

POSITIVE RIGHTS TWO-PERSON CASES

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THIS PAPER is about positive rights, meaning rights to be saved from harm. The topic is large, and I will therefore restrict myself entirely to the simplest type of case in which we appeal to such rights, leaving more complex ones for later treatment. I will be concerned with what I call “two-person cases.” In such a case, there is just one agent and one patient; the patient is in dire need and can be saved by the agent, and the agent alone, and there is no one else the agent could save. For most of the paper, I will also restrict myself still further, to what we can call “easy-rescue cases,” in which the cost to the agent of aiding is small.

My question, broadly speaking, is that of why patients in two-person cases have a right to the agent’s aid, given a view of rights, positive and negative, on which rights are not exhaustively characterized as corresponding to (first-order) reasons for action, but consist rather in one person’s having the authority or the standing to make demands of another (and more on that later). More narrowly, though, I will concentrate on one central aspect of the broader question, as will become clearer below.

I will proceed as follows. First, and as necessary background, I will say something about *negative* rights (to noninterference) and how positive rights differ from these—and also, in light of those differences, why we should be talking about positive rights in the first place. In section II, I turn to two-person cases and distinguish two questions that we would eventually have to answer about them: (1) Why does the agent in such a case lack a negative right he would normally have? and (2) Why does the patient have a positive right he would not normally have? I also offer a quick (and admittedly inconclusive) answer to question 2. However, question 1 is particularly challenging on the view of rights suggested above, and therefore I devote the balance of the paper to answering it. (Perhaps ironically, then, the lion’s share of this paper nominally concerned with positive rights is really about negative rights.) In section III, I sketch an answer to question 1, building on the idea that the kind of authority involved in having

a negative right requires being able to demand noninterference “decently,” and I offer some clarifications. In section IV, I continue my exposé of this proposal by considering the relevant notion of a “demand” a bit more closely and asking what we might mean in talking about an “indecent demand.” Then, in section V, I attempt to explain why the ability to demand decently is necessary for authority. Before concluding, I turn in section VI, if only briefly, away from easy-rescue cases to consider some other two-person cases.

I

As will become clear shortly, understanding positive rights requires understanding negative rights, and I will therefore begin by outlining my view of the latter in a rough-and-ready way. I have elaborated and defended it at length elsewhere, and so refer readers to that discussion if they wish further details.¹ On my view, to have a negative right is to have a certain type of *authority* over some other person, or persons generally, with respect to some type of interfering action. This authority consists in its being *up to* the right holder whether a given person is under a duty to refrain from performing that action, meaning both that a right holder is in some sense entitled or licensed to *demand* that others refrain from interfering in certain ways and that he is able to waive this duty. By the same token, a demand will be invalid or illegitimate if the demander lacks the authority to make it, meaning that it does not answer to any right. It is precisely this authority that yields the characteristic structure of a duty corresponding to a negative right—namely, that the duty bearer has *exclusionary* reasons not to act for any (or at least some) reasons for not doing his duty.² Again, note that it is up to the right holder whether these exclusionary reasons exist: that is what his authority consists in. To violate a negative right is to set aside the right holder’s authority, to act as if it did not exist and it is up to oneself to weigh the reasons for and against the relevant action. It follows, I hold, that duties corresponding to negative rights are not simply (strong) reasons for (in)action, and also that whether a negative right is violated does not simply depend on the duty bearer’s balance of reasons.³ It is not as if the fact that an action amounts to setting aside another’s authority is itself an overriding reason against that action, or indeed a reason at all, on a par (say) with the fact that the action will cause harm. It also follows that negative rights cannot conflict with other rights, strictly speaking,

1 Alm, *Moral Rights and Their Grounds*.

2 The idea of exclusionary reasons comes from Raz, *The Morality of Freedom and Practical Reasons and Norms*. See especially *Practical Reasons and Norms*, 39.

3 The view of right violation rejected here is essentially that of Thomson, *The Realm of Rights*.

as it is impossible for both parties to such a supposed conflict to have authority over the action at issue.

I admit that a view of negative rights like the one just described will likely make one ask why we should speak of positive “rights” at all, for they are not rights in the way I have said that negative rights are rights. For one thing, talk of “authority” and “demands”—or, relatedly, of the right holder’s being “sovereign” over certain matters—fits negative rights against interference much better than it does positive ones to aid.⁴ Indeed, the problem here goes deeper than mere language, for arguably an agent able to aid some patient does not, in virtue of that fact alone, have exclusionary reasons not to act for reasons other than that particular patient’s need—as opposed to simply having reasons for aiding him.

Even so, it seems to me that it still makes sense to speak of positive rights, if only in a possibly narrow range of cases, on account of several features that such rights share with negative ones. Here it will suffice to mention three. In the first place, the requirement one is under when in a position to aid another will, in some cases, be *personal* (as opposed to impersonal). It is a kind of relation between agent and patient.⁵ I will not attempt to specify this relation exhaustively, but at least it would involve the patient’s having reason to resent the agent for failing to aid and the agent’s having reason to apologize to the patient (or to those close to him) for such failure, and perhaps to make amends in other ways. A second point, possibly a consequence of the first, is that a purported positive right can be *waived*. Third, positive rights can be *enforced*, at least to some extent, meaning that the right holder is permitted to do certain things that would normally be disallowed if they are necessary and sufficient to induce the duty bearer to act. As we will see below, this feature in particular is essential to explaining why it makes some sense to speak of the patient as “demanding” the agent’s help, as opposed to merely “requesting” it (though such talk may admittedly still seem a stretch to some).

II

Having said a little about positive rights generally, I turn to what I have called “two-person cases.” It will prove useful here to work with a concrete instance, and

4 For the phrase “sovereign,” see Hart, *Essays on Bentham*, 183.

5 Some philosophers reject positive rights to aid on the grounds that (1) all rights require a nonarbitrary specification of the corresponding duty bearer, and (2) such specification is impossible for positive rights (unless they are institutional). See, e.g., O’Neill, *Towards Justice and Virtue*, 131–34. I dodge that issue by sticking to two-person cases, in which a unique duty bearer can be identified unproblematically.

I will be referring frequently to it and variants of it. Consider, then, the following situation: Bob is drowning, through no fault of his own, and Betty, a complete stranger, can (with certainty) save him by throwing him a public life preserver located right next to her; there is no one else she could save from harm in the situation; and there is no one else around who could save Bob. Call this case *Drowning 1*.

It will also be helpful to make a pair of stipulations about this case. The first stipulation is that Betty's decision (i.e., that of whether to throw the life preserver) is such that she typically, or by default, has a right against interference with it.⁶ In other words, unless special circumstances obtain, forcing her to perform that action would wrong her (and would not merely be wrong)—and, we might add, she would wrong no one by not performing it. This right includes also a right to use a moderate amount of force to prevent others from interfering with her decision.

The second stipulation is that special circumstances *do* obtain, because if Betty does not throw Bob the life preserver, he will die, and so he has a positive right against Betty that she do just that. As we have seen, it is awkward to speak here of Bob's having "authority" over Betty—and indeed potentially misleading, if we tend to link that notion with exclusionary reasons. Therefore, I will say only that Bob has the "standing" to demand that Betty make a decision she would normally be authorized to make as she sees fit. As a consequence, Betty lacks the authority over Bob, in this matter, which she would normally have. As we saw in the preceding section, this second stipulation also entails that Bob's right has the three features listed there as characteristic of positive rights. That is, (1) the features of the case suffice to yield a personal moral relation of the kind described between Bob and Betty, (2) Bob can waive his right, and (3) Bob is allowed to use some measure of (normally impermissible) force to make Betty save him. (Specifying means of enforcement that might plausibly be at Bob's disposal is cordially left to the reader's ingenuity.)

Given these stipulations and the view of negative rights outlined in the preceding section, we need to answer two questions about *Drowning 1*. The first is why Betty (the agent) to some extent lacks authority that she would otherwise have over a certain action (i.e., throwing the life preserver). That is, why does she lack her "default" negative right? The second is why Bob (the patient) acquires his standing to make demands on Betty. In other words, why does Bob have a positive right to her aid? Betty's lack of a right, of course, entails only that Bob has a mere liberty to make her help him, compatible with her own liberty to refuse to help, and to resist his efforts to make her do so.

6 On the notion of "default" rights, see Walen, "The Restricting Claims Principle Revisited."

My main concern in this paper is with the first of these two questions. That is in part because I have addressed the second question elsewhere—if admittedly incompletely—but also because the first seems to be especially pressing on a view of negative rights like the one outlined in the preceding section.⁷ Indeed, on the alternative view that rights are simply the correlatives of strong reasons to act, the first question hardly arises at all, as that view does not make use of the notion of authority in the first place. By contrast, the alternative view would still have to explain why Bob has a right to Betty's aid, whether or not that right is understood in terms of what I have called "standing." For present purposes, I will make do with the following very sketchy, and inevitably insufficient, remarks in answer to the second question, again referring readers to *Moral Rights and Their Grounds* for a more complete treatment. It is in virtue of their *agency* that persons have rights at all, and this fact is reflected in the content of these rights and also in their being subject to their holders' control (by waiver). In particular, persons have rights to what they need to function adequately as agents, which may include various resources. The fact that such a right presupposes a need, even if it cannot simply be reduced to one, explains the limited nature of the standing to make demands, in contrast to the authority constitutive of negative rights, which does not presuppose needs. There are two important points of difference. First, if I possess a negative right, I could legitimately demand that you *not* do something over which I have authority, even if your action would in fact meet important needs of mine and would be of net benefit to me. In the most familiar case, I could refuse needed medical treatment. But, at least barring a special obligation, I could not demand that you (positively) act unless your action would actually meet one of my needs. To the extent that I have standing to demand that you act, then, that standing requires a genuine need. Second, a positive right's presupposing a need of a certain strength also explains why it does not correspond to exclusionary reasons—or so I would argue. To put the point simply, if a little misleadingly, the right inherits this strength as an essential feature and so the right could not exclude stronger competing reasons.

The above will have to suffice here in answer to the second question, and so I turn to the first.

III

We have noted that in Drowning 1 Betty lacks the authority to demand of Bob that he not interfere with her decision not to throw the life preserver. Now, if we ask *why* that is so, we are bound to alight on the huge difference in what is *at*

⁷ See Alm, *Moral Rights and Their Grounds*, ch. 6.

stake for Bob, relative to Betty. After all, were that difference significantly smaller, Betty would retain her authority (see section VI). But, we might ask, why is this difference in stakes so important? Why does Betty lack her authority to make demands of Bob when he has much more at stake than she does, but not otherwise?

It is not an adequate answer to the question to say simply that Betty lacks authority in Drowning 1 because her stake is so much smaller than Bob's. This is for two reasons. In the first place, that answer renders unclear the relation between rights and the balance of reasons. The large difference in stakes might certainly explain why Betty's reasons for resisting Bob's interference are weaker than her reasons for not doing so and her reasons for aiding him, but that is not the same as her lacking a right to noninterference. Second, and no doubt related, it is unclear how an appeal to relative stakes could explain why *Betty's* authority is lacking, as it is as much a fact about *Bob* as it is about Betty.

We can see a more promising answer, I believe, if we attend to a feature of situations like Drowning 1 that is occasionally noted in the literature.⁸ For there would (typically) be something *morally objectionable* about Betty's exercising her purported authority in the way we are currently considering—that is, by demanding that Bob not interfere with her decision not to throw the life preserver. We might say that such conduct is “contemptible” or “indecent” or “selfish” or “disgraceful,” precisely because of the huge difference in stakes between Betty and Bob.⁹ Here, it seems, we have a factor that can explain why Betty's authority is lacking in Drowning 1: she lacks it because she could not use it (or try to use it) in the circumstances without being subject to some sort of moral opprobrium. Note that we are then pointing to a moral fact about Betty, the purported right holder, and not merely to a fact about relative stakes—though the latter matters indirectly—and thus a fact that seems to be of the right kind to explain her lack of authority.

Turning the proposed explanation into an account of authority, we get something like the following, as a first approximation: one has the authority to demand noninterference just in case one can do so decently. To throw some light on this proposal, it is useful to begin by comparing it to a similar one defended by Skorupski. On his view (in simplified form), one has a (moral) right if and only if it is “prima facie morally permissible” for one to demand its fulfillment.¹⁰ Our proposals are similar above all in that both are defined precisely in terms of the moral assessment of *demands*. Consider Drowning 1. On both views, Betty

8 For examples, see Taurek, “Should the Numbers Count?” 308; Quinn, *Morality and Action*, 169n34; and Voorhoeve, “How Should We Aggregate Competing Claims?” 75.

9 However, I would not say that, as a rule, Betty's demand *wrongs* Bob. I thank an anonymous referee for raising this issue.

10 Skorupski, *The Domain of Reasons*, 311–12.

lacks the right against Bob that he not interfere with her decision not to throw the life preserver because her demand that he not interfere would necessarily be morally objectionable, but the relevant objection is precisely to her *demand* that Bob not interfere with her decision, rather than to the decision itself. To be sure, her decision is also objectionable, and it may be that her demand would not have been objectionable otherwise—after all, the demand (for noninterference with her decision) logically presupposes the decision. Even so, our concern is with the demand. It is worth noting that this feature of the view means that it is compatible with a “right to do wrong.”¹¹ I grant that some action that a person has a right to do could be such that he could not decently choose to perform it (meaning that it is, in one sense, an exercise of the right to do wrong). Yet it does not follow that it must also be objectionable for him to demand that others not interfere forcibly with this action—and it is the latter judgment that matters to whether he has a right against such interference.

However, there are also some significant differences between my proposal and Skorupski’s, a couple of which can be noted here. In the first place, and as indicated in section I, I do not endorse the view of justifiably overridden (negative) rights that goes with Skorupski’s formulation. For that reason, I would also dispense with the qualifier “*prima facie*.” Second, I would hesitate to speak of “permissibility”; that is why I have used terms such as “indecent” and “selfish” (or the somewhat nebulous “objectionable”). I will say more about this last point in sections IV and V. In section IV, I will also describe a further important difference between the two accounts.

I end with a caveat. The account I presented above concerns authority, and so negative rights, exclusively. The same is arguably true of Skorupski’s account as well, as he does not seem to recognize rights to aid based simply on need.¹² It is possible to extend the suggested account also to positive rights—saying, presumably, that a person has a right to demand aid just in case he could do so decently. I do not think, however, that such an account would be plausible: while the condition stated may be necessary, it is hardly sufficient. I am further inclined to believe that we would also eventually have to modify the suggested account of authority (and, arguably, Skorupski’s account of rights) in light of these worries (and perhaps others). However, as these matters are not crucial for the argument to follow, I will set them aside here. At least as long as we limit our attention to two-person cases and consider only the information available in them, I believe that the proposed account is defensible—once properly understood.

11 See Waldron, “A Right to Do Wrong.”

12 See Skorupski, *The Domain of Reasons*, 312–13.

IV

I have made heavy use of the notion of demanding, and it is time now to consider it more carefully. As a preliminary, let me signal a restriction of scope: I am concerned exclusively with demands of the type made in Drowning 1 and similar cases; that is, demands that do not presuppose any kind of institutional background. Indeed, I do not pretend to offer a complete analysis even of “pre-institutional” demanding. This is because my main interest is really in the separate question of what would make such a demand morally objectionable (or selfish, indecent, or contemptible).

Turning to that question, I note first that it is useful to contrast a demand with a (mere) *request*. After all, even if a demand, such as Betty’s in Drowning 1, is objectionable, the same is typically not true, or at least not nearly to the same degree, of a request with the same content. The key difference is that demands are linked somehow to *enforcement*, as defined in section I, but requests are not. Unfortunately, there is no agreement in the literature about what role, if any, enforcement plays in an account of demanding.¹³ However, considering the purpose for which we appeal to the notion of a demand—that is, to make sense of the notion of a right, which is clearly linked to enforcement—I choose to embrace the following necessary condition: a demander must be willing to enforce his demand somehow, at least if he could do so at little cost to himself and third parties. It should be clear that such willingness matters to our moral evaluation of the relevant demand.

Having identified the morally distinctive features of demands, we return to our question of what makes a demand morally objectionable. Unfortunately, there has not been much discussion of that question.¹⁴ If we are to answer it, I believe, we must first realize that we could mean two rather different things when we say that a demand is morally objectionable. As we will also see, one of these interpretations is decidedly more promising than the other as a part of the account of authority suggested in the preceding section. Let me address these two interpretations now.

First, though, I wish to add something that applies to both of them and makes them more precise. I have spoken about a demand’s being morally objectionable,

13 For contrasting answers, see, e.g., Guttchen, “Demands,” 121; and Schaber, “Demanding Something,” 68. On Skorupski’s view, “to demand is to imply that enforcement would, if necessary be permissible” (*The Domain of Reasons*, 310).

14 Skorupski is an exception. He holds that “a permissible demand is a request that it is morally permissible to enforce” (*The Domain of Reasons*, 310). There are problems with that claim that will become apparent below.

and about its being indecent, but it was implicit in section III that a demand is objectionable or indecent because it is *selfish*, and that is indeed what I will assume in the sequel. (I will consider a complication below.) And so we can state the first interpretation, which is also likely the one that will first come to mind. It is that in saying that a demand is selfish, we are attributing selfishness to an *action*—namely, the act of demanding. Further, what makes that act selfish is its being explained or motivated by some desire or attitude, also selfish. In saying that a selfish desire or attitude *explains* an action, I mean to say at least that the demand would not have been made if the demander's desire or attitude had not been selfish.¹⁵ Call the above the “act interpretation.” Is it adequate?

Now, we should remind ourselves why we are interested in the notion of a selfish demand to begin with: it is because of the suggestion that a person has the authority to demand something of another if and only if he can do so without being (objectionably) selfish. On a closer look, though, it becomes clear that this ability is neither necessary nor sufficient for having such authority if the notion of a selfish demand is understood along the lines of the act interpretation.¹⁶ To see that it is not necessary, consider the following variant of Drowning 1. Bob is in no serious danger yet still demands that Betty throw the life preserver. If she refuses, her demand that Bob not interfere with her decision, and that alone (including the willingness to enforce), will trigger a madman to kill several people (and she knows this). It seems impossible in these circumstances for Betty to make her demand without objectionable selfishness, as it would inevitably depend on her callous indifference to the madman's victims: had she cared more about them, she would neither have made nor enforced her demand. Yet surely her authority remains intact: it still seems that Bob is duty bound to respect her demand. After all, the madman cares not one whit about what *he* does.

To see that the ability to demand nonselfishly is not sufficient either, consider the following “inverse” of the madman case just presented: Bob is again in mortal danger, but Betty's refusal to aid and her demand for noninterference with that refusal, and only that (including the willingness to enforce), would spur an eccentric do-gooder to save several other lives. If this fact moves Betty to make her demand, it seems both pardonable and permissible, yet surely Bob is not required to heed it. Again, the do-gooder does not care about what *he* does.

To get around these difficulties, it seems to me, we need to shift our attention—

15 For simplicity, I will assume that the act of demanding and the willingness to enforce have the same explanation.

16 Counterexamples much like those I go on to discuss in the text would also seem to affect Skorupski's view. These examples admittedly stretch the definition of a two-person case. Still, an account that fits them does seem preferable to one that does not.

and, as a consequence, appeal to a different understanding of selfish demands.¹⁷ I have been asking whether a person *is able to demand something nonselfishly*. Again, the focus here is on a moral evaluation of the possible act of demanding itself. A different and, I believe, more appropriate focus is on *what is being demanded*—as indicated by our talking about “what could decently be demanded.” That is, we are not asking “Is this act of demanding selfish?” but rather “Is it selfish to demand this (rather than that)?” Once we ask the question in those terms, an answer suggests itself: what one could decently demand of another, and so what one has the authority to demand, is what one could decently *want* the other to do. (Note that it does not matter what one in fact wants the other to do, if anything.) Strictly speaking, then, the kind of selfishness relevant to authority belongs not to the act of demanding, but rather to the *desire for compliance* with that demand. Further, whether one could decently want another to comply depends on the stakes involved in the case. To clarify, the “desire” here should be understood as a preference relation: compliance is preferred over noncompliance. In Drowning 1, Betty’s desire for compliance means that she prefers Bob’s leaving her alone (leading to his drowning) to his interfering (and, let us assume, making her save him)—and hence, in practice, that she prefers her own convenience to Bob’s survival. Call what I have stated in this paragraph the “compliance interpretation” of the notion of a selfish demand. It dispenses with the counterexamples. After all, in the madman case, Betty could nonselfishly desire that Bob comply, even though her act of demanding would be selfish, and so she does have the authority to demand noninterference. By contrast, in the do-gooder case, Betty’s desire for Bob’s compliance would have to be selfish, even though her act of demanding is not, and so she does not have the authority to demand noninterference.¹⁸

Importantly, the compliance interpretation can make sense of the essential role of enforcement in accounting for the objectionableness of demands. This is because the demander may also prefer *enforced* compliance over noncompliance (and so prefer compliance no matter what the other person says), at least given that enforcement is necessary. Strictly speaking, it is this preference that matters to our evaluation. Again, it could be absent in a given case; what matters is whether it would be objectionably selfish if it did exist, and that this selfishness explains why the demand in question is one that could not decently be made

17 As advertised in section III, I here take a step further away from Skorupski’s view. In saying this, I effectively attribute an act interpretation to Skorupski. I will not pause to justify that attribution here, but one strong indicator is his treatment of the “coercion” case, discussed in note 19 below.

18 Note that it is futile to revise the counterexamples so that the madman and the do-gooder act contingently on Betty’s desire for compliance, rather than her act of demanding. This is because our evaluation of that desire does not depend on the consequences of having it.

in the circumstances. However, we can ignore the particular *means* of enforcement the demander is willing to use, even if resorting to such means would be objectionable, and even if no other means are available or would be effective in the situation. Again, the question we are asking is that of what the person could decently demand, and though the willingness to enforce *in some way* may be essential to a demand, as I have suggested, it is certainly not essential that one be willing to use whatever means of enforcement are necessary in the circumstances, no matter how harsh. Our question, then, is not about whether it would be objectionable to use whatever means of enforcement happen to be available or necessary in the context. It is rather about whether it would be objectionable to demand compliance *no matter which* method of enforcement one uses (assuming, of course, that the means chosen would normally be impermissible).

I should note an important complication. Offhand, Betty's demand that Bob not interfere could be both nonselfish and invalid, as long as she makes it on behalf of someone else—in the sense that her desire for compliance itself is motivated by a concern for that other person's welfare. In such a case, Betty need not prefer her own convenience to Bob's survival. For instance, she might fear that her saving Bob's life, or Bob's making her do so, will disturb Bernie's afternoon nap. In this case also, Bob would not wrong Betty by interfering. Now, cases like this one, involving three persons rather than two, need separate treatment, and here I can only make a couple of brief remarks pertinent to the worry just raised. In the first place, I would say, a person is typically authorized to make demands on behalf of himself alone. As a consequence, when we try to determine whether a given demand of his is valid, we are to ask whether it would be objectionably selfish of him to make the demand on his own behalf (meaning that he is motivated by a concern for his own welfare), whatever his actual motivation. Second, in the special case in which a person could indeed make a valid demand on behalf of another—perhaps due to the intimate relationship between them—the validity of such a demand depends on whether that other person could validly, and hence nonselfishly, make the same demand on his own behalf. In our variant case, Bernie could make no such demand of Bob, and so Betty's demand, on Bernie's behalf, is invalid (but not because it would be selfish or otherwise objectionable of Betty to make it).

I have addressed the question of what it means to say that a demand is selfish, distinguished two interpretations of that question, and tried to explain why one of these interpretations is more promising in the context of accounting for authority. I turn now to another question—namely, that of what it means to say that a demand, in the sense indicated, is (objectionably) selfish. Here I need make only one crucial point; namely, that the term “selfish” tends to imply *blame*—though there is of course no strict entailment—suggesting that the judgment

that a demand, and the corresponding desire for (enforced) compliance, is objectionably selfish is in the end a judgment of blameworthiness. The same goes for the other terms I have been using: “contemptible,” “indecent,” and “disgraceful.” (By contrast, Skorupski’s favored term “morally impermissible” does not carry the same implication, or at least does so less strongly.) I will return in the next section to the question of *why* I choose to put my account in these terms.

In the meantime, though, I need to consider some further objections against the compliance interpretation, reflecting precisely the idea that it is a mistake to make authority depend on blameworthiness—rather than on justification, and thus ultimately on the strength of competing reasons. These objections have to do with the fact that our judgments about blameworthiness are sensitive to the presence of various *excuses*, which do not seem relevant to authority. In one type of case, the desire for compliance is the result of manipulation or brainwashing, making us unwilling to blame the person for having it—although his authority presumably would be no more genuine for that.¹⁹ In a less far-fetched case, our demander is akratic. There may be cases in which, if he feels terrible about his selfish desire for compliance (and for acting on it), he would not be contemptible—though he would have been contemptible if he had not felt terrible about it. Yet surely he should be equally lacking in authority regardless. In dealing with cases like the ones just described, it is again important to remember that we are not concerned with assessing a particular act of demanding performed by some particular person in some particular set of circumstances. Rather, we are asking what one *could* decently demand of another in those circumstances, and hence what one *could* decently desire that person to do—meaning what *anyone* could decently desire in those circumstances, defined by the relative stakes of the persons involved and not by the peculiarities of any actual demander. The relevant case here, therefore, is one where the demander is acting with full responsibility—in his full capacity as agent, as it were—and hence we can simply ignore excusing conditions such as those just cited. The judgment we make remains one of blameworthiness, if admittedly a somewhat peculiar one.

The second type of problem concerns a different kind of excuse—namely, ignorance. Specifically, the compliance interpretation seemingly entails that a person

19 Skorupski considers a parallel problem case for his own account—and, incidentally, for the act interpretation—in which a person is *coerced* into making a demand (*The Domain of Reasons*, 312n27). (Skorupski modifies his account to deal with this case, but that modification does not seem able to accommodate the do-gooder case described in the text above.) Interestingly, Skorupski’s coercion case suggests that he, too, may ultimately be concerned with whether the agent is *blameworthy* for making his demand—despite stating his view in terms of *permissible* demands. After all, coercion is usually seen as an excuse rather than a justification. (See also section v below.)

may retain authority because he is (blamelessly) misinformed about the facts—but that cannot be right. Thus, in a version of Drowning 1, Betty's desire for compliance is not selfish or blameworthy because she falsely, but blamelessly, believes that Bob is not in grave danger. For all that, though, Bob does not wrong her in forcing her to aid. Now, the reason mentioned in the preceding paragraph for disregarding excuses may apply to the case of ignorance as well; but there is also another reason, peculiar to that case, and worthy of separate treatment. Unfortunately, I will have to be brief and dogmatic, as a full discussion would require a rather extensive foray into rights theory. On the view of rights I have presupposed, based on the related notions of authority and standing, rights have to be objective, in the sense that they do not depend on what their holders, or other people, believe. If not, we could find ourselves forced to acknowledge both that Betty has the right to defend herself against Bob's interference (because of what she believes) and that Bob has the right to interfere (because of what *he* believes). To avoid that result—which I take to be impossible—we must recognize that our moral judgments about a person's demands are only relevant to that person's authority (or standing) on the assumption that he is correctly informed about the situation, including the stakes involved. As a consequence, we cannot infer that Betty's demand is valid in the above variant of Drowning 1, and the problem I noted does not arise.

So much for counterexamples. In the next section, I will return to the general question of why we should understand authority in terms of blameworthiness.

V

And so we face the question: Why does selfishness undermine a person's authority to make demands? Actually, I will ask a related question: Why does selfishness render a demand invalid? I will do this because I believe that, on the view of selfish demands now being presupposed, and restricting our attention to two-person cases, a person who makes such a demand could not in the situation have made that same demand nonselfishly—for selfishness is a matter of relative stakes, which we assume are essential to the situation. Hence, the person lacks the authority to make the demand in question. Granting that much, I hold that we can derive the desired conclusion (that selfishness undermines a person's authority to make demands) from the following two premises.

1. An objectionably selfish demand is not worthy of respect *qua* demand (indeed, it is worthy of disrespect).
2. A valid demand is worthy of respect, or at least not worthy of disrespect, *qua* demand.

From these two premises, it follows that an objectionably selfish demand is not valid. Let us now consider this simple argument.

The meaning of the premises should be fairly clear from the preceding section, but let me make it quite explicit here. In the first place, I use the term “respect” in such a way that a demand is worthy of respect, or at least not worthy of disrespect, just in case one is not blameworthy for making such a demand in the situation. Second, a demand is worthy of respect *qua demand* not in virtue of the demander’s actual contingent motive for making it or enforcing it, which could of course be practically anything, but rather in virtue of the *constitutive* aim of a demand.²⁰ This aim, at least in part, is compliance. Compliance is not a constitutive aim of demands in the strong sense that a speech act does not count as a demand unless the demander in fact prefers compliance to noncompliance. Yet that preference is at least constitutive of the *practice* of demanding in the sense that cases in which the demander does not prefer compliance—and indeed enforced compliance—to noncompliance will necessarily be exceptional. That is why, in judging whether a demand is worthy of respect *qua demand*, we naturally look to the desire for compliance, even if no such desire is actually present.

Given this understanding of the two premises, both seem quite plausible. A critic is likely to object, however, that this impression is deceptive, because the argument equivocates by conflating two ways in which a demand can be worthy of respect. On the one hand, a demand could be worthy of respect in more or less the way I have described (in terms of blameworthiness). On the other, it could be worthy of respect precisely because it is successful, meaning valid. There is equivocation here, the critic argues, because the first premise of the above argument (that an objectionably selfish demand is not worthy of respect) will seem indubitable only given the first interpretation, while the second premise (that a valid demand is worthy of respect) clearly presupposes the second interpretation.

Before responding to that charge, though, I wish also to state a second one, as I believe it is related to the first, and is effectively subject to the same treatment. This second charge is, perhaps, better thought of as aimed at the argument’s conclusion, rather than the argument itself. The idea is that the phrase “worthy of respect” is itself question begging in the present context: a demand is worthy of respect just in case we ought to respect it, which in turn means that it corresponds to a genuine right—or perhaps simply that the balance of reasons favors respecting it. Indeed, this criticism could be taken further, for it could be held that the judgment that a given person’s use of his (purported) authority is

20 For this notion, see, e.g., Lance and Kukla, “Leave the Gun; Take the Cannoli!”—though the view of the constitutive aim taken in the text is different from theirs (if not obviously incompatible with it).

“objectionably selfish” (or whatever other term we care to employ) presupposes an antecedent account of rights, and so cannot prop up just such an account. For instance, the critic has it, what makes it objectionably selfish of Betty to demand that Bob leave her alone in Drowning 1 is precisely that, for independent reasons, she lacks such a right in the circumstances, rather than the other way around.

I respond to both objections by flatly denying that we can tell whether a demand is valid or successful independently of its moral status. After all, we are not dealing with a performance with a causal effect, observable independently of its moral properties. At any rate, I would insist that some argument be provided for such independent facts, and in cases of the type that now concerns us, involving demands for noninterference in two-person cases, I can see no such argument. I conclude, then, that there is no obvious reason why we must resort to an independent fact about rights to draw the line between sufficiently and insufficiently morally objectionable demands. It seems at least as plausible to suppose, on the contrary, that we draw conclusions about rights in such contexts from independent judgments about what would be too much to ask of another, and thus about when he could decently demand to be left alone. While in making such judgments we are indeed concerned with a difference in stakes between the parties involved, we have no way of telling which difference is too great in a given context to support a valid demand, independently of our sense of whether one would be to blame for making that demand.²¹

Now, and as I have stressed repeatedly, I believe we should treat blameworthiness, rather than justification, as explanatory in the present context. In part, that is because it is much less clear otherwise that we could avoid the charge of begging the question just discussed.²² Yet my choice is not simply an *ad hoc* maneuver designed to circumvent circularity. On the contrary, we talk about blameworthiness in these contexts rather than simply about reasons for action (or justification) because we are asking precisely about the degree to which one may favor oneself, and it is hard to answer that question in terms of reasons for action. After all, are these reasons to be understood as impersonal or “for-me” reasons? To be sure, we may end up saying, in confronting a case like Drowning 1, that Betty ought to help Bob “all things considered” or suchlike, *and* that this fact in-

21 Cf. Quinn, *Morality and Action*, who endorses (but does not defend) the following proposal: “A negative right may be justifiably infringed just in case it would be contemptible of its possessor to insist on it,” stressing that this criterion “requires intuition to apply” (169n34).

22 For that reason, the “begging-the-question” objection might cause more trouble for Skrupski. On his view, after all, one has a right only if one is *morally permitted* to demand compliance, and demanding involves enforcement. It seems less plausible, at least arguably, that the notion of morally permissible enforcement is explanatory in this context compared to that of being objectionably selfish.

dicates that her impersonal reasons for preventing Bob's death are "stronger than" her self-regarding reasons for avoiding her own inconvenience—but it does not follow that we arrive at the former conclusion by way of the latter, understood as an independently intelligible weighing of reasons, rather than by way of a judgment about what a person could decently ask that we leave for him to decide.

The conclusion to draw, then, is that the argument outlined at the start of the section does not equivocate, and therefore gives support to our conclusion, that selfishness undermines a person's authority to make demands.

VI

After this tortuous analysis of Drowning 1, I wish to consider, much more briefly, a few other two-person cases, variants of the original. Consider first a *hard-rescue* case in which the cost to the agent of saving the patient is substantial. Specifically, in *Drowning 2* Betty is only able to save Bob from drowning by heroically swimming across ice-cold, stormy, and polar bear-infested waters, risking her own life. In light of our earlier analysis of Drowning 1, we need to make two observations about this new case. First, and obviously, it would not be objectionably selfish of *Betty* to refuse to aid Bob in this case, nor to demand that Bob not interfere with her decision. That is enough to explain why she retains her right against Bob not to force her to aid him in this case. Second, we may or may not hold that it would be objectionably selfish of *Bob* to demand Betty's aid at such great risk to herself. However, for present purposes it does not matter in itself whether that is so (as noted in section III). What matters is that Betty's demand is not selfish, and hence that her authority is intact, and so Bob could not have standing to demand her aid. In making that judgment, we would of course have to rely on a comparative assessment of what is at stake for Bob and Betty, respectively, just as we would in judging whether Bob's demand would be selfish. But even so, it is the judgment about Betty (the supposed right holder), rather than the one about Bob (the supposed duty bearer), that matters.

In yet a third case—*Drowning 3*—Betty is still able to save Bob at little cost to herself, but Bob's enforcement would be quite harmful to Betty.²³ In this case, if the harm that Bob's enforcement would impose on Betty is grave enough, she would not count as selfish in demanding that he desist, and she therefore retains her right. To be sure, she could have avoided putting herself in this predicament to begin with if she had not selfishly refused to aid Bob. Yet what is decisive here, as usual, is whether her *demand* is (or would be) objectionably selfish, and in determining

23 To avoid irrelevant complications, let us grant that, for whatever reason, Bob has no other means at his disposal.

that, we must also consider the severity of the enforcement, or interference, it is intended to forestall (if need be with counterforce). As that enforcement would, in Drowning 3, cause Betty significant harm, it is not selfish of her to demand that Bob not enforce. That is compatible with her conduct being blameworthy overall.

Our final case, *Drowning 4*, is in a way intermediate between the two preceding ones. In it, the cost to Betty of saving Bob is significant, but not severe enough by itself to shield her from the charge of selfishness were she to refuse to aid. The same is true of Bob's enforcement. The question now arises of whether the *combined* cost of enforcement and action could be enough to avert the selfishness charge, even if neither cost suffices on its own. After all, Betty would suffer both costs if Bob makes her save him by enforcing his demand (and he may have to do this to survive). I am inclined to answer that question in the negative: for Betty to escape the charge of selfishness, either cost on its own would have to be sufficiently great to absolve her. The aggregate cost does not matter. Unfortunately, I am uncertain about how to argue for this answer and have chosen to leave the matter unresolved.

VII

Summing up, I have argued that it is possible to account for the patient's positive right to aid in two-person cases on a view of such rights as the standing to make demands of others, rather than simply in terms of reasons for action. I have concentrated on one part of that account—namely, explaining, in a way that does not also presuppose a view of rights as reducible to reasons for action, why the agent lacks a negative right to noninterference that he would normally have. I have proposed just such an explanation, arguing that there are certain demands of noninterference that an agent could not validly make. While the proposal faces some significant hurdles, I have argued that these can be overcome. The next challenge is to extend it to cover more complicated cases involving positive rights, such as those in which the agent must choose between saving several persons and cases involving purported aggregation of positive rights. I aim to take on this challenge in subsequent work.²⁴

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