

## Doing Good and Doing the Best

When Leona Helmsley, a rather unpleasant American plutocrat, died in 2008, the estimated value of the estate she left was between three and eight billion dollars. She bequeathed a tiny fraction of this to certain relatives, pointedly omitting others. She also left \$12 million to her dog, an amount that was subsequently reduced to \$2 million by the Trustees of the estate. The remainder of the fortune went to the Helmsley Charitable Trust. The mission statement of the Charitable Trust stipulated that the money should be used, first, for “purposes related to the provision of care for dogs,” and, second, for “such other charitable activities as the Trustee shall determine.” The mission statement had earlier listed a third aim – “provision of medical and health care for indigent people, with emphasis on providing care to children” – but Helmsley later deleted that clause.<sup>1</sup>

After her death, I was briefly interviewed for an article on the legal challenges to her bequest. I was asked whether Helmsley acted impermissibly in leaving her money to dogs rather than to people. My response was rather simplistic and naïve. I said that

to give even two million dollars to a single little dog is like setting the money on fire in front of a group of poor people. To bestow that amount of money is contemptuous of the poor, and that may be one reason she did it. But to give such a large sum of money to dogs generally is not frivolous. I think it shows some misplaced priorities, but many bequests do. In a world where there is starvation and poverty, you can say that it’s wrong to give money to universities, or museums, or, worst of all, to divide it up for your children and heirs who are already rich. Welfare for dogs is better than more pampering of the rich. It may indicate misplaced priorities, but it not frivolous or silly. It [the bequest “for the care of dogs”] is disgraced by the context, but the two bequests should be separately evaluated.<sup>2</sup>

Among the thoughts I had when I made this comment was that a major activity of charities that care for dogs is finding homes for stray dogs that would otherwise either be “euthanized” or left to live by scavenging, often in a diseased or injured condition, only to be eventually killed beneath the wheels of a car. Preventing a vast number of dogs from suffering one or the other of these fates seemed to me a worthy use of this woman’s money.

But of course Helmsley’s billions could have been used instead to prevent human suffering and to save the lives of a very large number of people. So the relevant issue was essentially comparative: not whether preventing canine suffering and saving the lives of dogs was a *good* use of the money, but whether using the money for those purposes was morally acceptable when it was possible to use it in ways that would have done much more good. The Helmsley bequest

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<sup>1</sup> Jeffrey Toobin, “Rich Bitch: The Legal Battle Over Trust Funds for Pets,” *The New Yorker*, September 29, 2008, p. 41.

<sup>2</sup> *Ibid.*, p. 47.

thus raises the more general question whether it can be morally permissible to donate money to one charitable cause when one could instead donate the money in a different way that would prevent more suffering or provide greater benefits.

Most people assume that the money Helmsley controlled at the time of her death was hers to dispose of as she wished. If she had really wanted, for example, to convert it to cash and burn it in a latter-day “bonfire of the vanities,” even outside a shelter for the homeless, that would, many people assume, have been her right. Although I cannot argue against it here, I think that this view is mistaken. Not only would she not have had a “liberty-right” or permission to destroy the money, but she would also not have had a “right to do wrong” – that is, a “claim-right” or right against interference if she had attempted to destroy it. Helmsley, like Bill Gates and various others, had legal rights to far more resources than it could possibly be morally justifiable for her to own, possess, or control. Most of her money, in my view, was legally but not morally hers to dispose of. That which she was not morally entitled to retain, she was morally required to give away. But because she had no moral entitlement to that which she was required to give away, her wishes in the matter of its disposal were morally irrelevant. It is arguable that that portion of her wealth to which she had a legal but not moral title belonged to no one and ought to have been used in a way that would have done the most good, impartially considered. When there are resources to which no one has a claim, the default assumption is that they ought to be used to do the most good (taking into account that this may involve giving some priority to those who are worst off).

But some of the money that legally belonged to Helmsley at the time of her death was also morally hers to control. Let us assume that she was morally entitled to leave that money to wealthy relatives or even to gather it while she was on her deathbed and burn it in her fireplace. In that case it would have been genuinely supererogatory for her to give it instead to organizations that would use it to provide “care for dogs.” Some philosophers think, however, that even when it is supererogatory to give money to a charity, once one has decided to give a certain amount, one should give it in a way that would do more rather than less good. These philosophers acknowledge, of course, that there are limits to the amount of effort one must devote to determining which charity would be most effective, but they do insist that, given the information that one can be reasonably expected to acquire, one must give the money in the way that would do the most good.

This view is, however, rather puzzling. One may wonder how, if it is permissible not to give at all, it could be impermissible to give to a less effective rather than to a more effective charity. Most people believe that not only *whether* to give to charity but also *to which* charity to give is entirely discretionary. When it is morally permissible not to give to charity at all, it is also permissible to give to whichever charity one prefers, for whatever reason. It is generally believed, for example, that it is perfectly permissible to give to a charity that supports efforts to discover a cure for a rare and not terribly debilitating disease rather than to one that seeks a cure for a common and devastating disease. Indeed, most believe that it is no less laudatory to give to the first than to give to the second.

Yet there are cases in which it is supererogatory to benefit another – that is, it is permissible not to provide any benefit – but morally required to provide the

greater benefit if one provides any benefit at all. Derek Parfit has given one such case.

“Suppose,” he writes, “that I have three alternatives:

A: at some great cost to myself, saving a stranger’s right arm;

B: doing nothing;

C: at the same cost to myself, saving both the arms of this stranger.”<sup>3</sup>

Parfit claims is that while the cost to the agent of either of the two acts of rescue may make it permissible for him to do neither, once he decides to accept the cost, it becomes impermissible to save only one of the stranger’s arms. That is, while it is permissible to save *neither* arm, it is not permissible to save *only one* arm.

One might think that the Helmsley case is relevantly like this case of Parfit’s, in that they are both instances in which, if an agent who is not required to bestow any benefit nevertheless decides to bestow some benefit at a fixed cost to herself, she is then morally required to bestow a greater rather than a lesser benefit. But the explanation of why the agent in Parfit’s case is conditionally required to do the more beneficial of the two acts does apply in Helmsley’s case. In Parfit’s case, if the agent decides to accept the cost, thereby excluding the option of doing nothing, his choice is then between providing a certain benefit and providing that *same* benefit *and* another equally great benefit at no additional cost. While the agent has a good and sufficient reason to decline to prevent either harm, there is *no* reason for him not to prevent the second harm *if* he is going to prevent the first. To prevent only the loss of one of the stranger’s arms would be *gratuitously* to allow this person to lose an arm. And to allow a great harm to occur when one could prevent it without the slightest cost is clearly wrong.

By contrast, for Helmsley to donate her money to saving dogs rather than doing more good by using it to save people would not be to allow people to suffer harm gratuitously. This is so for two reasons. First, like many good people who volunteer to work at animal shelters, Helmsley cared about dogs. It was important to her to help provide care for dogs that would otherwise be killed or else suffer miserable lives. There would therefore have been a cost to her in forgoing the option of supporting a cause she personally cared about. That is, the cost to her of donating her money to the saving of people would have been greater than the cost to her of donating the same amount of money to saving dogs. Whether this additional cost was a sufficient justification doing less good is a matter to which I will return.

Second, and more importantly, Helmsley’s decision to allow people to suffer greater harms than those from which she would prevent dogs from suffering was not gratuitous because the prevention of those harms to people would have had a cost – namely, the failure to prevent the harms to dogs. Either of her charitable options would have had victims in the sense that there were individuals for whom each option would have been worse. The reason that Helmsley had to save dogs was thus a good *noncomparative* reason not to save people. Her failure to donate her money to the saving of people was therefore not gratuitous. That does not show that it was permissible but it does show that,

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<sup>3</sup> “Future Generations: Further Problems,” *Philosophy and Public Affairs* 11 (1982): 113-172, p. 131.

if it was wrong, the explanation is not the same as the explanation of why it is wrong not to prevent the greater harm in Parfit's case. For the Helmsley case to be relevantly like Parfit's case, it would have to be that she could have saved dogs and people as well but decided to save only dogs.

Most choices between preventing greater harm by giving to a more effective charity and preventing less harm by giving to a less effective charity are like the choice that Helmsley had rather than that which the agent in Parfit's case faces. For if one gives to a less effective charity, the failure to prevent more harm is not gratuitous in the way that the failure to save the second arm is. This is because preventing more harm rather than less would not have been costless. It have been worse for those who have been benefited by the donation to the less effective charity.

Another hypothetical case in the philosophical literature that does seem relevantly analogous to the Helmsley case was presented some years ago by Shelly Kagan.

Suppose a building is on fire. Upon entering, I find a child and a bird trapped within. Needing one hand free to clear a path back outside, I can save only one of the two, and I hastily pick up – and escape with – the caged bird. Clearly I have done something wrong. Even if [a person with moderate views about doing good] believes that I was not morally required to risk my safety by entering the building in the first place, he nonetheless believes that once I have decided to undertake the risk, I should have promoted the greater good, by saving the child. If my interests are equally affected by either of two courses of action, I have reason to pick that act with the objectively better outcome.<sup>4</sup>

This example seems just like the Helmsley case, in which she chooses to save many animals rather than many people, writ large. If that is right, and if Kagan's judgment about his own case is correct, we should conclude that Helmsley ought to have donated her fortune to save people rather than to save dogs, and that more generally people who decide to engage in supererogatory charitable giving then acquire a conditional duty to give to the charity that, according to the evidence they can reasonably be expected to have gathered, would achieve the most good, or prevent the greatest harm.

There is, however, one salient difference between the cases, which is that the agent in Kagan's case seems to save the bird on a mere whim. There is no mention of a reason that the agent might have for rescuing the bird rather than the child. Helmsley, by contrast, had a reason for saving dogs rather than people, which was that she loved dogs but apparently rather disliked most people. To make the cases relevantly parallel, we should imagine that Kagan's agent is a bird-loving misanthrope who enters the burning building with the aim of saving the bird. Because this agent cares enough about the bird to risk her life to save it, we should concede that she has an interest in its survival.

Kagan concedes that this might make a difference morally. He writes that what his original "case suggests...is that although ordinary morality grants me the option to refrain from promoting the good in the pursuit of my interests, I do

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<sup>4</sup> Shelly Kagan, *The Limits of Morality* (Oxford: Clarendon Press, 1989), p.16.

*not* have the option to react in a manner that neither promotes the good *nor* my interests.”<sup>5</sup> At least according to “ordinary morality,” if the agent in Kagan’s case has an interest in saving birds (so that it is better *for her* if she saves the bird) but not in saving people, it might be permissible for her to save the bird rather than the child. Similarly, Helmsley’s interest in saving dogs might have made it permissible for her to bequeath her fortune to the saving of dogs rather than to the saving of people. And, finally, people who engage in charitable giving often have an interest in the success of a particular charity – for example, it may matter *to them* to find a cure for a particular disease because someone they loved has died of that disease. In all these cases, then, one might claim that when it is supererogatory to do good at all, it can be permissible to act in a way that does less good if one has an interest in acting that way rather than in another way that would do more good. The explanation for this is that acting in the way that would do more good has an additional cost – namely, the sacrifice of the agent’s interest in achieving the lesser good. Because we are assuming that it is the cost to the agent of acting either way that makes her doing any good at all supererogatory, it cannot become her duty to do what would produce the greater good if that would require an additional cost.

There is another way in which reflection on Kagan’s case might be thought to support the common view that Helmsley acted permissibly in devoting her fortune (or that part of it to which she was morally entitled) to the saving of dogs rather than to the saving of people. Suppose that in Kagan’s case there are numerous people gathered outside the burning building. Because the risk to life of entering the building is significant, none of them is morally required to save the child. One of them, however, dashes into the building and, unable to save both, saves the bird. The others do nothing. Of all these people, can we really believe that the only one who has done wrong is the only one who has done any good at all – and in conditions in which it was permissible for her not to do any? Although she has done less good than she could have, her failure to do more good is not entirely gratuitous, as there were one or two individuals for whom her doing more good would have been worse: the bird and perhaps herself, if she had an interest in saving the bird but not in saving the child.

Yet the agent in Kagan’s case who saves the bird *does* act impermissibly. After she enters the burning building, she finds both the child and the bird. At that point, she has already taken the relevant risk; the foreseen cost that made saving the child supererogatory is no longer an issue. She can no longer appeal to considerations of cost as a justification for not saving the child. Saving the child is no longer supererogatory. She is now in the position of someone who can save either a child or a bird, though not both, at no cost to herself (or at only a small cost to herself). Such a person has a duty to save the child, thereby allowing the bird to die. It makes no difference if this person is a misanthropic bird lover who has a personal interest in saving the bird. That interest is comparatively minor. It would not be sufficiently worse for her to save the child rather than the bird to make it permissible for her to save the bird.

It does not follow, however, that Helmsley too acted wrongly in failing to do what would have prevented the greater harm. When she was choosing

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<sup>5</sup> *Ibid.*, p. 240.

whether to leave her money to charities that would care for dogs or to ones that would do more good by preventing the suffering and deaths of persons, the cost to herself that made her doing either supererogatory had not yet been incurred. We are assuming that, in that situation, there was no moral requirement for her to give whatever share of her legal fortune she was morally hers to a charity rather than, for example, using it posthumously to erect statues of herself at various Helmsley hotels. (In this respect her situation was relevantly parallel to that of others who can either leave their accumulated wealth to charities or leave it, for example, to their children. For many people, leaving it to charities would be worse not only for their children but also *for them*.) If the cost to her of giving her wealth away made it supererogatory to give it to any charity, the additional cost to her of giving it to charities that would help people rather than ones that would help dogs seems to exempt her from any duty to give it to the former.

To make this clearer, it may help to imagine a simple change to Kagan's case that makes it relevantly parallel to Helmsley's actual situation. In Kagan's case, the child and the bird are in the same part of the burning building. When the agent enters the building, he has immediate access to both and can take either with him on leaving. But suppose the building is large and that the child is near one entrance while the bird is near another. There is insufficient time for the agent to enter the building twice before it collapses. She must choose one of three options: go in one entrance and save the child, go in the other and save the bird, and not go in at all. The reason why it is wrong for the agent to save the bird in Kagan's original case does not apply in this version. In both versions, for the agent to be able to save the bird, she must have first incurred the risk of entering the building. In the original case, saving the child is still an option after she has incurred that risk. But in this further variant, if she incurs the risk necessary to save the bird, it is no longer possible for her to save the child. Suppose that she is standing outside the building deliberating about what to do. She knows that it is permissible for her to stay where she is, saving neither. But perhaps because she is a bird lover, she dashes to the entrance near the bird and saves the bird, just before the building collapses. One cannot claim that she has acted impermissibly because she has failed to save the child when she could have done so at no cost to herself, or at only a small cost to herself. If she does wrong in saving the bird rather than the child, we still lack an explanation, or at least a non-consequentialist explanation, of why she does wrong, given the assumption that it is permissible for her to rescue neither.

(Kagan says of his original version of the case that "once I have decided to undertake the risk, I should have promoted the greater good, by saving the child." But merely deciding to take the risk does not make it obligatory to save the child. If, for example, the agent decides to take the risk in order to save the bird, that decision alone does not make it obligatory for him to save the child. It does not become obligatory to save the child until the risk has already been incurred, so that there is no further cost in saving the child. All this, of course, presupposes that saving either is supererogatory.)

There are now many philosophers who believe that once one has decided to make a sacrifice by engaging in charitable giving, one ought then to make a reasonable effort to ensure that one gives to the most effective charity. These philosophers will be disappointed by my argument to this point, which seems to exonerate Helmsley's decision to use her wealth to save dogs rather than to save

persons. Those who give their time to working at animal shelters rather than raising money to buy malaria nets may, by contrast, feel relieved. It may seem, however, that both reactions are premature. For there is surely more to be said. In particular, it is difficult to believe that whether the agent in Kagan's case can permissibly save the bird depends on whether it is in the same room with the child or in a different part of the building near a different entrance. Yet if what I have argued thus far is correct, it is in fact permissible for the agent to save the bird in the latter situation but not in the former. If the bird is in a different part of the building, it seems that the agent can save it without acquiring a duty to save the child. But if the bird is in the same room with the child, then to save it the agent must enter that room. But once she is there, she becomes morally required to save the child rather than the bird.

Yet perhaps this is right. What is impossible to believe is that whether there is a duty to save the child could depend on something as morally arbitrary as whether he or she is in the same room as the bird. But nothing I have said has that implication. I have assumed, as virtually everyone does, that if there is a substantial risk of being killed in entering the building, there is no duty to save the child. I have also argued that if one has entered the building, even with the intention of saving the bird, and one can choose to save the child or the bird or neither, one must save the child. Both these claims are plausible. They leave it open that if one can save the bird in a way that affords no opportunity to save the child, it is permissible to do that – crazy, perhaps, but not impermissible.

One possible implication of my argument is that promoters of "effective altruism," of whom I am one, might investigate whether the context of charitable giving could be arranged so that it would be relevantly like the situation of the agent who enters the building intending to save the bird but once there finds that she has a duty instead to save the child. But it is hard to see how one could permissibly rig the process of charitable giving so that those who, for whatever reason, want to give to a less effective charity could be led to make their donation only to find themselves morally obligated to ensure that it goes to a more effective charity instead.

Another possibility, of course, is that the scope for supererogation is narrower than non-consequentialists have supposed. Perhaps it is a mistake to suppose that it was supererogatory for Leona Helmsley to give even that portion of her fortune to which she was morally entitled to charity rather than using it for some self-interested purpose, such as commissioning a eulogistic biography of herself, to be published posthumously. One might think, in particular, that the personal interest that an individual has in making one bequest rather than another cannot be very strong. Even assuming, as I do, that events can go better or worse for people after they die, it could not have been substantially worse for Helmsley if, for example, the money she was unable to spend on herself during her lifetime had been spent to prevent the suffering and deaths of persons rather than dogs.

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28 December 2015