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CAUSATION AND RESPONSIBILITY

Shelly Kagan

ORDINARY, commonsense morality recognizes a variety of obligations to aid, or otherwise benefit, various individuals. These obligations vary considerably in strength, but something like the following generalizations seem intuitively correct. First of all, we have a natural obligation to aid others—an obligation which can be generated from the mere fact that these other people are in significant need, and we are in a position to help. This obligation, however, is generally taken to be fairly modest, all things considered: provided that I have no special relation to the person in need, I do not have to provide aid when the cost to me would be significant.

In contrast, there are various *special obligations* which are more restricted in scope, but which are generally taken to be significantly more strenuous, in that I must meet these obligations even if the cost to me *would* be significant. Perhaps I need not save a random stranger's life at considerable risk to myself; but intuitively, matters are different if, as the on-duty lifeguard, I have promised to save anyone drowning in the lake, or if, as a father of two, it is one of my own children whose life is endangered.

Similarly, matters are different if it is my *fault* that the stranger's life is endangered. Intuitively, it is one thing to fail to send famine relief to someone dying of starvation. It is quite another to refuse to send the antidote to someone who is dying from the *poison* you fed them a short while ago!

Now I am, in fact, inclined to doubt the view of ordinary morality that our natural obligation to aid others is a modest affair. But that is a debate for another occasion.¹ What I want to do here is to examine (part of) the other component of ordinary morality that I have mentioned—namely, the view that special relations can generate far more demanding requirements. More specifically still, I want to try to understand the view that having caused harm generates a special obligation to aid the

victim of that harm. Let me emphasize that I do not yet feel that I have reached anything like understanding of the view in question. I am uncertain as to what exactly the view is, and I am uncertain as to what its justification is supposed to be. So what I am going to do in this paper is to share my confusion.

All other things being equal, the person who harms another has a special obligation to correct the harm, by undoing it or otherwise compensating the victim. Of course all other things are often unequal. Let me reel off a few potentially complicating factors. The agent may not be at fault for having caused the harm. Or the agent may be one of several individuals who causally contributed to the harm. Or the victim himself may have been partially or totally at fault. I hope largely to sidestep these, and other complications: my excuse is simply that I find the situation baffling enough even in the relatively straightforward cases. While confessing things I will not do, I should add that I will say nothing about tort law. It could, I suppose, be plausibly claimed that something like the view I am discussing underlies much of tort law. But I will not make that claim, nor consider any possible objections to it—for what I am interested in is the moral doctrine itself.

Complications aside, then, a person who harms another has a special obligation to correct the harm. The victim has a *claim* against the agent, and the agent is morally *liable*. Something like this, at least, seems to be a widely held view. But what exactly is its justification? How is the view to be defended?

There is, of course, a potential consequentialist justification, familiar in its broad outlines: given plausible background assumptions, making causers of harm liable to their victims provides a deterrence effect upon would-be harmdoers, and thus promotes the overall good. I'll spare you the details, which can of course get rather subtle.² But two comments seem worth making. First, such a consequentialist

argument is actually a justification of a social institution of *holding* people liable; it does not really defend the position that the agent himself has any stronger *moral* obligation to aid his victim than does anyone else. (However, a rule-consequentialist argument might meet this point.) Second, and more important, such consequentialist considerations don't seem to be the right *kind* of explanation. Even if correct, they seem beside the point: intuitively, the agent's liability and the victim's claim seem to turn on facts about the relationship between the two—the fact that one has harmed the other!—and not at all on facts about effects on others. Indeed, it would be dangerous for the advocates of ordinary morality to allow consequentialist considerations to ground significant obligations—for I believe that these would go on to ground a very demanding *natural* obligation to aid others as well. So I am going to assume that a defense of our special obligation to aid our victims must rely on considerations more deontological in character.

Here are two other familiar suggestions, with equally high-handed dismissals. One might appeal to retributivist values, and argue that the causer of harm deserves to be punished—and what more fitting punishment than correcting the harm he has done? (Of course since we also want to explain the victim's claim to compensation, we will probably have to move to a more general theory of desert—claiming that the innocent victim deserves to be made whole.)

There are various difficulties with this approach,³ but let me note just one: suppose the agent deserves to be punished, and the most fitting punishment is aiding the victim. Then there is some reason to see to it that the agent aids his victim. But this is a reason that *everyone* has, and not just the agent himself. That is, considerations of desert may make it fitting that a certain state of affairs obtain—namely, a state of affairs in which the agent aids his victim. But such considerations do not by themselves give the agent any more reason than anyone else has to *bring about* that state of affairs.⁴

Yet I am inclined to think that it is part of the ordinary view that the doer of harm has a special obligation to *see* to it that his victim is aided: that is, even if all of us have some (natural, weak) obligation to see that the victim is aided, the

harmdoer has an especially strong obligation to see to this; he has a stronger (moral) reason than the rest of us have. Admittedly, this is one of the places where I am not certain what the ordinary view is, but I *think* that most of us hold something like this. And it is not clear—to me at least—how considerations of desert can generate the requisite especially strong obligation on the part of the harmdoer.

Desert could only explain why it is that the harmdoer rather than someone else should foot the bill, not why the harmdoer should have a stronger obligation—stronger reason—than others to see to it that the victim is *aided*. Thus desert can't really explain the special obligation in question.

What about a principle of corrective, or rectificatory justice? Of course one might mean any of a number of things in speaking of such a principle. One might, in fact, have in mind the very doctrine that we are considering—namely, that the one who causes harm has a special obligation to correct that harm. In that case, obviously, the “principle of corrective justice” won't provide a *justification* for the view we're examining; it will simply be a *name* for that view. But there are other notions that one might have in mind instead; and some of these might be thought to provide the foundation for the special obligation.

Most promising is the following: when an agent causes harm to a victim, the victim loses something and the agent gains something (even if only the cost of taking care). There is an imbalance created by the agent's act: the victim has wrongfully undergone a loss, and the agent has wrongfully made a gain. This imbalance—or improper balance—needs to be corrected, rectified. This is done by cancelling both the agent's gain and the victim's loss.

If some such view is what we have in mind by the principle of corrective justice, can it explain the special obligation? At first glance it seems quite promising. We cancel the agent's gain by holding him liable for aid or compensation to the victim, thus cancelling the victim's loss. But there are at least two objections that I think merit our attention. First of all, this proposal seems open to the same objection that I suggested for the desert account: the need to rectify the agent's gain may explain why it is the agent rather than someone else who should pay the cost of aiding the victim, but it does

not in any obvious way explain why the agent will have greater *reason* than the rest of us have to see to it that the victim is indeed aided. So it does not really explain fully the agent's special obligation. Second, putting aside the first problem, it is not clear why—on this view—the agent is specially obligated *to* his victim.

This point will be easier to see if we distinguish certain elements of the ordinary view that an agent has a special obligation to aid the victim he has harmed. As a first stab in this direction, suppose we try the following: First, there is the fact that the victim has a moral claim to be aided or otherwise compensated. Second, there is the fact that the agent is under a special requirement to undergo a sacrifice (at least, given the need). Third, there is a connection between these two points, that is, internal linkage between the claim and the requirement: the victim has a claim *against* the agent, and the agent is particularly obligated *to* the victim.

It is this internal linkage that seems left out by the appeal to corrective justice. The need to rectify the purported imbalance will be satisfied so long as the agent loses the right amount, and the victim is given the right amount. But nothing here seems to require that the agent's payment go to his victim, or that the victim's compensation be paid by the agent. Such a hookup is compatible with this conception of corrective justice, but not at all supported by it. But if—as I believe—internal linkage is part of the view we are examining, then corrective justice cannot fully justify it.⁵

Obviously enough, this objection is telling only if the special obligation genuinely involves internal linkage in something like the way I have described. As I have indicated, I am inclined to think it does, but once more the matter hardly seems certain to me.

This matter of internal linkage seems to me to be fairly important to understanding the nature of the special obligation, so I want to consider it further. What's more, I have been traveling at a fairly high level of abstraction, and it may help to bring it down just a touch, so let me introduce an example. This may also help us to tease apart and identify the various intuitions that are at play in the problem we are considering.

A fairly simple kind of example—I'll complicate it soon enough—might involve an agent, Agnes, a

victim, Victor, and a swimming pool. Let us imagine that Agnes pushes Victor into the pool, and poor Victor is now in danger of drowning. I take it that Agnes has a special obligation to help Victor get out of the pool, and Victor has a special claim on Agnes. That is, having caused the harm, Agnes now has a greater obligation to help Victor than does some random stranger standing by the pool; and Victor has a greater claim on Agnes than on the random stranger.

That, I think, is the view of ordinary morality. But I fear that an attempt to zero in on these intuitions may be muddled by the presence of something like a standing natural obligation to provide low-cost aid in an emergency situation immediately confronting one. So even Stanley, the random stranger passing by the pool, may have a significant obligation to aid Victor, who is, after all, drowning. This may make it unclear whether, or in what ways, Agnes is under a special obligation. Perhaps I am foolish to worry about such muddled intuitions in an audience as morally sophisticated as this one. But just in case, let us add to the story just a bit. Victor manages to pull himself from the pool, but comes down with pneumonia as a result of his time in the water. I take it that Agnes is still under a special obligation toward Victor. Now, however, the obligation is (let us suppose) to help defray the costs of Victor's treatment for pneumonia. I also take it that intuitively we want to hold that Stanley, the uninvolved stranger, is *not* under anything close to a similar obligation to pay for Victor's treatment. So we have a tolerably clear case in which someone who has done harm is under a *special* obligation to correct it.

Let me complicate the story further by introducing another character—Penny—who has similarly come down with pneumonia, through no fault of her own, indeed, through no fault of anyone. Imagine that Stanley has decided to perform a meritorious good deed, and help some deserving pneumonia sufferer by paying for their treatment. Assuming that Agnes is going to continue to neglect her obligations, Stanley thus has to choose between helping Penny and helping Victor. If everything else is equal, does Stanley have any reason to help Victor rather than Penny? I am inclined to think not: both are equally needy, through no fault of

their own. The mere fact that Victor's pneumonia was caused by someone else, while Penny's was caused by no one at all, does *not* seem to me to give any good reason to think that Victor has a stronger claim on Stanley's aid than does Penny. (To confirm this intuition, note that if Victor had a stronger claim on Stanley than Penny does, Stanley would have reason to aid Victor, presumably even in some cases where Penny has a slightly better chance of recovery. Intuitively, however, it seems that Stanley should pick Penny if treatment is more likely to succeed in her case; this makes it implausible to suggest that Victor's claim on Stanley is greater than Penny's when other things are equal.)

It appears, then, that we have something of an asymmetry. Agnes harmed Victor. As causer of the harm, Agnes is under a special obligation—one stronger than the obligation binding upon other people able to correct the harm. But despite being victim of the harm, Victor does not seem to have a stronger claim to being aided than do other people in need of aid. Causing harm generates special obligations but not special claims. Or so it seems.

This apparent asymmetry is an illusion however. It is generated by the fact that when we considered the obligation of the faulty Agnes, we compared her to the innocent Stanley. But when we considered the claim of the innocent Victor, we compared him to the equally innocent Penny! The important difference, then, seems to be a matter of innocence versus fault. This would be borne out, I think, if we introduced still other characters to our already overpopulated example.

To begin with, both Victor and Penny are innocent sufferers from pneumonia—innocent in that neither is at all responsible for the fact that he or she has pneumonia. Let us imagine yet a third person with pneumonia; but this person—I'll spare you the ordeal of having to learn another name—is responsible for this fact, that is, it is her own fault that she is in her present condition. Now consider once more well-intentioned Stanley, still trying to decide whom to aid. Intuitively, I think, even though Victor has no more claim on Stanley's aid than does Penny, *both* have more claim on that aid than this new person does. For they are both not at fault, while the new person we are imagining is

at fault. We now have a result symmetrical to the one we had for Agnes: just as faulty Agnes has a greater obligation than does faultless Stanley, faultless Victor and Penny have a greater claim than does our faulty newcomer with pneumonia.

Similarly, we might introduce a *sixth* character to the drama, designed to match Agnes in terms of wrongful gain. How is this last addition to the cast to be imagined? Consider Victor and Penny again. They are both suffering a harm through no fault of their own; they differ only in that Victor's harm was caused by another person, while Penny's harm was unavoidably produced by totally natural causes. It will be helpful then to imagine our final character as someone who is *like* Agnes in that he has gained through some immoral or improper act, but *unlike* Agnes in that Agnes' wrongful gain involved harming another person, while our newest arrival's wrongful gain did *not* involve harming anyone else. The difference between this new wrongdoer and Agnes parallels the difference between Victor and Penny: Victor and Penny are both faultless sufferers, but differ as to whether the harm was caused by another; Agnes and our final addition are both faulty gainers, but differ as to whether the gain involved *harming* another.

I have already suggested that intuitively it seems that Agnes is under a stronger obligation than Stanley. I am inclined to think that the same thing is true of our final arrival: as a faulty gainer, he is under a stronger obligation to provide aid than is Stanley, a faultless individual. I am less certain about the next step. Suppose that Penny, and only Penny, needs treatment. I take it that both faulty Agnes and our new wrongdoer have a greater obligation to aid Penny than does Stanley; as noted, they are both wrongful gainers, and Stanley is faultless. But is Agnes' obligation any stronger than the newcomer's? It is not clear why it should be. After all, both are faulty gainers, and it is not as though Agnes was the cause of *Penny's* pneumonia. If we conclude—albeit hesitantly—that Agnes' obligation toward Penny is no stronger than the faulty newcomer's obligation toward Penny (although both have a stronger obligation than faultless Stanley), this would parallel our earlier intuition that Victor has no stronger claim on Stanley than does Penny (although both have a stronger

claim than would someone suffering pneumonia who was not faultless).

In short, the initial appearance of asymmetry was a mistake. Innocent sufferers have a greater claim on aid than do faulty sufferers, and faulty gainers have a greater obligation to provide aid than do the faultless. So far so good. But I promised to clarify what I meant by my talk of an internal linkage between claims and obligations, and I haven't yet done that. However, now that the little society of my example is in place, I think I am in a better position to illustrate what I mean. Indeed, if all goes well, you will end up not only understanding me, but also *agreeing* with me that some such internal linkage is part of our ordinary moral view.

As I have already noted, Victor does not seem to have a stronger claim on Stanley than Penny has. If all other things are equal, Stanley has no particular reason to decide to aid Victor rather than Penny; and if things are the least bit unequal—for example, if there is even a slightly higher chance of Penny's treatment being more successful than Victor's—Stanley has reason to aid Penny *rather* than Victor. The mere fact that Victor is suffering as the result of the action of another, while this is not true of Penny, simply does not suffice to give Victor a stronger claim. At least, it does not give Victor a stronger claim against Stanley.

But things seem *quite* different intuitively if it is not Stanley who is trying to decide whom to aid, but rather Agnes. As Agnes contemplates choosing between Victor and Penny it seems *highly* relevant that Victor's present difficulties were caused *by Agnes*. Although Victor does not normally have a stronger claim to being aided than Penny has, it seems that he *does* have a stronger claim on any aid being provided by the very person who harmed him. Victor goes to the front of the line, as it were, when it is a question of aid from Agnes. This seems true even if all other things are not quite equal; even if Penny has a somewhat better chance of recovery than Victor has, it still seems that Victor may have a stronger claim to Agnes' aid. (This is not to say, of course, that Victor's claim will outweigh Penny's no matter what else is the case; for Victor's claim may well be stronger, even if it is not infinitely stronger.)

So although Victor does not normally have a stronger claim to aid than Penny has—nonetheless his claim *is* stronger when it is a matter of aid from the person who harmed him. Victor's claim hooks up in a particularly forceful way to Agnes' aid—but only to Agnes' aid. To put the same matter the other way around, Agnes, but only Agnes, is especially obligated to offer her aid to *Victor*—the very person she has harmed. This is what I had in mind by my talk of an internal linkage between Agnes' obligation and Victor's claim.

Assuming that I am correct about the presence of such internal linkage in our ordinary moral intuitions, any adequate account of the issues we have been examining will have to justify and explain this linkage. And it is far from clear how such an explanation should go. But we are not yet done with this matter of internal linkage. For there is another apparent asymmetry that needs to be considered; and this one may well be genuine.

There is, I have been suggesting, particular reason for Agnes' aid to go to Victor, rather than to someone else. Is there, similarly, particular reason for Victor's aid to come *from* Agnes, rather than from someone else? Not as far as I can see. But if this is correct, then the internal linkage is asymmetrical: it is, as it were, stronger in one direction than in another.

Suppose that Victor is the only one in need of aid, which can be provided either by Stanley—who has volunteered to make the sacrifice—or by Agnes. Is there any reason to prefer that Victor's aid come from Agnes? Intuitively, I am not sure whether or not there is. But our intuitions here are complicated by the fact that Stanley is faultless and Agnes is not. Isn't it better that the faulty pay, other things being equal? Yet this factor doesn't really get at the issue of the internal connection between Agnes' obligation and Victor's claim.

Consider our examination of Victor's claim. To avoid the complications arising from comparing the faultless and the faulty, we compared Victor's claim to that of Penny, someone quite as faultless as Victor. Similarly, then, we should compare faulty Agnes' obligation not to that of faultless Stanley, but rather to our unnamed faulty wrongdoer—the one who has wrongfully gained, but who did not harm anyone.

So suppose that Victor is the only one in need of aid, and it can be provided either by Agnes or by the equally faulty wrongdoer. Is there any reason to prefer that Victor's aid come from Agnes? Here I am inclined to think that there is not. What is important is that Victor be aided—not that the aid come from Agnes rather than some other faulty individual. This intuition is supported by imagining that there is, for some reason, somewhat higher chance of Victor actually being helped if the aid comes from the other faulty person rather than from Agnes: here I find myself wanting to say that the aid should definitely come from the other person.

Of course one might insist nonetheless that when all other things are genuinely equal there is more reason for Agnes to pay than for anyone else—even if this reason gets quickly outweighed when other things are not equal. But I do not find in myself any intuitive tug in this direction. If my intuitions are the typical ones—and I am certainly not claiming to be confident of this—then we will want to say that the internal linkage only works in one direction: although there is particular reason for Agnes to aid Victor rather than someone else, there is no particular reason for Victor to be aided by Agnes rather than someone else. The hookup between Agnes and Victor is asymmetrical in this way.

Let me repeat a point that deserves emphasis. I have been spouting intuitions at a fairly fast clip. I am not at all certain that I have my intuitions properly sorted out here. And I am even less confident that my intuitions will be shared by many or most others. But these intuitions *seem* to me to be in accord with our ordinary moral views on these matters. So if I am right, ordinary morality recognizes internal linkage, but only in one direction. Let me also hasten to add, however, that I do not take intuitive support of a claim to be an acceptable substitute for a *justification* or defense of that claim. But, obviously, one has to have a reasonably clear idea of what the view is that one is trying to defend, before one can defend it.

Thus a defender of ordinary morality has her work cut out for her. She needs to explain not only Agnes' obligation and Victor's claim, but the internal linkage between the two. And she needs to explain why the linkage is asymmetrical. (Of course others might find themselves intuitively

inclined to view the linkage as symmetrical; this will clearly require a *different* explanation. Either way, then, attention to the issue of internal linkage should clarify what exactly it is that needs to be defended. But I'm going to assume that I'm right about there being an intuitive asymmetry.)

The very fact of the asymmetry may provide a useful place to start. For it seems fair to say that the asymmetry of the linkage focuses concern on the *victim*. When an agent harms a victim, what is particularly important is that the *victim* be aided or compensated; it is not of similar importance that the *agent* do the aiding or compensating. This moral primacy of the victim rather than the agent reinforces the suggestion that neither desert nor corrective justice can adequately justify the ordinary view—for both of these approaches will be just as concerned with the appropriateness of the agent undergoing a compensating loss as with the victim undergoing a compensating gain. We need, in contrast, an approach that focuses especially on the victim.

Once the problem is phrased in this way, the approach that immediately suggests itself is one that turns on the victim's *rights*. When Agnes pushes Victor into the pool, she violates Victor's rights. More generally, when the agent harms the victim, she violates the victim's right not to be harmed. And rights seem conveniently victim-centered. So we seem to be onto a promising line.

This line of argument may, in fact, be even more promising than meets the eye. For it may explain cases where the agent has a special obligation to compensate his victim, even though the agent was *fully justified* in harming the victim. If I destroy some of your property in the course of saving my life,⁶ I may be faultless—but I have an obligation to compensate you later nonetheless. And the seemingly obvious explanation of this has to do with your having a property right over the object in question. Given that I was morally justified in destroying your property it may be inappropriate to say that your rights were “violated”; but it still seems that your rights were “infringed,” and it is this very fact that explains why I owe you compensation for the damages. What's more, it is—after all—*only* fair compensation that I owe you: I need to compensate you for the harm I have done you. I do *not* need to give up something equivalent to

the *gain* I have made; in particular, I do not need to give up something equal in value to my life!⁷ In short, the focus of concern is upon the victim's right; not upon the fault or gain of the agent.

I won't pursue the question of how such an account might be extended to cover less obvious cases than those involving property rights. Nor do I want to commit myself on the question of whether some intuitively plausible right can be found for each case where compensation is due, and only in such cases. The fact remains, I believe, that—on the face of it, at least—an appeal to rights can help to justify the special obligation that I have been discussing.

There is, of course, the nagging worry that this line of argument seems so promising simply because talk of the victim's rights is nothing more than a redescription of the very facts we are trying to explain. If we simply stipulate, for example, that a victim has a right to be compensated by the agent of his harm, we have not actually made any progress in defending the view under examination. No doubt, if the victim *has* such a right, then it follows more or less trivially that the agent is under a special obligation toward her victim. But now we simply want to know what is the defense or explanation of this right.

To make the rights approach nontrivial, the position must be something like the following. There are certain facts that ground or generate a right not to be harmed. In certain cases this right will be violated, or at least infringed. If it *is*, then those same underlying facts (together with the fact of violation, and so on) must in turn generate a right to be aided or otherwise compensated by the agent who violated or infringed the right. More simply put: whatever it is that generates a right not to be harmed in the first place *also* generates a right to compensation.

Now this is a substantive claim. It may well strike us as intuitively plausible in its own right; but it is hardly self-evident. It is in need of *defense*. And I want to confess that I am currently unable to see what that defense would look like.

After all, the following is at least a logical possibility. Suppose someone suggested that when the agent harms the victim although this does indeed violate the victim's right not to be harmed, this

does *not* in turn generate any special obligation on the part of the agent to aid or compensate her victim. That is, although the victim's rights were genuinely violated in being harmed, this simply does not generate any right to be compensated by the harmdoer.

I have found that some people find this position bordering on the incoherent. No doubt my insistence that this position needs to be *refuted* reflects badly upon my own claims to coherence, but I still find the position an intelligible one for all that. It is not being denied that the agent did something wrong in harming the victim; it is simply claimed that this fact about the *past* is unable to generate a *further* obligation to correct the harm. "What's done is done," an advocate of this view might exclaim, "Don't cry over spilt milk."

Mind you, I am not claiming that this view is correct, or even plausible. I am only insisting that it is a perfectly consistent view that needs to be refuted if anything like the ordinary moral view is to be defended. And I do not see how the necessary refutation is supposed to go.

It might be suggested, I suppose, that the refutation is actually fairly straightforward. If an agent refuses to compensate her victim, then she is causing *further* harm, beyond the original harm—that is, the further harm consisting of the victim's continuing suffering. Since it is forbidden to cause harm, this is true of the further harm the agent is causing, and not only the original harm. So it is wrong for the agent to refuse to compensate her victim: it violates the victim's right not to be harmed.

Unfortunately, the proposed refutation fails to distinguish carefully between doing harm and allowing harm. Once the "original" harm is done by the agent, all that that agent is doing is *allowing* that harm to go uncorrected. If we want, we can even speak of the continuation of the harm as a "further" harm. But it remains the case that the agent is only allowing that further harm, exactly like everyone else who is in a position to do something about it but fails to. Since the agent is not actively causing the further harm, she cannot be said to be constantly violating the victim's right not to be harmed.

There is, however, a more sophisticated version of this argument that still deserves consideration.⁸ If the agent refuses to come to the aid of her victim

this will—in many cases, at least—affect the *size* or the *kind* of harm that the agent causes. For example, saving someone that you have pushed into the pool may help make it be the case that the only harm that you have committed is that of getting someone wet, rather than that of causing someone to drown. Similarly, Agnes' refusal to pay for the treatment for Victor's pneumonia may, at the very least, affect the severity of the case of pneumonia she has caused, and it runs the risk of making it be the case that the harm she has done is that of causing someone's death.

Thus, it might be argued, it is not so much that there is an original harm, followed by some "further" harm; rather, *how much* harm the agent does in harming her victim is determined, in part, by whether she takes later steps to minimize that harm. Note that this is genuinely a matter of how much harm the agent *does*, and not merely a matter of whether harm is allowed. And presumably, whatever reasons there are for an agent not to harm a victim at all, those same reasons support doing as little harm to the victim as possible. So once we grant that the victim has a right not to be harmed, it follows that the agent has a special obligation to correct—and thereby limit—that harm.

I think that this line of argument may well provide a partial solution to the problem we have just been considering,⁹ but as far as I can see it is indeed only a *partial* solution. In most of my discussion up to this point I have been blissfully running together different types of cases that we may now need to distinguish. I have spoken with indifference of the agent's special obligation to *correct* the harm she has caused or to *compensate* her victim. It may be important, however, to distinguish between the two. In cases of correcting a harm—where this is understood as ending the harm, causing it to terminate, or at least trying to limit its size—the proposed line of argument may come into play: it is not yet determinate just how much harm the agent does; what is at issue is how great will be the agent's violation of the victim's right not to be harmed.

But in other cases, intuitively at least, the harm the agent does is indeed determinate or complete; it is either in the past, or it is at least fixed in its size and nature. Accordingly, we might prefer to speak of compensation for the harm, rather than

correcting the harm. On the common view, of course, the victim has a right to be compensated by the agent who harmed him. But the agent's failure to compensate does not alter the size of the harm itself; so apparently we are concerned with something other than the original right not to be harmed. Thus failure to compensate the victim can at best be said to violate an *additional* right of the victim; and I see no shortcut around the challenge to offer a substantive defense of that additional right.

So a rights-based approach, promising as it may seem, still leaves many of the central questions unsettled—that is, whether it is truly the case that the victim has a special right against the agent of his harm, a right to be compensated, and how such a right is to be justified. The suggestion, worth repeating, is that the grounds of the original right not to be harmed—whatever those grounds turn out to be—will also generate a right to be compensated, in fact, a right with asymmetrical internal linkage of the kind I have described.

Now it may be possible to defend this claim without detailed knowledge of the grounds in question. That is, it may be possible to argue that these grounds—whatever they are—must generate the one kind of right if it generates the other. But, on the other hand, this may not be possible: a plausible argument may not be available without commitment to a specific theory of the foundations of rights. In any event, I am afraid that I cannot currently see how any sort of defense of this position would go.

So let me turn to a potentially distinct difficulty, one which I have rather surprisingly neglected up to this point. The ordinary view, as I have repeatedly described it, holds that if an agent causes harm, he has a special obligation to aid or compensate his victim (I here return to my blissful conflation of cases). I have been belaboring the point that neither the nature of this special obligation, nor its justification, is as clear as we might have hoped. What I have not yet asked is what is so special about causation. That is, why is it the *causing* of harm that generates the special obligation—as opposed to something else?¹⁰

This question can be understood in two ways, one more bold than the other. The more modest question is this: why is it necessary to actually

succeed in causing harm before a special obligation gets generated? Why won't it suffice to have *tried* to cause harm? Or—assuming that negligence can sometimes suffice to ground the special obligation, when harm ensues—why doesn't negligence *always* generate a special obligation, whether or not it results in harm? One could, of course, answer this more modest question by denying its presupposition, holding that the actual causation of harm is not strictly speaking necessary.¹¹ But whichever way one goes, this is yet one more element in need of defense.

The more bold question is this: why is it *causing* harm that is the offensive relation to harm that generates the special obligation rather than some rival offensive relation? For example, why isn't it intending harm as a *means* that generates the special obligation? This is a question that deserves more attention than I am able to give it here. But a few remarks will have to suffice.

Although defenders of ordinary morality tend to agree that there is a deontic prohibition against harming, people sharply disagree as to whether this prohibition should be understood in terms of the distinction between doing harm and merely allowing harm, or in terms of the distinction between intending harm as a means and merely foreseeing harm as a side-effect. These two distinctions cut across each other, and consequently the two interpretations of the prohibition can diverge in important ways.

Those who favor the second interpretation will insist that it does not actually matter whether an agent causes harm or not—what matters is whether the agent has intended harm as a means. And it must be noted that it is possible to intend harm as a means even when the harm is one that the agent is only allowing; for example, an agent might deliberately allow another's harm to continue so as to profit from it.

This is not the place, of course, to argue for or against a prohibition against intending harm as a means. But advocates of such a prohibition will rightfully demand a defense of the claim that the special obligation to provide aid is generated by *causing* harm. They will maintain instead that the special obligation is generated by intending harm as a *means*—whether or not one has actually *caused*

the harm in question oneself. They will maintain that even when one has allowed a harm as a means to furthering one's goals, one has a special obligation to provide aid or other compensation to the person whose harm one has allowed. Or perhaps I should say, they *should* maintain this position, as far as I can see; although, if the truth be told, I do not actually know of anyone who *has* maintained it.

Presumably one might try to argue backwards, from the fact that we believe compensation is owed only to those to whom one has caused harm, to the conclusion that it must be a prohibition against *doing* harm that is correct, and not a prohibition against intending harm as a means. But in the long run such an argument won't be compelling on its own. Ultimately, one must either provide an account of why causation is of particular importance to the special obligation, or else one must revise one's belief that it is.

One final problem. The agent harms the victim, and is now under a special obligation to provide compensation to the victim. But the agent—evil violator of morality that she is—refuses to provide compensation to her victim. May the victim *force* the agent to provide compensation? That is, may the victim (or friends of the victim) enforce the victim's claim against the agent? I take it that it is part of the ordinary view that the answer is Yes. But this seems to me to be a further substantive claim, which does not follow—at least, does not follow trivially—from anything else that we have been considering.

Thus one might conceivably hold that although the agent does wrong in harming the victim, and does wrong in failing to compensate the victim, it would nonetheless be wrong for the victim to *force* the agent to pay. (As a loose analogy, consider the position of pacifists, who admit that the would-be murderer does wrong in trying to kill, but who insist that for all that it is still wrong to use force to try to stop him.) We cannot assume in advance that a defense of the special obligation will automatically yield a defense of a special permission to enforce that obligation. This enforcement privilege seems to require justification in its own right.

Indeed it is possible that one might be able to defend the victim's right to forcibly take compensation from the agent—and yet be *unable* to defend the claim that the agent is under any sort of special obli-

gation to provide the compensation. Personally, in fact, I feel somewhat clearer about how one might go about justifying the permissibility of taking compensation that I do about how to defend the existence of a special obligation to provide compensation. But I will not subject you to the details. The point here is simply that the two features of the ordinary view seem logically independent of one another. I cannot see any good reason to assume that a defense of either one will yield a defense of the other. Once more, the defender of ordinary morality has her work cut out for her.

Well. I promised at the outset that all I was going to be able to do was to share my confusion and uncertainty about the view I have been discussing. I

trust that I have kept that promise. For me, at least, the special obligation to aid those that one has harmed has a double unclarity about it. I find myself uncertain as to the details of its nature and structure. And I find myself uncertain as to how a justification of the obligation might best proceed—indeed I am quite baffled as to what it would look like. Despite its apparent simplicity, I suspect that the obligation is actually rather complex. And despite its firm intuitive support, justification for the special obligation remains strangely elusive. Given the complexity of the special obligation, it may not be surprising that an adequate justification may take some doing. But it remains to be seen whether it can be provided at all.

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NOTES

1. I have criticized this view in *The Limits of Morality*, to be published by Oxford University Press.
2. The economic approach to tort law is consequentialist in this regard, even though not strictly utilitarian.
3. For example, an agent's fault might be small, even though the harm he causes is large; if he is liable for compensating the victim nonetheless, won't this exceed the punishment he deserves?
4. In general, it is one thing for there to be particular reason why Adam, rather than the rest of us, should receive a certain harm or benefit. It is quite another thing for Adam to have particular reason—that the rest of us lack—to *bring about* the state of affairs in which he receives that harm or benefit.
5. Jules Coleman has endorsed a principle of corrective justice similar to what I have described here, drawn the distinctions I have just drawn, and emphasized the conclusion that corrective justice does not entail any internal linkage. I am uncertain, however, as to whether he would prefer to (a) agree, accordingly, that corrective justice cannot justify the special obligation as ordinarily conceived, or (b) maintain that the ordinary view is not actually committed to any internal linkage. See, e.g., "Corrective Justice and Wrongful Gain," *Journal of Legal Studies*, vol. 11 (1982), pp. 421-440.
6. See, e.g., Joel Feinberg's example of the hiker lost in a blizzard, justifiably damaging an unoccupied cabin. "Voluntary Euthanasia and the Inalienable Right to Life," *Philosophy & Public Affairs*, vol. 7 (1978), pp. 93-123.
7. Cf. Coleman, fn. 16.
8. I owe this promising suggestion to Heidi Malm, who may not be satisfied with my presentation of it.
9. Although there are some serious problems with the proposal that I will not pursue. For it is not, I think, genuinely trivial to claim that whatever reasons oppose harming the victim at all must support doing as little harm as possible—once the latter is understood to include "damage control" *after* the fact, as it were. The basis of a prohibition against harming will not necessarily carry over into equivalent support for such a requirement of damage control; whether it does or not will depend on the particular grounds to which one appeals. But a survey of the possible grounds for a prohibition against harming lies beyond the scope of the present paper.
10. Judith Jarvis Thomson tackles a similar question in "Remarks on Causation and Liability," *Philosophy & Public Affairs*, vol. 13 (1984), pp. 101-133. I have criticized her argument in "Causation, Liability, and Internalism," *Philosophy & Public Affairs*, vol. 15 (1986), pp. 41-59.
11. If the actual causation of harm isn't necessary for the generation of the special obligation—to whom is one obligated (since there need be no victim), and what is one obligated to do (since there won't necessarily be need for compensation)? I won't try to evaluate the various proposals that might be made.