-142.



Wolf's cultural insanity defense is too vague: how are we to distinguish between those who truly cannot recognize and appreciate the truths of the world from those who *fail* to do so (Vogel, 132)?

We are faced with three competing hypotheses regarding the situations of Jones, Stangl and JoJo: (1) they nonculpably had insane deep selves and could not see the error of their ways; (2) they had insane deep selves, yet they were responsible for having allowed themselves to reach that point; or (3) they were fully capable of recognizing and appreciating the moral truth, yet they either disregarded what they knew was the moral truth, or they avoided learning the truth for self-interested reasons. Wolf has suggested that due to the unique cultural and societal environments of these three types of figures, the first hypothesis likely applies. Vogel points out—and I agree—that we need further criteria to help us distinguish between the first and the latter two hypotheses. Barring that, I argue that hypotheses (2) or (3) present the more likely accounts of the three men. Furthermore, even if Jones and Stangl in the end do not qualify as being “typical” representatives of their eras, I propose that hypotheses (2) and (3) will indeed apply to the vast majority of the nineteenth-century American slave-holders and the German Nazis of the 1930s, whatever characterization of “typical” we are able to agree upon.

If JoJo, in his insulated upbringing, cannot be described as suffering from an insane deep self, it seems all the more unlikely that the typical slaveholders of the American South were so brainwashed, and so shielded from the moral truth that they could not have known, or discovered with fairly minimal effort, that what they were doing was wrong. As Vogel writes: “...it presents a too closed picture of Southern society to suppose that plantation owners could cop a Wolfian insanity plea on the grounds that they could not have known better” (138). The same can be said—and arguably with even greater certainty—with regards to the German Nazis. The adult men and women who formed the bulk of the Nazi organization and who carried out the dreadful orders of Hitler had not been brought up isolated from all exposure to the moral truth. They had not

been indoctrinated from the time of their early formative years to accept the twisted values of Nazism. Given the particulars of their circumstances, however, we may assert that we are not surprised to learn of a random representative from each of these cultures that s/he either owned slaves or complied with Nazi orders. It was quite likely that a white member of the Southern upper class would either own slaves or in one way or another support the institution of slavery. Likewise, given what we know of the pressures of the era, and what we know of the weaknesses of human nature, it is not surprising that the typical German (or in our case, Austrian) did little to protest or fight against Nazism. Saying all of this, however, is not to say that any of these individuals are exempted from moral responsibility. Vogel elaborates upon this point:

There is an important difference between what it is reasonable to expect *from* someone and what it is reasonable to expect *of* him—between what we can *predict* he will do and what we can *require* him to do. Even if it is probable that JoJo will follow in his father’s footsteps, it is not inevitable, or at least it is unclear how anyone could show that it is. One might bet on his becoming a bad man while believing that he should be held to the standards of a good one. (132)

The suggestion that JoJo and these other individuals could not have known better seems unlikely, even admitting that their behavior was predictable. Even admitting that *if* someone really does not have the capacity to recognize and appreciate the truths about the world, and *if* that inability is not a result of negligence on the part of that individual, then that person is not morally responsible for her behavior, we must face the fact that finding such individuals who fit this description will be difficult. There will be few “normal” individuals of whom this description applies. Consequently, Wolf’s theory of when individuals may be subject to reduced moral responsibility looks unhelpful, to say the least.

#### Another Look at Tony

Finally, let us return to Wolf’s example of Tony. In her analysis of moral responsibility, Wolf has focused on what she takes to be the necessary condition that

individuals be able to recognize and appreciate important truths about the world. Her case studies presented individuals who, though they possessed freedom of action and freedom of the will, due to their unique circumstances, allegedly possessed insane deep selves. Wolf argued that it was “inevitable” that they would have formed the false beliefs and values that they did, and that consequently, in an important sense they could not have acted other than they did, for they could not have acted upon the correct beliefs and values (given that they lacked the ability to recognize these). I have already argued that it is unlikely that Wolf’s fictional JoJo could not have acted other than he did, and I have similarly argued that her account will not mitigate the responsibility of my case studies Jones and Stangl. The application of Wolf’s theory to these cases has illuminated what I take to be a suspicious understanding of the notion of “ability”. A more careful look at the case of Tony—the son of the mafia don contemplating his career options—will, I believe, further illustrate her reliance on a dubious understanding of what it means to say that a person lacks the ability to recognize and appreciate moral truths (and who thus, cannot act in accordance with the “True and the Good<sup>39</sup>”). Evaluation of this case will further undermine her theory, and will suggest that we turn our attention to theories which are concerned with the reasonability of the individual’s beliefs and actions. Perhaps these theories will provide a better chance at mitigated responsibility for the figures in our case studies.

Recall that the adult Tony is attempting to decide whether he should take over the family business or become an “honest” schoolteacher. Though Tony thought that he was making his choice freely, and though he thought that he had considered all of the reasons

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<sup>39</sup> This is the phrasing that Wolf employs in her book *Freedom Within Reason*, where she first offers her description of Tony. In this work, she refers to her theory of responsibility as the “Real Self View,” which, as best I can tell is the same as her “Sane Deep Self View”. Accordingly, when presenting the Sane Deep Self View, Wolf noted that sane individuals possess the cognitive and normative ability to recognize and appreciate truths, both moral and non-moral, about the world. She refers to these truths in her book as “The True and the Good”.

for and against both options, Wolf argued that Tony was actually unable to choose to become a teacher. She claimed that he was not “*really* able to choose anything else, in a sense that is relevant to assessments of freedom and responsibility” (113). Wolf hypothesized that Tony’s deep fear of his father compelled him to decide to remain in the family business.

Even granting that Tony’s story is fictional, and that Wolf can thus introduce any factors or twists she wishes, I think that her conclusion regarding Tony’s responsibility is highly suspicious. I do not, on the face of it, find good reason to conclude that Tony *could not* have chosen other than he did as opposed to thinking that he was simply conflicted, that he faced a difficult decision, and that he ultimately chose the path of least resistance.

Wolf does not provide us with Tony’s complete list of what he identified as being his reasons for and against each of his options. Nonetheless, I think that we can reasonably fill in some of those pros and cons. In contemplating a career separate from the mafia, Tony was contemplating leaving behind his very familiar, and most likely, very comfortable lifestyle. Tony’s father was the head of the mafia. This position surely came with its perks, not the least of which would be considerable economic security and material luxuries. The life of a schoolteacher, on the other hand, in no matter how generous of a district, would provide Tony with a much reduced standard of living. Surely Tony was aware of this, and if his list was as extensive as Wolf has led us to believe, he must have given some weight to this consideration and put a check in the negative column for becoming a schoolteacher.

We must not also forget, as Wolf has suggested, that were Tony to become a schoolteacher, he would be cutting off completely his ties with his family. For Tony to follow a career path different from his family members’ is not the same as, for example, an aspiring artist to reject her family’s history of entering the medical field. In most cases, choosing a career other than that expected by one’s family will not sever

effectively all familial bonds. Tony's case, then, is unique in that he has strong emotional incentives to choose to take over for his father. Even within a family of ruthless gangsters, we would expect Tony to have created loving bonds; indeed, he cites as one of his primary reasons for staying his desire to avoid breaking his mother's heart. To choose to leave your loved ones behind and cut off all contact with them can never be an easy decision. Consequently, we would have to think that Tony's desire to avoid this sort of heartbreak—for both himself and his family—would have resulted in an emphatic plus in the “stay in the family” column.

It is interesting that Wolf, while having created the detail about Tony's less intelligent and more ruthless brother, does not cite this at all in her exoneration of Tony. Thus far, I have identified what are clear economic and emotional incentives for Tony to stay in the mafia. If, from the fact that Tony was considering becoming an honest schoolteacher, we can conclude that he has some moral qualms about his family's line of work, I think we can likewise consider Tony's worry about his brother's ruthlessness to have provided him with a moral incentive for staying in the mafia. If Tony can be certain that his brother will take over in his stead, and if he is likewise certain (or as certain as he can be) about how his brother will operate once he reaches this position of power, then Tony should indeed consider what harm will be brought about by his brother, and what role he (Tony) has to play in this chain of events. While I am not endorsing utilitarianism as an ethical theory here, I think we can nonetheless recognize that there are utilitarian considerations at work. If Tony is as conscientious as Wolf has painted him, then we should be able to assume that he is facing this choice because he does in fact have a moral conscience and because he is worried about the role he will play in causing pain and suffering if he were to stay in the mafia. Becoming a schoolteacher would present itself as an option wherein he could avoid creating such harm, and which would concurrently allow him to bring about some good in the world. Nonetheless, if his stepping down were to guarantee that his brother would be let loose upon the world, this

is a fact which Tony ought to consider. Without doing the utilitarian calculations (if they are in fact possible), I am unable to say with certainty which of the two options would result in Tony's doing what he can to reduce pain and suffering and promote pleasure and happiness in the world (assuming these are worthwhile moral goals). Regardless, I think we can see how these concerns, coupled with the aforementioned economic and emotional incentives, might lead Tony to think that his staying in the mafia would be a morally acceptable choice.

We now have before us a fuller picture of Tony's dilemma. None of this account denies Wolf's claim that Tony feared his father's reaction to his potential rejection of the family lifestyle, yet it does call into question the likelihood that Tony's fear *compelled* him to make the decision to stay, or that he *could not* have chosen otherwise. I think that the picture I have painted presents a compelling (no pun intended) scenario in which all of these factors working together allowed Tony to make the decision he did. None of this is to say, however, that Tony made the *correct* moral decision in choosing to stay in the mafia. Rather, I am asserting that, even within the parameters that Wolf has provided, it seems just as likely that Tony was moved by a combination of his greed, his emotions, and even perhaps his moral conscience to act as he did. We do not have overwhelming reason to think that Tony's fear of his father *compelled* him to act as he did.

Notice that I am not claiming that these other considerations compelled Tony to act one way as opposed to the other. They all surely played a causal role in Tony's deliberation, but we do not need to conclude from this that any one of them were determinative. We can identify motives and incentives of Tony's which would lead him to choose one course of action over the other. Any one of (or combination of) these motives or incentives could have led him to place greater weight upon the corresponding reasons to stay in the mafia. Similarly, we can admit that fear might move a person to search for reasons to do that which he really wants to do (but which he might not honestly believe he ought to do). But to say that fear necessarily *makes* or *compels* a

person to place inordinate weight upon a particular factor is to make a controversial claim which needs further support than that with which Wolf has provided us.

At this point Wolf might interject with an objection. I have argued that we ought to consider as just as likely a possible interpretation of Tony's situation that he chose the easier, more comfortable career path, as is understandable given human emotions, motivations and weaknesses. Wolf might argue that, while this certainly may be true of some individuals, she has stipulated that in this case, Tony *was in fact* compelled by his fear, the full extent of which was unknown even to him. Thus, even if it might be true of many individuals that their greed or emotional ties might influence (but not *compel*) them to make morally questionable decisions which would benefit them (as there is no denying that Tony would benefit from staying in the mafia), her point might still stand. Wolf's hypothesis is, after all, a conditional: *If* a person could not have acted in a morally appropriate way, then we cannot say that they are responsible for their incorrect behavior. Thus, for any person who is actually compelled to act in a morally bad manner, we would say of them (according to Wolf) that they are not responsible. This thesis would hold true for Wolf even if the number of persons fitting this description is quite small.

But this too is problematic, in large part because I believe that Wolf is employing far too loose of a notion of what it is to say that a person lacked the ability to do otherwise. In *Freedom Within Reason*, Wolf attempts to provide a sketch of what it is to say that a person has an ability to do something, and then fills out that sketch with thought experiments such as that of Tony. She explains:

Although I can offer no reductive analysis of "ability" ... I can give a *characterization* of what is involved in attributing an ability to someone... In particular, we may characterize the attribution of the ability to X as consisting of two claims, one positive and one negative. The positive claim is that the individual to whom the ability is attributed possesses whatever capacities, skills, talents, knowledge, and so on are necessary for X-ing.... The negative claim is that nothing interferes with or prevents the exercise of the relevant capacities, skills, talents, and so on. (101)

With regards to Tony, Wolf is claiming (I believe) that Tony met the positive criteria outlined above. We are contemplating whether Tony had the ability to make a tough decision about his future. Arguably, he would require a certain level of intelligence, the capacity to predict the potential outcomes and consequences of various actions, knowledge of the particulars of each career, etc. Tony's possession of these capacities is not in question. Wolf seems to be calling into question whether the negative claim can be said of Tony. According to Wolf, we cannot say of Tony that he has the ability to make this decision unless we can also say that nothing interferes with or prevents his exercise of the aforementioned capacities. But she thinks that we have identified a factor which has prevented him from exercising the necessary capacities, thus rendering him unable to act in any way other than how he did. This factor, as already indicated, is Tony's supposedly overwhelming fear of his father.

Wolf's description of the necessary positive claim, while broadly stated, is one with which I am not inclined to argue. It is her second requirement, however, which I feel is far too lenient as stated. To say that a person will lack a particular ability if anything *interferes* with the exercise of his relevant capacities is to allow for far too great an allowance. There are many different ways in which we may interpret the concept "interferes with". The weakest understanding of "interferes with" might be to say that something gets in the way of, or makes more difficult the task of X-ing. As I attempt to finish this section, there are many distractions competing for my attention. It is a lovely day outside, and the chirping birds seem to beckon me to abandon my project for the afternoon. I hear the opening notes of my favorite cooking show from downstairs, and am tempted to set aside work to get ideas for dinner. My back tenses up, and I consider pausing for some yoga stretches knowing that in doing so I risk not resuming philosophy for the day. This constant stream of temptations and interruptions can certainly be interpreted as interfering with my ability to work. Even if I repeatedly succeed in resisting the temptations to abandon my work, my focus has nonetheless been strained,



and thus my ability to work has faced interferences. Nonetheless, I do not think that we ought to say that I lack the ability to work. Indeed, the fact that I have completed this paragraph serves as evidence that I *do* possess the ability.

I do not think that Wolf wants to say that the existence of *any* interference with the exercise of the necessary capacities, skills and talents would rob me of the ability to X. There surely is a continuum of interferences which eventually reach the point of full prevention of being able to X. There are weaker and stronger interferences, and it is really only the strongest of those interferences with which we are concerned. We are concerned with those interferences which actually prevent us from being able to X. We thus need more criteria for identifying those interferences which ought to count as creating genuine insurmountable obstacles to X-ing (or those which genuinely cripple a person's ability to X). As it stands, we should not simply state that strong emotional states such as fear prevent a person from exercising a particular ability in a way that renders that person exempt from moral responsibility.

Earlier, I identified Tony's financial incentives for remaining in the mafia. We can imagine an alternate scenario in which, as opposed to his subconscious fear of his father compelling him to reject his schoolteacher plan, his greed compels him to make the same decision. If it is plausible that his fear could have been stronger than even he was willing or able to admit, so too is it plausible that his greed could have operated in the same way. Both of these scenarios suggest that a strong emotion or vice prevented Tony from being able to make the morally correct decision. I doubt, however, that we would be so willing to claim that Tony was not responsible for his action if it were his greed as opposed to his fear which "made" him act as he did.

This brings up a more general point: I am not sure what it means to say that an emotion like fear or a vice like greed "makes" an individual act one way as opposed to another. Wolf makes vague reference to the "psychological laws" which apply to Tony, and claims that it would be "incompatible" with his psychological history and these laws

that he choose to become a teacher. Unfortunately, Wolf does not elaborate. She does not tell us what she has in mind when she refers to these “psychological laws”, nor does she explain the force of the word “incompatible”. Does she mean that it would have been impossible for Tony to have decided to become a schoolteacher? Or does she mean that it would have been exceptionally difficult psychologically for him to have broken with his family? There is a world of difference between these options.

We must not allow our analysis of—or our characterization of—an ability to collapse into the thesis that our strongest desire or emotion compels us to act in a particular way. If this is the case, then we lose any genuine sense of agency and responsibility. I believe that we must retain our notion—barring persuasive evidence to the contrary—that we are, in principle, able to choose which of our desires it is that we are to act upon. This will not be true of all and any instances within our lives, but it is nonetheless an ability which most adults possess. Wolf’s presentation of Tony paints his control over his motivational structure as being static: in this instance, Tony’s fear was supposedly so deep and so overwhelming that he was compelled by this fear to act in such a way as to not anger his father. I will grant that there are certainly instances in which we are at the mercy of our emotions, and instances wherein our vices seem to “grab hold” of us such that we do not, or cannot, in the moment, act against them.

I may, for example, know that a particular flaw of my character is that I am subject to jealousy when I think that others outperform me or succeed at a task with which I have struggled. Thus, if a peer’s paper is accepted at a conference to which I was rejected, there is certainly a sense in which I cannot control the feelings of jealousy which arise within me. Nonetheless, we would have reason to blame me for acting upon these feelings were I to, in response to my jealousy, send out a nasty email ridiculing my colleague. Part of what is required of moral agents is that they be aware of their vices (as well as their virtues), and that they be aware of their characters and their emotional states such that they are able to take steps to restrain these vices or to revise their characters in

positive ways. This is a necessary project which is ongoing and which requires a fair amount of conscientious reflection.

I think it is unlikely that Tony was so fearful of his father that he absolutely could not have done anything other than remain in the mafia. I also think it is unlikely that, were his fear so strong, that Tony would not have been aware of it. Perhaps when Tony made the initial decision to stay in the mafia, thereby rejecting the option to become a schoolteacher, Tony really did not recognize the fact that his unacknowledged fear was behind his decision. This does not, however, mean that Tony does not have the ability to further reflect and note the role that his fear played in this initial decision.

Wolf seems to suggest that once Tony has made this decision, then the question of his moral responsibility for acting upon it is settled. Tony, however, will have countless opportunities to reflect upon the nature of his decision, the nature of his relationship with his family, and the nature of his character and motivational structure. Tony can also be blamed, I think, for his erroneous assumption that he had only two options. If his father is so ruthless, then we can see how the option of being a schoolteacher may not be a prudent choice. But this is under the assumption that Tony was going to share with his family the details of his new life. If Tony were to teach under his real name in an easily identifiable location, then he would quite possibly be in danger. But I think we can expect Tony to have realized this—or I think that we can assume that he has the ability to realize this. Thus, Tony was certainly able to identify as a further option the possibility that he teach under an assumed identity in an undisclosed location. Or perhaps he could have joined the Peace Corps and removed himself from the sphere of his father's violent reach. Or perhaps he could have decided to testify against his family and entered witness protection. Granted, none of these options are likely to be easy, or attractive options to Tony, but we nonetheless do not have reason to think that he lacked the ability to identify them as *being* options. Indeed, several of them take into account his deep, and understandable, fear of his father. He might not have initially recognized them, but we

can nonetheless think of Tony that he possesses the ability to identify them, and that it is required of him to reflect upon his character and his situation so as to identify the actually best (and morally correct) option for him. Wolf's characterization of Tony, on the other hand, fails to take any of this into account.

Wolf's account of moral responsibility seems to be in serious trouble. I have already argued that her account fails to provide the excuses for Jones and Stangl that she predicted would result from the application of her theory to these "typical" slaveowners and Nazis. We now have reason to suspect that even her paradigmatic cases of JoJo and Tony did *not* have insane deep selves. It does not seem, then, that Wolf's account will be helpful as we ponder the moral responsibility of our cultural defendants.

## CHAPTER IV: THE LEGAL CULTURAL JUSTIFICATION DEFENSE

I hope that the reader is convinced that Wolf's insanity defense is not available to our primary case studies Jones and Stangl. Indeed, it appears dubious that the defense is even available to Wolf's case studies, JoJo and Tony. We have seen that there are many problems with a defense which attempts to exonerate individuals from moral responsibility on the grounds that they could not have recognized or appreciated the morally correct course of action due to unique cultural considerations. None of my criticisms of Wolf were meant to imply that her general thesis is completely false. Her thesis is, after all, a conditional: If a person is unable to recognize and appreciate the True and the Good (and if this inability has not resulted from some culpable failure on the part of the person), then that person is not morally responsible for his or her immoral actions. This conditional *may* be true, but as far as offering us a realistic defense for those who we might think are viable candidates, the thesis falls short. A strong case can be made that very, very few individuals have the "insane" deep selves of the sort that Wolf describes. Even if Wolf were able to convince us that we were wrong on this account, we nonetheless have identified good reasons for thinking that the candidates in whom we are most interested—Jones and Stangl—do not possess the requisite insane deep selves.

And of course, we are not just interested in only Jones and Stangl. They are, after all, meant to be representative. We want to know how we can assess the moral responsibility of "cultural defendants" who, though acting in actually morally impermissible ways, were nonetheless acting in ways which were encouraged by, or which were endorsed or required by, their cultures. We have reason to think that the "typical" American slaveowner and the "typical" Nazi officer would be examples of such cultural defendants. Indeed, Wolf herself suggested that her theory might help us understand why these sorts of individuals are supposedly less than fully responsible for their wrong actions. Even though she was primarily concerned with providing us with an

*analysis* of moral responsibility, she did indicate that this analysis would be helpful in helping us determine questions about the moral responsibility of particular persons.

Consequently, given that Wolf's theory *does not* make sense of the moral responsibility of even the individuals who she thought were most obviously less than fully responsible, we have reason to feel unsatisfied with her proposal. We not only want an analysis which is theoretically sound, but we also want one which will help us make sense of the genuine moral problems that people face. Wolf has not, in fact, provided us with insight into the relation between cultural factors and the moral responsibility of these typical cultural defendants. Once we determined that these representative figures (and indeed, even Wolf's paradigm examples) had the requisite sane deep selves, we would have to conclude that they were fully morally responsible for their wrong actions. This is not a conclusion which we should readily reject. Nonetheless, many people believe rather adamantly that individuals like Jones and Stangl—"typical" slaveowners and Nazis—are somehow different from "normal" criminals.

Would-be-defenders of Jones and Stangl might concede that they made moral mistakes; even so, these defenders might try to argue that Jones and Stangl, as members of a slave-owning culture and a Nazi culture, respectively, faced unique obstacles to discovering the moral truth *because* of these cultures. After our thorough discussion in the previous chapter, we may no longer accept defenses which argue that these sorts of cultures render people like Jones and Stangl utterly *unable* to identify and perform the morally correct actions, but perhaps their cultures worked upon them in other morally relevant ways. Indeed, recall some of the student intuitions from the introductory portions of this project: Hannah wrote that "[t]he slaveholders did not question their values. Everyone around them accepted slavery". She continued to suggest that this failure of the slaveowners to critically examine their values and beliefs (an examination of which may have then resulted in them discovering that their values and beliefs were false, and which may have led them to opt out of the slave-owning business) was reasonable. If everyone

around them accepted slavery as being a morally acceptable institution (this assumption is surely false, but not uncommon—a point to which I will return), then supposedly, it would have been unreasonable to have expected the typical slave owner to have questioned his values and beliefs.

Similar defenses of 1930s Nazis were offered in our earlier survey of common attitudes towards these sorts of individuals. Commenting upon those raised within the Nazi culture, George wrote: “All throughout childhood, children were raised to be opposed to the Jewish...community....The children did not know any better”. Again, it is implied that these children “did not know any better” because it either did not occur to them (as children, or as they matured) to question the claims about Jews and other “undesirables” with which they were being presented, or, if they did pause to ponder the truth of such claims, their other beliefs provided them with cause to reject the moral truth. While Stangl, our primary Nazi case study, was certainly not a child raised in such conditions, we can nonetheless find proposed defenses for his choices during the war which make reference to the supposed reasonability of his beliefs.

For example, others of my students pointed to the fact that individuals like Stangl thought that they were morally justified in accepting the assignments they did, and that, even if Stangl was in fact mistaken about this, his belief in the propriety of his behavior was backed-up by his contemporaries. Stangl’s environment was composed of individuals—many of whom he respected and not a few of whom he feared—who reinforced his belief that his actions were morally permissible. This argument in support of Stangl points to the Nazi culture which supposedly insulated Stangl in such a way that a “justificatory web” of sorts was created, in which Stangl and others like him could identify support for their beliefs. Because they had seemingly coherent support for their beliefs that their actions were morally permissible, the argument claims that it was reasonable for them to believe that they were at no moral fault. Because their beliefs were (supposedly) reasonable, and because it (supposedly) would have been irrational for them

to have accepted the truth that they were committing heinous crimes, supporters argue that the moral responsibility of these defendants is mitigated in a special way.

What is not being claimed in these commentaries upon the slaveowners and the Nazis is that the participants simply *could not* have acted other than they did. It is not claimed—contrary to Wolf—that these individuals were crippled by their societies such that they could not recognize or appreciate the relevant truths (both moral and non-moral). It is not claimed that the participants suffered from any sort of cognitive or volitional impairments such that they were blind to particular facts about the world or such that they could not control their behavior. And it is certainly not claimed that the participants suffered from any form of insanity, whether of the sort defined by Wolf or otherwise. Rather, we can find in the commentaries elements of another popular attempt (already mentioned above) to explain how these sorts of defendants differ from common criminals. In both the legal and the philosophical realms, defendants who were motivated to perform particular illegal (or immoral) acts due to unique cultural or societal considerations may attempt to argue that because their actions were supported and reinforced by their cultures, from their perspectives, it would have been unreasonable for them to have acted otherwise. Consequently, because it would have supposedly been unreasonable for Stangl and Jones to have acted against their cultures, it allegedly becomes unreasonable for *us* to expect them to have acted otherwise. Because of the alleged reasonability of their beliefs from within their cultures and their perspectives, their moral responsibility for engaging in actions endorsed by their respective dominant cultures is either reduced or negated (depending upon which particular defense we are examining).

In this and the following two chapters, I will introduce and critically examine three different defenses which I will dub the “Reasonability Defenses”. The first will be a legal position which argues in favor of a cultural justification defense. Recall that a cultural defense was first defined for us by Lyman as being one which would “...negate



or mitigate criminal responsibility where acts are committed under a reasonable, good-faith belief in their propriety, based upon the actor's cultural heritage or tradition" (88). While the term "cultural defense" was first introduced within the context of legal cases, we have since expanded it to include defenses concerned with moral responsibility as well. Recall also that a justification defense attempts to argue that the individual in question, while perhaps appearing to have committed a crime, did not in fact act impermissibly. While there are several variations of justification defenses, they all claim that the defendant was not, in fact, wrong to have performed the particular action in question.

Thus far, this project has been concerned primarily with examining excuse defenses. In fact, I indicated in the earliest sections of this project that I would operate under the assumption that the actions of the figures in our case studies were objectively wrong. Wolf's theory, and most of those that we will continue to examine, make similar assumptions. Doing so allows us to focus upon the question of what cultural conditions, if any, mitigate or vitiate moral responsibility, and if so, why it is that these conditions operate in such a manner. However, I have also indicated that other cultural defenses exist which attempt not to provide us with an analysis of the conditions which excuse, but rather with the conditions that supposedly provide *justification* for the actions in question. The Reasonability Defense offered by Elaine M. Chiu in her article "Culture as Justification, Not Excuse"<sup>40</sup> is one such position. I believe that it is worth our time to study elements of Chiu's argument for more than one reason: Most importantly, examination of Chiu's article illustrates vividly just how relevant these sometimes abstract discussions of responsibility actually are. As mentioned before, the concepts of legal and moral responsibility are distinct, and yet in an idealized system of justice, we would hope that our philosophic concept of moral responsibility would inform our

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<sup>40</sup> *American Criminal Law Review*, Vol 43, 2006: 1317-1374.

concept of legal responsibility. In her article, Chiu portrays the relation in the following manner:

The criminal law has the extremely important function of serving as the moral arbiter of the community. Arguably there are other institutions that also serve a similar role. However, the criminal law is unique because it is the most public of these arbiters and even more critically, it has jurisdiction over all. (1366)

The recent publication of Chiu's article within a distinguished law review illustrates the timeliness, relevancy, and pragmatic concerns of our current inquiry into the connection between responsibility and culture and further demonstrates that these theoretical concerns are pressing insofar as the conclusions we draw work their way into our judicial system. Additionally, Chiu's proposal—while perhaps not yet widely accepted within legal spheres—is one which nonetheless mirrors the argumentative strategies outlined above. That is, Chiu's cultural defense is one which relies upon the inclusion of a reasonability requirement. Consequently, I feel that it is doubly worth our time to examine elements of Chiu's argument as they are pertinent to our current quest to study Reasonability Defenses. In doing so, some of our attention may be drawn temporarily towards the excuse/justification question. If we are able to draw any conclusions as to whether cultural defenses are more appropriately presented as excuse or justification defenses, then this exploration of Chiu's work will have provided us with a bonus lesson. Indeed, by the end of this discussion, I think that we will have identified several reasons for thinking that we should be suspicious of the legal cultural justification defense. I will argue that, if any cultural defense ought to be accepted, relating both to matters of legal *and* moral responsibility, it ought to be presented as an excuse defense as opposed to a justification defense.

### Chiu

In her article, Chiu presents several notable legal cases, all of which, in one way or another, were characterized by cultural concerns. Of significant interest to us is Chiu's

presentation and discussion of the Fumiko Kimura case. Recall that Kimura was initially arrested on homicide charges for the drowning deaths of her two young children. Before a plea agreement was reached, Kimura's attorneys presented a temporary insanity defense. By the M'Naughten test, a defendant is deemed legally insane if at the time of the alleged crime, she did not understand the nature and quality of her action, or if she did not understand that her action was wrong. That Kimura's defense attorneys identified this as being her best legal defense strategy, and that she was allowed by the courts to claim that she met the criteria of legal insanity, is, to Chiu, a travesty. Granted, Kimura's case never went to trial, so we can never know whether a jury would have concluded that she met either of these criteria; Chiu expresses extreme skepticism that they could have, in honesty, done so. Nonetheless, her objection is aimed more generally at the subgroup of cases marked by unique cultural issues, which, as a whole, tend to rely upon excuse defenses such as the insanity defense. According to Chiu, the Kimura case is just an example of how this tendency results in what she calls "legal fictions" (1317).

Recall that excuse defenses such as insanity, duress, or extreme emotional disturbance all share the general assumption that blame for the wrong action may appropriately be at least partially shifted away from the actor. In an excuse defense, the actor is still considered to have acted wrongly, yet if that defense is successful, we will conclude that she is not to be blamed—or that she is to be blamed less—for she has suffered from some sort of disability. The blame for the wrong action is thus shifted onto the disability. The disabilities at fault may include, but are not limited to, intoxication, duress, automatism, somnambulism and mental illness (1327). In each case, the disability in question allegedly exerts its influence in a way that sets the defendant apart from "the general law-abiding population" (1327). The disability may make it the case that the actor cannot control her behavior, or it may make it exceptionally more difficult for the actor to control her actions. Alternatively, the disability may affect the cognitive abilities of the defendant: it may make it the case that she does not know what she is

doing, or that she does not understand the moral nature of what she is doing (1327). This latter scenario is what is being claimed when an insanity defense is put forth, as it was in the case of Fumiko Kimura.

But recall that Kimura's case was marked by unique motivations, the origins of which could be traced to cultural traditions and values. Kimura drowned her two children and attempted to drown herself in an act of *oyako-shinju*, or parent-child suicide. She felt that she had to end her life as a way to avoid the shame of her husband's affair, and she felt that she had to concurrently end the lives of her children as a way to shield them from the same shame. As explained by Chiu, traditional Japanese culture considers young children to be an extension of the parents, particularly the mother. In her mind, if Kimura had killed only herself, she would have left her children to suffer her shame; her shame essentially was *their* shame. Additionally, Kimura, believing that she would be successful in ending her own life, felt that she had to take her children with her so as to not leave them motherless—a state which is apparently also shameful in traditional Japanese culture (1353).

As we already noted in our earlier discussion of this case, Kimura clearly displayed the relevant *mens rea* for a charge of homicide: that is, Kimura clearly intended to do that which was against the law when she killed her children. She may or may not have known that *oyako-shinju* was illegal in the United States, but as also mentioned before, there are very few instances in which an ignorance of the law excuse is allowed. The case then came down to whether or not Kimura understood that her act of drowning her children was wrong. Kimura clearly thought that what she was doing was morally permissible; she even seems to have thought that it was morally necessary in that she believed that in ending their lives she was saving them from greater pain. Kimura's lawyers rejected any attempt at arguing a cultural defense. They predicted that they would have no success in arguing that Kimura's criminal responsibility could be reduced because of her good-faith belief in the propriety of her action. Consequently, they instead

argued that she temporarily was *unable* to know or appreciate that it was actually morally wrong for Kimura to kill her children. But, this, says Chiu, is an “ill-fitting” defense; one which amounts to a “legal fiction” in this case particularly, and more generally in similar cultural cases (1321).

With regards to Kimura, Chiu argues that we do not in fact have reason to think that Kimura met any of the criteria for legal insanity. According to the M’Naughten test, Kimura would have qualified for a defense of insanity if she did not understand what she was doing or if she did not understand that what she was doing was morally wrong. Chiu does not dispute the claim that Kimura possessed the requisite criminal intent; Kimura clearly intended to kill her children. Thus, by the M’Naughten test, Kimura did understand that her actions would likely lead to the death of her children. In this sense, she understood what she was doing. For the test to apply in a way which would provide Kimura with a potential insanity defense, she would have had to have failed the second criterion. It would have to be established that Kimura did not—and could not, because of her alleged impairment—understand that what she was doing was morally wrong. However, Chiu thinks that we have no evidence to think that Kimura suffered from this sort of cognitive impairment:

Cognitive insanity concerns whether the accused understands the distinction between *morally* right and *morally* wrong behavior. There is woefully little evidence that she lacked a moral compass at the time of the drowning. Instead, it was abundantly clear that Fumiko Kimura believed strongly in the moral rightfulness of her actions. More plainly, Fumiko Kimura and the California Penal Code simply differed as to whether her particular act of *oya-koshinju* was morally right or wrong. Moral disagreement is not and should not be masked as temporary insanity. Such circumstances should not lead to the use of an excuse defense. To do so is manipulation of legal doctrine into legal fiction. (1351)

Chiu argues that we have no reason to think that, because of the emotional shock of learning of her husband’s infidelity, Kimura somehow lost the ability to recognize or understand that certain actions are morally wrong. Rather, Chiu insists that we should instead acknowledge that Kimura’s moral beliefs simply *differed* from our own.

It is difficult to imagine how a parent could contemplate, let alone actually engage in, the act of killing his or her children. We have no reason to think that Kimura had long-term plans to commit *oya-koshinju*, or to think that she cavalierly decided to end her and her children's lives. It is quite possible that during times of domestic harmony, Kimura, like most parents, would have denied ever being able to kill her children; but if this were the case, we probably should not take this to mean that she thought that killing one's children under circumstances similar to those she herself eventually experienced was morally impermissible. Kimura was (obviously) familiar with the practice of *oya-koshinju*, and was familiar with the conditions under which, according to her community, it was acceptable to engage in the practice. That she or any other member of her community would have hoped that they would never find themselves in such circumstances would not negate their belief that *oya-koshinju* was sometimes morally permissible (or even necessary). Kimura believed that *oya-koshinju*, while an extreme solution to a problem, was nonetheless an option that was sometimes morally permissible. She furthermore believed that it was a reasonable and acceptable option for her to take given her particular circumstances. I concur with Chiu in concluding that the most likely description of the situation is that Kimura was not, in fact, *unable* to recognize the moral fact that it is wrong to drown one's children in light of marital discord. Rather, it seems a more fitting description to suggest that Kimura possessed the ability to recognize and appreciate moral facts, but that with regards to this particular moral matter, she got the facts wrong.

It is at this point that my conclusions may vary from Chiu's. I want to argue for the likelihood that Kimura did not suffer from insanity insofar as we do not have good reason to believe that she lacked the ability to understand that her actions were wrong. Chiu would agree with this, but would most likely hesitate to state as definitively as I want to that Kimura's act of killing her children *was in fact* morally wrong. Thus, while we may both agree that the excuse defense of temporary insanity does not seem to

accurately describe what we know to have happened in the Kimura case, I have not yet ruled out the possibility that some other excuse defense would be better suited for Kimura. Chiu, on the other hand, argues that Kimura—and other defendants in cultural cases—ought to have been allowed to present a justification defense. This is not to claim that Chiu would argue that Kimura’s actions were in fact morally justified; only that Chiu thinks that Kimura should have been allowed to *argue* that her actions were morally permissible. Chiu explains:

Fumiko Kimura’s act of drowning her children was not an act that needed to be excused, but rather an act that needed to be explained. Under a justification approach to the norms of minority cultures, Fumiko Kimura would be able to tell the truth and to provide that explanation as a justification defense. She could contend that what she was attempting to do was the less harmful act for a Japanese mother. In her close knit community, had she taken only her own life and left her two young children behind, they would have suffered for the rest of their lives. This honest explanation could be the basis of a defense of justification. (1354)

Chiu does not think that Kimura should have been allowed to present a justification defense because of any supposition on Chiu’s part that Kimura should have been absolved of criminal liability. She does not mean to suggest that, because a particular defendant’s belief in the propriety of her act is based upon norms and traditions which are reinforced by her culture, the defendant has acted in a morally permissible way, nor does she think that any such cases of culturally-motivated illegal acts ought to remain free from prosecution and punishment.

Chiu does, however, think that defendants such as Kimura share in common the feature that their motives are “righteous” (1319). That is, the defendants committed the illegal acts that they did, for they felt that they were morally justified, or right, to do so. Chiu thinks that restricting cultural defendants to existing excuse defenses forces them to argue that they were unable to recognize that their actions were wrong. This, according to Chiu, is to erroneously assume at the outset that the defendants were incorrect to believe that their actions were righteous. Chiu thinks that the defendants should at least be given

the chance to argue, and perhaps convince, the judge and jury that their actions were in fact morally permissible. Furthermore, Chiu believes that the current excuse defenses which are employed in these sorts of cultural cases suggest that the defendants are disabled by their cultures. These defenses attempt to shift the blame away from the defendants and onto the respective cultures. This, Chiu believes, results in our paying less than full respect to the defendants insofar as the defendants would characterize themselves as being agents who made reasoned, conscious decisions based upon their beliefs and values. Chiu elaborates:

The current excuse approach...automatically blames minority cultures while excusing the defendants themselves. The blame is indicative of the underlying belief that a minority defendant is compelled by the disability of his culture to commit a harmful act. This belief does not imagine any will or choice involved on the part of the defendant. Again, this is part of the denigration of minority defendants and their cultures in the criminal law. (1370)

I think that we should take seriously Chiu's point about the element of choice present in these defendant's stories; however, I am not so convinced that we will need to conclude that excuse defenses are not appropriate for our cultural cases. Further examination may reveal to us where our legal and philosophic concepts fail to overlap directly.

With Chiu, I think that it should be acknowledged that the defendants and individuals from the case studies we have been studying would have all characterized their actions as "righteous" in the sense that Chiu has outlined above. Kimura, as we know, claimed to believe<sup>41</sup> that she was performing a morally permissible action on the basis of (supposedly) justifying reasons. Likewise, Charles Jones devoted serious time

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<sup>41</sup> I write that Kimura "claimed to believe," for we do not want to prematurely rule out the possibility that some measure of self-deception may have been at work in Kimura's case. As our discussion of the other major case studies progresses, we will find much evidence suggesting, for example, that Jones and Stangl—while they claimed to have believed that their actions were morally justified—were in fact engaged in projects of self-deception. This would indicate that they knew, at least on some level, that their actions were *not* in fact morally justified. This conclusion would alter our view about their moral responsibility, and would make less likely the possibility that a cultural excuse (or justification) defense would apply to their cases.



and thought to the matter of the moral permissibility of his role as a slave owner. He paid studious attention to the ongoing debate about the morality and legality of slavery, and was seemingly conscientiously concerned that he act in a morally acceptable way. Ultimately, Jones was able to convince himself that he had good reasons to remain a plantation owner and master of slaves. Recall that Jones believed that he was protecting the slaves' interests by keeping them in bondage, for he thought that they were ill-prepared to enter independently into the hostile American society. He furthermore thought that it was his Christian duty to provide the slaves with a moral and religious education, and was able to convince himself that he could best perform this task within the structure of a slave-society. Additionally, Jones recognized that his family's comfort and position within Southern society was dependent upon his role as a successful plantation (and thus, slave) owner. Jones was deeply concerned with providing for his family. This was a moral obligation of his which he took quite seriously, and he believed that maintaining his role as a slave-owning planter was the best means to fulfill his obligations towards his family. Because Jones thought that he had justifying reasons to remain a slave owner, and because he subsequently thought that his behavior was morally permissible, his motives, according to Chiu's definition, were thus "righteous".

Note of course that in introducing the term "righteous," Chiu does not suggest that Kimura, or Jones, really were, in any objective sense of the word, right to perform the actions they did. The term "righteous" thus seems to be used in a subjective sense; from the perspectives of the defendants, their behavior was justified by what they took to be good moral reasons for acting as they did. None of the individuals we have been considering would have described their actions as having been impetuously performed. Even if we eventually conclude that their arguments in support of their choices were *bad* or incorrect arguments, each of the individuals actually considered the moral status of their choices and took efforts to act for good reasons. Chiu thinks that it is important that when individuals such as Kimura and Jones either stand trial for their choices, or, in our

case, face moral appraisal for their choices, we consider this fact. What we should not do, she argues, is falsely characterize their situations as being marred by inability or compulsion. These individuals are agents acting upon their values and traditions, choosing to do what they think is either morally permissible or morally required of them.

### Chiu's Proposal for a Legal Justification Defense

Because Chiu does not think that excuse defenses which characterize defendants as having suffered from some sort of inability to recognize and/or appreciate the truth (or to have understood the nature of their actions) properly fit our understanding of the actual phenomenology of these cases, she suggests we reevaluate the cases using a reasonability criteria. She proposes the following:

...to introduce a formal doctrine that allows defendants whose values are based on their cultural backgrounds to argue that they are not criminally liable because their acts were justified from the perspective of a reasonable person who shares their cultural attributes. If successful, such defendants should be free from criminal liability and any collateral consequences. (1338)

Chiu's first effort at outlining a potential form of this newly proposed legal doctrine is one in which the defendant would be found not guilty if a reasonable person from a similar cultural background would agree that the harm caused by the defendant's action was outweighed by the potential greater and imminent harm that would have resulted had the defendant not acted as he or she did. If an alternate course of action had been available to the defendant whereby he or she could have similarly avoided the greater harm, the defense would not be available. (1343) Chiu indicates that the harms which are sought to be avoided may not be ones which the law currently recognizes as being serious harms, or which the law seeks to protect against, but may rather be harms which are only recognized as being such by members of the particular culture.

For example, in the case of Fumiko Kimura, it was explained that in seeking her death and the death of her children (which surely amounted to the causing of serious harm), she actually believed that she was avoiding bringing about *greater* harm to her

children. This greater harm would have come in the form of the terrible shame they would have had to endure as children from a broken marriage, and the social stigma that they would have had to bear as being motherless children were Kimura to have killed only herself. As it stands, the law does not recognize this sort of shame as being serious enough as to warrant legal sanctions against actions which would result in it.

Chiu notes that certain “outer limits” would have to be in place were this proposal to make its way into formal legal doctrine (1344). For example, she suggests that the defense would not be allowed if the victims were innocent or would not have consented to being participants in the custom (1344-5). Similarly, she hypothesizes that the doctrine might be amended so as to not be available to defendants facing homicide charges (1345). She also suggests that the use of the cultural justification defense might be banned when “it would contradict some other important societal principle” (1346). Among the proposed principles which Chiu thinks we might want to protect would be gender equality, a no-tolerance principle towards torture, and the protection of children (1346).

#### Problems with the Proposed Outer Limits

Before proceeding to examine further elements of Chiu’s proposal, I think we should note some initial, and troubling, aspects of her argument. In particular, the outer limits which she proposes seem to be *ad hoc*. By suggesting, for example, that this legal cultural justification defense not be allowed if the victims were innocent, or if they did not consent to being participants in the custom, Chiu’s argument is weakened. Chiu wants to allow defendants to present arguments that their actions were in fact morally permissible. She wants to force the courts to confront the difficult moral questions about whether particular practices endorsed by subcultures are in fact morally impermissible. She likewise argues that our current legal system unjustifiably imposes the values of the

“dominant” culture upon subcultures, and fails to take into proper consideration what she takes to be the potential legitimacy of alternate moral outlooks.

However, for Chiu to say that her proposed cultural justification defense should not be allowed if we think that the victims were innocent contradicts her claim that the defendants be allowed to argue that their actions were morally permissible. Arguably, the defendants would not view the victims as being innocent, or if they did, they would have ready arguments suggesting that the harm inflicted upon these innocent victims was nonetheless necessary, and that it was inflicted as a means to avoid even greater harm falling upon the victims or themselves. If Chiu thinks it is so important that cultural defendants be allowed to present their arguments that their actions were morally justified, there seems to be no justification for allowing the courts to restrict the use of the defense in such a way. Indeed, Chiu’s proposal was seemingly offered as a means to *avoid* this sort of, in her opinion, premature ruling by the criminal justice system.

It is similarly not clear why Chiu would suggest that the defense not be available to defendants facing homicide charges. Chiu thinks that a cultural justification defense ought to be developed and included within formal legal doctrine. Our current legal doctrine includes a justifiable homicide defense; it is unclear why Chiu thinks that a parallel justification defense should not, in principle, be allowed for the cultural defendants in whom she is interested. In the standard justifiable homicide defense, it is argued that, due to the particular details of the defendant’s circumstances, an act of killing which would, under normal circumstances, be deemed wrong (or illegal), is in fact justified. That is, if successful, the defense would convince the court that it was not wrong for the defendant to have killed the victim. Chiu’s suggested cultural justification defense makes nearly identical claims: she thinks that the defendants ought to be allowed to argue that the course of action which they took was, in light of their cultural background, the only course of action available to them which would have prevented even greater harm (as recognized by members of the defendant’s culture).

A defendant in a standard justifiable homicide defense would argue, for example, that she had to shoot her victim in order to prevent him from, for example, killing or raping her. The standard justifiable homicide defense is not restricted only to cases in which the defendant faced a reasonable threat to his or her life. It is allowed, for example, when the defendant reasonably fears that she will be physically or sexually assaulted. Thus, while she inflicts harm upon her attacker when she shoots him, the defendant's actions are justified if the court agrees that she prevented an even greater and imminent harm (for example, her rape, or the rape of another person). The court is willing to hear arguments which suggest that the imminent rape of a person presents the prospect of a serious harm. The current law seeks to protect individuals against such harm. It seems inconsistent with Chiu's other claims that she would suggest that the cultural justification defense should not be available to a defendant who wants to argue that the harm of being shamed from a spouse's adultery, for example, is just as serious in his or her culture as the harms that the law currently protects against, such as the harm resulting from a rape.

To be fair to Chiu, she only *suggests* this as a possible outer limit which the court might consider adopting. It seems as though Chiu suggests it with a pragmatic goal in mind: she wants the courts to accept as a formal legal doctrine a cultural justification defense, and she recognizes that her proposal may seem radical. Her proposed outer limits, then, can be viewed as pragmatically necessary restrictions which, if incorporated into her proposal, would make it more likely to be adopted. Nonetheless, Chiu expresses doubt that this particular outer limit about homicide charges really ought to be included. Indeed, she seems to anticipate exactly the objection I outlined above. She writes:

Although this outer limit certainly has an appeal, its judgments are still subject to the criticism of the current excuse approach that inspires this Article. Preventing the use of justification in homicide cases by culturally motivated defendants is a general declaration that the values of the minority cultures never justify the harm of death. Yet, at the same time, death is outweighed by the values of the dominant culture in existing doctrine such as the deadly defense of habitation and the deadly defense against forcible rape. While the application of this outer limit may increase the

likelihood of the criminal law adopting the justification approach to minority cultures, this inequality among cultures remains problematic. (1346)

Consequently, even though I maintain that this particular outer limit is *ad hoc* in nature, we must recognize that Chiu is aware that its inclusion within her proposal would undermine her larger goals in advocating on behalf of cultural defendants. We can recognize her pragmatic reasons for suggesting it to the courts, but we are left somewhat confused as to why she would even reluctantly concede to her proposal being amended in such a way, given that it contradicts her claim that members of minority cultures should be allowed to explain their righteous motives and that they ought to be allowed to explain their cultures' views on what constitutes serious harms.

Furthermore, if we examine Chiu's final proposed outer limit, the *ad hoc* nature of her proposal becomes even more apparent, and indeed, even more problematic for her. Recall that the final suggested outer limit, if adopted, would not allow the use of the cultural justification defense if doing so would contradict what we take to be other, important societal principles, such as principles protecting gender equality or the interests of children. Chiu adamantly maintains that the current excuse approach to cultural cases results in "the denigration of minority cultures" (1322), and argues that the criminal law currently—and in her view, erroneously—responds to cultural defendants with the following "singular reaction": "Because their claims reflect the values and norms of minority cultures, and not the dominant Anglo-American culture, the criminal law ignores them" (1320). Chiu argues consistently throughout her article that this reaction on the part of the courts is not justified, and that it fails to properly address the righteous motives of cultural defendants, with the result that their cultures are undermined, and not given due respect. Chiu thinks that a positive result of her proposal is that, if accepted, it would further advance what she calls "cultural pluralism" (1322). She cites Robert

Post's<sup>42</sup> description of three possible ways that the law of a group of heterogeneous groups can be designed:

The law can place the authority of legal sanctions behind the cultural perspectives of a dominant group; or it can foster a regime in which diverse groups can escape from such domination and maintain their distinctive values; or it can ignore group values and perspectives altogether and recognize only the claims of individuals...[He calls] these three options, respectively, assimilationism, pluralism, and individualism. (Chiu 1368)

Chiu argues that our current legal system is assimilationist. That is, she views it as being one in which the values of the “dominant” group are forced upon the minority groups, or in which only the values of the dominant group are recognized as being legitimate. She cites numerous examples which she thinks provide evidence for this claim. For example, she notes that our current legal code recognizes the right to use deadly force to protect one’s home. This indicates that a high value is placed upon individual property rights, a value which, at least in some cases, is assumed to outweigh the harms which occur in the process of protecting this property. There are other cultures, however, which do not value so greatly personal property, or which, for example, would not concede that the use of deadly force is justified in order to prevent a forcible rape. These cultures might not value as highly claims to personal property as does our “Anglo-American” culture. Nor might they regard as important a person’s (particularly, a woman’s) right to protect oneself from sexual assault. We can identify cultures in which it is believed, for example, that a man has more inherent worth than a woman, and in which it is thought that a husband has complete ownership over his wife’s body. This sort of culture, then, would not recognize claims that a woman forced to submit to sex suffers a greater harm than would the husband if he were required to respect her refusal.

Chiu thinks that it ought to be an important goal of ours that we work towards becoming a pluralistic society. She does not think that the “dominant” culture is justified

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<sup>42</sup> Post, Robert C., *Constitutional Domains: Democracy, Community, Management*. 1995.

in imposing its value system upon its minority cultures. She furthermore thinks that the current approach to handling cultural defendants results in our sending the message that their cultures and values are “inferior” (1370). She has consequently argued that the courts ought to confront the hard moral questions posed by cultural cases so that we might not readily dismiss as being supposedly inferior these alternative moral outlooks. Consequently, I do not see how it makes sense that Chiu would propose this final outer limit. Chiu has been explicit in maintaining that the dominant culture should not, without proper attention being first paid to the alternate moral outlooks of minority cultures, impose their values and principles indiscriminately upon all defendants. If this is the case, then I do not see why she would suggest that *some* of the principles of the dominant culture—such as the principle to protect gender equality—ought to be given such priority. Once again, Chiu seems to be contradicting herself and undermining her proposed goal of encouraging the confrontation and examination of opposing moral outlooks. To suggest that certain principles ought to be absolutely protected, and to not allow cultural defendants whose actions violated these principles to present their arguments as to why, according to their cultures their actions were justified, is to present an assimilationist view of the law. Chiu was clearly opposed to this.

While Chiu was opposed, however, and while we can now see that her suggestion that certain “important societal principles” be protected actually contradicts her goal to advance pluralism, I am not so worried. Indeed, I think that it is very likely the case that certain principles, such as those she listed, *ought* to be protected. To be blunt, I do not see any inherent problem with telling members of certain cultures that, if their moral systems include principles which claim that men are inherently more valuable than women, that at least that part of their moral system is flawed, and indeed inferior. I do not think that we have to conclude from this willingness to label that principle or value as being inferior (or wrong), that we are necessarily claiming that the minority culture which accepts this principle is *itself* inferior, nor are we necessarily claiming that the individuals who accept



these principles and act in accordance with them are *necessarily* “bad” or “inferior” persons (though perhaps in some cases they might be). It is too hasty to conclude that criticism of a particular value or practice is equivalent to criticism or denigration of the entire culture or all of the persons within that culture. Chiu need not be so worried that a staunch willingness to protect what we take to be objectively correct moral principles will result in the denigration of any culture or persons who fail to recognize these principles.

Because of Chiu’s suggestion that these “outer limits” be in place in order to restrict the use of the legal cultural justification defense, it becomes unclear exactly to whom this defense would be available. If Chiu really does think that it should not be allowed if the victims were innocent or if the defendant faces homicide charges, or if allowing the defense would undermine the protection of important societal principles, then it would not be available to *any* of the individuals in the case studies we have thus far examined. Kong Moua’s victim, for example, was certainly innocent, and she likewise was not a willing participant in the marriage-by-capture custom. Don Lu Chen’s wife was similarly innocent and unwilling, he of course faced homicide charges for her death, and his defense contradicted principles about gender equality. Likewise, Kimura’s children were innocent, did not consent to being participants in parent-child suicide, and Kimura faced homicide charges after their drowning. Furthermore, if we are to consider parallel cultural justification defenses in the philosophical matters of moral responsibility, it would seem like Jones would also not likely be a candidate for the defense, given the innocent and unwilling nature of his victims.

However, for the time being we will set these worries about the *ad hoc* nature of Chiu’s proposed outer limits and our questions about the likely candidates for the defense aside in order to examine another important element of her argument. Chiu’s proposed justification defense seeks to protect defendants from criminal liability on the grounds that their actions would have been deemed justified from the perspective of a reasonable

person from that defendant's cultural background. I would like to further examine Chiu's reliance upon the term "reasonable".

### The "Reasonability Clause"

Chiu is aware of the fact that each of the defendants seeking to use the legal cultural justification defense would claim that his or her behavior was reasonable. She does not mean for her proposal to be reduced to the claim that, if the defendant had a good faith subjective belief which the defendant believed was reasonable, then the defendant would be free from liability. Chiu indicates that an element of objectivity must be in place for this defense to be taken seriously and to serve the interests of justice. Chiu thus intends for the reasonability clause ("...their acts were justified from the perspective of a reasonable person who shares their cultural attributes...") to function as the objectivity requirement. Elaborating upon the notion of a "reasonable person", Chiu hypothetically applies the defense to the Kimura case:

Under the new approach, the reasonable person will be imbued with a particular cultural background. For instance, the perspective for a jury in the Kimura case in evaluating whether the act of drowning her children in an attempted parent-child suicide was justified should be the perspective of a Japanese mother. The standard could be even more specific as to be a Japanese immigrant mother living in a predominantly Japanese community. However, the inclusion of a cultural background or community is not at all meant to eliminate reasonability in the standard...the proposal is not suggesting that the only question for the jury is whether Fumiko Kimura herself believed her act was justified...Objectivity is necessary for the criminal law to function as the moral voice of the community. (1338)

Chiu thus argues that the hypothetical reasonable person from whose perspective we would evaluate the behavior of the defendant would be "...a reasonable person who shares the same cultural background and community as the defendant" (1338).

Defendants who would face potential liability and punitive measures would be those who would be judged to be "extreme" or "outrageous" by members of the defendants' community as judged by the "norms and values of that culture" (1338). This is the extent

to which Chiu provides us with an analysis of the concept “reasonable person”. Given the central role of the concept within her defense proposal, and given what is at stake upon the rulings of these “reasonable” persons, I find Chiu’s analysis to be inadequate.

Furthermore, as it is currently presented, acceptance of Chiu’s proposal would lead to, in my opinion, troubling and counter-intuitive results.

For example, I think we have little reason to think that a “reasonable” Japanese mother—even one living in a predominantly Japanese community—would judge Kimura’s actions to be justified. The practice is, after all, outlawed in Japan, and parents who survive their attempts at parent-child suicide face criminal charges (though as indicated earlier, they rarely face homicide charges). Chiu’s proposal does allow for this, however. She notes that if Kimura’s peers would have judged her action to be extreme or outrageous, then she ought to (under her proposed defense) potentially be considered criminally liable. This caveat, however, fails to recognize a deeper problem with Chiu’s proposal: namely, even if it were the case that “a reasonable person who shares the same cultural background and community” as Kimura would conclude that her response to her husband’s adultery was justified, we have reason, I argue, to think that *this* person was wrong. It may be the case that many persons could potentially share Kimura’s perspective that parent-child suicide is a morally appropriate response to marital infidelity. If this is the case, however, we do not have any *prima facie* reason to think that they must be correct—that parent-child suicide really is a morally acceptable action in those circumstances. Rather, I think that, if a person sharing the defendant’s cultural perspective would conclude that an action like that taken by Kimura was morally justified, we would either have reason to conclude that that person was *not* in fact reasonable (for a genuinely reasonable person would not come to this conclusion), or that, if they were “reasonable,” that they were nonetheless mistaken to arrive at such a conclusion.

At least two additional problems with Chiu's proposal are presented: first, there is the problem of vagueness with Chiu's supposedly "objective" standard of reasonability; and second, there is a problem of application to various subcultures. The two problems are intertwined. With regards to the issue of reasonability, we can note that, if we are to take seriously Chiu's proposal, we will first need a more fully developed understanding of what it is to say that a person is reasonable, and what it means to say that a particular belief is reasonable. Chiu has not provided us with any criteria for addressing these questions. As it stands, we can hypothesize that a mature, functioning adult who seems to possess adequate reasoning abilities, and who does not seem to suffer from any cognitive impairment would qualify as a "reasonable" person. However, when this description of a reasonable person is then paired with potential cultural defenses of individuals from various subcultures who face trial for participating in culturally endorsed practices, we face the prospect of troubling legal results. How will we restrict the "minority" cultures, the members of which would be allowed to avail themselves of this justification defense?

Chiu's discussion has been focused upon the minority cultures of foreign immigrants to the United States whose members endorse value systems and moral outlooks, at least part of which, are in conflict with the moral outlook of our "dominant" US culture. However, there seems to be no reason to restrict the cultural justification defense to *only* these types of subcultures. Just as "foreign" to the dominant culture of the US are subcultures such as the mafia, neo-Nazi groups, fundamentalist religious sects, and inner-city gangs (to name just four). These would plausibly count as minority cultures, and their members certainly accept values and moral principles, and engage in practices, which we would take to be objectively wrong. Consistent with Chiu's argument, then, a member of a gang facing criminal charges for the shooting of a rival gang member ought to be allowed to present a cultural justification defense.

By Chiu's proposal, this gang member's actions ought to be judged by the standards of his community: if a reasonable member of his community who shares his

cultural background would agree that his actions were justified, then the defendant should not, according to Chiu, be held criminally liable. But how are we to determine who would count as a “reasonable” person who shares the background of gang culture? We are faced with two ways to view the problem. We can work with my proposed description of a reasonable person from above, which suggests that the gang member’s actions be judged by those of his peers who suffer from no cognitive disabilities and who possess basic reasoning abilities. Arguably, many such “reasonable” persons could be identified. These persons would predictably be able to explain why, according to their value systems, the defendant’s actions were necessary in order to prevent allegedly greater harm from befalling either the defendant or some other person from their group. These persons might explain that, given the extreme importance they place in their culture upon loyalty, the defendant had to shoot his victim in order to express his loyalty to his gang. Perhaps they might explain that, given what they take to be the vital importance of displaying masculine strength and the ability to never display any signs of weakness, the defendant *had* to respond to a threat with deadly force.

Given the accepted values of this gang culture—incorrect though we may think they are—these arguments certainly show signs of practical reasoning. Given what the gang values, the defendant’s actions were the means available to securing the ends which are viewed as valuable in his culture. However, by Chiu’s proposal, once we have accepted that this “reasonable” member of a gang culture can present an argument outlining why the defendant’s actions were justified, we would be led to the conclusion that the defendant would not be criminally liable. This is troubling. Perhaps Chiu would not be troubled with this result of the application of her justification defense to these sorts of cultural defendants, but I think we should be. Rather than think that the defendant ought to be freed from criminal liability because this “reasonable” person from his culture agreed that his actions were justified, I think that we should not dismiss the

possibility that, reasonable or not, both of these individuals were simply mistaken to arrive at such conclusions.

I indicated that there are two ways we can view the problem which arises when we consider the application of the justification defense to various subcultures within the US. The first, from above, assumes that we would be able to identify reasonable persons from within those cultural backgrounds, but this led to the likely outcome that far too many cultural defendants would be freed from liability due to the likelihood that their actions would not be deemed “extreme” by their peers. Chiu seems to be suggesting that if views are widely shared by members of a particular subculture, this fact somehow indicates that the practice, and those endorsing it, are reasonable. I see no *prima facie* reason to accept this assumption. The second option would be to conclude that any person who would agree that an action like Kimura’s or like the gang member’s, for example, is justified, should be considered unreasonable. We ought to consider the genuine possibility that *any* person who would conclude that an act of murder is justified insofar as it was necessary to avoid the allegedly greater harm of displaying weakness is unreasonable. We would take this person’s willingness to reach such a conclusion as evidence that he is in some fundamental way unreasonable. I think that we should consider this possibility—no matter how widely shared is the view—but Chiu would certainly protest that to do so would be to “denigrate” the cultural members and/or their cultures.

However, as I indicated earlier, we should not mistake our criticisms of particular practices or values as being criticism of the individuals or the cultures who accept such (in our view) mistaken values and practices. A willingness to engage in debate, and even a willingness to call into question the accepted outlooks of other persons is not equivalent to failing to respect such persons or cultures<sup>43</sup>. Chiu thinks that the current excuse

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<sup>43</sup> Michele M. Moody-Adams makes this point in her article “Culture, Responsibility, and Affected Ignorance”. *Ethics* 104 (January 1994): 291-309.

approach to cultural defendants results in our sending the message that these individuals and their cultures are inferior. However, I am concerned that her proposed justification defense potentially sends the same message. Implicit in her argument is the notion that the potential cultural defendants are not epistemic agents capable of critically evaluating their cultures' values and practices.

We must remember that cultures—however we define and delineate this concept—are perpetuated by individuals<sup>44</sup>. We should not accept as providing actual justification for the claim that a given practice is morally acceptable that the practice is “tradition” or that it is simply something that the members of that group “have always done”. We must demand further justification: why is that practice tradition? Is the tradition a *good* tradition? Are there actual reasons for maintaining the practice? Are the accepted values of the culture *correct* values? Do particular practices result in harm being inflicted upon certain individuals? Are the perceived harms of the group *actual* harms? Etc. These are questions which we can require individuals to consider, and we can require individuals to engage in critical reflection on their beliefs, value systems and moral practices. These are moral obligations held by moral agents. We must certainly think that a “reasonable” person, whatever our final analysis of the concept will be, is one who is engaged in the critical evaluation of her culture's beliefs and practices.

Chiu's proposal faces the objection that it fails to require of cultural defendants that they engage in this sort of critical evaluation of their groups' value systems and practices. She asks, perhaps reasonably (no pun intended), that we allow defendants to explain their righteous motives, and she asks that we allow defendants to explain why, according to their customs, their actions were morally justified. She then suggests that if other reasonable persons from shared backgrounds would agree that the defendants' actions were justified, the defendants be freed from criminal liability. What Chiu does not

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<sup>44</sup> This point is also made by Moody-Adams in the same article.

seem to require, however, is that the defendants—or their jury of cultural peers—be required to convince us that their actions *really were* morally justified. Chiu’s proposal faces the potentially devastating objection that, so long as other members of the defendant’s subculture would agree that the defendant’s action was morally permissible according to their moral outlook, the defendant not be held criminally responsible.

Chiu has said that she wants to force the courts to confront the hard moral questions, and has suggested that her proposal, if accepted, will allow the courts to determine whether such culturally endorsed practices really are morally acceptable. However, I do not see how acceptance of her proposal would get us this result. As she has stated it, her proposed defense would free defendants from liability if, and supposedly only if, the defendant’s actions are judged to be justified by the accepted standards of her community, and *not* if it is independently determined that her actions were actually, in an objective sense, morally justified. Her summary of her proposal is as follows:

In summary, the Article’s proposed justification approach is to introduce a formal doctrine that allows defendants whose values are based on their cultural backgrounds to argue that they are not criminally liable because their acts were justified from the perspective of a reasonable person who shares their cultural attributes. If successful, such defendants should be free from criminal liability and any collateral consequences. (1338)

It is not clear from this summary just how Chiu can think that acceptance of this proposal will force the courts to determine the “hard moral questions”. As it is stated, all that the defense would need to prove would be the fact that members of her culture share her view that her actions were morally justified. As stated, the defense would not need to present arguments that the practice in which she engaged *really was* morally justified. The proposal includes no requirement that the defendant or the members of her community who share her outlook engage in any sort of critical evaluation of their practice. So long as they share the view that they are justified, it seems not to matter whether they have questioned the legitimacy of the practice, or whether they are able to argue convincingly that they are *correct* that their values and practices are justified. This



does not require much of the cultural defendants, and I argue that this failure to require such individuals to live up to their moral responsibility to engage in critical evaluation results in a fundamental failure to respect such persons as moral agents.

#### Final Thoughts about the Cultural Justification Defense

Chiu thinks that cultural defendants ought to be allowed to present their arguments to the effect that their actions were actually morally justified. While I think that her particular proposal is unacceptable, this does not mean that some other justification defense could not be drafted which would manage to avoid Chiu's problems. However, if we are concerned with paying due respect to the unique influence that a person's cultural background plays upon her belief and value formation, and if we think that this fact about the interplay between a person's heritage and her moral choices is relevant to questions about her legal and moral responsibility, then I think we ought to be cautious about dismissing excuse defenses in favor of a justification defense. I think that, in all of the case studies presented thus far, we have good reason to think that the defendants' actions were objectively wrong. If we are right about this, then the cultural justification defense (in either the legal or the philosophical form), will not allow the defendants to escape from responsibility (again, either legal or moral). If, on the other hand, we still think that the defendants faced unique obstacles to identifying the actually correct course of action because of his or her cultural background, and if we think that this in some way affects his or her legal or moral responsibility, then we ought to further explore excuse defenses.

Chiu's discussion has, however, advanced our understanding of the individuals in the case studies. We have strong reason to think that all of our case studies possessed the abilities requisite to draw correct moral conclusions, and we thus have reason to reject inability defenses such as the insanity defense (both the legal insanity defense and Wolf's unique insanity defense). As we have noted, all of the individuals in our case studies

would argue that they were justified in their actions. They all believed that they had good moral reasons to act as they did, and they all thought that they were performing morally permissible actions. It thus makes sense that, like Chiu, we might think that these individuals ought to be allowed to plead their cases, that they ought to be allowed to explain themselves, and attempt to convince us that they were not wrong to act as they did.

To suggest to these defendants that they should not argue this way, but that they should consider offering excuse defenses for their actions, is to ask them to consider the possibility that they were wrong, that they made moral mistakes, that their reasoning was defective, or that they suffered from some sort of defect or disability. Few individuals, of course, would *want* to admit that any of these scenarios are true of themselves. We would all rather believe that we are fully rational persons whose actions are all morally justified. It is psychologically difficult to admit that we have reasoned incorrectly (or to confront the possibility that we do not even have the *ability* to reason correctly), and it is likewise psychologically traumatic to confront the possibility that we have committed atrocious moral mistakes. So it is not surprising that the individuals in whom Chiu is interested, and the individuals in our case studies, expressed righteous motives and would argue that they were justified. However, this does not rule out the possibility that, not only were they not justified, but that contrary to Chiu, their best bet at a defense nonetheless lies with some sort of excuse defense.

We will thus turn our attention to the two other “Reasonability Defenses” mentioned earlier in this chapter. I have indicated that Chiu has not provided us with an extensive understanding of the concepts “reasonable person” and “reasonable belief”. I do not, however, mean for this criticism to serve as reason for rejecting entirely her proposal. Chiu’s intent, after all, was to merely propose that we allow individuals whose actions were prompted by unique cultural motivations to present legal justification defenses. The form in which she suggested that this could become legal doctrine was

only an initial sketch, and thus she would surely be open to suggestions for revision. If her proposal were to be accepted, the final version would need to be amended to include a more specific detailing of “reasonable person” and “reasonable belief” (and she would of course want to reconsider her proposed outer limits so as to avoid the contradictions which she currently faces). We can find possible analyses within the spheres of theoretical philosophy. We will see if there we are able to get a better understanding of these epistemic concepts. We should then be in a position to address the question of whether the reasonability of a belief can make it the case that a person is justified in acting upon it, or if it will only provide for that person an excuse if it turns out that, while the belief may have been reasonable, it nonetheless was incorrect or led to the performance of a morally impermissible action. Alternatively, we may find reason to reject even this latter claim.

CHAPTER V: LAWRENCE VOGEL'S CULTURAL EXCUSE  
DEFENSE

Vogel on Wolf

Recall from our earlier discussion Lawrence Vogel's rejection of Wolf's characterization of JoJo, nineteenth century slaveowners, and 1930s Nazis as being insane. Like Wolf, Vogel is interested in the connection between moral responsibility and cultural conditions. Similarly, Vogel thinks that certain individuals such as Jones and Stangl can be negatively affected by their cultures in such a way as to provide mitigating excuses for their moral mistakes. Nonetheless, Vogel claimed that it is a stretch to conceive of these individuals as suffering from the sort of inability that Wolf suggests they possess. Vogel actually accepts many of Wolf's claims regarding what we ought to identify as being necessary and/or sufficient conditions for moral responsibility:

Wolf is correct to insist that freedom of the will is not sufficient for moral responsibility; it is necessary also that one's will be influenced by the world in the right way. And the condition of sanity is not a matter of will, but just a way one happens to have become if one is lucky enough. (131)

Nonetheless, we have already seen how Vogel is unconvinced that the cases Wolf identified as being paradigm examples of individuals with insane deep selves (in particular, Wolf's own JoJo) really lacked the requisite abilities to recognize and appreciate the truths about the world (in particular, the moral truths). Perhaps even more damaging is Vogel's supposition that, according to Wolf's criteria, it would become a genuine possibility that *too many* individuals would be identified as being insane, and would thus be considered non-responsible:

Her [Wolf's] definition of insanity is so broad, and the criteria for determining who meets it are so loose, that anyone who is bad enough, or who thinks differently enough from most of us, will qualify for her version of "madness," especially if they come from circumstances unfavorable to the development of "our" attitudes. (131)

Wolf did not provide us with helpful criteria which would allow us to determine whether someone who performed a morally reprehensible act could have acted differently, and whether they could have done so for the right moral reasons. Consequently, our best evidence in any individual case for thinking that a person might be insane would be the fact that the person acted wrongly. Thus, we might become tempted to conclude that because individuals committed terrible acts, they must have lacked the ability to have performed morally permissible actions for the correct moral reasons. This could lead to the rather absurd consequence suggested by Vogel that anyone who acts badly enough ought to be considered insane by Wolf's standards, and thus be considered non-culpable. To be fair, Wolf anticipates this objection. She concurs that the mere fact that a person acts badly does not imply that the person is incapable of acting otherwise. Nonetheless, she maintains that whether a person ought to be considered morally responsible, and whether that person merits blame for her behavior, turns on the truth or falsity of claims about her ability:

A person who acts badly, whether routinely or in an individual case, deserves blame for doing so if that person is capable of understanding that she acts badly and is able to use this understanding to act differently. A person who acts badly does not deserve blame if she is not in a position to understand that her action is bad, or if, understanding it to be bad, she remains unable to govern her actions accordingly. But it is hard to know whether a person who acts badly could have acted less badly, particularly if her action fits a consistent pattern of behavior. (86)

Any attempts to answer questions about the person's ability (or lack thereof) will require us to make inferences, the cogency of which we may not be certain. Wolf says that if we want to determine whether a person was able to understand the nature of her action, and if we want to know whether she was able to recognize that it was wrong—in spite of the fact that she chose to perform this wrong action—we will have to look more carefully at her character and her history. We will try to determine whether her action in a particular case was out of character for her, whether she has a history of making incorrect moral decisions, whether she typically acts as we think she ought, etc. This more complete

examination of the person's history will help as we attempt to infer whether the person in question could not have acted other than she did, or whether she simply did not exercise her ability to act upon what Wolf has dubbed "the True and the Good".

Wolf stresses that her primary aim is not to provide us with criteria for determining whether particular individuals meet the criteria for moral responsibility with which she has provided us. Rather, she has been concerned with helping us determine what would have to be true for us to say that someone is or is not responsible. The epistemic issue of how we are to know when someone has *met* those criteria is a separate matter. Consequently, Wolf admits that because many of our judgments about individuals' abilities will be uncertain, so too will our judgments about their responsibility be uncertain (87). Defending herself against criticisms like Vogel's, she claims—fairly, I think—that her view is not destroyed by this uncertainty. She writes, "... the view does not attempt to provide us with a way of knowing whether a person is responsible for an act. It only tells us what we would need to know if we wanted to discover this fact" (87). Yet even though I might think it unfair for Vogel to reject Wolf's insanity defense on this basis, I think that we have nonetheless already identified numerous reasons to be suspicious of it.

#### Vogel's Characterization of Cultural Defendants

Vogel does not dwell for long on the epistemic difficulties of applying Wolf's insanity defense to potential case studies. This is because he thinks that looking for excuses which rely upon the premise of an existing handicap of some sort misdirects our attention from the more interesting aspects of these cases. While Vogel maintains that we should be dubious of claims that these sorts of wrong-doers were nonculpably ignorant because of supposed insane deep selves, he argues that even if such a defense applies to *some* individuals, we ought to be more interested in the problematic cases wherein we think that we are faced with wrongdoers who are sane (and thus responsible) (133). The

majority of the defendants in our “cultural cases” (those cases wherein the individuals acted upon motives which were uniquely tied to their cultural traditions, or wherein they acted in ways encouraged by their societies) will supposedly fall into this category. That is, by Wolf’s own definition of sanity, we will conclude that they possess the abilities to recognize and appreciate the True and the Good. By Wolf’s criteria, these individuals would qualify as being responsible for their actions, but as mentioned before, we may think that they belong in a special category of wrongdoers. Vogel thinks that the aforementioned slaveowners and Nazis plausibly fall within this category. He writes:

The issue here is not that they are simply “non-responsibles” who are exempt from appraisal altogether, but that an understanding of the backgrounds out of which they became who they are may make it difficult to blame them unequivocally. It is not that they *could not* have known any better or had *no* access to morally relevant considerations, but that it is *not surprising* such considerations had little bearing on their behavior. Though they could have done otherwise, it is very unlikely, given their characters, that they would have. And it is not that they could not but have become the sorts of people they in fact became, but that it is no wonder they did. This does not mean that they cannot be held responsible or even that they should be excused; only that how we tell their stories affect what our responses ought to be. (133)

Vogel suggests that, for individuals of whom this is true, their fault is mitigated in a special way (139). In his discussion of cultural defendants, Vogel suggests that for many of these special cases, we may find compelling reason to withhold our blame, even if we think that they are sane, responsible agents, capable of having acted otherwise. The reason common to these cases is the supposed difficulty which would have had to have been surmounted by the defendants to have believed and acted other than they did. More specifically, examination of the circumstances and historical contexts of these cultural defendants may, according to Vogel, lead us to conclude that it would have been *unreasonable* to have expected them<sup>45</sup> to have critically examined their beliefs and

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<sup>45</sup> Throughout his article, Vogel uses this phrasing. He claims that it is unreasonable *for us* to expect individuals like Jones to have formed true beliefs, and because of this, we have reason to withhold our blame. Vogel does not make a clear distinction between what was reasonable *from their perspective*, and what it is reasonable *of us* to expect of them. This becomes a problem when

actions (141). This, Vogel asserts, may then lead us to conclude that “there is no point in blaming them” (140). Because Vogel has suggested that the fault of these sorts of cultural defendants may be mitigated, we are led to think that Vogel is also suggesting that they have a mitigating excuse for their actions. I will return to this point later in the chapter.

We already know, for example, that Vogel thinks it dubious to claim that the slaveowners of the 1850s lacked the abilities and the moral resources necessary to reach the conclusion that slavery was morally wrong. Recall his claim that “. . . it presents a too closed picture of Southern society to suppose that plantation owners could cop a Wolfian insanity plea on the grounds that they could not have known better” (138). Indeed, this Southern society was preoccupied with the question of the morality of the institution; it is simply false to claim that it did not occur to the privileged members of this society that their involvement in slavery was a moral matter. Furthermore, we have already discussed the fact that there is no convincing evidence that Southerners of this class, such as Jones, lacked the abilities to make correct moral decisions in other matters, nor is there reason to think that they had an excusable blind spot with regards to this moral question of slavery. Vogel’s analysis thus far mirrors much of what we have already concluded about the slaveowners and Wolf’s view on the matter. Nonetheless, even though Vogel agrees that these participants should not be deemed insane by Wolf’s criteria, he thinks that we should concede that there is a difference—indeed, a moral difference—between the advocates of slavery from this time period and modern day advocates. He writes:

But surely there is a difference between one who endorses slavery today and one who did so in 1850. Plantations were a way of life in the South before the Civil War, and though they were disgraceful, it was not outrageous among large, educated circles in the United

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Vogel suggests that the slaveowners, for example, may have had mitigating excuses for their actions, not necessarily because their behavior was reasonable from their own perspective, but because there would supposedly be no point in our blaming them. I will return to this point later in the chapter.



States to defend their value and even be willing to die to protect them. Any serious person who proposed their revival today would not even deserve to be debated. (138).

Even as he begins to illustrate how these two groups of slavery advocates may differ, Vogel maintains that the plantations owners of the American South had before them the resources to discover the error of their ways. For example, he mentions that many owners who supported the American liberation from Britain did so on the basis of their acceptance of the notion that “all men are created equal” (138). Further examination of this truth might have led them to recognize and attempt to correct the contradiction between their principles and their actions as slaveowners. As Vogel notes, “[t]hey may have chosen a self-serving interpretation of the principles implicit in Christianity and the Declaration, but this does not mean that a more judicious interpretation was *unavailable* to them” (138). That is, these Christian plantation owners accepted many correct moral principles, and were fully capable of engaging in the sort of critical self-reflection which would have led them to identify their “self-serving” motivations. They were certainly capable of realizing that the declaration that “all men are equal” could be interpreted as correctly applying to *all* humans, not just white Christian men. Indeed, it would have been the rare plantation owner who was not aware that this was an interpretation vociferously advocated by abolitionists of the time. Nonetheless, as mentioned above, Vogel recognizes what he takes to be a special difference between these sorts of proponents of slavery and hypothetical modern-day proponents. He rhetorically asks:

Still, was it not *difficult* for them to come to see blacks as non-slaves in a way that it could not be for whites today who have been raised in a culture defined not only by Abolition and Reconstruction but also by the breakdown of Jim Crow and the flourishing of the civil rights movement? (139)

Vogel suggests that it would have been difficult for someone like Jones—someone who was raised within a society that strongly advocated the domination of the black race—to have engaged in the sort of critical reflection which would have been necessary for him to overhaul his belief system and opt out of the slave business. It would have been

difficult insofar as Jones would have had to have rejected the opinions of many persons whom he greatly respected, and would have had to have found reason to reject many claims which were regarded as fact by the majority of the educated population. On the other hand, a modern day American advocating slavery would have a large body of evidence and a long history of anti-slavery opinion contradicting his beliefs. The majority of Americans today do not advocate slavery; the abolitionist message that black Americans are humans worthy of freedom and respect would not be the radical, minority opinion today as it would have been to someone like Jones in the first half of the nineteenth century. Vogel suggests there is a larger body of evidence available today for an individual to come to the conclusion that slavery is immoral than there was to someone like Jones. This is not to say that Jones and his contemporaries *could not* have reached that conclusion—only that they had more history to reject, more falsehoods to recognize as such, and more false public opinion to overcome in order to reach the truth. This equates to a greater degree of difficulty in their path to the truth, and, according to Vogel, makes it less reasonable for us to expect them to have arrived at the truth. Vogel argues that even if we maintain that “...the slaveowner, Nazi and male chauvinist” (141) could have arrived at the correct moral conclusions, we should perhaps temper our appraisal of them:

Still, though we admire the exceptional few who proved able to rise about the prevailing “bad morality” of their time, it is relevant to our assessment of the acquiescent majority just how reasonable it is to have expected them to have criticized themselves in light of moral intuitions that we, and a few members of their society, take to be more enlightened. Our response will depend partly on just how remote their cultures seem to be from ours. If their culture is so alien that the criticism of practices we abhor would have only presented a notional, not a real, possibility for them, then it would be unfair to blame them. But they remain sane, responsible agents. (141)

Vogel’s use of the terms “alien” and “remote” are borrowed from Bernard Williams; in an effort to provide us with criteria for what counts as a reasonable or unreasonable

expectation regarding a person's failure to critically self-reflect, Vogel borrows Williams' distinction between *notional* and *real* possibilities.

### Real and Notional Possibilities

In *Ethics and the Limits of Philosophy* (1985), Williams discusses the ways in which distinct groups may confront one another, and the ways in which their customs, practices and worldviews—their “outlooks” as he calls them—may conflict (160). Members of a group, when presented with the varying outlooks of other groups, may recognize that their beliefs or customs are rejected by the other group. Perhaps the new group's outlook is simply different, or perhaps elements of the outlooks directly contradict each other. In our case, we are considering the outlook of the southern American plantation owners of the nineteenth century as it compares to our outlook as twenty-first century Americans. The outlook of the former group included the belief that slavery was morally permissible. This outlook contradicts that of the latter, current group. To ask that the plantation owners change their outlooks—or to consider the question as to how reasonable it would have been for them to have rejected elements of their outlook in favor of ours—Williams introduces a distinction between real and notional confrontations:

A real confrontation between two divergent outlooks occurs at a given time if there is a group of people for whom each of the outlooks is a real option. A notional confrontation, by contrast, occurs when some people know about two divergent outlooks, but at least one of those outlooks does not present a real option. The idea of a “real option” is largely, but not entirely, a social notion. An outlook is a real option for a group either if it already is their outlook or if they could go over to it; and they could go over to it if they could live inside it in their actual historical circumstances and retain their hold on reality, not engage in extensive self-deception, and so on. (160-161)

Williams continues to argue that if an option presented by a divergent outlook is merely a notional possibility for a particular group, then it would be “inappropriate” to morally assess the group with moral language such as “good, bad, right, wrong, and so” (161).

Vogel agrees. While Williams continues to present a unique, and I must admit, rather confusing version and defense of moral relativism, we have no reason to assume that Vogel endorses these further tenets of Williams's ethical philosophy. Vogel restricts his discussion of Williams's piece to these few passages, and while he does not provide an extensive discussion of them, his argument nonetheless seems to get a lot of mileage from the real/notional distinction. I think it best, then, that we further reflect upon the distinctions and their application to our case studies.

Vogel does not apply his theory to any specific cases as we have done with Jones. Rather, he merely indicates that it is likely that the fault of the typical slaveowner may have been mitigated due to the fact that their culture was supposedly "alien" to ours insofar as it encouraged a "bad morality" (141). Vogel does not suggest just *how* remote or alien the plantation culture of the American South might have been from modern day culture—he and Williams suggest that remoteness comes in degrees. This is highlighted by Vogel's comments regarding the slaveowners of classical Greece. Vogel readily admits that the abolitionist position that slavery was an immoral institution was one with which the plantation owners of the 1850s were well familiar; they could not claim, then, that the proposition that slavery was an evil which needed to be eradicated had never occurred to them. The typical slaveowner of the American South likewise could not have claimed ignorance regarding the fact that there were Americans (and even Southerners) who *had* successfully opted out of slavery. Indeed, the educated slaveowner would certainly have been familiar with the abolitionist cause and the emancipations of various groups of slaves around the globe at the time. Given all of this, Vogel could not, in all sincerity, claim that the outlook of the abolitionists was *entirely* notional. (We will return momentarily to examine just how notional of a possibility we *really* think it was for persons like Jones.) However, Vogel indicates that for earlier slaveowning societies such as classical Greece, the prospect of freeing their slaves truly was a notional possibility. He writes:

...Wolf's idea that advocates of a "bad morality" might be utterly nonculpable becomes more credible the more remote and alien another culture is from ours....It is plausible to suppose that a classical Athenian, unlike a nineteenth-century American, "could not have known better" when he advocated slavery; nothing akin to the American Abolition movement was a real possibility in ancient Athens. (139)

So while Vogel claims that the culture of the nineteenth-century American South was alien to ours, that of classical Greece was supposedly even more alien. Vogel thinks that because of this remoteness the fault of the typical American slaveowner is mitigated. With regards to the Athenian, he makes an even more extreme claim: "...it would be unfair to blame slaveowners in classical Greece insofar as they lacked the moral resources within their tradition to challenge slavery" (140). I would like to challenge Vogel on both of these points.

#### Further Exploring the Real/Notional Distinction

We will start with the typical nineteenth-century American slaveowner, or in our case, Jones. Was the possibility of opting out of slavery a real possibility for Jones? By Vogel's reasoning, if it was, then we may judge Jones and determine how much blame ought to be placed upon him. If, on the other hand, the possibility was only notional, then Vogel suggests that it would be inappropriate to blame Jones (though we may still consider him sane and responsible by Wolf's definitions; more on this later). We must now ask whether we think Jones could have seriously considered the possibility of opting out, and whether he could have actually done so without "losing his hold on reality" or without engaging in serious self-deception.

Vogel suggests that the possibility of opting out of slavery was, for someone like Jones, not a genuine, real possibility. At a minimum, he seems to be suggesting that, on the scale of notional-to-real, the option to quit the business of owning slaves lay further down the scale on the notional side. But why would anyone suggest that it was only a notional possibility? After all, even if Jones had been raised in such an insular environment that he had never in his lifetime heard it suggested that slavery was

immoral, or heard anyone argue that it was possible to have a societal organization in which there were no slaves, one could not claim that it would have been *impossible* for Jones to have considered the possibility on his own. After all, one needs only to understand the operation of negation to be able to move from the proposition that ‘it is morally permissible to enslave other races’ to ‘it is not the case that it is morally permissible to enslave other races’<sup>46</sup>. One would need only limited imaginative powers to consider what life might be like without slaves, or to envision what the life of the slave might be like. Nonetheless, Williams and Vogel argue that this is not enough to make an option real for a given group or individual.

In order for the option to become more than merely notional, the individual must be able to *actually* imagine himself living that way, and beyond that, it must be the case that there are no fundamental obstacles that would prevent the option from being adopted. Thus, as Williams notes (and Vogel cites this particular remark), “[t]he life of a Greek Bronze Age chief, or a medieval Samurai, and the outlooks that go along with those, are not *real* options for us: there is no way of living them” (161, 140). If I were so interested, I could immerse myself in a study of the medieval Samurai. I could learn of their history, their lifestyle, training, value systems and place within their societies. I could read literature devoted to the topic and watch movies depicting Samurai narratives. I could thus easily *imagine* myself as a Samurai hero. Nonetheless, Williams and Vogel would maintain that the life (or outlook) of a medieval Samurai can never be a real option for me. That is because there are too many external obstacles to this path; my modern world is not set up for such a life. I am bound by the twenty-first century, and try as I might, I cannot recreate the environment of the medieval Samurai.

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<sup>46</sup> Michele M. Moody-Adams makes this point in her article “Culture, Responsibility, and Affected Ignorance”. *Ethics* 104 (January 1994): 291-309.

And yet, even granting Williams and Vogel the point that I cannot live the literal life of a medieval Samurai, I do not think we need to go so far as to say that the entire *outlook* of the Samurai is unavailable to me. I have been using Williams's terminology (i.e., "outlook"), but I think an ambiguity needs to be pointed out. If an outlook is interpreted as a way of life, then there are many different *ways* in which I might adopt a way of life. Of course I cannot literally become a Samurai; I cannot make it the case that I am a participant in the constant feudal warfare that characterized the life of the Samurai. Nonetheless, I *could* adopt elements of the Samurai outlook. In particular, I could examine the value systems of the Samurai and could possibly adopt particular moral principles by which they lived their lives. I could, for example, endorse the Samurai's commitment to loyalty. Similarly, I could accept their Buddhist belief in discipline and moderation as a path to enlightenment. In adopting these beliefs and principles, I would then act upon them in ways different than did the Samurai. For example, I would not fight on behalf of my feudal lord as a means to express loyalty, but I may vow to unwaveringly support my friends and family in a similar commitment to loyalty. Thus, strictly speaking, we do not need to say that there is no way of living the life of the medieval Samurai available to me. Insofar as I can adopt the value system of the Samurai, the outlook is indeed a real option to me.

#### The Real/Notional Distinction Applied to Jones

But how will this relate to our case study of Jones? If we can admit that there is room for us to assert that the life of the Samurai is a real option for us, then we can certainly claim—contrary to Vogel—that the life of an abolitionist was a real option for the average plantation owner of the 1850s. To begin, as a member of the privileged upper class, Jones had access to an impressive education. While we already know that Williams and Vogel argue that mere exposure to an alternate outlook is not sufficient to make it a real option for an individual, Jones's exposure went beyond the minimal (and we have

little reason to think he was unique among his class). I have already outlined in previous chapters the various ways in which Jones was confronted with the abolitionist message that the slaves ought to be freed. Even as a child, Jones was asked to contemplate the arguments both for and against slavery. While it is quite possible that these early exercises were colored by the confirmation bias that was surely present among his class, the exercises nonetheless served an important function in beginning to open Jones's eyes to alternate ways of structuring society and his life in particular. Furthermore, the fact that exercises of this sort were assigned indicates that slavery was recognized as being a moral issue.

As Jones grew, his exposure to these arguments did not wane. In fact, we know that he eventually sought out abolitionist literature, and was friendly acquaintances with several notable abolitionist advocates. Certainly as the instances increased in which Jones was exposed to the abolitionist message and learned of additional former slaveowners, the possibility that he himself could change his outlook became more of a real possibility for him. Indeed, we know that Jones gave serious consideration to the option of quitting slavery on at least two occasions. The first, as mentioned earlier, occurred as he neared completing his studies at Princeton. He wrote to Mary:

How often do I think of the number of hands employed to furnish me with those conveniences of life of which they are in consequence deprived—how many intellects, how many souls perhaps, withered and blasted forever for this very purpose! What I could not give if our family were not freed of this property and removed beyond its influence! (Clarke 96)

These concerns prompted Jones to hesitate to return to Georgia upon his graduation. Being determined to help those of the African race enslaved within his country, Jones was uncertain as to how he could best be of aid to them. He thought of staying in the North and working on behalf of the slaves there, perhaps in conjunction with the Colonization Society, which aimed at returning emancipated slaves to West Africa (Clarke 89). As we know, Jones soon abandoned these plans to return to Georgia in 1830



and began his work as a missionary to the slaves, believing that they required a sound religious and moral education before they would be ready to face the prospect of what he hoped would be their eventual emancipation. Several years of Jones's life were subsequently devoted to this project, but in 1835 he once again faced a moment wherein it seemed as if he had a genuine chance to leave behind the life of a plantation owner.

It was at that time that Jones was nominated for and elected to a professorship in ecclesiastical history and church polity at the seminary in Columbia. When considering whether to accept the professorship, Jones recognized that he was being presented with an opportunity to get out of the business of slavery. Jones wondered whether he ought to abandon his "planting interests" and sell his three plantations (174). Upon voicing his proposal, Jones faced resistance on more than one front. Jones's biographer Erskine Clarke notes that his friends discouraged him, claiming that Jones would be unable to advocate properly for the religious instruction of the slaves (174). This leads Clarke to note, rather sardonically, "[t]o be a convincing advocate for religious instruction, one needed, evidently, to be a slave-holder" (174). Beyond this "noble" concern, it was thought that Jones's potential "selling out would confirm the suspicions...that the movement was at its heart antislavery" (174). Recall that as Jones founded the Liberty County Association for the Religious Instruction of the Negroes, he had taken great pains to convince the participating white owners that he was not attempting to advance the abolitionist cause. He presented his plan as being to the greater benefit of both the slaves and the owners, and argued that productivity and obedience would be increased were the slaves properly educated. Clarke suggests that Jones presented this argument to the plantation owners of Liberty County with duplicitous intentions. His correspondence and diaries indicated that at the time he still believed that it was a moral imperative that the slaves eventually be set free. He likewise believed that it was his Christian duty to help further that goal. However, he knew that he could not yet present that argument to his neighbors, as they were hostile to this message. He thus put forth the supposedly false

pretense that he had no intentions of preparing the slaves for independence. Whether Jones remained committed to this goal as his life and career progressed, however, is a different topic, to which we will later return.

Perhaps the most strident voice protesting Jones's contemplation of selling his interests in slavery in 1835 was that of his wife, Mary. Her voice was also the most influential. Clarke explains Mary's protests and the resulting resolution of the dilemma:

Mary drew the line, however, at "selling out" plantations and people in Liberty County....For Mary, it was even simpler—she did not want to break the ties to home. "I should not like," she told Charles, "to sunder the chords that have bound us so long and happily—for go where I will, like the captive bird I expect to sigh for the native air where I sang my sweetest song." So a year after he was elected to the professorship, Charles finally said "yes" to the call to Columbia but concluded to hire good managers to look after Montevideo and Maybank. (174-5)

Even though Jones rejected the opportunity to sell out and chose to remain a plantation owner, we cannot deny that he gave serious consideration to this alternate possibility. It seems as though he had at least two obvious opportunities to step away from his life as a slaveowner (though we could argue that this was an opportunity available to him every day). Furthermore, while we must admit that the situation of each slaveowner of this time period was unique, I think we must imagine that many others faced opportunities similar to Jones's.

Jones was not unique in obtaining an education in the North. While it had to have been the case that it was assumed by most of these students and their families that they would return to the South and assume their roles within society, it is nonetheless true that they each faced the *option* of rejecting this path. Additionally, Jones and others in situations similar to his had the option of refusing to accept their inheritances or of selling their interests. Jones's brother-in-law, John, for example, sold his slave inheritance to his father, Joseph. Apparently, John's temperament was not suited to owning and managing slaves, and he furthermore "...had reservations about slavery itself and wondered whether it was not more trouble for white owners than it was worth" (236). It cannot be

argued that John's actions were entirely noble, for though he himself chose not to own slaves, he nonetheless assumed responsibility for the thirty slaves that his wife brought into their marriage (236). John may not have gone as far as he could have—or morally, as he should have—to opt out of slavery; nonetheless, this brief anecdote illustrates that there were steps available that a southerner of the time could have taken to distance himself from slavery. Does this, then, mean that we can conclude that the possibility of opting out of the business of slavery was a real option for men and women like Jones? While I think that we have begun to make our case, I doubt that Williams and Vogel would yet be convinced.

#### The Difficulties in Changing Outlooks

Williams and Vogel would most likely point to the real difficulties that would have been faced had Jones or others like him chosen to reject their roles as slaveowners. Jones knew that the issue of slavery was a moral issue. He knew that he had the choice to not be involved in the operation and perpetuation of the institution. Beyond that, he knew that he had the choice to work actively against the institution. Nonetheless, Vogel would point out, and I think we would have to agree, that none of the choices that Jones faced were particularly easy choices. Had Jones decided to opt out when he accepted the position at Columbia, for example, he would have faced serious, life-changing consequences. As Clarke noted, Jones's suggestion that he sell out was not met with enthusiasm. His friends tried to talk him out of it, but beyond that, it would be a safe bet that *had* Jones opted out, his friends no longer would have been his friends. Had he opted out, it is quite likely that Jones and Mary would have been rejected by their social circle in Liberty County, whose suspicions that Jones had been advancing antislavery concerns would have been confirmed. Had Jones sold his plantations, it is also quite possible that he could not have continued his missionary work, at least not in exactly the same role and capacity as he had been doing. After all, he had been allowed to train the visiting white

teachers and had been allowed to himself preach to the slaves in the area on the strict condition that he not undermine the authority of the white owners. Jones surely would not have been trusted in this capacity had he himself made the very public move to no longer own slaves.

Additionally, while Jones was already a wealthy man when he was contemplating this choice, he did not have unlimited stores of cash. He surely would have profited from the sale of his land and slaves, but he would have faced economic uncertainty some time thereafter. Most of his wealth, after all, was tied up in the plantation operations. With the cessation of those operations would come the cessation of his greatest source of income. Furthermore, it is possible that Jones's future employment could have been threatened. It is possible that the offer of the professorship, for example, could have been rescinded, and he could have faced difficulty finding further means to support his family—at least if they remained in the South, that is. Last, and certainly not least, is the strain that would have been placed upon Jones's most important relationship had he chosen to sell his interest in slavery, that being his relationship with Mary. Mary never did seem to share as genuine an interest in the well-being of the slaves as did Jones. While she often seemed to adopt Jones's opinions, and at various times claimed that slavery was an evil, this sentiment was always in tension with her obvious love for the lifestyle of the plantation mistress. It is not obvious that Jones's marriage would have survived had he attempted to tear Mary away from her home and her beloved lifestyle. Again, while the situation of each slaveowner was admittedly unique, it was nonetheless true that the prospect of rejecting slavery was equally difficult for most. All of this leads Vogel to argue that, for the typical American slaveowner of the time (like Jones), opting out was not a real possibility.

I concede that genuine difficulties would have arisen had Jones decided to sell his interests in slavery (or even better, had he decided to free—and not sell—his slaves). Nonetheless, I do not think that these admitted obstacles amount to it being the case that

Jones did not have a real option. Recall that Williams wrote that an outlook is a real option for a group "...if they could go over to it; and they could go over to it if they could live inside it in their actual historical circumstances and retain their hold on reality, not engage in extensive self-deception, and so on" (160-161). I do not see how it can be argued that Jones—or others like him—would have lost their "hold on reality" had they freed their slaves and abandoned the life of the southern planter. Certainly they would have had to have adopted entirely new lifestyles. Jones probably would have had to have moved away from the South. But this of course was an option, and it was a known option to Jones. Jones had traveled in the North, and studied in the North, and later, even spent time living and working in the North. Indeed, it was not uncommon for Southerners to visit the North or to have family located there<sup>47</sup>. The prospect of moving, then, does not seem like one which would force a person to lose their hold on reality. Likewise, the prospect of no longer being wealthy, of having to do one's chores by oneself, to look after one's own children and cook one's own food, surely would not have been *welcomed* by individuals like Jones. Nonetheless, to have to do these things for oneself would not, I think, force one over the edge. It is even harder for me to see how it can be argued that extensive self-deception would be involved were Jones and others to have "gone over" to the alternate outlook. If anything, I think we can identify an extreme level of self-deception that was employed by Jones and Mary in order for them to be able to convince themselves that slavery and their involvement in it was morally permissible.

As Vogel himself admits, we cannot claim that these slaveowners were "...hermetically sealed off from the intuitions that form the core of our morality" (141). Jones knew that slavery was a terrible evil. He believed (correctly) that black slaves were fully human. Precisely because it would have been difficult for him to free his slaves and

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<sup>47</sup> I do not mean to present the North as being some sort of idyllic haven, free from racial tensions or even free from the effects of slavery. I only mean to suggest that it presented more options to live apart from slavery than did the American South at the time.

reject the society which thrived upon the flourishing of slave labor, and precisely because he personally benefited from slave labor, Jones had to identify arguments—unsound though they may have been—to convince himself that he was a good person, doing good deeds.

I cannot argue that it would have been easy for Jones to have rejected the lifestyle of the Southern planter and to have removed himself from any involvement in the business of slavery. In fact, I have to admit that at the time, it would have been nearly impossible for *any* white American to have avoided profiting from the labor of slaves; the economy of the nation was too much dependent upon slave labor for that to have been true. In his book *Inhuman Bondage: The Rise and Fall of Slavery in the New World*, David Brion Davis discusses the hold that slavery had upon the United States during the period of 1789 to 1861:

Slaveholding Southern presidents governed the nation for roughly fifty of the seventy-two years between the inaugurations of Presidents Washington and Lincoln. Most of the Northern presidents eagerly catered to Southern proslavery policies, as did the U.S. Senate, the Supreme Court, and the two-party political system. Every Northern businessman knew that Southern slave-grown cotton was by far the largest American export, which paid for imports of everything from iron to textiles. The southern “lords of the lash” forged close ties with Northern “lords of the loom,” to say nothing of Northern banking, insurance, and shipping firms. Moreover, these intersectional connections were reinforced by blatant antiblack racism in the North, and by the fear held by countless numbers of white workers that if slaves were emancipated, they would move north and drastically lower wages. (280)

Consequently, it must be acknowledged that Jones, and any other Southern planters contemplating the moral permissibility of their participation in the institution of slavery faced serious obstacles. It is in part because of the existence of these obstacles that individuals such as Vogel suggest that not owning slaves was more of a notional possibility than a real possibility for Southerners of the time.

## More Considerations Towards Thinking Jones had a Real

### Option

Admittedly, it was an easier task for someone like Jones to have owned slaves than it would be for someone like me, today, to own slaves. Likewise, it would have been more difficult for someone like Jones to have rejected the life of a slaveowner than it would be for me to reject a similar lifestyle. Owning slaves was a real possibility for Jones (obviously, since he *did* own them), but it is only a notional possibility for me. I know that owning slaves is a way of life, but I can only imagine myself becoming the master and owner of another human being; taking actual steps to become a slaveowner would be practically impossible. Were I to try to buy another human being and make her labor for me here, in my current circumstances in Iowa in 2010, I would encounter serious obstacles. Because of the relative lack of racism in my community, and because of the assured antipathy towards slavery which I would face, I would have to conduct my campaign to become a slaveowner in extreme secrecy. This would be difficult to maintain. But beyond the scorn I would face from my community were it to be discovered that I owned slaves, I would face serious legal ramifications were I to get caught. Jones, of course, faced none of this, making it quite easy for him to lead the life of a slaveowner. Thus, it is in this sense that it was a real possibility for Jones to own slaves, but is only a notional possibility for me.

Because of the legal sanctions and the current anti-slavery public opinion which would hinder the fulfillment of any plans of mine to own slaves, that option is indeed notional. It is notional in yet a further sense; namely, because of certain *internal* obstacles to the possibility. For me to own slaves would be for me to violate the moral principles which I hold to be objectively true, and would thereby mean that I would be violating my conception of myself as a person who attempts to live virtuously. I would have to reject nearly all my values to be able to put myself in a position where I could subjugate another human to the sort of humiliation and pain that a slave experiences. Jones, on the

other hand, were he to have freed his slaves—or even were he to have treated them better—would *not* have been acting in violation of his moral principles, but rather would have been acting consistently. This is contrary to what Vogel has suggested.

For example, we know that Jones believed that the marriage bond was sacred, and that slave families ought to be kept together (Clarke 127-8). While Jones and Mary may have believed these claims in theory, in practice their commitment can best be described as weak. The story of Phoebe and her family illustrates this inconsistency. Phoebe was Mary's personal servant and seamstress, a house slave with whom she had a long, intimate, and—as the years progressed—increasingly troubled relationship. In the summer of 1831 Jones, Mary and their infant son Charles Jr. moved to Savannah. Charles Sr. (Jones) has accepted the pastorship of the First Presbyterian Church. While preaching to the white congregation, he conducted one service each Sunday for blacks, and befriended many of the black preachers in the city in an attempt to better relate to the slaves of Liberty County, the primary subjects of his missionary work. Mary, meanwhile, could not do without Phoebe, and insisted that she be brought to Savannah with the family. This meant that Phoebe would be separated from her husband and from her children. While the separation was not permanent, it was nonetheless long and isolated for Phoebe. She had no visits with her children, and her only means of communication with her family was at the discretion of her mistress, Mary. Mary's "concern" (or lack thereof) for Phoebe's worry and homesickness is evident in the following excerpt from her letter home: "Do my dear sister, whenever you write, mention the health of Phoebe's children as she appears anxious about them and it is her only means of hearing from them" (Clarke 107). Phoebe's news of her children came about in the following succinct line, included in the postscript of the return letter: "Tell Phoebe her chicks are well" (107). Mary and Charles failed in this instance to note the cruel irony in requiring Phoebe to care for the baby Charles Jr.—indeed, she slept on a pallet in his nursery—while her own young children remained forcibly separated from her. Their failure to recognize the



contradiction between their beliefs regarding how slave families ought to be treated and their actions towards them only increased as the years passed.

As mentioned above, the relationship between the Jones's and Phoebe's family was never particularly smooth. Phoebe was not a docile, submissive slave. She was described as "saucy" and found her own subtle ways to rebel. In particular, Charles and Mary had been scandalized when Phoebe began an affair with the slave Cassius while her husband, Sandy Jones, was loaned out from the plantation for carpenter work. Phoebe and Cassius remained together as common-law spouses, and had ten children together (476). Nonetheless, Charles and Mary never forgave the pair for their adultery, once again failing to note the instrumental role that they had played in the circumstances. In 1856, the trouble with the family came to a head when Phoebe and Cassius's daughter Jane ran away. Charles and Mary were infuriated that Jane's parents showed no interest in finding her, and were furious that they would not participate in their efforts to locate Jane and return her to the plantation. Jane was eventually found living and working in the city, where she had been posing as a hired-out slave. (348-350)

It is difficult to imagine how two parents as devoted to their children as were Charles and Mary could have failed to comprehend why Phoebe and Cassius might not want to help them return their daughter into the bonds of slavery, particularly knowing the severe punishment she would face were she found. Nonetheless, they seemed to have remained blind to this, and tension between the families increased. Charles and Mary took this last transgression as a reason to put the family up for sale. The family was sold under the pretense that they could no longer be trusted, but it surely was no coincidence that Jones stood to gain financially from the sale. Jones's operation had suffered huge losses from a devastating hurricane in 1854 (337), and upon the sale of the family, he immediately began to pay off his debts (355). The timing of these troubles with Phoebe and her family seemed quite fortuitous to the Jones family.

While Charles and Mary believed that it was necessary that they rid themselves of Phoebe and her family, they did seek to keep the family together, choosing not to auction them off separately. Jones was aware that he stood to make more money had he split them up, and was proud that he held himself to his principles as opposed to bowing to the temptation of greater economic gain. In a letter to Mary, he wrote of the final sale:

They have all been sold to one person—not to be separated, but remain on his own farm in the vicinity of Macon...and of this we should be glad, although more might have been obtained had they been sold separately....Conscience is better than money. (355)

Jones's biographer notes the self-deception involved in Jones's self-congratulatory "conscience is better than money" remark: "...[Jones] seemed to think he had freed himself from any charge of self-interest, and he appeared completely oblivious to the ways in which he had acted cruelly in the quest for the high ideals of peace and harmony" (356). Jones remained oblivious as the saga of Phoebe and her family played out further.

Some time later, Jones heard rumors that the family had actually been sold to a slave-trader, not a farmer. This of course would mean that the family had been, or soon would be, divided. Jones learned of this potential twist as he was attempting to locate Cassius; Cassius had been put up for auction before he had had time to sell his belongings. Jones had assumed responsibility for overseeing the sale and for delivering the proceeds to Cassius. Once the items had been sold, Jones enlisted his son, Charlie, to help him locate Cassius. He gave the following instructions to Charlie regarding how Cassius's money ought to be handled as they communicated with a trader claiming to know Cassius's whereabouts:

He may request you to send him the money for the people. Do not do so. It will be a roundabout way, and they may never get it. All we wish to learn of him is to know how the game has been played. If we have been deceived by Wright and the purchaser, we have been deceived. We were endeavoring to do the best we could. (359)

It was later confirmed that the family had been sold in Savannah and had eventually made their way to be sold in New Orleans. This of course, meant that the worst possible

scenario for the slave family had become a reality. They could retain little hope that they would remain together, and it would be difficult to keep track of one another. It was quite possible that Phoebe and Cassius would never see each other, or their children, again. Jones and his family knew of this devastating twist of events, and were similarly aware of the potential fate of the family. Nonetheless, the last line of Jones's above correspondence seems to accurately reflect his conscience; he was convinced that they had "done their best", and while he prayed for the family and "wish[ed] them well" (360), he notably did not take any action to attempt to rescue the family. He did not travel to New Orleans to find the family, nor did he send any emissary on his behalf. He was satisfied that he had done his duty, and that he had done all he could for the family. While the distance of time and context surely lends more objectivity to an assessment of the situation, it is nonetheless difficult to comprehend how Jones, had he exerted even a minimal amount of self-reflection, could not have identified the blatant contradictions between his principles and his actions. The family continually displayed an impressive talent for convincing themselves that they were acting as benevolent advocates for the slaves when their actions betrayed otherwise. The story of Dinah and Abram provides further illustration of the degree of self-deception which was involved in order for the family to maintain their view of themselves as virtuous, benevolent masters.

Jones and Mary owned the slave Dinah, who in 1850 married the slave Abram on a neighboring plantation. This meant that they were only occasionally able to see one another, yet they were together for almost a decade and had four children together. In 1858, the death of Abram's master, Roswell King, unleashed turmoil upon Dinah and Abram. King's will was not in order, and it was decided that several of his slaves would have to be sold in order to settle the estate among King's heirs. Abram was among the chosen slaves. Dinah was devastated at the prospect of being separated, and pleaded to Mary for help. Mary, in turn, wrote to her son Charlie and her brother Henry (both in the city) to see if they could find a local buyer for Abram. Were such a buyer to be located,

the slave family would be able to retain some semblance of togetherness. Charlie took up the cause for his mother, and wrote her with the following news:

Abram is in Wright's office [the slave jail], and in a very distressed frame of mind, not knowing who will be his purchaser, and with the probability staring him in the face of his being carried far away from his wife and children, to whom he appears to be sincerely attached. It is a hard case, and I would in a moment purchase and send him to the Island [King's plantation] was such a thing practicable. As it is, we can only regret the sad fact of his being thus parted without the means of preventing the separation. (393)

Letters continued to be sent back and forth between the members of the Jones family, but they were ultimately unable to locate the hoped-for local buyer. It is notable that they did not purchase Abram themselves, nor did they ever really seem to consider it. Thus, Abram was separated from his wife and children. He never saw them again. Mary and Jones admitted no fault in the destruction of Dinah and Abram's family.

While it is true that Mary and Jones were not the ones to have initiated the sale of Abram, I contend that it is nonetheless true that they were in a position to have saved the family. It cannot be denied that they would have sacrificed a significant sum of money were they to have committed themselves to saving Abram. A healthy male slave would have sold for several hundred dollars, and that was no small sum at the time. Nonetheless, it was surely a sum which, had they been so concerned, and had they been willing to make certain relatively small sacrifices, the family could have done without. It is difficult to imagine how the Jones family could have convinced themselves that it was not "practicable" to have saved even *one* slave, to have tried to keep just one slave family together. Dinah and Abram were, by all accounts, well-loved and even respected by the Jones family. Jones had described Dinah, who spent all her life working on the Maybank plantation, as "the life of the place" (393). Given his professed interest in the well-being of his slaves, his expressed belief that it was a great harm to divide families, and his repeated affirmations of his duties to his slaves, the Jones family's lack of action in this tragedy can only be described as inconsistent and contradictory.

I argue that Jones surely failed to examine sufficiently the consistency between his beliefs and his actions, and that this failure was a moral failure. Had Jones undergone more extensive self-analysis, and had he (and Mary) refrained from engaging in self-deceptive measures, they would have had to have recognized their moral failings in their treatment of their slaves. Certainly the family was morally wrong to have been slaveowners in the first place, and certainly they reasoned incorrectly if they were able to convince themselves that slavery was morally permissible. In rejecting the alternative outlook wherein they would have sold or freed their slaves, Jones and Mary missed out on the opportunity to adopt the morally correct outlook, an outlook which was available to them, even if it would have been difficult to “move over to it”. Setting that option aside, however, due to what I admit would have been the genuine difficulties they would have faced had they opted for this more radical option, I assert that Mary and Jones regularly failed to recognize their opportunities to treat their slaves better. These opportunities, I argue, constituted for them real—not notional—alternate outlooks, or ways of life. These were alternate outlooks wherein they would have simply treated their slaves better, wherein they would have simply acted as their moral principles dictated (by, for example, refusing to let a loyal slave family be divided forever).

### Steps Between Outlooks and “Enlightened” Moral

#### Intuitions

Vogel has suggested that it would have been unreasonable to have expected the typical American slaveowner of the time to have performed the sort of critical self-reflection which would have led to these sorts of conclusions. I will reproduce Vogel’s earlier quotation, so that we might reexamine it in light of our greater understanding of the circumstances surrounding our case study:

...it is relevant to our assessment of the acquiescent majority just how reasonable it is to have expected them to have criticized themselves in light of moral intuitions that we, and a few members of their own society, take to be more enlightened. Our response

will depend partly on just how remote their culture seems to be from ours. If their culture is so alien that the criticism of practices we abhor would only have presented a notional, not a real, possibility for them, then it would be unfair to blame them. But they remain sane, responsible agents. (141)

I hope that I have convinced the reader that criticism of the practices of Jones (and other slaveowners of the time) would not, in fact, have presented only notional, as opposed to real, possibilities. We must be careful in our analysis of these complicated moral situations to not oversimplify. I think that the distinction introduced by Williams of real and notional possibilities can be helpful, but only to a degree. We must be careful in how we outline and describe alternate possibilities. This will vastly affect the conclusions we subsequently draw regarding whether a particular option was real or notional. If we only view Jones's situation as one where he had the option of being the slaveowner he was, with the alternative outlook wherein he would have freed his slaves and worked for the abolitionist cause, we can be tempted to conclude that the latter option was only notional. I think that I have given us reason to suspect even this conclusion. Nonetheless, I have further argued that we must be more imaginative in how we identify alternative outlooks. We need not adopt an all-or-nothing way of viewing the situations faced by our cultural defendants. Doing so can often be a strategy for rejecting a particular outlook so that we might be able to convince ourselves that our desired outlook is also a morally acceptable outlook. Jones certainly seemed to have done this: we know that he studiously examined the abolitionists' arguments, and seemingly considered abandoning all of his slaveholding interests.

Once he concluded that such a plan would have been impractical, however, Jones settled comfortably into the life of the plantation master, and seems to have never again given serious consideration to alternative outlooks. In particular, once he was able to convince himself that he was acting in a morally permissible way in his role as a slave master, he failed to consider the various ways in which he could have been a *better* slave master. It seems like an oxymoron to suggest that there are better and worse ways to be a

slave master, but surely this is true. Surely Jones would have made fewer moral mistakes, and caused less overall harm, had he committed himself to keeping slave families together. I argue that this was a real possibility for Jones, and had he critically reflected upon himself, he might have recognized his moral failures and rectified at least some of them.

There are steps between alternative outlooks. One step between the outlook of a cruel, domineering slave master is the step wherein the slave master is caring, yet paternalistic. Another step would be that of the master who is devoted to the well-being of his slaves, and who refuses to divide families. Adopting this outlook might lead the owner to decide to not purchase new slaves, for doing so would of course be a way of perpetuating the destruction of other slave families. Perhaps this would lead to the outlook wherein the owner would take gradual steps to emancipate his slaves. Etc., etc. I do not see how it can be argued that these outlooks were merely notional, as opposed to real, possibilities for Jones and similar American Southerners of the nineteenth century. I furthermore do not know what Vogel means when he suggests that there were certain, key moral intuitions to which the typical slaveowner of the time was not privy, or which they could not have recognized as being morally significant.

Davis relates the story of the English immigrant Morris Birkbeck, who traveled throughout America in the earliest part of the nineteenth century. Birkbeck had originally settled in Virginia, yet left the region for Illinois in order to avoid what he took to be the corrupting influence of slave society. Birkbeck later wrote a memoir, entitled *Notes on a Journey in American From the Coast of Virginia to the Territory of Illinois* (1818). In it, he wrote about the sale of two slave women and their children: "I could hardly bear to see them handled and examined like cattle; and when I heard their sobs, and saw the big tears roll down their cheeks at the thought of being separated, I could not refrain from weeping with them" (Davis 176). Birkbeck clearly noted the wrenching pain experienced by the women and their children. He recognized the lack of respect with which they were

treated, and he took all of this as evidence that their enslavement was morally wrong. Birkbeck—a relative contemporary of Jones—witnessed nothing unusual at that day's slave auction, and I argue that his moral intuitions were not especially enlightened. The same moral resources which were available to Birkbeck were available to Jones and to others involved in the slave trade. I think it disingenuous to suggest that individuals like Birkbeck (individuals who were able to recognize that slavery, and participation in it, was morally impermissible) were particularly advanced.

This leads me to return to Vogel's earlier comments about the slaveowners of ancient Greece. Vogel suggested that their society was even more remote from ours than was the slaveowning society of the American South. He claimed that the slaveowners of classical Greece did not have available to them the moral resources to challenge slavery and that they thus might have been utterly nonculpable for their mistreatment of their slaves (139). But why should we think this? We often encounter the attitude that it could not have occurred to upper-class citizens of ancient times that there were outlooks available to them wherein they might not have owned slaves, but I do not see that we have evidence to think this. It may be true that little anti-slavery literature has survived from the period. It is similarly true that when the topic of slavery is approached in the surviving works it is generally approached with a pro-slavery attitude. This should not lead us to conclude, however, that it could not have occurred to citizens of the time that slavery was morally impermissible, or even that it was not an issue which was debated. Indeed, it makes sense that we would not locate many anti-slavery arguments in the surviving literature; the anti-slavery position admittedly would have been the minority position. Furthermore, those responsible for publishing works would most likely have been upper-class individuals in positions of power, who predictably would have been pro-slavery. It is thus not surprising that we see little evidence of anti-slavery sentiments from this time period. This does not mean, however, that individuals from this time period did not recognize the issue as being moral in nature.



Davis informs us that, even in these ancient times, the topic of slavery was recognized as being a moral issue: “Even ancient Roman writers like Seneca wrestled with the conviction that slaves were in some sense equal and capable of true virtue, much as early Christians declared that a slave could be a saint and his master a sinner” (178-9). Davis further identifies the various and compelling pragmatic reasons which may have motivated so many persons to profit from slaves. He writes:

Yet what made slavery so appealing and seductive, especially in the long era before self-powered appliances, engines, and other labor-saving devices, was the freedom it brought for slaveholders. Thus slave labor gave Aristotle the time to contemplate the nature of man and worldly existence, much as it freed Washington to lead the American Revolution and Jefferson to compose the Declaration of Independence. (179)

We have already noted the economic incentives which surely played a role in the perpetuation of slavery within the American South. Davis traces these motives back further, indicating that they were existent and active within the earliest of slaveholding societies. To note that the economies of these societies depended upon slave labor, and to note that advances in scientific and philosophic thinking were made possible because of the labor of enslaved humans does not, however, allow us to conclude that there were not moral reasons against slavery available. We cannot conclude that that the moral intuitions which were available to Morris Birkbeck were not available to Jones, to Aristotle, or to the average Roman or Athenian.

#### Noting a Problematic Ambiguity

I hope that I have convinced the reader that these alternate outlooks were in fact real, as opposed to merely notional, possibilities for our case studies. I have also suggested that, contrary to Vogel’s suggestion, it would not have been unreasonable to have expected our case studies to have critically examined their beliefs and their actions.

Throughout his argument, Vogel has consistently used the phrasing “reasonable *for us* to have expected them [i.e., the cultural defendants] to have arrived at the truth”.

Because of this alleged unreasonability from our perspective, Vogel suggested that we have reason to temper our reactive attitudes towards these wrongdoers. That is, he suggested that we have little, or no reason, to blame them. He said this while maintaining that they were sane and responsible by Wolf's standards. However, Vogel also suggests in various points that the fault of these cultural defendants may be mitigated in a special way (139), and he furthermore suggests that they are "exonerated" on his account: "So what difference does it make that Wolf would exonerate<sup>48</sup> such a person on grounds of insanity, while I would do so because he is blameless?" (141). Vogel's claims thus become, in my view, confusing, due in large part to an ambiguity in his use of "reasonable".

Vogel is primarily concerned with addressing the question of what the appropriate reactive attitude for us to take towards cultural defendants ought to be. He makes it clear that matters of a person's degree of responsibility do not determine questions about how we ought to respond to that person. On most accounts of moral responsibility, our reactive attitudes are not determined solely by answers relating to whether individuals are or are not responsible. We might, for example, determine that a person is fully responsible for her wrong actions, but we may have good reasons for withholding, for example, our blame. Vogel is thus right, I think, to make this distinction in his piece.

However, Vogel is not as consistent as I think he should be in outlining distinctions between whether a given action is reasonable *from the perspective* of the defendant, and what it is reasonable *of us* to expect of that person. Thus, we might

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<sup>48</sup> I am not sure in what sense Vogel is here using "exonerate". If he means "exonerate from blame," then his claim is not particularly meaningful, since he would be claiming that the defendants are exonerated from blame because they are blameless. If, on the other hand, he means "exonerate from moral responsibility," then he means that they would be exonerated from moral responsibility because they are blameless. This makes a bit more sense (though I indicate problems even for this interpretation in the remaining paragraphs), but I am not convinced that Vogel wants to say this—in particular, because he said that they are sane, and thus responsible (on Wolf's account). It is certainly not clear that Vogel is offering *a different* account of moral responsibility from Wolf's.

consider the case of unmotivated students. Every semester, as I assign new writing projects, I entertain high hopes that my students will excel, and will provide me with carefully considered and constructed arguments. Instead, I frequently receive a first batch of essays which is woefully subpar. Were I to bring my complaints to my supervisor, and protest my dismay to her, explaining that I had expected more of them, she might sagely point out that it is unreasonable of me to have expected more of them. After all, this apathy and intellectual laziness is, sadly, not uncommon among students “forced” to take philosophy courses for general education requirements. Furthermore, she might point out that many of the students have not engaged much in the sort of critical analysis and academic writing required by my writing assignment. For these reasons, it is indeed unreasonable for me to have expected them to have done better than they did. This should not, however, allow me to conclude that, because there very well may be no point in my blaming them, that they were anything less than fully responsible for their poor performances. I certainly should not conclude that their fault is mitigated, or that they have a mitigating excuse from responsibility<sup>49</sup>.

Thus, if Vogel wants to make a connection between mitigated fault and the reasonability of expectations of a particular person, he must make further distinctions between what is reasonable from an individual’s perspective, and what it is reasonable—from a third person perspective—to expect of that person. If fault is mitigated, it arguably will not be simply because it is unreasonable *of us* to have expected otherwise from the defendant, but because it was primarily unreasonable *for them* to have done otherwise. Because their action (or beliefs) was reasonable from their perspective, then it would be similarly reasonable for us to have expected them to have acted as they did. Consequently, it is *for this reason* that we might think that their fault for participation in an actually morally wrong practice is mitigated. Contrary to Vogel, this might suggest

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<sup>49</sup> I would like to thank Diane Jeske for this example.

that the person's moral responsibility is reduced. They might be exonerated not just from blame, but also from moral responsibility.

Vogel's discussion of the real/notional distinction was meant in part, I think, to focus upon what it was reasonable from an individual's perspective to believe or do. Given the alleged reasonability of a person's beliefs from her perspective within a particular culture, he suggested that it would consequently be unreasonable *of us* to have expected otherwise from her. However, I have argued that the real/notional distinction will not so easily allow us to reach this conclusion. Indeed, I argued that there were many, better alternative outlooks available to the case studies, and that they presented real, as opposed to only notional, possibilities. If I am right, then Vogel cannot maintain that their beliefs and actions were reasonable, even from within their own perspectives, and we would then be suspicious of claims that their fault (or moral responsibility) is mitigated. It is possible that we would still find reasons to withhold our blame, but our primary focus in this project is not towards how we should respond to these perpetrators (although we may obtain some insight into this question). Rather, we are attempting to obtain a better understanding of whether they are responsible for their wrong actions, and if so, on what grounds. Vogel's account, then, is not particularly helpful in answering these questions.

If I am wrong in my claims about the cultural defendants—if, that is, their beliefs really *were* reasonable from their perspectives—then the question about the extent of their moral responsibility remains open. What we should *not* do, however, is conclude that, if it would be unreasonable *of us* to have expected otherwise from them, then their fault or responsibility is mitigated. The following chapter will further develop this topic. It will focus even more explicitly on the connection between the alleged reasonability of a person's belief and her corresponding moral responsibility for holding that belief and acting in accordance with it. Additionally, the next chapter will pick up on my claim, made only in passing here, that we have a moral obligation to engage in critical self-

reflection, even if our beliefs and actions seem to be supported by the majority of the members of our community. In his article “Cultural Membership and Moral Responsibility,” Neil Levy denies this claim. Examination of his argument will thus allow me the opportunity to further defend my claims.

## CHAPTER VI: NEIL LEVY'S CULTURAL EXCUSE DEFENSE

As the title of his article suggests—“Cultural Membership and Moral Responsibility<sup>50</sup>”—Neil Levy is similarly interested in our topic of inquiry. As he develops his position, Levy engages with some of the philosophers familiar to us, most notably Wolf and Vogel. Like Vogel, Levy rejects the Inability Thesis advanced by Wolf as being inapplicable to the majority of cases in which we are interested. That is, Levy agrees that it is highly unlikely that individuals such as JoJo and American slaveowners of the nineteenth-century were *unable* to recognize and appreciate the True and the Good (to use Wolf’s terminology). Like Vogel, Levy also thinks it is important that we address epistemic questions as we attempt to determine whether the individuals in question were fully morally responsible for their actions. In what follows, we will see how Levy delves further into the questions about what it is reasonable to expect of an individual regarding what she believes and what values she adopts, what it is to say that a particular belief is rational, and in what way these considerations allegedly affect moral responsibility.

In his article, Levy considers many of the individuals from the case studies with which we are already familiar. In particular, he devotes extensive space to a reexamination of Wolf’s JoJo, and he likewise reconsiders the case of the typical nineteenth-century American slaveowner. In each of these cases, Levy assumes that the actions committed by the individuals were objectively morally wrong. Nonetheless, as he develops his discussion, he argues that the defendants were ignorant of the fact that their actions were wrong, and that they were plausibly non-culpably ignorant. This leads Levy to suggest that the defendants were either not morally responsible or that their responsibility was significantly mitigated. We should consequently understand that Levy is presenting us with an excuse defense:

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<sup>50</sup> *The Monist*, vol. 86, no. 2, pp. 145-163. 2003

We shall assume, in the first place, that the actions in question were morally wrong. We are here concerned with the question of excuses, not justifications, but people can only be excused for performing wrong actions.... Very young children and the insane are typically excused from responsibility for their actions, on the ground that they could not know that they were wrong. If culture excuses, it is presumably on similar grounds: that cultural membership can prevent someone from perceiving the wrongness of an action. This is precisely how the cultural defense is invoked: attorneys do not argue that the acts in question are not, in fact, wrong, but that their clients did not know them to be wrong, and that their ignorance was not itself culpable. In what follows, then, we assume that the acts concerned *are* wrong. (146)

Levy continues to explain how it is that he thinks cultural membership can prevent individuals from perceiving the wrongness of their actions. Levy argues that individuals can be “ethically disabled” by their cultures, but in making this claim, he does not want us to adopt Wolf’s view that such persons no longer have the ability to perceive the rightness or wrongness of their actions. Rather, Levy thinks that a person’s society, insofar as it creates the environment in which she is raised, can present evidence in such a way that the person is barred from recognizing the truth as being the truth. Levy will argue that, though she may have been exposed to the truth at some point, given her upbringing, she may have no good reason to recognize as being relevant facts which might suggest that her values or participation in particular cultural traditions are wrong.

Levy’s argument is developed as he critiques Vogel’s discussion of Wolf’s JoJo. Recall that Wolf initially introduced JoJo as being, in her view, the paradigm case of a person with an insane deep self. Wolf argued that JoJo’s upbringing by his tyrannical father rendered him cognitively and volitionally unable to recognize and appreciate the “True and the Good”. Vogel, however, vehemently questioned this claim. While he was sympathetic to JoJo’s plight, insofar as he conceded that we could easily understand why it was that JoJo turned out as he did, Vogel maintained that we could not argue that JoJo *had* to turn out the way he did, nor did Vogel think it likely that JoJo lacked completely (or even partially) the ability to make correct moral decisions.

Recall that Vogel argued that, for JoJo to have been nonculpably ignorant of the fact that his murderous and tyrannical behavior was morally wrong, it would have had to have been the case that JoJo was never exposed to better values. Vogel hypothesized that the following was a reasonable description of JoJo's environment and his likely exposure to alternate viewpoints:

...it is by no means clear that his environment was so seamless that it did not allow for a criticism of the values he held. For one thing, it is quite likely that JoJo would have been exposed to moral sensibilities different from, and critical of, his father's. If the island he controls is like Haiti, one must assume that there are traditions that form part of the education of the young and stress the importance of respect for others. Can JoJo have been wholly sealed off from the values that govern his countrymen? And as an effective ruler in international society, he is not living in a total vacuum. Surely he is aware of the restraint that is expected of respectable leaders in countries whose citizenry gives them legitimacy. And would he not have experienced some love, friendship and benevolence that would have revealed other possibilities to him? He was lucky enough to have received the benefits of privilege. It would be odd to say that his environment deprived him of the opportunity to become more humble. (Vogel 134)

Levy does not contest the claim that JoJo was probably exposed to alternate values in such a way. However, Levy does contest the supposition that these instances of exposure provided JoJo with good reason to criticize his values and beliefs. Levy argues that JoJo wasn't "in a position to grasp" the fact that the alternative conceptions presented to him were closer to the truth than were his own beliefs and values (151). This is because Levy insists that mere exposure to the truth cannot be a sufficient basis upon which we may subsequently attribute culpable ignorance of that truth (151). To make his point, Levy introduces an analogy with a hypothetical nineteenth-century European physician.

#### Miasma Theory and the Nineteenth-Century Physician

This doctor, Levy imagines, has been trained at the finest medical schools. During his extensive education, the doctor learned about "miasma" theory, and consequently believes that many of the diseases presented by his patients are caused by these miasmas.



The doctor's teachers, mentors and colleagues are likewise all proponents of miasma theory, and endorse the doctor's treatment of his patients as this medical theory dictates. When the doctor learns of a new theory which suggests that these dangerous illnesses are caused by invisible germs, as opposed to miasmas, he rejects the hypothesis. His respected colleagues concur, and insist that germ theory "is the work of cranks". Levy asserts that, in these circumstances, the doctor "has no reason to believe [germ theory is true], nor any reason to investigate it for himself". (151)

Unbeknownst to the doctor, this new, absurd-sounding theory about invisible germs is actually much closer to expressing the truth about disease propagation than is his accepted miasma theory. Nonetheless, Levy insists that we cannot conclude that, just because the doctor has been confronted with the truth, that he has sufficient reason to accept it as being the truth. This is because the new (and true) propositions expressed by germ theory do not cohere with other, important beliefs of the doctor. The doctor first learned of this miasma theory while a student in a reputable medical program, and those persons he most respects endorse the theory. The doctor allegedly has every reason to believe that these persons are qualified authorities, and furthermore, his experience in his own practice has, in his opinion, provided him with supporting evidence of the supposed truth of miasma theory. Because these new propositions about germ theory do not cohere with his beliefs (indeed, they seem to contradict certain of his core beliefs), Levy argues that the doctor has no reason to accept the propositions. Indeed, he thinks that the doctor would be *irrational* to accept the truth about germ theory.

Levy continues to argue that this analogy extends to cases like that of JoJo. Though we can admit that JoJo was most likely exposed to correct moral values, Levy contends that JoJo's upbringing quite likely could have made it the case that JoJo had good reason to reject the truth. Even if JoJo had been explicitly told that his father was an evil despot and that the values his father had worked to instill in him were false, Levy argues that JoJo would not necessarily be culpable for rejecting these claims and

remaining ignorant of the truth. This is because, Levy explains, JoJo has been taught—by those he most respects—to disregard the word of those bearing the (unbeknownst to him) truth. JoJo’s father has taught him that he cannot trust anyone outside of the tight circle formed by the two of them. Anyone who dares suggest that JoJo or his father are committing evil acts is either a weakling, or someone “who cannot bear to face the universe as it is” (151). JoJo has been taught that nearly everyone is out to get him, and that only he and his father have access to the truth.

Levy argues that this moral education—twisted though it may have been—and JoJo’s resulting confidence in the supposed truth of his values and beliefs, make it the case that he has no “...good antecedent reason to respect these others” and that “he has no reason to question his values or to adopt theirs” (151). Levy claims that it would actually be irrational for JoJo to reject his values and beliefs, “since they are supported by all the evidence to which he has good reason to give weight” (151). Because Levy thinks that JoJo lacks good reason to reject his beliefs in favor of the alternate (and true) suggestions to which he is exposed, and because he thinks it would be irrational for JoJo to accept these suggestions, Levy concludes that JoJo should not be considered culpable for his continued ignorance. JoJo is ignorant of the fact that many of his beliefs and values are false, and he is ignorant of the fact that when he acts in accordance with these beliefs and values he is committing morally impermissible actions. But so long as this ignorance “goes all the way down,” Levy contends that JoJo may remain non-culpable, and thus non-responsible:

JoJo’s ignorance might go all the way down: he is ignorant of the Good, of the reasons for believing the Good if, by chance, he is exposed to it, and of reasons for investigating his own reasons further. So long as JoJo’s moral and non-moral beliefs form a minimally coherent set, and he is not responsible for having come to have them, he is not culpably ignorant. JoJo is ethically disabled, through no fault of his own. (152)

It should not be surprising to us that Levy further extends his analogy between the doctor and JoJo to the typical members of slave-owning societies. Levy suggests that it is even

more likely that the upbringings of these individuals would render them ethically disabled, and would put them in a position in which they would be rationally compelled to reject the truth about the morality of slavery. Levy thinks that if we can conclude that JoJo was non-culpably ignorant of the moral truth (and he thinks that we ought to conclude this), then we would have to conclude that this is even more likely to be the case for persons like Jones.<sup>51</sup>

### The Alleged Nonculpable Ignorance of the Slaveowners

JoJo was exposed to the truth, and he most likely was exposed to these truths on a fairly regular basis. But because JoJo's moral system was instilled in him by his father, and because JoJo admires, respects and loves *only* his father, Levy has claimed that JoJo has no good reason to give credence to any opposing viewpoints. There are only a few respected figures expressing support for JoJo's beliefs and values, and yet because JoJo places absolute trust in those few, and because JoJo's beliefs cohere, Levy thinks he lacks epistemic reason to critically self-reflect or to engage in further investigatory efforts. This leads Levy to argue that individuals like our Jones would have had even less reason than JoJo to reject their established beliefs in favor of the actual moral truth.

Levy explains that the typical slaveowners would have had their beliefs and values (false though they may have been), reinforced by significantly more people than did JoJo. Again, those persons affirming the (false) claims that slavery was morally permissible would have been persons who were revered, respected and loved. As with the case of JoJo, Levy readily admits that the slaveowner might have been exposed to alternate views which expressed the idea that slavery was morally impermissible, or—to use Levy's example—that the slaves were fully human. The typical owner would likely

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<sup>51</sup> Once again, Levy does not discuss the particular case of Jones, but I hope that I can substitute his case as being representative of the "typical" slaveowner of the time.

have heard this view expressed not just by abolitionists, but also perhaps by the slaves themselves.

Nonetheless, Levy thinks that alleged facts about the owner's moral education would have made it the case that the owner lacked epistemic reason to take those views seriously. He explains:

Our agent has grown up in a slave-owning society, and has been taught by everyone she most loves and respects—her parents and other close relatives, her teachers, the authorities in her society—that slaves are (say) subhuman. Now, if a slave tells her otherwise, has she any reason to believe him? Surely she ought, rationally, to give the views which have been inculcated in her, and which are held by those who, it is acknowledged on all sides, are the wisest members of her culture, greater weight than the views of someone she at least suspects of being subhuman (and therefore of being very unlikely to be a reliable informant)? (152)

Levy insists that moral reasoning is “a coherentist affair”. He contends that the typical slaveowner most likely had a “minimally coherent” set of beliefs regarding the nature of the slaves, the economic necessity of the system, the moral permissibility of the institution, and the reliability of authority figures. Any new proposition, then, which did not cohere with this set of beliefs—such as the proposition that slaves were fully human—would need to be rejected if the slaveowner were to continue to believe rationally. Because Levy thinks the typical slaveowner would have been “rationally compelled to reject the truth” in such a manner, he argues that “[i]t is simply not true, then, that the typical member of a slave-owning culture is culpable for her ignorance of the humanity of her slaves” (152). I think we can assume from such a statement that he would think it similarly true that the slaveowner would not be responsible for her ignorance of other facts relating to slavery, including the more general fact that slavery is morally impermissible.

#### Comparing Vogel and Levy

While much of Levy's argument reads as a negative critique of Vogel's position, I think that the two nonetheless bear much in common. Levy does not use much of the

same terminology as does Vogel; in particular, Levy does not embrace explicitly the Williams-ian distinction between real and notional possibilities. I do think, however, that these terms can apply to Levy's characterization of the situations faced by our case studies. After all, Levy is discussing whether or not our case studies had sufficient reason to give serious consideration to adopting the alternate moral outlooks which would have forbidden JoJo to be a tyrannical dictator and Jones to be a slaveowner. This is the same question with which Vogel was concerned.

A major point of contention is that Vogel and Levy differ as to whether these were real or notional possibilities for the individuals in question. Vogel thought that it would have been a real possibility for JoJo to abandon his father's values and traditions (though he explained how it was not surprising that JoJo did not). Levy, on the other hand, had a different assessment of JoJo. He argued that there was no real sense in which JoJo could have become a moral man, for Levy thinks that JoJo lacked genuine reason to question or reject the (flawed) moral outlook which he learned from his father. Levy suggested that it would have been irrational for JoJo to have accepted the truth. For this reason, Levy thought that JoJo may have remained nonculpably ignorant of the truth, and that he consequently may not have been morally responsible for his moral crimes.

Vogel and Levy differ less when it comes to their assessments of slaveowners. Vogel has suggested that it might have only been a notional possibility for persons like Jones to have adopted the outlook in which he would come to accept that slavery was morally wrong and in which he would have taken steps to abandon the lifestyle and traditions of the Southern planter. It is here that I think Levy rather unfairly characterizes Vogel's argument. A key premise in Levy's argument is his claim that mere exposure to the truth is not a sufficient basis upon which to claim that a person is culpable for his ignorance of that truth. Levy then criticized Vogel for allegedly denying this. Vogel's discussion of JoJo might, indeed, lead one to think this. Recall that Vogel called into question the fact that JoJo's environment had been "so seamless that it did not allow for a

criticism of the values he held” (134). However, I do not think we should take this as conclusive evidence that Vogel thinks that “mere” exposure is enough for a person to recognize the truth as being such.

Indeed, Vogel was ready to admit that exposure to, and/or knowledge of, an alternate possibility was not enough to make it a real possibility for a person. Vogel, along with Williams, claimed that if the person could not honestly imagine himself going over to this alternate possibility, then it remained only a notional possibility. This, to me, seems similar to what Levy is arguing. Both Levy and Vogel agree that JoJo and Jones (and others like him) were aware that there were alternate ways they could be leading their lives. They part, however, in how they think the individuals in the case studies ought to have been expected to respond to this awareness. Levy thinks that awareness of these alternate possibilities does not provide JoJo or Jones with a genuine reason for reexamining their beliefs or actions. Vogel seems to suggest that both JoJo and Jones *did* in fact have such reasons, but particularly in the case of Jones, that we can understand why he would not have acted upon that reason and undertaken a project of critical self-reflection.

This is where I expressed confusion with Vogel’s argument. Vogel introduced the real/notional distinction primarily as a way to help us determine what attitudes we ought to take when morally assessing other individuals and cultures. If a possibility was not real for a person, then even if that possibility represented the correct moral viewpoint, Vogel claimed that it would be most appropriate for us to withhold our blame. However, even while suggesting that we restrain our reactive attitudes, Vogel maintained that the individuals in question were still privy to important moral intuitions and had the ability to make correct moral conclusions. This would be true even of Jones and of the Athenian slaveowner. Because they retained this ability, and because they had within their body of evidence the requisite moral evidence needed to arrive at the correct conclusions (in spite of the fact that they supposedly understandably disregarded it), Vogel thought that the

individuals remained responsible. They were responsible, but from our perspective they were not blameworthy. I was uncertain as to why Vogel would want to maintain that the individuals in question really were fully morally responsible. After all, Vogel was attempting to explain why these possibilities were allegedly only notional. If it supposedly would have been unreasonable (from his perspective)<sup>52</sup> for someone like Jones to have engaged in the requisite critical self-reflection which might have led to his recognition of the truth, then why should we think that he remains responsible for his failure? Perhaps Levy is right, after all, on this point.

It is unclear whether, in claiming that individuals like Jones were not “hermetically sealed off from the intuitions that form the core of our morality” (141) Vogel thinks that Jones’s access to these intuitions provided him with sufficient epistemic reason to reexamine his beliefs. In saying that someone like Jones remained a sane, responsible moral agent, Vogel seems to be suggesting that Jones was *culpable* for failing to recognize that his beliefs were false and that his actions were morally impermissible. Yet, in saying that it is unreasonable for us to expect him to have reflected and discovered this fact, one might think that Vogel wants us to conclude that Jones was not culpable for the reason that the suggestion that Jones engage in critical reflection was allegedly unreasonable from *Jones’s perspective*. Our remaining question is: if we think that a belief is epistemically justified, on what grounds may we conclude that the believer is morally responsible for acting in accordance with that belief? The question is actually a bit more complicated than that.

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<sup>52</sup> Recall that Vogel claimed that it would be *unreasonable for us* to have expected otherwise from the slaveowner. In the last chapter, I included a section in which I noted problems with this claim. Specifically, Vogel’s argument seems to work better if we take him to be suggesting that the unreasonability of our expectations that slaveowners should have rejected slavery stems from the unreasonability of doing so *from the perspective of slaveowners themselves*. If Vogel’s claim that it is unreasonable for us to have expected otherwise from them is merely a *predictive* claim about what we can expect these sorts of individuals to do, his claims about the alleged mitigated fault of the slaveowners loses grounding.

To elaborate: If an epistemically reasonable, yet false, non-moral belief (such as a belief that slaves are sub-human, or that they possess retarded intellectual capacities) provides epistemic justification for a false moral belief (such as the belief that slavery is morally permissible), which then motivates the performance of a morally impermissible action (such as the ownership and abuse of other humans), can the performer be considered morally responsible? Or should we consider the performer to be absolved of culpability due to the justificatory epistemic support of her beliefs and actions?

Levy tackled this question head-on, and has answered in the affirmative. That is, he has argued that if the slaveowner (like our Jones) is able to create a minimally coherent set of beliefs which provides epistemic justification for a belief, then, even if that belief is false, and even if it leads to the slaveowner acting in an objectively morally wrong manner, the slaveowner should not be considered culpable. It supposedly would have been irrational for him to act otherwise, and we should thus allegedly consider the slaveowner to be absolved from responsibility. Levy considers him to have an acceptable moral excuse, even though his actions were objectively wrong.

#### Reexamining Levy's Argument

I will now return to Levy's argument in order to provide a critique. Even though I think that Levy has further advanced the cause by bringing to the forefront important epistemic questions which we can now see underlie our investigation into questions about moral responsibility, I will argue that, ultimately, Levy's argument fails, and provides us with the wrong answers about our case studies. Let us first return to Levy's doctor.

Levy argued that the doctor was non-culpably ignorant of the truth about germ theory, because the doctor purportedly was rationally compelled to reject the truth. Levy claimed that the doctor had "no good reason" to further investigate the newly proposed theory. Thus, even though the doctor's beliefs about miasma theory were incorrect, and even though acting upon these false beliefs led him to treat incorrectly his patients,



thereby causing them harm, Levy thought that the doctor was not morally responsible for this resultant harm. I assert, on the other hand, that we have very little reason to think that the doctor (hypothetical though he may be), *over time*, remained non-culpable for his ignorance and thus non-responsible for the harm caused to his patients.

Underlying Levy's claims about the doctor (and JoJo, *et al*) is the following thesis about the source of culpable ignorance: "[i]gnorance is culpable so long as it can be traced back to an act or omission by the same agent concerning which she was not ignorant" (148). Thus, to use Levy's example of an educator, if I were ignorant of a particular university policy, I could only be considered culpable for this ignorance (and culpable for failing to act in accordance with that policy), if at some point in time I knew of some important act I ought to have undertaken which would have led to my familiarizing myself with the policy. I would be culpable for not knowing that, as an instructor I am responsible for ordering textbooks, if, for example I knew of, yet failed to attend, an important departmental meeting in which policy would be explained. But, if at no point in my employment had it ever been made known to me that I was expected to read the employee handbook, or to attend departmental meetings, etc., then I allegedly would not be culpable for any resulting ignorance.

Levy advances this claim about culpable ignorance in opposition to those who argue that a person's failure to be aware of his or her obligations can itself be culpable. While he concedes that "...it is true that particular roles imply special responsibilities" he maintains that "it cannot be the case that ignorance goes all the way down, as it were" (148). If we cannot pinpoint any one instance in which the doctor was culpable for failing to do something which would have led to his learning of his special obligations as a doctor (or in which he was culpable for *doing* something which subsequently led to his remaining ignorant), then Levy thinks that the doctor remains non-culpable. Levy thinks that if this is not the case, an infinite regress will result, and we will never be able to identify the source of culpable ignorance. I do not think that Levy's argument hinges

upon this point. Rather, I think that Levy's position faces serious trouble even if we concede that ignorance can only be culpable if it originates with a culpable act or failure to act. More specifically, I think that Levy does not present a believable scenario in that of the doctor.

Levy claimed that his hypothetical doctor was rationally compelled to reject the truth about germ theory, and that he had no good reason to further investigate the truth of the matter. In order for us to accept this claim, however, we need to know what counts as a "good reason" for accepting or rejecting a claim, and under what conditions we would think we have good reason to further investigate a claim. Similarly, we ought to have a solid understanding of what it means to say of a belief that it is rational. To these ends, then, I suggest the following as providing an intuitive view as to how it is that we ought to believe.

Evidentialism as Presenting an Analysis of Appropriate  
Epistemic Attitudes

Consider the following propositions as they relate to Levy's doctor:

Proposition G: Germ theory provides the correct explanation of the causes of many serious illnesses and diseases.

Proposition I: I (Doctor X) ought to further investigate the merits of germ theory.

We might now consider what the doctor's appropriate epistemic attitude towards these propositions should be. In his article "The Ethics of Belief"<sup>53</sup>, Richard Feldman is concerned with identifying epistemic norms. That is, he addresses questions about the epistemic conditions under which a person should accept or reject particular propositions, and provides an analysis of the appropriate epistemic attitude that a person (epistemically) ought to take towards a given proposition. I will here present and defend Feldman's view.

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<sup>53</sup> *Philosophy and Phenomenological Research*, Vol. 60, No.3. (May, 2000), pp. 667-695.

Feldman argues that “one always ought to follow one’s evidence” (678). This is the “succinct” version of the position defended by Feldman which he calls evidentialism. Feldman explains that, according to evidentialism, if we are to adopt a doxastic attitude towards a particular proposition, then the attitude that we ought to take towards that proposition is the attitude supported by the evidence that we have at that time (679). Thus, if we consider Proposition G, we would say that the doctor ought to believe G at time t if and only if the doctor’s evidence at time t on balance supports G (or indicates that G is likely to be true). If the doctor’s evidence at that time fails to support G (or suggests that G is false), then the appropriate epistemic attitude for the doctor to have towards G would be an attitude of disbelief. If the evidence is neutral, then Feldman suggests that suspension of belief would be the most appropriate epistemic attitude, though he indicates that it would not be inconsistent with his theory to allow belief or disbelief in light of such neutrality of evidence.

Feldman presents his thesis as a conditional—*If we are to adopt a doxastic attitude...*—in order to avoid certain objections which may arise if we were to insist that a person’s evidence would make it the case that they *must* adopt a particular doxastic attitude towards a given proposition. For example, it is the case that any logical truth is entailed by any particular proposition. We would not want to say, however, that the doctor ought to believe all the logical consequences entailed by all of the propositions he accepts. For the doctor to entertain each and every one of these logical consequences would be a practical impossibility, and for him to even attempt to undertake such a project would certainly require him to squander significant time and cognitive resources which, arguably, could be put to better use. Thus, Feldman is careful not to make his thesis so strong as to require that we must consider all and any propositions related to our body of evidence. The main thesis of evidentialism is only meant to provide us with guidelines for how we epistemically ought to respond to the particular propositions that we do in fact consider.

Consequently, even if it were the case that the doctor's body of evidence would provide convincing support for the Proposition G were he to actually consider G, if the doctor had not done this (if he had never heard of it, nor had he thought of it himself), we could not, according to evidentialism, claim that, epistemically, the doctor ought to believe G. Feldman's evidentialism will not allow us to say that if we determine that the doctor had available to him evidence supporting G of which he nonetheless was not aware, or which he did not seek out or consider, that the doctor still ought to have believed G. This does not sound controversial, particularly in the case of the doctor. It would seem absurd, in fact, to assert that the doctor ought to have believed G prior to the doctor's *hearing* of G. Why would we expect the doctor to believe in a scientific theory of which he has never heard? Even though we know that evidence existed at the time which supported the truth of germ theory, and of which we can imagine that, if the doctor had in fact properly considered it might have led him to accept the truth of the theory, it is too strong of a claim to require the doctor to assent to the truth prior to his consideration of the evidence.

Evidentialism's restriction to informing us of the appropriate doxastic attitudes to take only when and if we consider particular propositions becomes more controversial when we consider other cases. Let us consider for a moment the young Jones and the proposition S, 'Slavery is morally impermissible'. We know that Jones was aware, from a relatively young age, that slavery was a morally-charged issue. He was thus certainly familiar with the proposition S, and subsequently adopted a specific doxastic attitude towards it. However, we might consider an alternate scenario wherein a young Southerner had lived such an insulated, privileged existence, that he had never heard it mentioned that slavery was a moral issue. In this case, the young Southerner could have conceivably reached maturity without ever having considered whether S was true or false. In fact, as we have painted the scenario, the young man has never heard S uttered, nor has he himself formed the proposition or anything like it. Even if the young man had

so managed to remain ignorant of the moral nature of slavery (and had thus never considered the truth-value of propositions related to the topic), there are those who might want to argue that, had this young Southerner reflected upon his beliefs and reflected upon his evidence, he would have realized that S was true (that slavery was morally impermissible).

This line of argument would suggest that, given the likelihood that the young man had considered more general moral views, he arguably held at least *some* morally correct beliefs, such as “It is morally wrong to cause unnecessary harm to others”. The argument would continue to point out that, given that the black slaves really were human persons, and given that they really were subjected to morally unjustified actions which resulted in their pain and suffering, and given that this was all happening in front of the young man, he had available to him evidence which supported the proposition that slavery was morally impermissible. Thus, because the available evidence did in fact support S, it is argued that the young man epistemically should have believed S, even though he had never considered S, and even though he did not know that he had this kind of confirming evidence.

Similarly, consider the following propositions:

For the doctor, Proposition I: I, Dr. X, ought to further investigate the truth of germ theory.

For JoJo, Proposition C: I ought to give serious consideration to the opinions of individuals other than my father.

Levy has suggested that it would be unreasonable to expect either the doctor or JoJo to accept these propositions. There are two different ways this claim could be stated. In the first, the doctor would have considered Proposition I—perhaps the new doctor across town is a proponent of germ theory, and the doctor is aware of this new physician’s beliefs and knows of, in the doctor’s opinion, the ridiculous treatments prescribed by the newcomer. Even so, the doctor may have paused to consider whether the new theory was something with which he ought to be concerned. Thus, in this sense the doctor considered

Proposition I, but then rejected it as being false. Levy has claimed that this was most likely the most appropriate response for the doctor to have taken, given his background, training and his other beliefs.

JoJo, too, may have been told by one of his servants, or perhaps by one of the visiting diplomats to his country, that JoJo's father was a tyrant and that JoJo ought to consider and respond to the many persons speaking in protest against the senior Jo. Thus, JoJo would have also considered Proposition C, yet Levy argued that JoJo had good reason to reject C. The doctor and JoJo would have allegedly been acting irrationally had they actually accepted the respective propositions. I will soon return to reexamine these claims of Levy's. However, I mentioned above that there is another way in which someone might claim that it was unreasonable for JoJo or the doctor to accept these propositions.

In this first scenario, our case studies have considered their respective propositions and have subsequently rejected them. In this second scenario, as before, JoJo and the doctor have *not* been so confronted with the propositions claiming that they ought to investigate or grant further consideration to viewpoints differing from their own. Again, there are those who would argue that, even if the doctor and JoJo had never considered the propositions expressed by I and C, they *should* have considered them, and they *should* have believed them. This line of argument would claim that JoJo and the doctor had an epistemic responsibility to consider I and C, which then may have led to them accepting other propositions. Had the doctor considered the suggestion that he ought to have further investigated germ theory, perhaps he would have realized that G was true (recall that G was the proposition that 'Germ theory provides the correct explanation of the causes of many serious illnesses and diseases'). Accepting this proposition and then acting upon it may have led to the avoidance of significant harm to the doctor's patients. Likewise, had JoJo thought of Proposition C and not rejected it, this might have led to his considering a proposition such as that expressed by R: 'It is morally

impermissible to rape servants in order to appease my (JoJo's) sexual appetites and ease my boredom'. Had JoJo considered R, he might have accepted it, acted in accordance with it and, obviously, caused far less pain and suffering.

Levy clearly would reject the argument presented in this second scenario, but so too would Feldman. Evidentialism has told us that we can only inform a person of the appropriate epistemic attitude for her to take towards a proposition when she *actually* considers the proposition. It has told us that we should believe what our evidence, at the time of considering the proposition, indicates is likely to be true. If we are not believing on the basis of our evidence, then we are believing on other grounds, such as wishful thinking. Given this, Feldman would allow us to examine the details of the first scenario (the scenario wherein the doctor and JoJo had considered I and C). We would then want to think carefully about what evidence JoJo and the doctor had at the time, and would then reconsider Levy's claim that it was reasonable for them to reject the propositions. We will thus do this next. I will later return to the second scenario, and will further explain and evaluate why evidentialism will not allow us to claim that an individual epistemically ought to consider particular propositions, even if doing so would lead that person towards the truth.

As I have thus far presented evidentialism, I find no reason for Levy to reject the theory. Nothing that he has argued seems to me to be inconsistent with evidentialism's mandate that we (epistemically) ought to follow our evidence and believe accordingly. Where Levy and I will differ, however, is upon his claim that, based upon the evidence the doctor most likely had, the doctor had good reason to reject the truth about germ theory. In evidentialist terms, I think that Levy would say that the doctor's evidence did not indicate that the doctor ought<sup>54</sup> to have accepted G (or I, for that matter). I, on the

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<sup>54</sup> The reader should understand that, unless indicated otherwise, I am using "ought" to suggest an epistemic ought in this and the following sections.

other hand, will argue that this is unlikely. Thus, I hope to convince the reader that the doctor was probably *not* rationally compelled to reject the truth about germ theory based upon his beliefs. I will extend this argument to the cases of JoJo, Jones and Stangl (whom we have not mentioned for some time).

After I have done this, I will return to the second argument strategy above, which attempted to argue that individuals like the doctor and JoJo should have undergone further investigation, even if they had never been told that they ought to have done so, and even if they had never themselves thought about undertaking such efforts. As I address this argument strategy, I will argue that, given the plausibility of evidentialism, we will not be able to accept the conclusion. I will explain why, according to evidentialism, no defensible epistemic rule can prescribe that we ought to believe particular propositions that we have not considered on the grounds that our evidence, if considered, would support the propositions. I will also argue that, even if I am wrong in my first argument in which I attempt to persuade the reader that these individuals were probably *irrational* to believe as they did, I can nonetheless maintain that the rationality of their beliefs did not provide them with an exculpatory moral excuse. I will argue that there are other grounds upon which we can claim that the individuals from our case studies failed to believe as they ought to have believed, and failed to sufficiently investigate and gather evidence relating to important moral matters. First though, we will return to Levy's depiction of the doctor.

### Evidentialism and the Doctor

Levy claimed that his hypothetical doctor was rationally compelled to reject the truth about germ theory, and that he had no good reason to further investigate the truth of the matter. He claimed that it would have been irrational for the doctor to have actually accepted G. I think that after having spent a bit of time considering Feldman's evidentialism, we can better express what it means to say that a belief is rational or



irrational. Consistent with both Feldman and Levy, I think that we could propose that a belief is rational if it is supported by the evidence that one has, and it is irrational to hold a belief if one's evidence does not provide support for the belief. In their piece "Epistemic Indolence"<sup>55</sup> Richard Foley and Richard Fumerton argue that we can say that a person rationally believes a proposition  $p$  on the basis of evidence  $e$  when the following conditions are met: (1) That person rationally believes  $e$ , and (2) that person rationally believes that  $e$  confirms  $p$  (38). If these are the conditions which must be met in order for a person to rationally believe, then we would say that the belief is rational when it is held "beyond reasonable doubt", or when, as Foley and Fumerton indicate, "accepting is more reasonable than withholding" (38). While I do not want to go so far as to suggest that either Foley or Fumerton adhere to the same epistemological theory as does Feldman—that is, it would be hasty for me to categorize either of them as being evidentialists—their explication of rationality seems to me to be consistent with the evidentialist thesis I have indicated we ought to accept.

So we are considering whether the doctor rationally rejected proposition G on the basis of the evidence he had upon first learning of the theory. I would agree with Levy that the doctor's beliefs that his colleagues could be trusted, that his education was rigorous and current, and that he was knowledgeable in his field were all reasonable beliefs. Given that the doctor rejected Proposition G as being false on the basis of these beliefs, it does seem as though the rejection was rational. The beliefs about the doctor's evidence were all held rationally, and they seem to have provided strong support for the rejection of proposition G. However, while these claims may have been true of the doctor the first time that he heard about this new theory, the same cannot be said of the doctor as time progressed.

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<sup>55</sup> *Mind* (1982) Vol. XCI, 38-56

I think it highly unlikely that any well-educated doctor (as Levy indicated this doctor was) would be unaware of the special responsibilities which he has as a doctor, in particular, of his responsibility to stay current with advances in medical research. I do not think that Levy could plausibly deny this. In saying that the doctor had such a responsibility, and in claiming that the doctor was surely aware of this responsibility, however, I am not claiming that the doctor had the onerous duty of thoroughly investigating every new claim relating to his field. That would surely be an impossible task, and it would be one which would be counterproductive to the doctor's duties to care for his patients. Nonetheless, the doctor—as a doctor—surely knew that he needed, for example, to periodically review respected medical journals in order to stay abreast of advances in his field. Similarly, the doctor would be aware of the importance of networking and fostering collaborative relationships with other physicians. Maintaining this sort of connection might very well have helped the doctor remain current; he would be exposed to alternate views and techniques than his own, and as germ theory gained wider acceptance, he would be forced to reexamine arguments in its favor. Furthermore, given the claims made about the doctor's education, it is also likely that he would have been aware of the phenomenon of scientific fallibility. Thus, even if he had good reason to believe that miasma theory was true, the doctor surely did not have sufficient reason to believe that it was impossible that it ever be proven false.

Certainly we can admit that as germ theory was first expounded, the doctor had no reason to believe that it was true, and he thus had no reason to alter his practices. So Levy was probably right to say that the doctor's ignorance of the truth at this point was non-culpable. If it really was the case that the doctor heard about germ theory on only one, or only a few occasions, and if it really was the case that all those persons whom the doctor most respected told him that the theory was absurd, then I think we can agree with Levy that it would have been irrational for the doctor to accept the new theory. I think we could even agree that, given those particular circumstances, it would have been

irresponsible for the doctor to devote any significant amount of his time to the investigation of the veracity of the theory, given that we have been led to believe that the doctor had significant clinical duties. This doctor was not, after all, a researcher, but was a practicing physician with patients depending upon him.

However, we are not concerned primarily with whether a person is morally responsible for being ignorant of the truth when she first encounters the truth. Rather, we are concerned with the moral assessment of individuals who remain ignorant of the truth over time, and after repeated exposure to the truth. Levy seems to be aware of this, for he acknowledges that individuals like the doctor (and JoJo, and the slaveowners) would have had multiple exposures to the truth. However, what Levy does not seem to recognize is the fact that, as the exposures to the truth increase, so too does the doctor's body of evidence. Just because the doctor is epistemically justified in rejecting a claim on one occasion, we cannot conclude that the doctor would be justified in continually rejecting that claim over time.

Feldman warns us that we must pay careful attention to the details of our examples before we make determinations about the justificatory status of our beliefs. To illustrate this necessity, he introduces an example in which he has the firmly-held belief that "G: Taking ginko supplements is a safe and effective way to improve my memory" (687). Feldman tells us that he has a "modest" amount of evidence which supports his belief GF<sup>56</sup>. However, he comes across a headline of a reputable magazine which reads "Ginko Shown to be Ineffective". Feldman is fearful that were he to read the article, he might be compelled to conclude that GF was false. Thus, he puts the magazine away without reading the article in order to retain his belief, and actively endeavors to remain ignorant of any new evidence relating to GF.

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<sup>56</sup> Feldman has labeled his belief (G). However, to avoid confusion with the proposition G from above (relating to the doctor and germ theory), I will refer to Feldman's belief in the powers of ginko as (GF).

Feldman further supposes that, had he actually read the article, he would have obtained strong evidence against GF. We might want to say that Feldman should have believed on the basis of this new, avoided evidence, instead of his believing on the basis of the evidence he possessed which supported GF. Evidentialism has told us that we ought to believe on the basis of the evidence we in fact possess when we consider a particular proposition, and in this case, our subject Feldman has managed to avoid considering evidence which would have led to his rejection of GF. This seems to provide an objection to evidentialism, for it seems as though we would be justified in claiming that Feldman ought to have sought out evidence relating to GF, and that his epistemic mistake was a result of his indolence. Feldman agrees that he ought to reject GF, but not on the sole grounds that he negligently avoided seeking out relevant evidence.

Rather, Feldman points out that his evidence has already changed once he has encountered the magazine headline title. Had Feldman not read the headline, and had he not heard of any other reports calling into question the merits of the supplement, then he would have remained justified in believing that GF was true, for his evidence—limited though it may have been—allegedly provided support for GF. Prior to any exposure to suggestions that GF might be false, Feldman had no epistemic reason to further investigate the truth of his belief. At this stage, then, we would not want to say that Feldman had made an epistemic mistake, even if evidence did in fact exist which would have undermined his belief. However, as soon as Feldman was exposed to the headline, he obtained new evidence. His subsequent efforts to avoid evidence inconsistent with his cherished belief were ineffective, for the game was already lost at that point:

...I have acquired evidence against [GF] and my belief loses some considerable support the moment I see the title of the article. It gives me good reason to think that there are strong objections to [GF], even if I'm not yet in a position to say in any detail what they are. That significantly alters the evidential status of the proposition for me. Given the credibility of the source and the nature of the article title, most likely my overall evidence no longer supports my belief. I no longer ought to believe [GF]. (687)

I suggest that something similar can be said about the doctor in Levy's example. Prior to reports about the new germ theory, the doctor most likely had no reason to reconsider whether his beliefs in miasma theory were justified. After his first exposure to reports of the new theory, however, his body of evidence changed. It is quite possible that the doctor's continued belief in miasmas was justified after this initial exposure, but it all depends upon the details of the example. If the first reports about germ theory were broadcast by only one inexperienced doctor, who had graduated from a lower tier medical school, then our doctor had little reason to accept the reports as providing him with reason to investigate. However, if our doctor's first exposure to the theory came about in a similar manner as above—if, for example, he read a headline in a respected, peer-reviewed medical journal—then the doctor's evidence had changed in a significant manner.

Unless the doctor ceased practicing shortly after hearing about germ theory, it is difficult to imagine that he failed to be aware of the theory's gradual acceptance. As this happened, the doctor's evidence was altered. As the theory gained proponents, and as more studies by respected researchers confirmed the theory, the doctor's evidence changed, and thus so too did the doctor's reasons to further investigate and reexamine his own methods of care. I argue that the doctor's epistemic culpability for remaining ignorant of the truth thus increased as the doctor's exposure to the truth increased, and as his reasons in favor of reexamination of his evidence, beliefs and practices likewise increased. The doctor may have initially had little reason to engage in this sort of reflection and investigation. So perhaps Levy was correct in arguing that it was rational for the doctor to continue to believe that miasma theory offered the correct explanation for the cause of many diseases. Even so, I have attempted to argue that the status of this belief surely would have changed over time, so that eventually, it was *irrational* for the doctor to retain his beliefs about miasmas.

It is important that we remember that our evidence is generally not static. Feldman has told us that we ought to believe as our evidence indicates, and I think that Levy would agree. However, Feldman has warned us that we must think very carefully about what our evidence is and how our evidence changes. We cannot decide that, after an initial review of a particular proposition, the matter is closed. As our evidence changes—and it often changes whether we want it to or not—so too do our epistemic reasons for reevaluating our beliefs. I think that we can make a strong case that the individuals in our case studies failed to respond to their evidence in this way. JoJo, for example, was surely exposed to the truth on numerous occasions. Even granting that JoJo had reason to regard highly his father’s opinion, JoJo surely could not have ignored the fact that his father’s views were continually contradicted. Every single time that JoJo was exposed to acts of kindness, humility, honesty and benevolence, his body of evidence changed. Every single time that JoJo heard it expressed that murder was wrong, that rape was wrong, etc., his body of evidence changed. Indeed, every time that JoJo saw someone tortured and in pain (most likely at his own hands), he was exposed to relevant evidence. JoJo was deluged with evidence which, were he to have given it serious consideration, would have undermined his trust in his father. JoJo was not epistemically justified to have concluded early on that his father had sole insight into the truths about the world and to have never again reconsidered this claim.

#### Evidentialism and Jones

Jones too, seems to have reached a rather premature (and false) conclusion about the moral status of slavery, and after a certain point, ignored new evidence which undermined his belief. Even if Jones’s initial evidence supported his belief that slavery was morally permissible, there is no way to deny that Jones was exposed to new, contradictory evidence on a regular basis. When Jones was quite a young child, he may have had reason to reject as being unreliable the objections to slavery voiced by “crazy”

Northerners and by the slaves themselves. However, as Jones matured, the debate over slavery did not lessen, but intensified. For a time, at least, Jones seemed to be actively engaged in this debate, at least on an inner, personal level. As we have already noted, Jones was aware that slavery was a morally-charged issue, and he was concerned with identifying the truth. He genuinely seemed to be sincere in his desire to do what was morally required of him.

To that end, during their summer vacation in 1839, Jones and his family traveled north through Philadelphia, Princeton, New York, Montreal, Boston and Andover. While traveling, Jones undertook the task of learning everything that he could about the abolitionist movement. While he was still concerned with determining, in a supposedly objective manner, whether the South's (and his) participation in the institution of slavery was morally defensible, Jones's ulterior motive of defending his compatriots and their heritage began to emerge. Jones wrote that he wanted to "make some acquaintance, as intimate as possible, with the publications, the general spirit and design, the standing and influence of those persons who of late years, have been so violently assailing the character, and the domestic institutions of the South" (Clarke 207). I think it is apparent in the latter part of this citation that Jones's true loyalty was becoming more firmly directed towards his southern homeland. It is not particularly surprising, then, that as the end of their time in the North drew near, Jones was relieved to observe that his careful study of the abolitionist position led him to the conclusion that "the good sense and Christian feeling of the Free States, were far from being perverted; or from having any serious impression made upon them, in favor of modern abolition doctrines" (207). Jones and his family soon returned home to their plantation in Liberty County. This period of extended study seems to have been the last serious effort undertaken by Jones to assess the morality of slavery and to critically reflect upon the morality of his own actions as a master of slaves. Jones was unsurprisingly relieved to have convinced himself that the

abolitionist arguments held no persuasive sway, and he continued with a contented mind to engage in the duties of a plantation owner.

I argue that in doing so, Jones continually overlooked important new evidence which, had he paid it the necessary attention, would have led him to recognize that his beliefs were indefensible. This is not to say that he failed to search for new evidence (I am not yet charging him with indolence), but rather, to say that he failed to recognize the evolution of his body of evidence. I have already argued elsewhere that it is doubtful that Jones was unable to recognize that his belief in the moral permissibility of slavery was not supported by the actual evidence he had, even if such evidence was limited. For example, I argued that Jones should have realized that his actions towards the family of Phoebe and Cassius were inconsistent with other of Jones's beliefs and values. Barring the admission of any new evidence, he had in that instance all he needed to be able to recognize the internal incoherence of his beliefs. However, I am now arguing that Jones made a further epistemic mistake when, having reached a conclusion about the abolitionist message, he failed to reconsider seriously that conclusion ever again, in spite of the fact that he possessed evidence suggesting that he ought to have undertaken such a task. Even if Jones had been justified in rejecting the abolitionist message when he did in 1839, Jones was not isolated from the debate. As the years progressed, Jones was made aware of new arguments against slavery, and in particular, he was made aware of arguments against *his own* beliefs and practices, yet rather than give them the proper thought and consideration owed to them, he ignored them.

For example, in 1850 Jones was elected the executive of the Presbyterian Board of Domestic Missions in Philadelphia. This was a prestigious position of significant influence, yet despite this, it took Jones a while to decide whether to accept the position and move to the North. Explaining his dilemma, he wrote to Mary:

I am Southern born and Southern reared; my hopes, my desires, my sympathies and my interests are with the land of my nativity. I wish my children free from the prejudice of sectional feeling when



carried to animosity; yet I want them to love the south and to support and defend her honest rights; and in the event of any national division (which I would trust in the goodness of Providence will never take place) I hope they would be found true to the land of their birth. The liberalizing effect of a Northern education is desirable, but not alienation, leading to dishonorable and traitorous conduct. (279)

Jones's true sentiments and loyalties are evident in this passage. Of course, the South's "honest rights" is a euphemism for the Southern states' belief in their right to own slaves. It is quite telling that Jones was nervous that exposing his children to a Northern education might lead them to engage in "traitorous conduct" against the South. Jones had moved from having once considered living in the North and removing himself completely from the lifestyle of a southern plantation owner, to traveling to the North so as to (supposedly) give due consideration to the abolitionist message, to now dreading an extended stay in the North for fear that it would convince his children that the South's traditions were indefensible. While reluctant, Jones did decide to accept the position. However, Mary and Jones returned home to the South for good in the fall of 1853, in part because of Jones's declining health, but also in large part to escape embarrassment caused by recent abolitionist publications which drew upon Jones's writings.

In particular, Harriet Beecher Stowe—the sister of Jones's friend Catherine Beecher and the author of *Uncle Tom's Cabin*—was most troublesome to the family. Stowe's novel had been published in the summer of 1851, and immediately caused tremendous controversy. Stowe was accused by southerners of making false and outrageous claims about their treatment of their slaves. In order to defend what she took to be her accurate depiction of slavery, she published *A Key to Uncle Tom's Cabin; Presenting the Original Facts and Documents upon which the Story is Founded* in 1853, in which she presented her responses to the charges made against her. Among her primary sources for the key was Jones's *Religious Instruction of the Negroes in the United States*, which had first been published in 1842, but which had gained widespread popularity and underwent several reprints.

While preparing to write his *Religious Instruction*, Jones had first engaged in a sustained study of the history of slavery. He included within his book an historical sketch of slavery in the Colonies and the United States from 1620-1842. Jones's research focused on the missionary and religious efforts extended by Americans on behalf of the slaves. He included detailed summaries by state, year and religious denomination. Stowe then used Jones's *Religious Instruction* in order to address the claims made against her that she had fabricated facts about the history and circumstances of slavery in the American South. As she developed her defense, and as she reasserted her arguments against slavery, Stowe criticized Jones's pro-slavery arguments. Stowe's criticisms of Jones were tempered by her respect for him, and she recognized that he had admirable intentions in advocating for the religious and spiritual needs of the slaves. However, she argued that ultimately, Jones's arguments were fatally flawed. As Jones's biographer reports, Stowe believed that "Charles's sincerity and benevolent spirit made his support of slavery all the more deplorable" (Clarke 298). Stowe believed that Jones failed to distance himself properly from his roots, and failed to take an appropriately objective stance from which to critically assess the issue. She wrote that "...if we look over his whole writings, we shall see painfully how the moral sense of the finest mind may be perverted by constant familiarity with such a system" (Clarke 298-299). Jones and his family were mortified by the accusations made against them, and were particularly humiliated that his writings were used to bolster the abolitionists' cause. Clarke reports that they returned to Liberty County in large part to escape the controversy. Jones did not respond to Stowe's criticisms, nor did he seem to take them as providing him with reason to reexamine either her, or his, arguments. (Clarke 298-299)

This above story provides us with just one example in which Jones failed to respond to evidence suggesting that his beliefs were incorrect. Unhappy though he may have been to have been confronted with Stowe's accusations, he nonetheless was exposed to them. This exposure then became evidence against Jones's position. Obviously, we

cannot go so far as to say that any expressed opposition to one's position provides a person with sufficient reason to reexamine her position. Again, the details of the situation matter. In this instance, Harriet Beecher Stowe was the sister of one of Jones's respected friends. She was an intelligent, and obviously educated, woman. As the controversy around slavery increased rapidly, and as more and more nations became engaged in the debate, Jones was faced with increasing reasons to remain engaged in the debate, and not to step away from it. When Stowe called out Jones individually, he failed to recognize her criticisms as providing him with reason to critically reflect upon his position. Thus, in this instance, Jones did not treat his awareness of the existence of opposing arguments as being potentially undermining evidence to his beliefs. He did not take this awareness to itself be evidence that he ought to reconsider his beliefs. Because he failed to do so, he failed to follow his evidence as he epistemically ought to have done.

And this example, of course, provides us with only one such instance in which Jones failed to respond to evidence suggesting that he might have been wrong. This brings up a separate point against Levy. I argued above that it was quite likely that the doctor was exposed to reports about the merits of germ theory on more than one occasion, and that as the theory gained advocates, the doctor's reasons for rejecting the theory were weakened. I have similarly argued that Jones was exposed to anti-slavery arguments on a regular basis, and that as these sentiments increased, so too did his epistemic reasons for reevaluating his own beliefs. However, I recognize that I may have mischaracterized (or mis-imagined) the situation of the doctor. Perhaps the doctor was not operating when germ theory was gaining support. Perhaps the doctor was isolated in such a way that he only heard of the theory once or twice. If either of these were true of the doctor, then Levy could maintain that the doctor would have been irrational to have accepted the truth about germ theory. However, if *that* were the case, then the doctor's situation would not be similar enough to the situations faced by JoJo, Jones and Stangl. Levy's analogy would fail, for our case studies certainly were exposed to the truth on

many occasions, and they certainly knew of the moral nature and serious consequences of their beliefs and actions.

I have thus far argued that the individuals in our case studies, in all likelihood, possessed evidence which indicated that their beliefs were not justified. I argued that they similarly were most likely exposed to evidence which suggested that they undergo critical examination of their beliefs and values, and that such an examination would possibly have led to them discovering inconsistencies and contradictions. Consequently, their beliefs were not reasonable, and it was in fact irrational for them to have continued to believe as they did. This is contrary to Levy's imagination of the circumstances faced by these case studies. In what follows, I will address the second line of argument from earlier, which wanted to charge the subjects of the case studies with having made epistemic mistakes because of their indolence—their failure, and sometimes blatant refusal, to seek out evidence relating to their beliefs. I will argue that the individuals in our case studies were most definitely indolent, but that their indolence was not necessarily irrational. Even so, I will continue to argue that their indolence did constitute a moral failing on their parts. This will be contrary to Levy's position. In order to develop my position, I will return to the case of Franz Stangl.

#### Franz Stangl's Epistemic Mistakes

I think we can make a very strong case that Stangl's belief that his participation in the Holocaust was morally permissible was an unjustified belief. We can admit that Stangl's environment within the Nazi political organization was perverted, and that he was surrounded by constant reinforcement of absurdly bad values. However, we must also recognize that he was continually exposed to instances of senseless violence and pain which he ought to have recognized as providing him with solid reason to think that his actions, insofar as they contributed to this suffering, were morally wrong. It is hard to imagine how someone like Stangl could have actually believed that what he was doing

was morally acceptable, until, that is, we recognize that he desperately *wanted* to believe that he was not culpable. Given this strong desire, it is sadly not surprising that he was able to construct justifying arguments, weak though they may have been, to which he then clung. However, even though this is an easy enough argument to wield against Stangl, I would like to turn our attention not towards what I think were his unjustified beliefs in the moral permissibility of his actions, but rather towards his pervasive indolence.

While Levy does not discuss 1930s Nazis (as Wolf and Vogel did), he has suggested that if a person's beliefs are epistemically justified, then we should not consider them culpable for acting upon those beliefs, even if doing so results in a morally wrong action. I think that accepting this premise will lead us to draw the wrong conclusions about many individuals. The reason for my making this claim is the fact that a person's indolence can make it the case that their beliefs are rational, even if radically false, and even if they motivate an individual to perform morally reprehensible actions. Let us look further at Stangl's indolence.

To be epistemically indolent is to be negligent or careless in one's investigatory efforts about a particular proposition. A true proposition relating to Stangl would be 'D: I, Franz Stangl, am playing a direct and morally culpable role in the death of thousands of persons'. This was a proposition which Stangl desperately did not want to accept as being true. Consequently, he did his very best throughout his career—indeed, throughout the remainder of his life—to avoid considering the question and to avoid being exposed to any evidence which might lead him towards recognizing the truth of the proposition. For example, Stangl shared with his biographer Gitta Sereny the fact that he actively avoided witnessing many of the most distressing and unpleasant aspects of the camp Treblinka's operation. Sereny asked Stangl what the worst place in the camp for him was. His answer:

“The undressing barracks,” he said at once. “I avoided it from my innermost being; I couldn’t confront them; I couldn’t lie to them; I avoided at any price talking to those who were about to die: I couldn’t stand it.” (203)

Sereny recognized that for Stangl, the prisoners’ fragility and vulnerability was most evident as they were forced to undress prior to their imminent execution. Had he been forced to admit that they were innocent humans, he quite likely would not have been able to continue with his work. Thus, he avoided witnessing this terrible moment, and instead found ways to dehumanize the prisoners in his mind. Stangl refused to consider propositions asserting, for example, that many of the victims were innocent children, and he likewise refused to empathetically imagine himself as being the parent of those children. Considering such propositions might have led him to accept proposition D as expressing the truth. Thus, he avoided events which might have confirmed D, and instead sought out events which would allow him to reaffirm his false beliefs that the prisoners were inhuman, or that they somehow deserved their treatment.

For example, Stangl admitted to often watching the prisoners being driven naked from the undressing barracks to the death chambers. In the following passage, Sereny has asked Stangl whether he ever thought of his own children when he viewed the young prisoners, and whether this prompted him to imagine the heartache of the parents of those children:

“No,” he said slowly, “I can’t say I ever thought that way.” He paused. “You see,” he then continued, still speaking with this extreme seriousness and obviously intent on finding a new truth within himself, “I rarely saw them as individuals. It was always a huge mass. I sometimes stood on the wall and saw them in the tube. But—how can I explain it—they were naked, packed together, running, being driven with whips like...” the sentence trailed off. (201)

Stangl had admitted to Sereny in this exchange that he never thought of the prisoners as humans. Instead, they were cargo to him. Stangl never oversaw the events which followed the prisoners’ last journey through the camp, so as to be able to not observe directly their horrible fate. As mentioned above, Stangl, with rare exception, took great

pains to avoid seeing any of the prisoners as individuals. He did not want to know their names, where they came from, or their histories. He knew that to learn such details would undermine his ability to perform his job. I argue that had he learned such details, he would have been confronted with even more incontrovertible evidence that his actions were not defensible. Setting this aside, however, even when Stangl did take the rare interest in a prisoner, he made certain that he was not familiar with the details of that prisoner's fate. When asked about particular prisoners—whether and when they had died, or if they had been one of the few to have survived—Stangl always responded that he did not know. The reader might recall the story of Blau and his father from an earlier section of this project as an example of this tendency of Stangl's. Another related example comes from the story of the young woman Stangl referred to as the "beautiful red-blonde girl".

Sereny had asked whether there had ever been a moment when the "wall" he had built around himself had been breached, "[w]hen the sight of a beautiful child perhaps, or a girl, brought you up against the knowledge that these were human beings?" (203). Stangl related that this young red-blonde Polish girl (he never knew, or could not recall, her name) had impressed him. The young woman was a replacement maid in the officers' living quarters. While cleaning in Stangl's office, he attempted to initiate her in pleasant conversation by asking whether she had yet chosen her room. The young woman calmly, and rather coldly, asked Stangl why he had asked such a question. When he did not answer, she asked to be dismissed. Stangl later realized that she had interpreted his question as indicating his desire to know the location of her sleeping quarters so that he might "visit" her. He was ashamed to have been so misunderstood, and was impressed at her courage and dignity to respond to him as she did. Yet despite the extent to which Stangl was impressed by this young woman, he put her out of his mind after she was "reassigned", and claimed that he did not know what happened to her. (203-204)

Now, I think it is highly unlikely that Stangl actually did not know what happened to Blau's father or to this young woman. However, we are considering Stangl's indolence

and whether it is possible that he could have had rationally justified beliefs in spite of this failure of his to gather evidence relating to his beliefs. It is rarely the case that our efforts to remain ignorant and to avoid being exposed to evidence which might undermine beliefs of ours which we suspect might be false will actually work. It is important that we do not forget this. However, if we are in theory able to do so, then those beliefs of ours would remain rational so long as we have evidence which on balance supports them. I say this because of what I take to be the plausibility of the evidentialist thesis that we ought to believe as our evidence indicates. If we do not have evidence which suggests that a belief of ours is false, then so long as the evidence we *do* have supports our belief, then the appropriate epistemic attitude for us to take is one in which we continue to believe. We should not change our epistemic attitude on the basis of evidence we do not have. We should, of course, be careful and honest in recognizing and admitting when evidence has presented itself.

This is part of why I suggest that Stangl really was not successful at avoiding evidence which might have confirmed the truth of D (that Stangl was in fact directly involved in the deaths of thousands of innocent victims). Stangl was troubled at the sight of undressing victims, and so he subsequently avoided having to see such a sight again. He did not want to think that he had a direct, morally culpable role in sending people to their deaths, so he avoided learning the specifics of the deaths. Stangl failed to realize, of course, that his initial viewing of the undressing barracks was already potent evidence undermining his belief that his actions were morally justified. He likewise did not admit that his efforts to avoid learning about the fates of the camp prisoners highlighted the fact that he already knew that they would die, and that he had a key role to play in their deaths.

Despite all this, we can still imagine a situation in which someone like Stangl could have intensified their efforts to seal themselves off from any circumstances which might potentially provide them with evidence contradicting their beliefs. Stangl could



have reached an early conclusion about the moral permissibility of his actions. Let us say, for example, that he initially accepted his first assignment because he had reason to think that he and his family faced immediate and deadly danger were he to have refused. Let us further assume (for argument's sake only) that this initial belief in the moral permissibility of his action was epistemically justified. Stangl could have, from that point out, refused to consider any new evidence and refused to have reexamined his beliefs. He could have become indolent to the extreme. It is theoretically possible, I concede, that if Stangl had been successful in these efforts, then his belief would have remained rationally justified. If it really were the case that Stangl was able to draw the appropriate conclusions based upon what would surely be a very limited body of evidence (but it would be all the evidence he had), then Stangl's beliefs would have been rational, in spite of his refusal to expand his body of evidence. Stangl could not be charged with irrationality for refusing to gather more evidence.<sup>57</sup>

This might seem like a potentially troubling conclusion to reach, especially in light of Levy's suggestion that the rational justification of a belief provides a person with a mitigating excuse if, upon acting upon that belief, he commits an actually immoral action. This might make it the case that, at least in theory, someone like the indolent Stangl might have been able to construct a cohesive web of beliefs supporting his belief that he was morally justified to accept the role and assignments of a death camp commandant. A slaveholder of the American nineteenth-century, for example, could have accepted that slavery was morally permissible and refused from then on out to reconsider the proposition. If that person surrounded himself with ardent slavery supporters, and was successfully isolated from any anti-slavery sentiment, then it is possible, at least in theory, that a coherent web of beliefs could be formed, in large part because of their indolence towards investigating propositions to the contrary. This is what led Levy to

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<sup>57</sup> See Fumerton and Foley's "Epistemic Indolence," pp 54-56 for more on this point.

argue that it would be unreasonable to expect a person in this situation to expend time and energy towards such an investigation, and that it would be similarly unreasonable to think the person irrational for being so indolent. Levy wrote:

...it is unreasonable to expect anyone to expend a great deal of effort in investigating the truth of something which they have very good reason to believe to be false. Again: moral reasoning is a coherentist affair....given that is the case, we ought, rationally, to expend our energy in attempting to make our moral beliefs more consistent, not in attempting to overthrow them completely. If you reject this line of reasoning, you commit yourself to the task of testing each one of your beliefs separately; it would take many lifetimes for you to complete your task. (156)

I agree with very little of what Levy states in this excerpt. I earlier argued that the individuals in our case studies surely did not have as coherent and consistent of belief structures as Levy assumes them to have had. I likewise argued that, contrary to Levy's suggestion, they probably had good reason to reconsider their beliefs and to look for relevant evidence. However, I will agree with Levy that *if* we determine that a person's beliefs are in fact coherent, and assuming that this coherence lends support, then we can conclude that the person's beliefs are rational. This person's beliefs can remain rational even in the face of continued indolence, so long as they remain coherent. However, I disagree vehemently with Levy when he claims that we ought to primarily be concerned with the task of making our moral beliefs more consistent. I think in making this statement, Levy is conflating two sorts of goals: namely, he is conflating epistemic goals with moral goals.

Stangl could have made his moral beliefs more consistent by simply refusing to form any new moral beliefs after having formed the initial belief that he was justified in accepting his assignments on the supposition that his family was in danger. If this belief was in fact so justified, then Stangl could have maximized consistency by refusing to consider any new evidence relating to this moral belief. I do not think that we want to conclude that because of the rationality of this belief, Stangl's moral responsibility was mitigated. We may not have an *epistemic* duty to gather evidence relating to our beliefs,

but I think that we do have a *moral* duty to gather such evidence. Thus, I think we have moral duties with epistemic content. I furthermore think that we ought to be concerned not just with the task of creating coherent and consistent beliefs (moral or otherwise), but also, and primarily, with obtaining *actually correct* beliefs.

In what follows, I will further elaborate upon this point. I will argue that while epistemic indolence may not be an epistemic mistake, it very well may be a moral mistake. This will be because I believe that we have moral responsibilities to seek out evidence relating to important, morally-charged issues. In my opinion, these responsibilities stem from our roles as moral agents, and I will argue that we have these duties insofar as we are moral agents, and regardless of whether we know we have them or not. I will counter Levy's claim that it would have taken any of the individuals in our case studies "a great deal of effort" to investigate the truth relating to their beliefs. Part of why Levy thinks it would be unreasonable of us to expect JoJo or the slaveowner to examine their beliefs and investigate the truth is because he thinks that such an investigation would be "arduous and difficult" (157). I will argue against this claim, providing examples related to each case study, in order to demonstrate that, contrary to Levy, thinking that these individuals could have, and indeed should have, acquired correct values and beliefs is not too demanding of an expectation.

## CHAPTER VII: IDENTIFYING THE GROUNDS OF MORAL CULPABILITY FOR FALSE BELIEF

At the conclusion of the previous chapter, I indicated that I would argue in favor of the claim that while epistemic indolence may not necessarily be an epistemic mistake, it may very well constitute a moral mistake. All of our case studies, to one degree or another, exhibited signs of epistemic indolence at one point or another in the course of their lives. I have argued of Jones and Stangl (and of many of the more minor case studies) both that their beliefs were most likely not epistemically justified, and that they furthermore exhibited epistemic indolence with regards to their general reluctance to seek out evidence relating to their moral beliefs about the permissibility of their actions. I have also suggested at various points that the individuals in our case studies exhibited a common characteristic in their reluctance to undergo projects of critical self-reflection which, had they exerted such efforts, might have led them to discover internal inconsistencies and contradictions among their beliefs (both moral and non-moral) and their values. In what follows, I will maintain that these behaviors and tendencies bear directly upon our assessment of their status as morally responsible agents.

I have suggested, for example, that Stangl, as a representative Nazi, was not—contrary to some suggestions—incapable of recognizing and appreciating the moral nature of his actions. I argued similarly that we have little reason to think that his belief that his behavior as a Nazi officer was morally permissible was epistemically justified, even from his point of view. I furthermore argued that it was in fact reasonable to have expected him to have believed differently than he did. I also made suggestions at various points that Stangl ought to have critically reassessed his beliefs at various points throughout his career, and that this was a reasonable expectation. And of course, I have indicated that I believe that his failure to live up to these expectations can be viewed as a moral failure.

To successfully defend my claims, however, I will have to be more precise, and may have to amend some of these statements. I think it should be clear to my readers that I think that Stangl (and Jones, and JoJo, etc) can be regarded as morally culpable for coming to have the false moral beliefs that they did and for acting upon them. Yet even as I have moved towards this assessment of Stangl and Jones, I have had to admit that it was not surprising that they would have come to have had the beliefs they did, or that they would have acted as they did.

This was especially apparent in the case of Jones. Given Jones's placement within history, and given his particular upbringing within a slave-holding society, it is surely not surprising that he came to have the beliefs he did about the morality of slavery, nor was it surprising in the least that he was a slaveowner himself. Sadly, it is not surprising that any particular individual in circumstances similar to those of Stangl's would have formed the beliefs he did and made the choices that he did. So too is it not surprising that any particular white Southerner in the early nineteenth century would have believed that slavery was morally permissible, nor is it shocking that any such person would have acted in such a way as to perpetuate the institution of slavery. Acknowledging such thoughts, Gary Watson observes that it is with a sense of irony that we may admit to ourselves that, had we been in similar circumstances, we very well might have believed and acted the same<sup>58</sup>.

We—like Jones and Stangl—may also very well have attempted to convince ourselves that our actions were morally permissible, and we quite possibly would have believed that we had justification (both epistemic and moral) for our beliefs and actions. After having read the details of their histories, we saw that Jones and Stangl claimed to believe that their beliefs and actions were epistemically and morally justified. Of course,

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<sup>58</sup> Gary Watson, "Responsibility and the Limits of Evil: Variations on a Strawsonian Theme," in Schoeman, ed., Pg 277.

we also noted clear signs of self-deception, evasion and affected ignorance at work in both of these case studies, which led us to question the sincerity with which they believed in the moral permissibility of their actions. We observed that both Stangl and Jones seemed to be trying to convince themselves that they were committing no moral crimes, and this led us to question the epistemic status of their beliefs. I indicated that Jones's and Stangl's beliefs in the moral permissibility of their actions were actually *not* epistemically justified, that even from their perspectives they lacked evidence supporting their beliefs, and I also suggested that they themselves were probably not genuinely convinced that their beliefs and actions were justified.

Even so, the following deeper question arises: what exactly is the connection between the epistemic status of a belief and a person's moral responsibility for holding and acting upon that belief? In previous discussions, I indicated that a lack of epistemic justification may provide us with grounds for making a moral assessment about an individual's culpability for holding these questionable beliefs. I also suggested that, while we must concede that displaying epistemic indolence will not necessarily render a belief irrational (or epistemically unjustified), we may nonetheless think that false beliefs which are maintained as a result of epistemic indolence may provide the grounds for the moral culpability of a person who acts in accordance with these false beliefs. Likewise, I noted that all of the case studies failed to engage in projects of critical self-reflection which, had they done so, might have led to their discovering the error of their ways. We must now attempt to determine whether these claims can be defended.

Thus, this final chapter will address the following question: Can any of the following provide the grounds for a person's moral culpability for engaging in wrong action? The possible grounds are: (A) the epistemic nature of that person's false belief (namely, the epistemically unjustified nature of a false belief which leads to wrong action); (B) a person's failure to engage in critical self-reflection; and/or (C) the fact that

a person displayed epistemic indolence which led to the retention of a false belief, which subsequently led to performance of the morally wrong action.

#### Montmarquet and Strategy (A)

Strategy (A) suggests that the moral culpability for wrong action may sometimes derive from the epistemic culpability that one has for holding a false belief. Thus, if a false belief leads to the performance of an actually morally wrong action, we would attempt to determine the epistemic status of the belief. The belief will be either epistemically justified or epistemically unjustified. We have come to understand this concept to mean that, if a belief is epistemically justified, then the evidence held by the person holding the belief actually supports the belief. Whether the belief is epistemically justified or unjustified, we will want to determine whether the person holding the belief is either epistemically or morally culpable for holding the belief. We will then determine whether our answer to these questions will translate to questions about the person's moral culpability for acting upon the belief.

In his article "Epistemic Virtue and Doxastic Responsibility"<sup>59</sup> James Montmarquet warns against strategy (A). Montmarquet puts forth a compelling argument for the conclusion that "...the lack of epistemic justification for a belief does not provide a sufficient basis either for its culpability<sup>60</sup>—or for the culpability of any action taken on its basis" (332). If we are to accept this conclusion, it seems as though many of my earlier judgments about Stangl and Jones are called into question. For example, if Montmarquet is correct, then I will not be able to say that Jones and Stangl were morally culpable for their false moral beliefs merely because they lacked the epistemic justification they thought they had. If they are not morally culpable for holding these false beliefs on the

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<sup>59</sup> *American Philosophical Quarterly*, Volume 29, Number 4, October 1992, pp 331-341.

<sup>60</sup> I take Montmarquet to be using "culpability" in the sense of *moral* culpability.

grounds of insufficient epistemic justification, then we have lost at least one potential link to their moral culpability for acting upon those false beliefs. But as I have already indicated, I will argue that Montmarquet's argument is successful. To convince us that we cannot ground moral culpability for belief and subsequent action upon the epistemic justificatory status of a belief, Montmarquet introduces us to Mary.

### Mary

In his first scenario involving Mary, Montmarquet hypothesizes that Mary forms a false, but epistemically justified, belief. He will argue that Mary is not culpable (either epistemically or morally) for forming this belief, and is similarly not morally culpable for acting in accordance with her false belief. In this first scenario, Mary forms the belief that the person charging towards her is a hostile stranger intent on causing her harm. Unbeknownst to Mary, she suffers from "some sudden and undetectable failure in her visual cortex"(332)<sup>61</sup>. Consequently, she does not realize that the approaching stranger is in fact her good friend coming to greet her. Acting upon the belief that he has malevolent intentions, however, Mary sprays her pal with mace, causing him serious pain and harming his eyesight. In this scenario, Mary thinks that she has solid epistemic justification for believing that her friend was a stranger about to attack her, and so she similarly thought that she had good (moral) justificatory reasons to defend herself against the imminent attack. Montmarquet thinks that, even though the evidence she acted upon was in fact false, we would nonetheless consider her to have a good excuse for acting as she did. He thinks that we would agree that Mary should not be considered morally

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<sup>61</sup> Montmarquet actually uses the terminology "externally unjustified belief" to refer to Mary's belief that she is about to be attacked by a stranger. He uses this language to indicate that her belief is not formed by a reliable process, insofar as it results from her visual failure. However, given what else he says about this scenario, I think it is clear that Montmarquet wants us to accept that Mary's belief is epistemically justified *from her perspective*. The evidence available to her supports her belief.



culpable either for forming the false belief or for acting in accordance with the belief, even though it resulted in causing her friend pain.

Extending his argument even further, Montmarquet argues that we would think Mary blameless even if the situation were altered so as to render her belief epistemically unjustified. Specifically, Montmarquet says that Mary's belief in this revised scenario will be internally unjustified. We would say that a belief is internally unjustified if it is held in spite of the fact that the believer (Mary) had internal access to evidence suggesting that the belief in question was false. Montmarquet asks us to envision a scenario in which Mary had been informed on good authority that she was highly susceptible to this type of hallucination. However, as Mary's friend approached her, and as she in fact began to hallucinate, Mary panicked and forgot about the prior warning. Once again, Mary formed the belief that she was at risk of being harmed by a violent stranger, and once again sprayed her friend with mace. Even in this altered scenario, Montmarquet thinks that we might consider her action to not be morally blameworthy. Mary indeed had access to evidence which, had she remembered it, would have spoken to the falsehood of the belief that she was about to be attacked. Nonetheless, Montmarquet thinks that, "...since most anyone would have formed this belief under these circumstances, it would be unfair (unreasonable, extreme) to blame Mary for forming this belief—and, consequently, unfair (etc.) to blame Mary for acting upon it" (332).

#### Problems with Montmarquet's Characterization of Mary's

##### Second Scenario

Montmarquet wants us to accept that Mary's false belief in this second scenario is epistemically unjustified, yet morally nonculpable, and that furthermore, she is not morally culpable for her wrong action. He presents this argument so as to convince us that the epistemic justificatory status of a belief will not decide matters of moral culpability for wrong action. While I will eventually agree with him on this point, I think

that we should take note of a problematic element of this description of Mary's situation. Namely, Mary's state of panic, and the fact that she forgot about the prior warning about her susceptibility to visual hallucinations, makes the case difficult to assess. I am not so willing as is Montmarquet to conclude that Mary's false belief was actually epistemically unjustified. Rather, I think that we may have reason to think that, while false, her belief that she was about to be attacked was indeed epistemically justified. I think that we can certainly understand why Mary panicked, and we should likewise think that she was not necessarily culpable for panicking. Montmarquet would surely agree with this; however, I think that we ought to consider the fact that, once she panicked and forgot about the prior warning, the evidence available to her as she was forced to reach a quick conclusion had changed in an epistemically relevant way. For all intents and purposes, Mary did *not* have available to her the evidence suggesting that she was suffering from an hallucination. She did not, then, have access to evidence which suggested that she was not about to be attacked. Thus, even though her belief was false, I think a case can be made that Mary's belief was subjectively epistemically justified. With Montmarquet, we will still think that she is not culpable (either epistemically or morally) for holding her false belief, and we will likewise think she is not morally culpable for acting upon it. Contrary to Montmarquet, however, we may still wonder whether, had her belief been epistemically *unjustified*, she would not then have been subject to being held morally culpable for either holding the belief or acting upon it.

We should thus consider two different examples, both of which present more clear-cut examples of epistemically unjustified false beliefs which lead to wrong action in order to see if the bad epistemic status of the belief allows us to make claims about the moral culpability for action.

### The Dinner Party Hostess

In this example (which is not provided by Montmarquet, but is rather mine), let us imagine that I am hosting a dinner party. As I am preparing ice cream sundaes for dessert, my guest Jayne asks me which of the unmarked bowls contains cherry sauce and which contains strawberry sauce. I respond that the bowl on the left is cherry. I believe this, yet in this example my belief is false and epistemically unjustified. It is false simply because the cherries are actually in the bowl to the right. It is epistemically unjustified, for, although when I tell Jayne where she can find the cherries I actually believe that I am correct, I also know (and have not forgotten) that I am prone to forgetfulness, and that I get easily flustered while hosting. Indeed, I merely guessed which bowl contained the cherries, insofar as I was flustered at scooping out the ice cream which I had not set out to soften. I essentially zeroed in on an answer, but once doing so became convinced that I was correct.

Jayne then proceeds to eat her sundae, and has an allergic reaction to the strawberry sauce. I think that in this instance, we can conclude that my belief was epistemically unjustified, and that it led to a wrong action (my serving a guest a dish to which she was allergic). I do not, however, think that we should readily conclude that I am morally culpable for the harm caused to my guest *simply* in virtue of the fact that it resulted from my acting upon an epistemically unjustified belief. If we think that I am not morally culpable for my friend's allergic reaction, it will be because of at least two important facts, neither of which have to do with the epistemic status of my actually false belief.

It is certainly relevant that, in this example, Jayne did not tell me that she was allergic to strawberries. Had she told me, I may very well have been more careful to separate the sauces. Thus, her omission provides me with at least a partially mitigating excuse. We may also think that I am not morally culpable for serving my friend strawberries (and thus causing her harm) because, even though my false belief was

epistemically unjustified, I did not, in coming to have this belief, display a general disregard for the truth, at least not to a level which we would necessarily conclude is morally culpable. In this example I had no reason to think that anything serious was at stake (this is in large part due to Jayne's failure to inform me of her allergy). While I did reach my conclusion about the location of the cherries rather hastily, and indeed, while I did fail to consider relevant facts about myself, we have no reason to think that making these sorts of quick inferences is necessarily a morally culpable pattern of behavior.

If, on the other hand, we think that I am in fact morally culpable for my action in this case, we should not maintain that it will be simply in virtue of the fact that my action was a result of an epistemically unjustified belief. If I am morally culpable, it will be because we think that, contrary to the above suggestion, my willingness to reach such hasty conclusions *is* a morally culpable tendency. It will be because we think that, though engaging in such thoughtless reasoning often leads to no harm, we know that it often can result in disastrous consequences, and we will thus think that I was not being sufficiently epistemically careful. Montmarquet will have more to say about this notion of epistemic care. For now, I will note that I recognize that this example may not be without controversy. However, I hope that it nonetheless convinces the reader that, regardless of whether we think I am morally culpable for causing my guest to have an allergic reaction, our assessment of me will not be determined *merely* by determining whether my false belief was epistemically justified or unjustified. To answer questions about my moral culpability for wrong action, we will have to consider *other* facts about the scenario.

#### Jones and Strategy (A)

Jones will provide a second example of an individual who held a false, epistemically unjustified belief which led to wrong action. Recall that I have argued that Jones was epistemically unjustified to believe that he was treating slave families properly. His belief was epistemically unjustified due to the fact that *his* evidence failed

to support this belief. Because Jones held the false belief that he was not mistreating slave families, he continued to perform many morally wrong actions insofar as he continued to separate them and insofar as he did little to protect their interests. Did Jones's culpability for his wrong actions derive from the epistemically unjustified status of his false belief? Montmarquet has suggested that the answer to this question is 'no,' but the example of Mary in the second scenario does not, after all, provide us with sufficient reason to accept his answer. Nonetheless, I think that we will be able to agree with Montmarquet.

Jones had an unjustified false belief which led to his performing morally wrong actions. I will maintain that Jones should be considered morally culpable for his wrong actions, but we cannot say that he was culpable simply in virtue of the fact that his actions resulted from an epistemically unjustified false belief. Jones should not have been certain that his (actually false and actually unjustified) belief was true, but once he *was* certain, Jones allegedly did not have reason to think that he was doing anything wrong. Subjectively, he had reason to think that he was acting in a morally permissible way. It does not seem obvious then, that his moral culpability for his wrong action can be directly derived from the fact that his false belief was epistemically unjustified. Even though we think that he should not have formed the belief in the first place, once it was formed, we can understand why Jones would have acted in accordance with it, and we can see how, from his perspective, he did not see reason to alter his behavior. We still realize, however, that had Jones critically reflected upon his evidence and his beliefs, he might have realized that his belief was false (and unjustified) and also that his actions were not morally permissible. Perhaps then, Jones's culpability for his wrong action derived from his failure to engage in projects of critical self-reflection. This brings us to strategy (B) from above.

### Montmarquet and Strategy (B)

Montmarquet is aware of the sorts of concerns with which we have been struggling throughout this project. In claiming that the epistemic justificatory status of a belief will not decide the question of moral culpability, Montmarquet does not want us to hastily conclude that figures like Stangl or Hitler (as Montmarquet discusses) will be able to claim that they were not morally culpable for holding their false beliefs or for acting in accordance with them. Montmarquet thinks that there is a relevant difference between cases like Mary's and Hitler's, but identifying this difference may be a more difficult matter than we initially thought.

Even though Mary was in fact wrong, we nonetheless concurred that she had an acceptable moral excuse and found her to not be morally culpable either for forming her false belief or for acting upon it. But Hitler, too, was convinced that he had epistemic justification for his (radically) false beliefs and values. Should we then, by extension, argue that Hitler was not morally culpable for believing, for example, that the Jews were involved in a worldwide conspiracy to annihilate the Aryans, and for his implementation of the Final Solution? Indeed, we should not, and on this point Montmarquet agrees. In order to separate the two cases, however, we will in fact have to identify a relevant difference between the two cases.

To this end, Montmarquet considers the suggestion that "the exigency" of Mary's circumstances provided her with a morally relevant detail (332). Indeed, it could correctly be pointed out that Mary did not have sufficient time, as her perceived attacker advanced, to step back and sort through her beliefs and evidence in order to check whether her belief about the nature of the approaching figure was in fact true. We could argue, on the other hand, that Hitler was presented with a multitude of opportunities to perform these sorts of checks. Hitler, of course, would have denied this. He certainly would have described his situation as one characterized by urgency: he thought that the alleged Jewish threat was building fast, and he thought that he needed to be unhesitating in his

decisions and actions. Nonetheless, we could still maintain that Mary's situation was characterized by a much more immediate threat; she had mere seconds to react, whereas Hitler did have time to reflect. Though he thought the alleged threat posed by the Jews was serious and imminent, he nonetheless had days, weeks and months to reconsider his beliefs and his plans. Perhaps instead of hosting so many dinner parties, for example, he could have engaged in critical self-reflection. Consequently, we may think that Hitler's failure to do this, given the additional time which was available to him for reflection, is a ground for his moral culpability for his actions.

Montmarquet identifies this strategy as attempting to ground Hitler's culpability in his failure to perform a particular action—namely, the action of subjecting his beliefs to “reasonable scrutiny”. The strategy, he explains, attempts to assert the following:

Doxastic responsibility is ultimately a matter of failing to take actions which, from an epistemic and sometimes from a moral standpoint as well, one should have taken. No longer is the purely epistemic defectiveness of one's beliefs the issue; the issue is now the epistemic inadequacy of one's *conduct*. (332-333)

I have made similar sounding charges against Jones and Stangl throughout this project. I have indicated, for example, that Jones should not have been as certain as he was about the alleged moral permissibility of slavery, and that in spite of his eventual certainty with regards to this belief, he should have further reflected upon his beliefs and the evidence which he had available in order to discover that he lacked genuine epistemic justification. I likewise said that Stangl should have given proper attention to the evidence he had, and that he should have subjected his beliefs to a much higher degree of scrutiny. Because these two men failed to perform these checks upon their beliefs, I indicated that we may think they were culpable for holding them, and of course, for acting upon them.

Montmarquet, however, warns against this argument strategy insofar as he thinks it will lead us towards a dangerous regress.

If we consider Montmarquet's example of Hitler, we will note that Hitler failed to perform checks regarding the epistemic status of his beliefs because he was, in his mind,

sufficiently convinced of their truth such that he believed that further checking was unnecessary (333). If we were to object that Hitler ought to be considered culpable for falsely believing *this* (that further checks were not necessary), Hitler would predictably respond that he had no reason to verify this belief: he was similarly convinced that he had no reason to verify the alleged fact that he was justified in believing that he was justified to believe that the Jews, for example, entertained an evil plan for world domination. We could attempt to pinpoint Hitler's culpability at each higher level, but such attempts would fail. If Hitler's belief that further checks were unnecessary was culpable, it would be so

...in virtue of Hitler's having failed to take appropriate actions, by way of verifying *it*. But, of course, any such omission, from Hitler's own standpoint, will be justified by the belief that checks at this level were *also unnecessary*. *Again, we can find that belief culpable in virtue of his failing to check on it—but it seems quite clear that a regress is going to ensue.* (333)

While Montmarquet's point seems well-taken, it may nonetheless be difficult for us to release the thought that Hitler committed a serious failure—indeed, a moral failure—in his refusal to critically reflect upon his beliefs and values. So much was at stake with regards to his subsequent actions. Hitler surely knew that his beliefs about non-Aryans and his subsequent actions towards them were moral in nature. He was committed to bringing about the deaths of millions of people. Hitler could not have been ignorant of the fact that this was a moral issue, and he likewise could not have been ignorant of the fact that had he been wrong (which of course, he was), he would have committed a *tremendous* moral mistake.

The same holds true, of course, for Stangl and Jones. Stangl certainly knew that his participation in the Holocaust was a moral issue; he was concerned with being able to point to moral reasons which would justify his actions. Jones too was aware of the morally-charged nature of slavery, and was concerned with “getting it right”; he knew that much was at stake, and was concerned with acting in a morally acceptable manner.



Given the moral significance of these men's beliefs and actions, can we not hold them culpable for failing to exert an extra effort with regards to verifying the epistemic status of their beliefs? Montmarquet's sober answer is 'No'.

He is aware of this objection, and recognizes that we may want to demand of the Hitlers (and Joneses and Stangls) that they exert a special effort to be sure that they are right before they perform actions, the consequences of which would be disastrous were they to be wrong (333). Yet, so long as we recognize the possibility that Hitler was convinced that he had sufficient evidence to meet even this "higher standard," we must avoid leveling this objection in order to avoid falling susceptible to the same regress outlined above. So long as Hitler can rejoin by saying that he was sufficiently convinced of the truth of his beliefs—even with his admission that acting upon his beliefs had serious moral consequences—he would be able to maintain that he had no reason to submit them to further scrutiny. And of course, because he was convinced that he had no reason to conduct further checks, he would reject our claim that he was unjustified to believe *this*.

At this point, we may have accepted that we cannot mark Hitler's false beliefs as being culpable in virtue of his failure to perform further checks of verification. But perhaps we may still be tempted to argue that Hitler's culpability for his false beliefs was derivative from his culpability for *other* morally questionable actions. Perhaps, for example, we could point to his tendency to engage in practices of self-deception as providing us with the grounds to label his beliefs culpable. If we could argue that his self-deceptive actions directly led to the formation of his false beliefs, and if we could argue that these self-deceptive actions were culpable, then his doxastic responsibility might be considered derivative from this responsibility for action. Similarly, we might try to point to morally questionable motives which led Hitler to engage in questionable evidence-gathering procedures, which then led to his formation of the false beliefs. In this case, too, we might be able to ground his doxastic responsibility upon this prior responsibility

for action. Once again, however, Montmarquet stops short these strategies. His explanation should remind us of some of the lessons learned in the previous chapter as presented by Feldman's Evidentialism. While I think that Montmarquet provides us with some valuable insight in this coming section, I nonetheless think that elements of his argument are confusing, and perhaps even contradictory. I will thus do my best to keep separate claims of Montmarquet's from my own.

### Judging Beliefs and Judging Believers

Recall that Feldman suggested that the appropriate epistemic attitude for us to have towards any given proposition which we entertain is that attitude suggested by our evidence. If our evidence on balance supports a particular proposition, then we ought to believe it, etc. While Montmarquet does not, in this article, proclaim himself to be an evidentialist, his claims nonetheless seem to me to be consistent with the theory. Montmarquet tells us that a belief is to be judged not on the process by which that belief came to be held, but on the basis of the evidence on which it is believed (334). Thus, even if Hitler came to form the beliefs he did because of malevolent motives (that is, he specifically sought out evidence which he hoped would reinforce his hatred for the Jewish race), we would judge any resulting beliefs solely on the basis of whatever evidence he in fact discovered and on which he formed his beliefs. To support his claim, Montmarquet offers a thought experiment in which he is a fraternity pledge acting upon bad motives.

In this case, he imagines that he needs to motivate himself to perform a cruel prank as part of an initiation right. Montmarquet wants to believe that his participation in this prank is morally acceptable, and sets out to find evidence which would support this belief, which he initially, at least, suspects to be false. If, however, in the course of this project, he comes to discover and do what is *actually* right, then Montmarquet maintains

that we would judge the status of his belief, and his culpability for holding and acting upon it, independent of his motives. This leads him to conclude the following:

Even when I do form a belief on the basis of prior, epistemically culpable actions, I am judged for forming the belief quite independently of this prior action and its motivation (or intention); I am judged—as I am in the fraternity case—on the basis of what reasons (evidence) actually led me to the act (belief). (334)

Thus, if we return to the case of Hitler, even if we recognize that his motives were surely malicious, we would judge him poorly for holding a particular false belief—say, that the Jews were engaged in a plot to gain world domination—only if it were the case that his belief was formed in light of insufficient or faulty evidence, from the subjective perspective of Hitler. We know that evidence contradicting Hitler's beliefs existed, but if for some reason he was not confronted with this evidence—if he did not have access to it, even if the reason he did not have access to it was because he undertook no efforts to seek relevant evidence—then the existence of this evidence does not count in our assessment of the epistemic status of his beliefs. We will judge whether Hitler ought to have accepted that the Aryans were in danger on the basis of the evidence he actually had, and on the basis of the propositions relating to this claim which he actually considered. If Hitler dismissed any facts which spoke against this proposition, and if the evidence he recognized did not on balance support the proposition, then we would say that he did not have sufficient epistemic justification for thinking the (actually false) proposition was true. Of course, we must remember the earlier lesson from above. We cannot judge Hitler morally culpable for holding (and acting upon) this false belief solely on the basis that it was not epistemically justified. The case of Mary was meant to show that our judgments of culpability for belief are not logically entailed by our judgments about the epistemic status of a belief. Thus, even though it is surely the case that *many* of Hitler's beliefs were not epistemically justified, we still do not have all we need to hold him morally culpable for holding these beliefs.

Indicating how he will ultimately assess Hitler, Montmarquet suggests that if Hitler were to be held culpable for holding his false beliefs and for holding them with the degree of certainty with which he did, it would be on the grounds that "... he had no right to be certain in the first place—and not that, regardless whether he was certain, he should have conducted further checks" (333). Based upon what he has said in his explication of the fraternity example, Montmarquet would supposedly also claim that we would not judge Hitler to be culpable for holding his false beliefs in virtue of the fact that they were prompted by bad motives. Given what he will soon argue, however, I am confused by this claim of Montmarquet's. I will return to explain this confusion, but in order to do so, will first need to elaborate upon what Montmarquet means by claiming that Hitler "had no right to be certain".

Montmarquet suggests that our responsibility for what we believe may be grounded in facts about our intellectual characters (334). Hitler's culpability for holding false beliefs then, would allegedly result from Hitler's tendency to allow his conduct to be governed by what Montmarquet calls "more basic flaws of intellectual character" (334). He cites Allan Bullock's (one of Hitler's biographers) following depiction of Hitler's intellectual character:

Hitler's was a closed mind, violently rejecting any alternate view, refusing to criticize or allow others to criticize his assumptions. He read and listened, not to learn, but to acquire information and find additional support for prejudices and opinions already in his mind<sup>62</sup>.

If we characterize Hitler's closed-mindedness as an intellectual vice, we can now hypothesize that it was due to his exercising this vice that we might think he had no right to be certain of the truth of his beliefs.

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<sup>62</sup>Bullock, *Hitler: A Study in Tyranny*. New York: Harper and Row, 1962. P. 398. Cited by Montmarquet, p. 335.

Hitler exhibited a disheartening pattern of poor epistemic conduct, and displayed an apathetic disregard towards the project of forming objective, reasoned and balanced judgments about the world. Given his perpetual lack of respect for the truth, and given his failure to acknowledge the possibility that he was fallible, we can observe that it is no wonder that he came to form the radically false beliefs that he did. We recognize that a personality which is marred by vices such as closed-mindedness, bigotry and an inflated sense of superiority will inevitably lead to the formation of false beliefs and values. This is a conclusion which we can reasonably have expected Hitler to have reached. He ought to have recognized that for any individual to allow these vices to develop, and to allow them to be exercised, could quite predictably lead that person away from the truth (both moral and non-moral). Montmarquet claims that it is consequently because Hitler allowed his conduct to be governed by these vices that we can now deem him to be morally culpable for holding, and acting upon, false beliefs.

While I think that Montmarquet's suggestion is compelling, and while I think that he may very well be on the right track towards identifying the grounds for considering a person to be morally responsible for holding false beliefs (and for subsequently acting upon them), I nonetheless worry that his prior discussion of motives may present a confusion here. Recall that Montmarquet argued that a person's motives for forming a particular belief are not relevant to our assessments of that belief. He has now begun to argue that a person's tendency to exhibit epistemic vices *will be* relevant to our assessments of that person. However, if we think that vices may just be seen as dispositions to have (and act upon) certain motives<sup>63</sup>, then we may think that Montmarquet is contradicting himself.

I think that we would indeed reach this conclusion if we do not keep clear the distinction between a justified belief and a justified believer (or the justified conduct of a

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<sup>63</sup> I thank Diane Jeske for this observation.

believer). Montmarquet himself is not particularly careful with regards to this point. We should now understand that an epistemically justified belief can result from a person acting upon bad motives. When we judge the epistemic status of a belief, however, we should not be concerned with the motives which prompted the believer to form the belief. Once again, a belief is epistemically justified if it is held in light of supporting evidence. However, insight into motives can provide us with insight into the believer's character. Even though a believer may have, in a particular instance, "lucked out" and formed an epistemically justified (but actually false) belief, the alleged truth of which she is then certain, we can claim that the believer had no right to be certain. This is not due to the fact that her evidence allegedly does not support her (actually false) belief, for if her belief is epistemically justified, then her evidence *does* support it. Rather, she has no right to be certain of the alleged truth of her belief because it was formed as a result of her exercising an intellectual vice (or acting upon bad motives). This person should have realized that allowing one's conduct to be guided by such vices will rarely lead one towards the truth. Because of *this*, Montmarquet suggests that she is morally culpable for forming the false belief (even if it is epistemically justified), and we can thus say of her that she is morally responsible for holding the false belief and for acting upon it. This is a rather complicated, and I predict, controversial, claim. Nonetheless, I suggest that it is initially intuitive, and I suggest that we grant it further consideration.

#### Moral Responsibility for our Intellectual Characters

This suggestion of Montmarquet's, however, brings to the foreground a familiar worry, one of which he is duly aware:

But this raises the following difficulty. If the real source of Hitler's culpability lies in his intellectual character, it must lie in something for which he possesses surely no *direct* responsibility after all....How to prevent responsibility for belief—and, to a larger extent, action as well—from dissolving into the murky origins of our "personalities"? (334)

This concern is reminiscent of similar worries raised by Wolf. Wolf has already reminded us of the fact that we cannot claim to be directly responsible for the formation of our characters or personalities. In her terminology, we are not directly responsible for our “deep selves”. This observation led Wolf to argue that, in order to be considered morally responsible agents, we must be in possession of “sane” deep selves. That is, she argued that, rather than thinking that we need to possess direct control over our personalities or deep selves, we need to *be* a particular way. For Wolf, this meant that we needed to possess the ability to cognitively and normatively recognize and appreciate the truths (both moral and non-moral) about the world. If we possess this ability, then Wolf said that we had sane deep selves. Upon a closer examination of Wolf’s theory, however, and upon the application of her theory to important and relevant case studies, we found her theory of moral responsibility to be unsatisfactory. Even so, she did advance our study in many ways, not the least of which was her reminder that any attempts to provide an analysis of moral responsibility had best not require of us that we be directly responsible for the formation of our personalities, characters or deep selves, for we are surely incapable of being so.

Montmarquet has suggested that our responsibility for what we believe may be grounded in our responsibility for our intellectual characters, which has led us to wonder whether he is claiming that we must be able to exert some form of direct control over our personalities, insofar as our personalities arguably can be described as the amalgamation of our character traits. He assures us, however, that he is not making of us such an impossible demand. It is perfectly consistent, he claims, that we can admit that we are not directly responsible for our character traits, and yet maintain that we can be held responsible for *exercising* those traits. Montmarquet cites Shakespeare’s jealous and traitorous Iago to convince us of this point, claiming that we do not have to hold Iago responsible for having these bad traits of character, but rather, just for “allowing his conduct to be governed by them” (335). Montmarquet’s discussion of Iago is not

extensive, but I think we can take him to mean that, even though we do not know why or how it is that Iago came to be the villainous man he was, we can nonetheless condemn him for acting in villainous ways. Indeed, Shakespeare does not provide us with a biography of the character, nor should we think that the existence of such a history would necessarily alter our assessment of the character.

Perhaps Iago was so unfortunate as to have suffered a childhood of neglect or abuse. Perhaps he was raised by villains and had instilled within him a morally dubious code of conduct which advocated an egoistic ethic. It is quite likely that Iago's character was a natural, or at least unsurprising, outcome of a morally deficient upbringing. Nonetheless, we are faced with the adult Iago in Shakespeare's *Othello*, one who seems to have fully embraced his vices, and who exercises them with fantastic and tragic efficacy. Iago could certainly not have been in control of his birth and upbringing, and thus could not, in an important sense, have helped but to become the sort of man plagued by such vices of character. Perhaps most persons raised in similar circumstances as we have been hypothesizing would have matured into adults prone to traits of jealousy and selfishness. This recognition, however, is separate from our judgment that any such person can nonetheless appropriately be held responsible for allowing those tendencies to dominate his or her behavior. I—along with Montmarquet—think that we can expect of mature adults who possess normal cognitive capabilities, that they are under the obligation to be consciously self-aware<sup>64</sup> of their character traits, and that they ought to be concerned with exercising virtues. A person prone to jealousy, for example, is under the obligation to be aware of this tendency in himself and to take pains so as not to exercise this vice. This will hold true even if we are able to explain, upon examination of

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<sup>64</sup> I will return to discuss the problem of individuals who are prone to unawareness. We may worry that if a person is prone to such a tendency, and if this is a result of his upbringing (which might suggest that he is nonculpably unaware of his vices), then we may think that I cannot claim that he remains culpably ignorant of facts about himself, or that he is morally responsible for holding and acting upon any false beliefs which result from his exercising these intellectual vices.



that person's background, why it is that he has such a vice, and even if we can empathize and recognize that we too would most likely suffer from such vicious traits had we experienced similar histories<sup>65</sup>. We can hold consistently the claims that Iago was not responsible for the formation of his vicious character, and yet he *was* responsible for acting in vicious ways. By extension, if we apply this to the case of Hitler, Montmarquet argues that we will recognize the following:

Hitler's culpability (in regard to his beliefs) may ultimately be traced to those negative traits of intellectual character, such as the aforementioned closedmindedness, which quite obviously shape the nature and general direction of his beliefs. But, again, this does not have to mean that Hitler's responsibility for his beliefs is somehow derivative of his more direct responsibility for his closedmindedness, etc. As with Iago, we may want both to hold Hitler responsible for allowing these vices to be *exercised* in the formation of his beliefs—without holding him responsible in anything like a direct way for the existence of those vices. (335)

Hitler carelessly allowed his epistemic vices to reign free, and for this, we *can* hold him responsible. Leveling this charge against Hitler naturally leads us to ponder questions about the alleged traits of intellectual character. Montmarquet has accused Hitler of exercising an intellectual vice of closedmindedness, and he argued that any culpability Hitler may have had for holding false beliefs can be grounded in his willingness to exercise this vice. Montmarquet recognizes that to further advance his theory, we will need to ponder important questions about the intellectual virtues and vices. If moral responsibility is dependent upon the possession and exercise of these virtues, we will of course need to enumerate them. Ultimately, we want to gain as clear a picture as possible of a good epistemic character.

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<sup>65</sup> Gary Watson discusses this in the piece cited above. See in particular his discussion of Robert Harris.

### Epistemic Conscientiousness

Montmarquet notes that this will be a separate, and most likely large, project. Nonetheless, he takes an initial step towards sketching out such a view. He explains that, at a minimum, a good epistemic character would involve an “underlying desire to believe what is true and to avoid belief in what is false” (336). He calls this trait “epistemic conscientiousness”(336). While Montmarquet hypothesizes that there may be other individual intellectual virtues, he thinks that our recognition that Hitler failed to exhibit *this* virtue will be enough for us to ground Hitler’s moral culpability. Hitler, according to Montmarquet, clearly did not exhibit epistemic conscientiousness:

Whereas Hitler would not have (and could not have) consciously set about believing what he took to be false, Hitler’s underlying attachment to the truth seems to have been quite weak; his underlying tendency to believe what gave him emotional support, quite strong. (336)

It is thus because Hitler lacked this intellectual virtue of conscientiousness, and because he allowed his competing intellectual vices such as closedmindedness to dominate his behavior, that we can ultimately hold Hitler (morally) responsible<sup>66</sup> for forming the false beliefs that he did and for subsequently acting upon them. Just as we can be considered morally responsible for exercising our virtues (both moral virtues and intellectual virtues), so too can we be held responsible for failing to exercise them. Hitler failed to take care with his intellectual endeavors, and can thus be held morally responsible on the grounds that he did not sufficiently attempt to exercise better traits.

We may be worried that this newly revised view is still open to an earlier objection, perhaps thought to have been put to rest. Namely, we earlier recognized that we could not argue that Hitler’s moral culpability for holding false beliefs did not derive from his failure to have subjected his beliefs to further scrutiny. Because he would have

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<sup>66</sup> At this point in his discussion, Montmarquet does not make consistent distinctions between “epistemically responsible” and “morally responsible”. I interpret him to mean “morally responsible”. Doing so results in his argument being more consistent.

responded that he was sufficiently convinced of the truth of his beliefs, we would not have been able to argue that he had available to him a reason to reexamine his beliefs about the nature of the Jews or about his belief that he had (allegedly) good justification for those beliefs. For us to have argued such would have led us down a path of regress, where at each step Hitler would have said that he was sufficiently certain, such that he had no reason to reexamine each higher level belief. Fortunately, Montmarquet claims that we are not vulnerable to such a regress with this new proposal. When we charge Hitler or Iago with having failed to be sufficiently openminded or benevolent, we can reject their claims that their certainty provided them with reasons to continue to believe and act as they did:

...a Hitler may falsely regard himself as being “sufficiently openminded”—just as an Iago may regard himself as “sufficiently benevolent”—and *still* be culpable for being closedminded or malicious. If either man should reply that “because I thought myself sufficiently virtuous in regard to this quality, I can hardly be expected to have made any greater effort to exhibit it”—the reply in turn should be the same. In a given circumstance, a certain level of effort, either of intellectual or moral, may rightly be expected of one. The fact that one did not see the need for such effort may itself simply reflect that one was not exerting that effort in the first place. Hence the excuse, as stated, is question begging. (336-337)

So, just as we must take care with what we do, so too must we take care with what, and how, we believe. Exhibiting a degree of care with regards to how we form our beliefs is otherwise known as displaying epistemic conscientiousness.

Montmarquet argues that “being careful” (or being epistemically conscientious) should not be considered a separable action, but is rather a mental state which is exerted as one performs actions (337). To illustrate this point, he provides us with an analogy of a woodcarver who carves carefully (or who takes care in his carving). The care shown by the woodcarver is not an action separable from the actual movements made by the carver as he works his wood. Rather, Montmarquet says that the care is expressed in “a single exertion of mental effort” (337). The carver would describe this effort as “maintaining

[his] concentration” or, from our vantage point, we might describe the care with which he is carving as being evident through the careful way with which he moves his fingers (337). Montmarquet relates this example of the woodcarver to the case wherein we would say someone is believing carefully:

...in both cases [woodcarver and believer], care involves the maintenance of an appropriate frame of mind which is to be *expressed* as one confronts the medium in question. The difference is simply that in one case the “medium” is what the carver is working upon, in the other it is what propositions the subject is confronted with and which he or she must either accept or not. Just as the carver’s care is expressed *in* his work, the believer’s care is expressed in the attitude she actually employs, or fails to employ, in the process of evaluating and ultimately accepting or not accepting the propositions in question. (338)

Accepting then, that this is an accurate picture of what it means to say that we can believe with care (or conscientiously), we will recognize that most, if not all, of the figures in our case studies failed to exercise appropriate epistemic conscientiousness relating to their individual circumstances. Because I—along with Montmarquet—believe that we have a *moral* duty to develop and exercise this epistemic virtue, we will be able to consider these figures morally responsible for their failure to exhibit better epistemic virtues. We will likewise be able to consider them morally responsible for forming their false beliefs and for any subsequent harm which resulted as consequences of their acting upon their beliefs. I will thus next discuss the ways in which each of these individuals can be viewed as having failed to be epistemically conscientious. I will then attempt to explain why it is that I think this failure was a moral failure on their parts, and why they were under this moral obligation to believe carefully, even if they themselves were not *aware* of their obligation.

## Returning to the Case Studies

### A New Case Study: Othello

I will begin with a couple of the “smaller” case studies. Let us first discuss Othello. Just as we observed that Iago was responsible for allowing his conduct to be governed by his vices (even if we thought he may not have been directly responsible for coming to have these vices), so too can we observe that Othello did not exhibit a sufficiently high degree of epistemic conscientiousness as he fell prey to Iago’s wicked scheme. While certainly a victim in the play, Othello nonetheless bore some responsibility for his own downfall, and certainly was not blameless (or nonculpable) for his actions taken against his wife, Desdemona.

Othello was quick to believe on the basis of rumors and paltry evidence that his wife was engaged in an affair. Othello failed to see that a man in his position might be subject to traitorous schemes, and he failed to give due consideration to the possibility that all might not have been what it seemed. Rather than heed the protests of his wife, and rather than rely upon their history of love and trust, he placed his trust in the unsubstantiated rumors of servants and colleagues. While their views certainly ought to have been given consideration, he disregarded his wife’s proclamations of innocence rather readily, and instead took to be as trusted authorities those who in fact lacked solid credentials. All of this indicates that he did not sort through the tangled mess of evidence with sufficient care. Othello reached his conclusions about his wife’s alleged guilt with unjustified hastiness, and though he may have been an innocent victim in other respects, his false belief that his wife had betrayed him was culpable, and he was culpable for acting upon it (for murdering Desdemona), even though he was deeply convinced of its truth.

### The Doctor

Levy's doctor can be charged similarly with failing to exhibit a sufficiently high degree of care with regards to the formation of his beliefs about germ theory. We acknowledged that the doctor may initially have been epistemically justified to have rejected the proposition that germ theory provided the correct explanation for the cause of many diseases. However, we also noted that the doctor would not have been justified to continue to hold his belief that the theory was the theory of "quacks" due to his likely exposure to increasing evidence to the contrary. In light of what we have learned from Montmarquet, we can concede that we should not consider the doctor to have been morally culpable for holding his false belief solely on the grounds that it was not justified (as I argued that it surely was over time).

However, we *can* claim that his continued belief in the supposed falsity of the theory was morally culpable insofar as he retained it in large part because he failed to acknowledge as being relevant evidence new reports about the theory's predictive and explanatory powers. He likewise was culpable for failing to acknowledge the epistemic duty he had in virtue of being a doctor that he remain up-to-date with advances in his field. Similarly, he failed to acknowledge the important premise that investigatory advances in the sciences are subject to fallibility. The doctor failed to recall that it is an historical and distinguishing feature of scientific beliefs that, though they once may have been held nearly universally and with great certainty, that they are often overturned in light of new discoveries. It would certainly be unreasonable to require the doctor to examine all newly proposed medical theories, yet we can nonetheless maintain that, as the theory gained acceptance, and as reports on the theory increased, then the doctor's obligation to pay heed increased. The doctor did not let this important fact guide his thought as he considered the evidence before him relating to germ theory. It is for all these reasons (and others, outlined in our previous discussion) that we can say that the doctor did not exhibit proper care as he formed his beliefs.

### Franz Stangl's Lack of Epistemic Care

It will be even easier for us to identify a lack of proper epistemic care in the case of Franz Stangl. If epistemic conscientiousness is marked by one's "underlying desire to believe what is true and to avoid belief in what is false" (Montmarquet, 336), I think that we can find a multitude of evidence which would indicate to us that Stangl lacked this desire, and that his investigatory efforts were quite careless. Above almost anything else, Stangl appears to have been motivated by a deep psychological desire to be convinced that his actions during the war were justified. He was likewise motivated by a strong, and indeed understandable, fear that he and his family were in danger<sup>67</sup>. Unable, or unwilling, to recognize that he was not in as imminent of danger as he wanted to believe—or unwilling to believe that even if he *was* in significant danger, that this would not necessarily have provided him with a justificatory excuse for all of his actions undertaken as a death camp commandant—Stangl sought to identify evidence and create arguments which would convince him that his actions were morally permissible. Had Stangl been forced to admit to himself that his choices were not morally justified, he quite understandably may not have been able to have lived with himself. Nonetheless, to say that Stangl was motivated by a desire to believe that he was correct is *not* to say that he was motivated by the sort of desire which Montmarquet has told us is necessary in order to be epistemically conscientious. Stangl was *not* moved by a desire to *be* right in

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<sup>67</sup> In previous discussions of Stangl, I indicated that we might conclude that Stangl was deceiving himself about this alleged fact. That is, I suggested that Stangl might not have really believed that he and his family were in serious or imminent danger, yet believing that if they were, then he would supposedly be able to justify his choices to cooperate with the Nazis, he undertook efforts to convince himself of their supposed danger. If this was the case, then we might not want to say that he honestly feared for his family. However, two points can be made about this possibility: (1) if Stangl did engage in such self-deception, I think that he was ultimately successful, and eventually came to believe that his family was at risk; (2) furthermore, the fact that Stangl engaged in such self-deception indicates a general, and morally culpable, lack of regard for the truth. Given what was at stake, and given that he surely recognized that much was at stake, he was not morally justified in his failure to exhibit epistemic care as he considered the proposition that his family was in danger.

any objective sense. He rather wanted to be able to *believe* that he was right<sup>68</sup>; he wanted peace of mind, and it did not seem to trouble him much when it was pointed out that his conclusions may have been formed on the basis of faulty evidence.

Stangl's thought was characterized by motives of fear and ambition, and were further characterized by consistent patterns of self-deception. Montmarquet has indicated that we cannot judge Stangl culpable for holding any false beliefs which resulted from these poor motives *simply in virtue* of the fact that they so resulted. However, I think that we actually can judge him on this basis, and indeed, I think that doing so is consistent with Montmarquet's general claims. This is where Montmarquet needs to be a bit more explicit in making distinctions between judging beliefs and judging believers. If we are to judge the epistemic status of Stangl's beliefs, then Montmarquet is correct to argue that those of Stangl's motives which prompted him to form the belief are not relevant. As has been pointed out, we will judge the epistemic status of a belief not on the grounds of the motives which prompted it, but rather in virtue of whatever evidence it was in fact formed. Many of Stangl's beliefs were in fact epistemically unjustified insofar as the evidence upon which he based them did not in fact support them. Nonetheless, his *moral* culpability for holding those beliefs derives not from this poor epistemic justificatory status. I do, however, think that Stangl's bad motives are indeed relevant as we address the question of his moral culpability for coming to hold an unjustified belief which in turn led to wrong action.

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<sup>68</sup>We might wonder whether Stangl would have put it this way. I have suggested that Stangl was primarily concerned with being able to *believe* that he was right, and not that he actually *be* right. We may think that he instead wanted both of these to be true. Most of us, after all, especially in our roles as philosophers, are concerned not just with being able to say that we believe that our views are correct, but that they actually are correct. We aim at the truth. While I think that this is the epistemic goal towards which we all *should* aim, I am not so confident that it is commonly shared, and certainly not that it was shared by individuals like Stangl. Indeed, I think that there are many persons who are not particularly concerned with knowing that their beliefs are true; rather, they are satisfied with confidence as opposed to confirmation.



We will consider Stangl morally responsible and deem him culpable insofar as he was culpable for allowing his epistemic vices to be exercised in the first place. Stangl ought to have been aware that proceeding to form beliefs about the world (both moral and non-moral) when moved by such vices as greed and excessive ambition will quite likely lead one away from the objective truth. He furthermore ought to have been aware of these tendencies within himself<sup>69</sup>, and ought to have been on guard so as not to have allowed them to dominate his behavior. Stangl was less concerned with getting things right and with being able to identify the objectively correct (or morally permissible) courses of action than he was with being able to say to himself that he was correct.

Stangl ought to have been aware of the fact that he was in a position in which, were he to have been wrong (which he in fact was), the consequences of his choices and actions would have been devastating. Were Stangl to object, and claim that he was absolutely convinced that he was believing as he ought, and that he was taking sufficient care to weigh his evidence and reach careful conclusions about the moral permissibility of his behavior, we could nonetheless reject his protests. We would say that his degree of certainty that he was being sufficiently careful in light of the circumstances constituted for us evidence *against* his claims. We would say that the fact that he was certain, in spite of the fact that what was morally at stake was so high, provides us with evidence for thinking that he was not being epistemically careful as he assessed his situation. We can likewise reject any potential claims of his that he was not aware of the fact that his situation required him to exert special care. Montmarquet explains:

Once again, this is an excuse which should not always or automatically be granted: the fact that one did not perceive the situation to call for a special effort is not always or necessarily exculpatory, for this lack of perception may, and often will, *itself* reflect a lack of due concern with the truth. (339)

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<sup>69</sup> The reader may object here that it was not in Stangl's character to be aware of his poor epistemic habits. We must then ask whether he was morally culpable for being unaware of this fact. I will address this concern shortly.

If Stangl did not always perceive that the position in which he found himself at the start of, and throughout, the Second World War called for him to take special care, Charles Jones Senior, on the other hand, certainly did seem aware of his obligation to proceed carefully as he formed his beliefs about the moral status of slavery and his role within that institution.

#### Charles Jones's Lack of Epistemic Care

We have noted throughout our discussion of Jones that he was acutely aware of the moral nature of the topic of slavery, and he was likewise concerned with arriving at true beliefs. Thus, it may be possible for Jones to have claimed that he displayed at least a somewhat high degree of epistemic conscientiousness when he confronted questions about slavery as a young man. Nonetheless, I think that we will be able to present a solid case suggesting that the effort he displayed was nonetheless not sufficient, and as the years progressed, Jones's epistemic conscientiousness plummeted to a level of culpability.

I think that we can find fault with Jones's degree of care with regards to his investigatory efforts even as a younger man. For example, while a college student, Jones professed to be convinced that the practice of slavery was morally indefensible. He likewise was convinced that the black slaves were fully human, and were not deficient in intelligence or reasoning skills. He rather professed that any differences noted between the blacks and the whites were most likely due to class differences and due to the fact that the slaves had been transported into a foreign culture, wherein they supposedly lacked the skills to thrive on their own. In spite of Jones's acknowledgement of these truths, however, he failed to reach the correct conclusion that it would have been morally better of him to remove himself (as best he could) from his position as a slaveowner directly involved in the perpetuation of the practice. Jones considered the option, and gave serious thought to the alternative choice wherein he would have foregone his slave inheritance

and worked to further advance the cause of emancipation. Jones's decision can be explained in large part by noting that his reasoning was prompted by a lack of epistemic conscientiousness.

While he might have professed that he was genuinely interested in arriving at the objectively correct moral answer, even if we admit that perhaps *part* of his reasoning was so motivated, I think we can hypothesize that a larger part of his reasoning was motivated by his even stronger desire to identify the answer he deeply *wanted* to be correct. Jones was understandably loathe to consider the prospect of divorcing himself from his Southern homeland and from his beloved family and friends. He recognized that had he chosen an alternate career path as an abolitionist, he would have been effectively removing himself from the presence of their kind regards, influence and respect. We cannot conclude that Jones's culpability for arriving at and holding the false belief that it was morally better for him to work as a missionary to the slaves as opposed to working as an abolitionist on their behalf, was grounded in the fact that the belief was epistemically unjustified.

We can nonetheless say, however, that he was so culpable in virtue of the fact that he allowed his desire to identify a comforting answer, as opposed to a true answer, guide his search for relevant evidence and guide his reasoning. Jones ought to have been aware of the fact that we are subject to confirmation biases, and that strong emotions of love, coupled with the prospect of losing corporeal comforts, may easily move a person in favor of any prospect which promises the retention of such comforts. It is thus quite likely that the young Jones engaged in self-deceptive behavior as he allowed himself to be convinced that he was investigating and reasoning carefully and objectively. It is by allowing his epistemic conduct to be governed by this vice that he can be said to have been epistemically unconscientious, and in virtue of which he was morally culpable for holding this false belief.

Indeed, Jones's epistemic conscientiousness waned significantly as he aged. Once he had made his initial decision to return home to Liberty County and begin his work as a missionary, any serious thought of leaving the South (or to further advancing efforts towards emancipation), was lacking. Jones's letters, diaries and speeches are heavily peppered with his idyllic depictions of southern plantation life. I think that this is quite telling, and indicates that Jones's guiding desire was to be able to identify reasons which would allow him to remain in such a privileged and comfortable position. For example, we can examine the following excerpt from a speech given by Jones in December of 1861 at the Meeting of Southern Presbyterian General Assembly. As the threat of civil war loomed, the meeting was characterized by a series of pro-secession and pro-slavery sermons and speeches. Jones delivered the following:

Yes, my brethren, there is a blessing in the work. How often, upon returning home after preaching on the Sabbath-day, through crowds of worshippers—sometimes singing as they went down to their homes again; or returning from plantation meetings held in humble abodes, late in the star-lit night, or in the soft moonlight, silvering over the forests on the roadside, wet with heavy dews, with scarcely a sound to break the silence, alone but not lonely—how often has there flowed up in the soul a deep, peaceful joy, that God enabled me to preach the Gospel to the poor. (Clarke 407)

One wonders whether the slaves to whom Jones preached were as grateful as he. By this stage in his life, Jones seemed to have lost almost all ability to empathetically imagine himself in the place of his slaves. This speech was delivered a few years after the saga surrounding Phoebe and her family, as well as after the separation of Dinah and Abram (both cases discussed in the previous chapter). In neither of those situations did Jones or Mary attempt to imagine the devastating pain which was surely felt by the members of the respective families as they were forcibly separated from one another. Jones never seemed to have attempted to have imagined what it would have been like to live and work as a slave, subject to the will and caprices of an all-powerful master. For a man deeply devoted to his family, and who grieved deeply at the loss of those of his children and grandchildren who died in infancy, Jones's failure to consider the feelings of those of

his slaves facing similar circumstances was curious, and indeed, culpable. It is culpable insofar as it is surely a necessary requirement to believing carefully (to being epistemically conscientious) that one be able to consider the various perspectives on a situation. If one is truly concerned with attempting to arrive at true beliefs (and avoid arriving at false conclusions), then one must surely attempt to get as full and as objective a characterization of a situation as possible. When considering how one ought to treat another person, one must surely be under the obligation to consider how *the other person* will be affected by one's actions, and must surely attempt to correctly estimate the degree of harm to which that other person will be subjected. In order to perform this operation, one must engage in the sort of empathetic imagination mentioned above.

#### The Moral Importance of Empathetic Identification

Consider the following passage taken from Harriet Beecher Stowe's *Uncle Tom's Cabin; or Life among the Lowly* (1851). The selection is taken from chapter seven, entitled "The Mother's Struggle". Prior to the start of this passage, the slave Eliza's owner Mr. Shelby has sold his slaves Uncle Tom and Harry—Eliza's young son—to a slave trader. While Uncle Tom accepts his fate, Eliza makes a desperate break for freedom with her child. Stowe's envisioning of Eliza's plight and her emotions is as follows (this passage is lengthy, yet providing such an extensive quote is necessary in order to fully appreciate the extent of Stowe's sympathetic imaginings):

It is impossible to conceive of a human creature more wholly desolate and forlorn than Eliza, when she turned her footsteps from Uncle Tom's cabin.

Her husband's sufferings and dangers, the danger of her child, all blended in her mind with a confused and stunning sense of the risk she was running in leaving the only home she had ever known, and cutting loose from the protection of a friend whom she loved and revered. Then there was the parting from every familiar object—the place where she had grown up, the trees under which she had played, the groves where she had walked many an evening in happier days, by the side of her young husband—everything, as it lay in the clear frosty moonlight, seemed to speak reproachfully to her, and ask her whither could she go from a home like that?

But stronger than all was maternal love, wrought into a paroxysm of frenzy by the near approach of a fearful danger. Her boy was old enough to have walked by her side, and in an indifferent case she would only have led him by the hand; but now the bare thought of putting him out of her arms made her shudder, and she strained him to her bosom with a convulsive grasp as she went rapidly forward. The frosty ground creaked beneath her feet, and she trembled at the sound; every quaking leaf and fluttering shadow sent the blood backward to her heart, and quickened her footsteps. She wondered within herself at the strength that seemed to be come upon her, for she felt the weight of her boy as if it had been a feather, and every flutter of fear seemed to increase the supernatural strength that bore her on, while from her pale lips burst forth, in frequent ejaculations, the prayer to a Friend above—“Lord, help! Lord, save me!”

If it were *your* Harry, mother, or your Willie, that were going to be torn from you by a brutal trader, to-morrow morning—if you had seen the man, and heard that the papers were signed and delivered, and you had only from twelve o’clock till morning to make good your escape, how fast could *you* walk? How many miles could you make in those few brief hours, with the darling at your bosom—the sleepy head on your shoulder—the small, soft arms trustingly holding on to your neck?<sup>70</sup>

Stowe’s imagining of this scene is heart-wrenching. Eliza’s anguish at the prospect of being separated from her son is palpable, and Stowe’s vivid depiction of Eliza’s escape is evidence of Stowe’s adept capacities of empathetic imagination. In large part because she was so able to imagine the perspective of slaves such as Eliza, Stowe was able to reach the conclusion that slavery was morally indefensible. Stowe, as mentioned previously, was a contemporary of Jones’s. She was writing of slavery as it occurred in the time and place of Jones’s lifetime; indeed, we have noted that she relied heavily upon Jones’s writings about the history of slavery within the United States in order to depict as accurately as she could the workings of the practice. I have not been able to determine whether Jones actually read Stowe’s novel, and thus cannot speculate as to how he responded to the above passage. Even if he did read it, we can safely infer that he was not moved significantly, certainly not to the point of actually take steps to keep families

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<sup>70</sup> Taken from *The Norton Anthology: American Literature, Shorter Fourth Edition*. New York: W.W. Norton & Company, Inc., 1995. P. 738. *Uncle Tom’s Cabin* was first published serially; the chapter above appeared in the *National Era* on July 19, 1851.

together. And of course, Stowe's depiction of the heart-ache suffered by slave families subject to forced separations was not the only means by which Jones could have found insight into their circumstances. He had available to him countless opportunities to consider their suffering, yet consistently failed to engage in such thought.

Consider, for example, Jones's reaction when many of the slaves from Liberty County successfully escaped as the war commenced and progressed. As opposed to taking their increasing attempts at flight to serve as evidence that they were not as content with their position as slaves as he was so certain they were, Jones was angered. He wrote that those who were caught fleeing

...must be turned 'over to the proper authorities to be tried and dealt with as the public welfare may require ....some example must be made of this matter. They are traitors who may pilot an enemy into your *bedchamber!* They know every road and swamp and creek and plantation in the country, and are the worst of spies. (Clarke 415)

Here Jones seems to have allowed his fear and anger at what he perceived to be ungratefulness color his view of the situation. As he reasoned about the propriety of the slaves' behavior and about what appropriate measures the Southerners ought to have taken towards the runaways, he failed to take into consideration the perspective of the slaves. Jones was convinced that the slaves were wrong to have attempted escape, which then led him to advocate that they be subject to harsh punishment. Both of these beliefs were surely false, and Jones can be considered culpable for holding them insofar as he did not exert sufficient care as he considered the evidence relating to these beliefs. We have already noted that Jones's behavior at this later stage in his life was characterized by his greed and his exclusive love for his family. That is, Jones was loathe to forgo the comforts afforded to him by his lifestyle as a plantation owner, and he was similarly loathe to disappoint the expectations of his family, in particular, those of his wife. Allowing these vices of greed and exclusive concern for a small subset of persons to govern his behavior rendered Jones epistemically unconscientious, and he was

consequently culpable for forming his false beliefs and acting upon them. Furthermore, Jones's consistent habit of engaging in self-deceptive behavior made it such that he barely, if ever, considered the perspective of the slaves. Given that this vice led him to neglect performing a necessary action for conscientious thought, Jones can be considered culpable.

Consider, for example, yet another example of how Jones characterized the instances in which his slave families were divided. In the late summer of 1862, the family purchased a plantation in the middle of Georgia to escape rising military tensions along the coast (along which their other plantations were situated dangerously close). They named this new plantation Indianola, and transferred their slaves from the plantations Carlawter and Arcadia. Jones and his family knew that this move would most likely be permanent. Writing in his journal on moving day, Jones wrote the following about the slaves. Note the contrast in comparison with the above passage offered by Stowe:

They all went cheerfully—a few leaving husbands and wives for the present, until matters become more settled.... This removal involving great expense we have undertaken from a conviction of duty and with much pain at the separation from the people and pray God's blessing and that it may issue in his glory and our good. (Clarke 418)

As mentioned, the family was aware that the move was not to be temporary. This then suggested that those slaves who had been forced to leave behind their spouses (and certainly some children) could not entertain any real hope that they would be soon reunited. Furthermore, the Joneses were not the only family in the county to undertake such a move. Many other planters followed suit, and the tightly-knit slave community of Liberty County was even further divided. Many slave families had been scattered throughout the county, with it often being the case that spouses and children would live and work on separate plantations. They had been able to retain some degree of normal family life, however, insofar as the distance between them was not so great as to disallow weekend visits. For many of these families, those visits had now been put to an end. This



fact could surely not have been difficult for Jones to have acknowledged, yet he instead characterized the slaves as going “cheerfully”. It is difficult to imagine that his depiction was accurate.

Rather than infer that his slaves were happy to make the move, and grateful that they were so being cared for, we can instead infer that Jones (and his family) were deeply self-deceived. Jones seems to have wanted his slaves to thank him for undertaking the move at such great “expense” to his family, yet he inexplicably did not recognize or appreciate the expense at which those families continued to serve the Joneses. Again, allowing his conduct to be guided by his desire to believe what gave him comfort and what would allow him to contentedly remain a slaveowner grounds Jones’s culpability for holding false beliefs and for acting upon them.

#### Returning to Strategies (A), (B) & (C)

We began this chapter with the goal of identifying the grounds of moral culpability for individuals holding false beliefs which lead to wrong action. We wanted guidance for assessing the moral status of the beliefs and actions of persons like Hitler, Jones and Stangl. Strategy (A) from above suggested that we might be able to ground the moral culpability for false beliefs and subsequent wrong action upon the poor epistemic status of those false beliefs. With Montmarquet’s help, I believe that I have shown that this strategy will not work. We will not be able to claim that simply because a given false belief is epistemically unjustified, that we will be able to make claims about the moral culpability of the person who holds and/or acts upon that belief. If we think, for example, that Hitler was morally culpable both for holding an epistemically false belief and for acting upon it, it will not be solely in virtue of the fact that the belief was epistemically unjustified. We will have to consider other factors if we are to make such a judgment.

Strategy (B) suggested that a person may be considered morally culpable for holding a false belief and for acting in accordance with it due to the fact that the false

belief was held as a result of that person's failure to critically self-reflect. Strategy (C) was similar, in that it suggested that a person may be considered morally culpable insofar as a false belief was held due to the fact that the person was epistemically indolent. Due to the person's indolence, he failed to seek out evidence which was relevant to his belief, and consequently failed to obtain evidence which would have suggested that the belief was in fact false. Montmarquet specifically responded to, and rejected, Strategy (B), and I think that he would similarly reject strategy (C). This is because he would consider both strategies to have in common the feature that they are attempts to derive our moral responsibility for belief from our more general responsibility for our actions (for what we do).

If we fail to conduct projects of critical self-reflection, or if we fail to seek out evidence, we are failing to *do* certain things. Thus, any alleged moral culpability for holding false beliefs (according to strategies (B) and (C)) would result from our more general moral culpability for failing to do something we were in fact morally required to do. Montmarquet explained that arguing this way will lead us to a regress. Even if Hitler's belief, for example, that he had sufficient epistemic justification for his belief that the Jews were plotting against the Aryans was actually epistemically unjustified, the fact that *he thought* his belief was epistemically justified made it such that Hitler had no reason (from his perspective) to accept the proposition that he ought to critically reflect upon his beliefs. He similarly would have rejected any proposition suggesting that he seek out new evidence which would be relevant to his belief.

We could attempt to argue that Hitler should have critically reflected, or that he should have sought out additional evidence, but because of his (actually unjustified false) belief, and because of his confidence in it, he had no epistemic reason to recognize that he was failing to do something important. Even if we maintain that Hitler did in fact have moral obligations to critically reflect and to seek out relevant evidence, epistemically, he had no reason to accept that he was failing to meet either of these obligations. Thus,

Montmarquet argued that if Hitler should be considered morally culpable either for holding his false beliefs or for acting upon them, it will not be because he failed to perform either of the actions which strategies (B) or (C) suggest.

Montmarquet does not explicitly tell us why our moral responsibility for our beliefs is not derived from our more general responsibility for what we do. Rather, he makes his point with examples. However, I think that he says this because we perform particular actions—we judge what it is that we ought to do—on the basis of the beliefs we have formed about our evidence. Once we are certain that our beliefs are true, the fact that they are (or are not) *actually* epistemically justified does not factor into our assessments about what we ought to do. I will judge that I ought to critically reflect if and only if my beliefs about the epistemic status of my beliefs, or my beliefs about the credibility of sources questioning my beliefs, support such suggestions. But if I am as convinced of the alleged truth of my beliefs as was Hitler, then I would reject suggestions that I ought to critically reflect (or seek out new evidence).

It may be the case that this is what I actually (in an objective sense) need to do, but from my (or Hitler's) subjective point of view, I have no epistemic reason to accept that it is my moral obligation to perform particular acts of reflection or evidence gathering. Thus, I have failed to perform an action, which then leads me to remain even more confident in my actually false beliefs, and which most likely leads me to form even more false beliefs. However, I should not be considered morally responsible for holding these false beliefs solely on the grounds that I failed to *do* something. Any attempt to argue such, will result in my protesting that I had no reason to think that I needed to perform those particular actions (critically self-reflect or seek out evidence).

Nonetheless, I think it should also be apparent that both Montmarquet and I think that it is vitally important that we engage in projects of critical self-reflection, and that we not be epistemically indolent. Consequently, there is a sense in which strategies (B) and (C) may, after all, provide us with the grounds for making claims about moral culpability

for false belief and wrong action. Montmarquet argued (and I defended his view) that our moral responsibility for belief may be derivative from our more general responsibility for our moral characters, specifically, for our intellectual characters. Montmarquet would concede, I think, that consistently refusing to engage in projects of critical self-reflection, or that consistently displaying epistemic indolence, as well as consistently acting upon bad motives, indicates a lack of epistemic virtue. Once we form our beliefs and develop confidence in them, the game is essentially lost. Even if those beliefs are not epistemically justified, we must recognize that the individuals holding them will probably not recognize that they have evidence suggesting they reconsider their beliefs. If we are to maintain that they are morally culpable for holding those beliefs (and for then acting upon them), we must begin further back. We must recognize that their moral culpability for coming to have false beliefs begins with, and derives from, the *way in which* they approach epistemic issues.

Hitler, Stangl and Jones were culpable for holding false beliefs not solely because those beliefs were epistemically unjustified, but because they were not sufficiently careful in how it was that they came to have those beliefs. They did not properly exhibit epistemic virtues. They were under the moral obligation to exercise such virtues. Montmarquet and I have both indicated that we are under this obligation, and can be considered morally culpable for failing to meet it, even if we claim to be unaware that it is our obligation. I must now attempt to further defend this claim.

#### Our Moral Responsibility to Exhibit Epistemic Virtues

I believe that I have successfully shown how each of the above individuals from the case studies displayed an insufficient degree of care in their thought. Because they were not sufficiently epistemically conscientious, I think that we can say that their false beliefs were culpable, and that they were subsequently culpable for acting upon those beliefs, regardless of whether their individual beliefs were epistemically justified or not

(though I have also argued elsewhere that they were most likely unjustified). I now must turn to the task of convincing the reader that these individuals were under the moral obligation to exhibit epistemic conscientiousness, though I hope that the reasons in support of this claim are already intuitively obvious. Indeed, Montmarquet's discussion went far in illustrating to us the extent to which our epistemic and our moral duties are intertwined. It is because of our role as moral agents that we are under the obligation to believe carefully. We cannot escape this obligation simply by claiming ignorance.

I have argued that Hitler (Stangl and Jones) was morally culpable for coming to hold false beliefs because he was not sufficiently epistemically conscientious. If Hitler had claimed that he was sufficiently convinced that he was epistemically conscientious in an attempt to trap me in a regress similar to that explained above, Montmarquet and I would respond that Hitler's certainty actually provides us with evidence that he was indeed not epistemically virtuous. Hitler had no right to be certain in the first place, and he was both morally and epistemically unjustified to believe that he was forming beliefs carefully enough. Thus, we would maintain that he was morally culpable for both his beliefs and his subsequent actions.

However, I must respond to a potential objection: What if Hitler was not *aware* that he needed to be epistemically conscientious, or more generally, what if Hitler did not know that he had a general moral obligation to exhibit epistemic virtues? If he was not aware of his general obligation, or if he was not aware of his obligation to display the virtue in a particular circumstance, why should we think him morally culpable? This is indeed a serious objection, and to address it, we must consider whether we think that Hitler's lack of awareness was itself culpable. We must attempt to determine how it is that we are morally responsible for becoming aware of the fact that we have moral duties, and that we have particular moral duties such as the moral duty to be epistemically virtuous. This is a deep question, and it is one that I can only hope to begin to answer here.

Given what I have argued thus far—particularly relating to what I have said in my defense of evidentialism—a person would only be epistemically at fault for falsely believing that, for example, she has met all of her moral obligations (including the moral obligation to believe carefully) if the evidence she has considered does not support her belief. This would lead us to suspect that Hitler would not have been epistemically at fault for failing to realize that he was epistemically unconscientious if his (subjective) evidence supported his (actually false) belief. We could only claim that Hitler had no right to be certain that he was sufficiently open-minded if the evidence he actually considered contradicted his belief. We must attempt to determine then, whether we think that Hitler’s evidence probably supported our claim that he had no right to be certain. Do we have reason to think that he was culpably unaware of the fact that he had a moral obligation to develop and exercise epistemic virtues? The same question will apply to Stangl and Jones.

I think that we can present some initial answers as they relate to our case studies. We will be able to conclude that, as a contingent matter of fact, all of the case studies most likely had evidence available to them which supported the claim that they should have been aware of the moral duties to develop and exhibit epistemic virtues, and that any unawareness on their parts would have been culpable. None of our case studies were feral children. They were all raised as members of moral communities, and were exposed to, and accepted, at least many correct moral values. They were all aware of the fact that they were moral agents, and were concerned with acting properly. It is quite unlikely that they had never considered the fact that, if one is to perform morally correct actions and avoid performing morally impermissible actions, that one needs to assess situations carefully and attempt to form *true* beliefs. I think we can also claim that all of the case studies understood that some situations are morally-charged, and indeed morally complicated, and that special effort is required as one attempts to determine the correct course of action in such situations.

All of the case studies were concerned with the *ends* of moral actions. That is, they all wanted to do what (they hoped) was morally permissible. We cannot allow individuals to overlook the means which will help them bring about the ends, nor do we have reason to think that the case studies were unaware of this necessity. Two important means to achieving our moral ends are that we correctly identify our actual moral obligations and that we form accurate beliefs about the world. The means to being able to successfully complete these two tasks is that we be epistemically virtuous. This conclusion is the result of simple practical reasoning, and I think that we have reason to believe both that all of our case studies shared the common end of acting morally, and also that they possessed the practical reasoning skills which should have led them to recognize that the means to their ends was that they believe carefully.

To a certain extent, then, we can reasonably have expected our case studies to have figured this out on their own. If they did not, or if they claimed that they were unaware either that they had a general moral obligation to exhibit epistemic virtues or that their particular circumstances were ones in which a special degree of care was called for, I think that we can maintain that they were culpably ignorant. I will not, however, dismiss the possibility that a solid moral education is indeed necessary if we are to consider persons who fail to meet their moral obligations morally responsible. Our close examination of the case studies has suggested, I believe, that each of these men had sufficiently “good enough” moral educations and sufficient exposure to the moral truth such that they had all the evidence they needed to be able to become aware of their obligation to believe carefully. An important requirement of moral agency is that we must become adept at recognizing when particular circumstances are morally-charged and when they require a special degree of epistemic care. This is certainly not an easy task, but it is nonetheless one which is vitally important, and one which we cannot reject. To do so is to renounce our status as moral agents. I am uncertain as to how much guidance

is required from a person's moral education before we can claim that this obligation holds for a particular person.

We certainly have reason to suggest that a feral child, raised apart from all human contact, who receives no moral education, will probably remain ignorant of the fact that she has moral obligations towards other people or animals (were she to meet them). Or perhaps we might think that she *does not* have any obligations due to the fact that she was raised entirely without a moral framework. Perhaps she is beyond the pale, and we should not consider her to be a moral agent. Perhaps Hitler was somehow beyond the pale. We would of course still have had reason to respond to him with reactive attitudes (we would have been morally justified to condemn him, for example) just as we would have justifying reasons to protect ourselves from the feral child.

I have not engaged in as careful a study of Hitler's moral upbringing as I did, for example, in the case of Jones. I suspect that even Hitler had enough exposure to the moral truth—and that he accepted enough true moral claims—such that we can claim that he had the moral obligation to recognize that he ought to have been more epistemically careful. I certainly think that we can claim this about Jones and Stangl. Try as we might, though, this discussion of what our moral obligations are, and on what grounds we can be required to identify them for ourselves, is always only a short step away from discussions about the impact that our upbringing has upon our characters, the extent to which we must be *told* what our moral obligations are, and the extent to which we can be expected to figure things out on our own. Addressing these questions gets us dangerously close to the complicated topic of moral luck, which, while interesting and important, is definitely beyond the scope of this project. These questions must remain for a later project.



## CONCLUDING REMARKS

As we near the end of this project, the lessons I hope we can take away from it may be hard to identify. If anything, we have learned that matters of moral responsibility are complicated. As we have attempted to explore the impact that culture can have upon an individual's moral responsibility, and as we have searched for possible mitigating excuses on behalf of the individuals in our various case studies, we will surely have recognized that matters are never simple, straight-forward, nor quickly assessed. We have considered whether these persons *could have* believed and acted other than they did; we pondered questions about whether it was *reasonable* for them to have believed as they did; we tried to identify what it was reasonable *of us* to have expected them to have believed; and we have tackled questions relating to our more general epistemic and moral duties. At a minimum, I hope that the discussion in this last chapter convinced the reader how vitally important I believe it is that we believe carefully, or conscientiously. I have argued that all of the figures from our case studies exhibited an extreme lack of care as they formed their beliefs about the world and made moral decisions. Perhaps not all of their culpability derives from their respective failures to exhibit epistemic virtue, but I think we can conclude that a large portion of it can indeed be explained in such a way.

In what follows, I would like to briefly discuss some of the points presented by Geoffrey Scarre in his piece "Moral Responsibility and the Holocaust"<sup>71</sup>. Many of Scarre's observations relate directly to those made by various of the philosophers we have studied, and also to those made by my students at the beginning of this project. Scarre provides us with some important reminders—ones which I feel we ought to contemplate—but also extends some of his comments too far, in ways which I feel will undermine the lesson we have learned about our moral duty to exhibit epistemic virtue.

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<sup>71</sup>Included in *Moral Philosophy and the Holocaust*, eds. Eve Garrard and Geoffrey Scarre. Ashgate Publishing Limited: Hants, England, 2003. Pp. 103-116.

As the title of his article indicates, Scarre's discussion is focused on our moral assessment of the Nazi perpetrators of the Holocaust. My discussion of his piece will thus, for the most part, remain focused on these perpetrators, but we ought to keep in mind that his conclusions can be extended to American slaveowners and others.

Scarre begins by indicating that he wants to make sure that our moral assessment of the Nazis is in line with our normal practices. He observes what he takes to be a troubling trend wherein it is proclaimed of the Nazis that no amount of insight into their circumstances would result in the uncovering of any mitigating excuses. This trend is motivated by the belief that their crimes were so horrific as to suggest that no mitigating excuses could ever be identified on behalf of the Nazi perpetrators. But this approach, Scarre argues, is not in line with our ordinary approach towards questions about moral responsibility:

As a rule, when a person is charged with some moral or legal offence we are ready to listen to the case for the defence; the accused's deed may be atrocious but we do not automatically infer from the presence of *actus reus* the existence of *mens rea*. Perhaps the agent was misled or deluded about the empirical facts or falsely believed that they were morally justified in what they did. Not so with the Nazis. Here we assume a priori that nothing could ever diminish the blameworthiness of the architects and agents of genocide. (103)

Scarre is certainly right to note that this response to automatically condemn the Nazis is common. Recall from the introduction that various students referred to the Nazis as being "unequivocally" wrong, and "absolutely" morally responsible. These responses generally argued that no excuse could possibly have been present such that the moral responsibility or guilt of the Nazis was mitigated. Scarre hypothesizes as to why this response is so common. In explanation, he notes that the crimes committed by the Nazis were so heinous and incomprehensible that we tend to oversimplify as we contemplate the circumstances surrounding these crimes. Because the crimes were so awful, it may be difficult for many of us to imagine ourselves in the perpetrators' shoes. Hence, Scarre thinks that we tend to "[read] off the moral character of the agent directly from the

quality of the deed itself” (104). Doing so, while perhaps understandable, will nonetheless result in our failing to consider what Scarre takes to be important considerations relating to motive and intention.

Scarre also conjectures that our tendency to so quickly dismiss the possibility that mitigating excuses may be found on behalf of the Nazis may be due to our desire to respect the victims of the Holocaust. He notes that it may be thought that were we to identify such excuses, we would not be taking “seriously enough the sufferings of the persecuted” (104). Again, we noted similar sentiments expressed in the introduction to this project. Several respondents proclaimed that the Nazis (and slaveowners) were fully responsible for their actions, and fully culpable, insofar as, and allegedly *because*, the level of harm they inflicted upon their victims was so serious. While Scarre notes the good intentions displayed in such an attitude, he nonetheless argues that it too is misguided. He notes that “[t]he error is that of failing to distinguish properly between the wrong character of the deed and the guiltiness of the doer” (104). Scarre reminds us of the importance of attempting to get as full of a picture as possible relating to the circumstances of the accused, such that we will not only consider the magnitude of the crime committed, but that we will also consider the motives, intentions and beliefs of the perpetrators. It will be through our attempts to provide as full of an explanation as possible for the perpetrators’ behavior that we will be able to reach cogent conclusions about the extent of their culpability.

In proposing this approach, Scarre identifies yet another explanation for our tendencies to quickly dismiss the possibility that mitigating excuses may be available to these perpetrators. Namely, he notes that we may be reluctant to search for explanations for terrible behavior because of what he takes to be the erroneous belief that to explain is to excuse (106). Again, we saw evidence of this sentiment at work in some of the responses from the introduction. For example, it was suggested of the slaveholders by one respondent that they were fully responsible “no matter what kind of social

environment they were in”. Perhaps this conclusion was indeed motivated by the fear that further exploration into the social circumstances of the accused would lead us to suspect that their fault was mitigated. Or perhaps the worry was that providing an explanation would be *the same as* providing an excuse. If this is the case, then Scarre’s point is well-taken. I hope that it is evident to the reader that I do not share this mistaken notion about explanation. Indeed, scores of pages have been devoted to the investigation of the circumstances surrounding the figures of the case studies in an attempt to explain and understand their beliefs and actions. If anything, I think that such an investigation has revealed to us that many of the initially proposed mitigating excuses were not available to these persons once we reflected upon the details of their circumstances.

I think that Scarre is correct to note that “[e]mpathetic identification with another agent does not require us to adopt or approve their point of view; we may continue to see it as profoundly mistaken in its factual or value commitments” (106). I think he is also correct to note that, when we undertake such an investigation into the background and circumstances of an alleged perpetrator, we may at times decide to temper our moral assessment of them:

Yet the more we grasp about the origins of actions, the less likely we are to take a black-and-white view of moral responsibility. Where we thought we saw wickedness, we may now discover ignorance, error, prejudice, thoughtlessness, bad logic, distorted values, fears and phobias, and a host of other factors that lead men to hatred and violence. As Seneca noted long ago in his essay *De Ira*, human life is replete with occasions for going wrong. (106)

While noting that this sort of investigatory effort may uncover the existence of ignorance, error, etc., Scarre does not want us to conclude that we will be unable to judge the accused’s actions or that it would somehow be inappropriate for us to make such judgments. Reflection upon the intricacies involved in understanding historical circumstances and human behavior will lead some persons to suggest that it is not appropriate for us to judge perpetrators of the past. Quite to the contrary, Scarre argues that historians (and presumably philosophers) may appropriately attempt to make such

assessments. He notes that part of our desire to learn about the circumstances of the perpetrators is wanting to see if their actions and beliefs can be defensible (108). We may find that they are not, but alternatively, and Scarre suggests just as likely, we may find that they are.

It is at this point in his discussion that my thoughts begin to diverge away from Scarre's. Scarre notes that learning as much as possible about the perpetrators and their cultural environments may lead to our making the observation that "...even some highly repellant practices can acquire a degree of defensibility from the world-view of their practitioners" (108). This is certainly true; we have indeed been able to identify and outline the various arguments given by the individuals of our case studies which they took to provide them with a defense that their actions were morally justified. Scarre means more than this, however. He means that, beyond being able to identify the arguments actually given by the perpetrators, we may, upon examination of those arguments, determine that those arguments may actually be *convincing*, insofar as they allegedly may provide actual justification. Again, this point alone is surely correct. However, Scarre continues to suggest that what may make these practices defensible, and what may provide the perpetrators with mitigating excuses, may be the fact that their practices were grounded in wide-spread acceptance of bad ideologies. Scarre notes that, of many of the perpetrators in question, we will recognize that they firmly believed in the propriety of their actions, and that they often firmly believed that they were acting in accordance with morality.

Again, I will agree with Scarre that many of these individuals—certainly Stangl and Jones—thought that they were acting in morally permissible ways, and indeed that they were acting in accord with their consciences. Jones, for example, was able to convince himself that he was performing his moral duty towards his slaves by acting as their missionary, and he likewise believed that he was *not* failing to perform an important moral duty when he did not take steps towards freeing them. Scarre thinks that, in

assessing an individual like Jones, we should not dismiss the fact that he genuinely thought that he was performing his moral duty. We must be aware that not all appeals to duty are genuine heart-felt commitments to duty. Performing an action on the grounds that one believes it to be one's duty may be a way to avoid thinking carefully about the situation and considering all of the facts which would be relevant to reaching a moral conclusion. Scarre recognizes that persons may, because of laziness, selfishness, or any number of possible motivations, be reluctant to properly and carefully perform moral reasoning, and will thus make an "easy" appeal to duty in order to arrive at a decision. However, he nonetheless thinks that we ought to consider what he takes to be the genuine possibility that an action performed in accordance with conscience, even if objectively wrong, may be excused:

Yet what should we say when a person does something terrible because they have decided, after due reflection, that it is their moral duty to do it? Even if our abhorrence of their action makes admiring them impossible, it would be (to say the least) harsh to deny that their intention to do right has some exculpatory force. What more can we reasonably ask of someone that they should do what, after careful consideration, they decide to be right? We may think their notion of duty mistaken, perverse, even crazy; given the chance, we will try to persuade them to see the world by what we believe to be our own better lights. But whether we think them empirically misguided or morally purblind we must acknowledge that by *their* lights they are acting well. Indeed we may find it hard to justify assigning *any* moral blame to someone who acts strictly according to their conscience. (109-110)

I will agree with Scarre one more time before continuing to outline my disagreement with him. I think that Scarre is correct to remind us of the importance of considering an individual's intentions for performing a particular action. He is correct to note that we should expect persons to act in accordance with their consciences. We certainly would not want persons to do what, upon reflection, they genuinely think they should *not* do. Scarre does indicate that we ought to require of persons (and ourselves, of course) that they ought to give "careful consideration" to their moral deliberations. While I think that this is a necessary obligation that all moral agents must undertake, and while I

consequently think it good that Scarre reminded us that we are so under this obligation, I nonetheless think that he has failed to sufficiently stress the importance of this requirement. It is of course important that we act in accordance with our consciences, but is just as important (if perhaps not more) that we reflect carefully, and consider carefully, the facts (both moral and non-moral) relevant to our moral decisions.

I have argued that we cannot undervalue the importance of having as a goal believing correctly, and I have argued that we have a moral obligation to believe conscientiously. It is of course important that we attempt to act in accordance with our consciences, but I think that the reason we think this is so important is that we think that (or hope that), when we act in line with the dictates of our conscience, we will be led towards performing objectively correct moral actions. We are—or should be, concerned with doing what is right, period, and not just with what we *think* is right. Our goal as moral agents is—or should be—to accomplish our objectively correct moral duties. We believe that following our conscience is the way by which we (hopefully) accomplish this moral task. Thus, it is important that our conscience be provided with the correct input or data. We must bear in mind the importance of getting the facts correct so that our conscience will help us identify actually morally correct actions. We *must*, then, be epistemically careful as we form our beliefs about the world.

As Scarre continues to discuss the case of the Nazi perpetrators, I believe that he loses sight of this vital component of moral reasoning, and instead places too much emphasis upon the role of conscience. This in turn leads him, in my opinion, to draw the wrong conclusion about the moral status of perpetrators such as Stangl. Scarre makes the following claim about the Holocaust:

The Holocaust happened when it did not because twentieth-century Germans were wickeder than the average, but because they lived in a politically and economically dislocated world in which an extreme racist philosophy might come to seem reasonable. This was a world in which Heinrich Himmler could unblushingly inform his SS subordinates in 1943 that they had moral responsibilities to their own blood and to no one else; honesty,

decency, loyalty and friendliness were, he conceded, virtues, but they were out of place in dealings with racial inferiors. Our astonishment that Himmler could contemplate the violent deaths of many millions of Jewish, Russian, Polish and other men, women and children with such equanimity would not have been shared by his audience. (110)

While Scarre notes that the above surely provides a generalization, and that it will not provide an accurate depiction of *a//* Nazi perpetrators, he nonetheless clearly thinks that it applies to many of the Germans and Nazis of the time. He thinks that the outlandish (to us) racial theories proposed by the Nazi authorities could have seemed reasonable to a significant number of people, such that they were led to believe that they were acting correctly as they participated in the murderous schemes of the Holocaust. Because he thinks that we can say of many of these persons that they had given due reflection, and because they ultimately acted in accordance with their consciences, Scarre thinks that they are provided with a genuine mitigating excuse which, in some cases, he thinks will reduce their blameworthiness down to zero (110, 113).

Scarre and I may have reached a point of fundamental disagreement. He hypothesizes that a racial theory such as that proposed by Himmler could have been viewed as reasonable, and he hypothesizes that many such persons can be described as having given careful consideration to the plausibility of the theory. I think, on the other hand, that if a person can actually come to view such a theory as reasonable, then we have strong evidence suggesting that that person displayed an appalling lack of intellectual virtue as he or she reasoned. Our recognition of this fact should not allow us to conclude that we are morally better than the perpetrators under consideration. We should not allow ourselves any self-congratulatory pats on the back. Rather, we should be deeply concerned—and perhaps afraid—to realize that epistemic conscientiousness is rather uncommon. We should thus make it a priority of ours to foster the development of this important intellectual (and indeed, moral) virtue within ourselves lest we find ourselves in situations all too similar to those of Jones and Stangl.



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