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## NEVER AGAIN SHOULD A PEOPLE STARVE IN A WORLD OF PLENTY

Harvard University is the richest university on the planet, with an endowment of over \$34.9 billion and a campus of almost 5000 acres throughout Cambridge, Massachusetts, and surrounding areas.<sup>1</sup> Amidst the oldest college campus in America sits a public park, called Cambridge Common, which is surrounded on all sides by Harvard's glorious history. To the west of the park is the Radcliffe campus, where the university educated its female students for 120 years.<sup>2</sup> To the north of the park sit several undergraduate dormitories that bear the names of some of the university's richest benefactors: Pforzheimer, Cabot, and Currier. To the east of the park is Harvard Law School — the oldest law school in the country and the birthplace of the teaching method that has dominated the approach to law throughout much of this country's storied legal history. To the south of the park is the undergraduate campus and the famous Harvard Yard where, on June 5 of this year, the university's seven thousand graduating students will end their time at Harvard and begin what promise to be seven thousand successful careers.

In contrast to the undeniably prestigious institution that literally surrounds Cambridge Common, in the middle of this park is a statue reminding Harvard students that not everyone can be so fortunate. The statue is composed of two figures. On the left is a wealthy man, dressed in the clothes of a nineteenth-century aristocrat. He is standing upright, holding in his left arm a child resting peacefully on his shoulder. With his right arm, the man is reaching out — grasping in the direction of the figure on the other side of the statue.

Across from the man, on the right side of the statue, a woman sits in poverty. She is dressed in torn rags, hunched over on the edge of a rock. The woman has a child of her own, but she is too weak to stand and lacks even the strength to hold her child close to her. The mother and her child are both starving, in search of food or money to get them through the next day, the next hour, or, with any luck, the next meal. The woman's right arm, like the man's, is stretched outward. From above, he reaches down toward her. From below, she reaches up toward him. But their hands fail to grasp — she is inches too far away and the statue has frozen them in that pose forever.

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<sup>1</sup> HARVARD UNIV., HARVARD UNIVERSITY FINANCIAL REPORT: FISCAL YEAR 2007, at 4 (2007), available at <http://vpf-web.harvard.edu/annualfinancial/pdfs/2007fullreport.pdf>; HARVARD UNIV., HARVARD UNIVERSITY FACTBOOK 2006–2007, at 33 (2007), available at [http://vpf-web.harvard.edu/budget/factbook/current\\_facts/2007OnlineFactbook.pdf](http://vpf-web.harvard.edu/budget/factbook/current_facts/2007OnlineFactbook.pdf).

<sup>2</sup> See Significant Dates in Radcliffe's History, <http://www.radcliffe.edu/about/363.aspx> (last visited Apr. 5, 2008).

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The statue is an intergenerational depiction of inequality. As the poverty of the woman is cast in stark contrast to the wealth of the man, the children of each are chilling prophesies of the unequal future that is certain to come. At the base of the statue is an inscription that forms the title of this Note: NEVER AGAIN SHOULD A PEOPLE STARVE IN A WORLD OF PLENTY.

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This Note explores two important concepts inspired by the statue in Cambridge Common: morality and justice. In its vivid depiction of a wealthy individual who finds himself in a position to help a poor individual, the statue raises fundamental questions of morality and obligation toward others. In its reminder of the impoverishment of some groups relative to other groups in society, the statue also draws on deep conceptions of justice and inequality between classes. This Note investigates how morality and justice affect the choice of legal professions, arguing that legal career choices should involve good faith efforts to serve both of these noble goals.

## I. MORALITY AND JUSTICE

Before scrutinizing the concepts of morality and justice in close detail, it is first important to offer definitions of the two terms. For the purposes of this Note, consider the following definitions:

Morality: a prescriptive set of rules, principles, and propositions that should guide actions by individuals with respect to their effects on other people.

Justice: a prescriptive set of rules, principles, and propositions that should guide actions by institutions with respect to their effects on the relative status of people in society.

While these definitions are only definitions and, in that sense, simply a matter of semantics, they capture important intuitive understandings of the usages of these two words. It is therefore helpful to explore the parameters of each of the definitions provided.

Morality is a set of rules, principles, and propositions; it makes positive assertions about how to act and how to resolve competing values. It is also a system that guides actions with respect to their effects on other people. This important point follows closely in the tradition of John Stuart Mill in *On Liberty*. Mill's famous Harm Princi-

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ple states that “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”<sup>3</sup> Morality is fundamentally concerned with the effects that actions have on other people — actions that have effects on others are subject to the constraints of morality.

Although the definition of “justice” is similar to the definition of “morality,” the differences are quite important. The first difference is that, whereas morality guides actions by individuals, justice guides actions by institutions. This part of the definition is entirely consistent with the common usage of the term. When people refer to acts that are unjust, they usually do not mean to describe individual actions that are devoid of institutional force. For example, it is probably immoral to punch someone in the face, but assault and battery is not commonly thought of as unjust because it is only an action between individuals — it does not reach the level of institutional action.

However, all sorts of institutional actions are bound by principles of justice. Whether a high school principal decides to suspend a student can be considered an issue of justice because it involves decisionmaking by an institutional actor. Similarly, the consistency with which a judge applies rules of law to both wealthy and poor defendants alike would commonly be regarded as an issue of justice — institutional action is involved.

To say that justice concerns actions by institutions does not mean that individual human actors are free from the constraints of justice. Quite the contrary — institutions are nothing but collections of individuals, and thus individuals are often bound by the rules of justice. Judges, for example, use institutional force in their jobs on a daily basis, as do high school principals. Because they have an institutional role, they are constrained by the concept of justice.

The second important difference between morality and justice is that justice pertains to institutional actions with respect to their effects on the relative status of people in society. Whereas morality focuses on effects on other people, justice is more narrowly focused on effects on the *relative status* of people. John Rawls famously advocates this view of justice as relative. In his landmark text, *A Theory of Justice*, Rawls defines the principles of justice as those principles that affect the relative status of groups in society.<sup>4</sup>

The view of justice as relative is consistent with an intuitive understanding of the term. For example, it might not be unjust if a convicted burglar is sentenced to two years in prison. However, if other defendants who were convicted of exactly the same crime received

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<sup>3</sup> JOHN STUART MILL, ON LIBERTY 9 (Elizabeth Rapaport ed., Hackett 1998) (1859).

<sup>4</sup> JOHN RAWLS, A THEORY OF JUSTICE 6–7 (rev. ed. 1999) (1971).

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only six-month sentences, the disparity might be regarded as “unjust.” If, in addition, the defendant was singled out for a longer sentence specifically because of her race, her two-year sentence definitely seems unjust. Though not unjust when viewed in isolation, a sentence that is relatively harsh when compared to others in the same situation is unjust — justice is a fundamentally relative concept.

Importantly, while these definitions describe each concept as a “set of rules, principles, and propositions,” the definitions do not specify the substantive content of such terms. This Note explores possible obligations under morality and justice and invites each person to further determine her own views on the specific requirements of each concept.

Given the definitions provided, the demands of morality and justice frequently overlap. While morality binds individuals and justice binds institutions, individuals who have an institutional role (such as judges or high school principals) are quite clearly bound by both. As human actors, their actions affect others and thus are bound by rules of morality. As institutional actors, their actions affect the relative status of members within society; thus, they are bound by the rules of justice. Lawyers too have both a human (morality) and institutional (justice) obligation. This Note explores the contours of those twin obligations and examines how those obligations affect our choice of legal careers.

## II. MORALITY

Having provided definitions for “morality” and “justice,” we can now consider the extent to which we are obligated under each concept. This Part argues that lawyers, like all people, are bound by the rules of morality in every aspect of their lives.

The first lesson of morality starts with a story.

### A. *Phil and His Ferrari*

Phil is close to retirement.<sup>5</sup> He has lived a happy and successful life and is looking forward to relaxing in his elder years. Phil has invested several hundred thousand dollars in an expensive car — a Ferrari. He enjoys driving his Ferrari and is planning to sell it upon retirement; because of its appreciation in value, it will certainly provide him with a comfortable retirement sum.

One sunny afternoon, Phil parks his Ferrari near a quiet field and goes for a walk. His otherwise relaxing day is disrupted, however, when he notices a runaway train nearby. He sees that there are literally no people on the train — somehow the conductor and whatever

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<sup>5</sup> This story is borrowed from Professor Peter Unger. The presentation offered here is altered slightly; for the full details of Professor Unger’s original version, see PETER UNGER, *LIVING HIGH AND LETTING DIE* 136 (1996).

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passengers may have been on it have all departed and the train is barreling down the tracks with no end in sight. Phil looks down the tracks and, to his horror, he sees a very young child playing on the tracks just a few hundred yards ahead of the oncoming train. The child does not realize that the train is coming and, even if she did, she would not be able to move out of the way quickly enough. Phil is too far away to run to the child, and there is no one else in sight that can help.

Phil looks down and notices that he is standing right next to a lever labeled "Runaway Train Switch." Phil realizes that if he flips the switch, the train will divert to the runaway tracks and the child will be saved. He also notices that he has (unwittingly) parked his Ferrari on the runaway track; the track is never used and so is unmarked. Just beyond his Ferrari is a pile of sand that will stop the train; if Phil flips the switch, the train will demolish his Ferrari before coming to an otherwise safe stop.

Phil is faced with a dilemma. If he flips the switch, the young child will certainly live, but his car will be destroyed. If he does not flip the switch, his car will be safe, but the child will die. What is Phil to do?

The answer should of course be obvious: Phil should flip the switch and sacrifice his Ferrari to save the innocent child. The fact that his car is very expensive is of no consequence — even the extravagant price tag does not amount to the value of the innocent child's life. For Phil to choose his Ferrari over the child would be unjustifiably selfish. He has the power to save the child and, given the comparatively lower value of his car, he should flip the switch.

The fact that Phil did not volunteer to be in this situation is of no import. Indeed, it can be readily conceded that it is not his "fault" that he is forced to make such a decision. But morality often asks us to make difficult choices in unforeseen circumstances. Of course, life might be much easier without ever being confronted with such a choice. But Phil does not get an excuse. If he lets the child die, he will have chosen his car over the value of a human life, and most people's moral codes will forbid such a choice.

It should also be noted that the train's initial path is not a morally relevant consideration. Phil cannot walk away from the switch, thereby letting the child die, and say, "Hey, the train was already headed toward that kid. It's not my fault that the train didn't get out of the way on its own." This kind of selfish rationalization, though perhaps common as a psychological matter, would not justify Phil's actions if he chose to walk away from the switch. Because the truth is that Phil *is* morally responsible if the train hits the child. Although he did not put the child on the tracks, he is in a position where he can save an innocent life. For most people, it is obvious that he has to bite the proverbial bullet and sacrifice his car to ensure the safety of the young child.

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Law students, who are trained to think in legalese, may believe that Phil cannot be morally required to flip the switch because such a requirement would bind Phil's "inactions" rather than his "actions." Whatever the merits of this kind of thinking in tort law, moral principles are generally much more sensible. It is fruitless to ask whether Phil's inaction is immoral — what would be immoral is the affirmative action of *walking away*. As a human actor, Phil is confronted with the sometimes troubling, sometimes empowering fact that humans are always acting. They are always making choices and their choices always have consequences. Phil knows that he can direct the train to one track or the other. He has to make a choice. The choice that he makes will result in an action. If he chooses to save the child, then his action will be to flip the switch. If he chooses to save his expensive car, then his action will be to walk away from the switch, or to close his eyes and pray, or to stand meekly by as he watches an innocent child get smashed by a runaway train. In any case, he is acting. Thus, he will be held morally responsible for his actions and is justifiably labeled as "immoral" if he chooses to save his Ferrari at the cost of an innocent life.

Finally, the fact that Phil would not be legally culpable is irrelevant to what is entirely a moral question. Just as the law does not perfectly capture morality, neither does morality line up perfectly with the law. Our moral judgment about Phil — that he is morally required to flip the switch to save the child — is held independent of whether the legal system punishes him for his choice.

### B. *Kate and Her Class*

Kate is a law student. She lives in an apartment within a five-minute walk from the law school campus. One day, as she passes through the park on her way to her morning class, she sees a young child drowning in a shallow pond.<sup>6</sup> The pond is shallow enough that Kate can easily wade in to save the child. Unfortunately, if she does so, she will not only get her jeans dirty, but she will almost certainly be late for class (and may even miss class altogether). Kate knows that if she wades into the pond to save the drowning child, she will likely have to then call an ambulance and wait for the ambulance to arrive. She also feels that she may be obligated to remain with the child until the hospital can ascertain the child's identity and find her parents. Kate knows that this whole process may very well take several hours — she could quite easily miss her afternoon class as well.

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<sup>6</sup> Although the details of this story are substantially different, Professor Peter Singer also discusses an example involving a child drowning in a pond. For the original version, see Peter Singer, *Famine, Affluence, and Morality*, 1 PHIL. & PUB. AFF. 229, 231–33 (1972).

What is Kate to do? She finds herself in the throes of a moral dilemma. Should she wade into the pond to save the child, thus forcing her to miss her class? Or should she walk by the pond, hoping instead to get to class on time though letting the child die?

It is obvious to most people that Kate's moral "dilemma" is only a "dilemma" in the most trivial of senses; she is quite clearly obligated to save the child, even if it means that she will miss her class. Few people would even think twice about whether to save the child. In comparison to the value of an innocent life, missing a class is such a small sacrifice that it is almost a joke to think that Kate would walk away when confronted with a child's impending death.

### C. *Do the Right Thing at Every Moment*

The stories about Phil and Kate may strike some as simple and obvious moral situations, but they drive at important moral intuitions that are commonly shared. The basic principle in each scenario is the same: if we know that we can prevent something we believe to have extreme negative moral consequences from occurring (like an innocent child dying) by sacrificing something we value at much lower moral weight (like a car or a class), then we are morally obligated to do it.<sup>7</sup> This moral principle is quite modest. It obligates us only to prevent extreme harm when we are in a position to do so without making a comparable sacrifice. It would not require us to kill one person to save another, or to sacrifice our own life or limb to save another. It simply asserts that, if called upon to sacrifice something of clearly lower moral weight in order to save something of clearly higher moral weight, we should do so. The value of a car or going to class is trivial in comparison to the life of a child.

To the surprise of many, the sad reality is that innocent children are dying every day in every part of the world, from the United States to India; from Europe to South America to Africa; no corner of the planet is free from this tragedy. In fact, a young child dies of malnutrition or starvation every five seconds.<sup>8</sup> It is also the case that, with a donation of \$200, a child's life can be saved.<sup>9</sup> There are organizations that dedicate themselves toward saving the lives of innocent children. They provide the vaccines for curable diseases and they supply the

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<sup>7</sup> Professor Singer comes to a similar moral conclusion, finding that people are obligated to prevent moral harms when the sacrifice is less substantial than the potential harm. *Id.* at 231.

<sup>8</sup> See World Food Programme, Facts & Figures, [http://www.wfp.org/aboutwfp/facts/hunger\\_facts.asp](http://www.wfp.org/aboutwfp/facts/hunger_facts.asp) (last visited Apr. 5, 2008).

<sup>9</sup> This calculation is based on the research of Professor Unger. UNGER, *supra* note 5, at 146–48 (determining that \$200 can provide a starving infant with the medicine, nourishment, and sustenance needed to live into the foreseeable future).

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food to ward off starvation. By sending in just \$200, you can save the life of one child.

Of course, you know that \$200 is no small change. With that money, you could buy yourself six dress shirts, two very nice pairs of jeans, or a month's worth of coffee at Starbucks. \$200 can finance your next fifteen trips to the movies or your cable bill for the NFL sports package. It can be the difference between a 42-inch television screen and a 44-inch television screen. It can cover two tickets to the opera, the symphony, or a Broadway musical. It can also save the life of one innocent child.

Like Phil, you now find yourself in a moral dilemma. Should you sacrifice a whole month's worth of Starbucks coffee to save a child's life? Or should you let that child die, thereby allowing yourself to live \$200 more comfortably than you could if that child were alive?

These questions may strike some as so obvious that they border on the absurd. Just like in Phil's situation, there is simply no question (for most people) that the value of a child's life greatly exceeds that of a car, a big screen TV, or a pair of jeans. However, for many people, these are live moral questions because they require us to rethink our way of life; we must consider the possibility of a lifestyle without fancy cars, designer clothes, the finest coffee, and cable entertainment packages that allow us to watch thirteen football games every Sunday.

Once we accept that Phil is morally required to save the child's life, we can also recognize that there is no moral difference between his situation and ours. One might suggest that, unlike Phil, the child who we can save with a donation of \$200 is not sitting right in front of us, but may be several miles away.<sup>10</sup> But can this really make a moral difference? Anyone who believes in consistency, neutrality, or non-arbitrariness in their moral code should realize that the coincidental location of the child is not a relevant moral consideration. You may tell yourself that you would save a child sitting right in front of you, but is it morally fair to treat the child a few miles away differently just because you cannot see her? While distance is definitely a *psychological explanation* for why many people dissociate their actions from their consequences, it is far from a *moral justification*. Moral justifications must, after all, be based on morally relevant factors. Our psychological predispositions are not relevant moral factors when compared to the value of human life.

Similarly, one might argue that Phil is morally obligated to save the child because he *knows* of the choice he is making, whereas many people may be unaware of the fact that children are dying all over the world from preventable causes (a concept that some may call "ignorant

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<sup>10</sup> This objection is raised and discussed by Professor Unger. *See id.* at 33–35.

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bliss”). This lack of knowledge may indeed excuse those people who are unaware of the moral tragedies that are occurring every five seconds — whether ignorance is an excuse is a very open moral question. But whatever the merits of the “ignorant bliss” line of argument, it no longer applies to you. You have now read this Note and you are equipped with the knowledge that \$200 can save a child’s life. No claim of ignorance can be supported at this point. In fact, if you would like to make a donation, the toll-free number for UNICEF is 1-800-486-4233. They take credit card donations over the phone, or you can go online at [www.unicef.org](http://www.unicef.org). Here is some time to call right now.

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Related to the “ignorant bliss” argument is the notion that, while Phil was certain that he could save a child’s life, you are only indirectly impacting a child, so you cannot be certain that she will survive. Research shows, with confidence, that \$200 is sufficient to cover the costs of saving a child’s life, even including whatever portion covers salaries and costs for running organizations like UNICEF.<sup>11</sup> But, needless to say, your own claimed uncertainty does not justify sitting idly by every five seconds as another child starves to death. If you really believe that \$200 is not enough, then you should do your own research to convince yourself of this somewhat easily discoverable fact (or, you can play it safe and donate \$250 to cover any doubt).<sup>12</sup>

Another attempted distinction between your \$200 and Phil’s Ferrari is that your \$200 might only be a temporary solution.<sup>13</sup> Phil knows that, by sacrificing his Ferrari, he will have saved the child’s life. The \$200 donation, it might be argued, is only a temporary solution — the child you save today might die next year from some other disease. This argument is appealing but unfortunately fails to capture any relevant moral difference between the present situation and Phil’s situation. First of all, many vaccines are lifetime cures; a child who is vaccinated against polio will never die from that disease. But, more importantly, Phil’s situation itself is not a permanent solution. The child will be saved, but Phil has no idea whether that child will come back to play on the tracks a month later. Phil is not morally permitted

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<sup>11</sup> See *id.* at 146–48.

<sup>12</sup> In his important work, Professor Unger also urges readers to donate money to charitable organizations. *Id.* at 175.

<sup>13</sup> This objection is also raised and discussed by Professor Unger. See *id.* at 41. Similar objections relating to the possible differences between a situation like Phil’s and our own situations are discussed at length in moral philosophy. See generally F.M. KAMM, *INTRICATE ETHICS* (2007); JAMIE MAYERFELD, *SUFFERING AND MORAL RESPONSIBILITY* (1999); *THE ETHICS OF ASSISTANCE: MORALITY & THE DISTANT NEDY* (Deen K. Chatterjee ed., 2004).

to save his Ferrari and let the child die with the excuse that he presumed the child would die next month anyway. The child on the tracks is facing a specific and actual threat to her life, and Phil can save her. So too are children dying from specific and actual causes every moment; your donation can prevent those deaths and ensure that a child at least makes it past the current threat.

A final possible objection to the notion that one might be morally obligated to donate \$200 to save a child's life is that, unlike the situations of Phil and Kate, many other people are similarly equipped to donate \$200.<sup>14</sup> In other words, the problem is not uniquely centered on one person in the way that Phil and Kate were the sole individuals capable of saving the life in front of them. This objection does indeed identify a difference between the cases, but it does not qualify as a morally relevant difference. Imagine, for example, if there were other people in the park when Kate walked by that drowning child. Does the fact that others have acted immorally by standing idly by while a child drowns to death mean that it is permissible for Kate to do nothing? Obviously not. The familiar slogan that there is "safety in numbers" does not affect the morality of Kate's actions. If she joins the others and lets that child die, then they have all acted immorally. She may be psychologically comforted by the company of others who have acted immorally; she may even feel less guilty. But neither of these emotional responses makes her refusal to help morally justified.

Some may worry that the position being advanced leads to extreme results. Sure, Phil can be required to sacrifice his Ferrari, but that is just a one-time deal. If you give \$200 to charity, however, you have only saved one life when there are hundreds of thousands of children who will still be in need. Although you have decided to forgo drinking Starbucks for the month of January to save that child's life, are you then also obligated to forgo drinking Starbucks for the month of February to save another child's life? And March and April? And what about those expensive jeans that you were hoping to buy? Or that big screen TV? Or four months of unlimited football watching? Must you sacrifice all of these luxuries for the sake of children who are starving?

Yes. Definitely. That is, if you agree that Phil is obligated to sacrifice his Ferrari, if you also agree that your moral beliefs should be con-

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<sup>14</sup> This objection is also raised and discussed by Professor Unger. See UNGER, *supra* note 5, at 39–40. It has also garnered attention in other philosophical works. See generally GARRETT CULLITY, *THE MORAL DEMANDS OF AFFLUENCE* (2004). The issues raised in this Note are the subject of a growing philosophical debate. See, e.g., SHELLY KAGAN, *THE LIMITS OF MORALITY* (1989); MAYERFELD, *supra* note 13; PETER SINGER, *PRACTICAL ETHICS* 218–46 (2d ed. 1993); *WORLD HUNGER AND MORAL OBLIGATION* (William Aiken & Hugh La Follette eds., 1977); T.M. Scanlon, *Contractualism and Utilitarianism*, in *UTILITARIANISM AND BEYOND* 103 (Amartya Sen & Bernard Williams eds., 1982).

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sistent, and, finally, if you agree that your actions should line up with your moral beliefs. It is up to each person to decide how much to give and where to draw the line. You probably do have to sacrifice more than one month of Starbucks coffee, but you probably do not have to sacrifice to the point of your own starvation. Where to draw the line is a difficult moral dilemma. The point of Phil's situation is that you have got to draw the line somewhere.

This Note is not arguing that nobody is ever justified in buying coffee. The point is simply that, given the global context of suffering and poverty, each one of our spending decisions must be scrutinized. We have to live our lives in a manner consistent with our moral beliefs. Each time we spend money on an item of luxury, we are like Phil, standing next to that switch. The decision, in the end, is up to each person to make for herself. But we have to make the decision each time, and we have to justify why we are making the decision, because it is simply unacceptable for Phil to walk away without so much as an explanation about why he is letting that child die.

Phil's situation shows that the way we spend money is open to moral scrutiny — that we have to think deeply, on a daily basis, about how much excess is justified in our lifestyle. Kate's situation shows an equally compelling and equally useful point: that the way we choose to spend our time is a similarly moral dilemma. Instead of spending four hours watching that football game on Sunday, you could devote those same four hours toward feeding the hungry, or building houses for the homeless, or educating the uneducated to help them find jobs. There is virtually no limit to the amount of help that can be done.

The difficulty of these questions may prompt some to think of clever rationalizations to justify our behavior — attempts to find subtle logical distinctions between our situations and those of Phil and Kate. But these questions are not posed merely as an exercise in philosophical creativity; rather than searching for some esoteric justification for our lifestyle, each of us should apply our own honest moral judgments to the decisions we make. The urge to devise countless objections and distinctions should be balanced by our moral beliefs about the right thing to do.

Morality is a constraint on all of the choices we make. This Note will not prescribe a specific moral code, but instead suggests that we must each think deeply about the choices we make, based on our sincere moral reflection. We are no longer free to shirk our moral responsibilities for the sake of a "happy" or "comfortable" lifestyle. Morality demands that we live consistently with our beliefs; we must realize that the constraints of morality are present in all of our decisions, even those we may have previously thought of as unimportant or trivial.

Morality's basic demand is a simple one: do the right thing at every moment. Following this principle requires each of us to take two steps: (1) figure out what the right thing to do is and (2) do it.

### III. JUSTICE

Having examined the possible ways in which our substantive moral beliefs might constrain our actions, it is now necessary to investigate how we are substantively obligated under a conception of justice. This Part explores the constraints of justice with respect to its core focus — the relative status of members of society.

As before, the first lesson of justice starts with a story.

#### *A. James and His Jambalaya*

James is a student. To help contribute toward his tuition costs, James has decided to take a part-time job working as a shift manager at a small diner. The diner is a local favorite because of its famous “Jambalaya Tuesdays”; every Tuesday during the winter, the diner offers half-price bowls of jambalaya. Given the often freezing winter temperatures, students and nearby residents flock to the diner on Tuesdays to enjoy the warm and hearty combination of rice, beans, chicken, pork, tomatoes, vegetables, and spices.

While working as shift manager for his Tuesday evening shifts, James notices that, despite the large crowds, there is often some leftover jambalaya at the end of the night (the cook prepares more than necessary to ensure that they do not run out). On one winter Tuesday, not wanting the excess food to go to waste, James decides that he will start taking a meal-sized portion of the leftovers to give away after each shift. Because he has read about Phil’s and Kate’s dilemmas in Part II of this Note, James thinks that the warm and filling ingredients in jambalaya might make the perfect meal for a homeless person if he comes across one on his way home.

As luck would have it, James does indeed pass by a homeless person — a woman huddled in a sleeping bag, using the awning of a bookstore for her only shelter. The woman asks if he has any food or money that he can give her so that she can buy food. James is proud of himself for having prepared for just such an eventuality.

But before James has the chance to respond, a young, well-dressed professional comes walking around the corner. Not noticing the homeless person under the awning of the bookstore, the professional sees the name of the diner on James’s bag and says “Hey — is that food from the diner down the street? I love that place! Can I have it?”

Shocked by this turn of events, James finds himself in a dilemma. Although he had planned to give his jambalaya to someone, he had not at all expected to find himself confronted with two requests at the very same moment. He now has to ask himself: should he give his jambalaya to the homeless person — for whom James’s gift may be her only meal for the next several days — or to the young, successful-looking professional — who claims to really like food from that par-

ticular diner? The dilemma may have been unexpected, but James's choice is not difficult.

James should give the food to the homeless person. After all, given the evidence in front of him, James has every reason to believe that the food is much more necessary for the homeless person than it is for the young professional. The professional likely has the financial resources necessary to buy her own bowl of jambalaya and also likely has a kitchen in which she can prepare her own food. The homeless person, by contrast, lacks any such luxuries.

Even the most rudimentary courses in economics cover the law of diminishing marginal returns — the fact that the value of any given commodity decreases as one acquires more of it. Thus, the first portion of food that a person obtains may be almost invaluable. However, as one accumulates more and more, each extra portion becomes less and less valuable. This principle extends to other commodities as well. A wealthy person may have \$100,000 to spend on a yacht, but each of those one hundred thousand dollars is more beneficial to one hundred thousand people who have nothing at all. So, clearly, the bowl of jambalaya is worth more to the woman under the bookstore awning than it is to the successful professional on her way home from work.

Some may wonder whether James has any obligation to give the food away at all. They may think that he should keep it for himself and eat it for lunch the next day. But that option is not the question of this section, nor is it an option presented to James, because he has already resolved to give his food away to someone. Given that he is confronted with a choice between something of extreme moral import (the value of the meal to the homeless person) and something of comparatively trivial moral import (the value of the meal to the young professional), James's choice is obvious: he should give his jambalaya to the homeless person.

### *B. Stephanie and Her Service*

Stephanie is a law student. Having read Kate's dilemma above and feeling inspired by Kate's willingness to sacrifice her own time for the benefit of others, Stephanie decides that she wants to do some community service. Because she has a talent for both design and construction, she decides to volunteer to build houses, and so she joins her law school's community service organization, which enables students to work in precisely such a capacity. The organization provides its members with the tools and transportation they need to perform their services, and it also allows its members to choose the recipients of their services.

Looking through the classified section in the newspaper, Stephanie discovers that there are two groups that want services like hers. The first is Habitat for Humanity, a charitable organization that builds

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simple, small homes for those in need — often the only shelter available for the individuals serviced by the organization. The second group is an association of homeowners. The homeowners are all quite wealthy, living in homes that cost several million dollars each. The ad indicates that these wealthy homeowners would like simple, small structures to store their golfing equipment during the winter. They would rather not pay for the service, according to the ad, because they prefer to invest their money in lucrative stock opportunities.

Stephanie is faced with a dilemma. Now that she has decided to offer volunteer house-building services to someone, which group should she give her services to?

As much as Stephanie may struggle with her dilemma, the answer should be obvious to the rest of us. Stephanie, like James, should give her services to the group that needs them most. It is not only insulting to build free recreational homes for the wealthy when there are people with no roof over their heads at all, but it is an inefficient allocation of a valuable resource. Because of diminishing marginal returns, the value of a second home to a wealthy individual is much less than the value of that same shelter to a homeless person. For someone who has no place to go in the cold, no place to bathe for cleanliness, and no place to rest after a long and tiring day, that shelter can be invaluable.

Given that Stephanie has already decided to give away her service, the choice between the wealthy homeowners and Habitat for Humanity is a simple one indeed. The dilemma confronting Stephanie, if it can be called a “dilemma” at all, is so obvious that it is almost boring to continue reading about.

### *C. Pursue Equal Justice Under Law*

The stories about James and Stephanie reveal important intuitions that underlie our commonly held conceptions of justice. The basic principle advanced by both scenarios is the same: when deciding whether to provide a benefit to a person who is better off or a person who is worse off, we ought to give that benefit to the person who is worse off. Because this principle is about the relative status of people, it is fundamentally about justice. Justice, in its focus on relative status, tells us that once we have decided to give help, our help should go to those who need it most.

This principle, notably, says nothing about whether James or Stephanie must act in the first place. It only says that, once each person has decided to give something of value, she should make her contribution to those who are the most destitute, the most in need, and the most underprivileged.

Lawyers should not be surprised to hear that their position is really quite analogous to the dilemmas faced by James and Stephanie. Like Stephanie, lawyers offer a valuable service. Lawyers have the train-

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ing, experience, and desire necessary to represent clients in their legal affairs. Like Stephanie, lawyers offer a service that is desired by both rich and poor clients. Although some may ask whether James or Stephanie is sufficiently institutional to be bound by the principles of justice, lawyers are more clearly institutional actors; they play an integral role in a legal system that, in turn, substantially affects individual lives and social structures. The similarities between the position of lawyers and the position of Stephanie require, in both cases, that their services go to those people who need them most: the poor.

Some may object that the situation lawyers face is distinguishable, suggesting that rich and poor clients have an equal need for legal services, whereas Stephanie's dilemma involves one group who arguably needs homes more than the other group. This objection, though theoretically plausible, is rebutted by the empirical facts of our modern justice system. In reality, poor individuals who need legal services *do* need them more than the wealthy corporations who seek them. For many poor individuals involved in the legal system, the quality of their legal representation can have an immeasurable impact on their life and on their liberty. Many criminal defendants face the possibility of multiple decades in prison; some even face the possibility of capital punishment. On the civil side, poor clients seek the protection of restraining orders so that they do not become victims of domestic violence. They need to understand the immigration laws so that they can stay with their families without being deported. They need advice on property law so that arguably excessive exercises of eminent domain do not force them out of their homes and onto the streets.

Although wealthy individuals sometimes find themselves in situations similar to those just described, the most powerful entities in our legal system — corporations — generally seek legal advice for much less life-threatening circumstances. Corporations do not face the death penalty or the threat of twenty years in prison. They are not victims of domestic violence and never risk possible deportation. Indeed, because corporations are not actually people at all, the legal advice they seek is more likely to be geared to their primary function: generation of profit. Through mergers and acquisitions, they attempt to buy out other corporations in order to increase profits. In products liability, they seek to defend themselves against suits arising from potentially defective products or drugs that may have harmful side effects. In antitrust, they pursue protection for possibly monopolistic and anti-capitalist practices. In discrimination lawsuits, they defend themselves against allegations that their employment practices involve racism, sexism, or other forms of illegal prejudice.

As compared to the plight of poor defendants who face overwhelming restraints on their liberty, corporations seek help for what might be called "legal luxuries" — more akin to Phil's Ferrari. Lawyers are thus very much like Stephanie. It is not that wealthy clients do not have

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legitimate concerns; it is just that the concerns of wealthy clients are generally not the life-altering concerns faced by so many poor clients.

Law students may next object that corporations, unlike indigent clients, pay for their legal services. While it may be readily agreed that pro bono services should go to the poor (given their greater need for legal advice on issues of substantially more fundamental import), lawyers are generally not volunteers. This objection might carry some weight if public defenders and legal aid attorneys were forced to work without pay. But in fact, public defenders and legal aid attorneys are paid a salary. Though usually not paid directly by their clients, they are paid either by the government or by private organizations that support charitable causes. So from the lawyer's perspective, she really is quite similar to Stephanie: she has already chosen to provide a service, she will be paid either way, and the only question is to whom she will provide the service.

Persistent law students might next object that corporate lawyers make *more* money than public defenders or legal aid attorneys. This objection — that a difference in pay between legal jobs might be relevant to a career choice — is dealt with in more depth in Part IV below. For now, it suffices to ask: What are you going to do with the extra money you will make as a corporate lawyer? Buy an extra pair of jeans? Designer coffee? The moral significance of the difference in pay is likely dependent on what the corporate lawyer does with her marginal increase. The desire to live extravagantly probably does not outweigh the moral demands on our career choices.

In short, given the comparative need of rich and poor clients, it should be accepted that volunteer legal services should go to the poor. Adding money into the equation should not change this basic fact because, like Phil, we must sometimes sacrifice the luxuries of a six-figure salary in order to serve a more important moral goal.

A final possible objection is that lawyers do not need to sacrifice their six-figure salaries because, unlike James or Stephanie, they are not confronted with a significant moral goal. The need to address inequality in the justice system, it might be objected, is not as important as the need for James to provide food for the hungry or Stephanie to build homes for the homeless. This objection fails to take into account the tremendous inequality that permeates our justice system and the pressing need to help bring about fairer consequences. The Supreme Court building itself promotes this profound message; the inscription above the entrance reads "EQUAL JUSTICE UNDER LAW." It is unjust for someone to receive unequal treatment in the justice system because of her race, wealth status, gender, place of birth, or other arbitrary factors. As the Supreme Court has recognized, "[t]here can be no

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equal justice where the kind of trial [one] gets depends on the amount of money [one] has.”<sup>15</sup> It is unjust for a rich person to receive a better trial than a poor person, even though the two were brought to trial for the same reasons and under the same circumstances. Our legal system should not tolerate such unequal treatment.

The trouble is that our justice system is plagued with injustice. Poor individuals face a disadvantage at every stage of the criminal process. They are arrested at higher rates than rich individuals;<sup>16</sup> after arrest, charges are pursued at higher rates for poor defendants;<sup>17</sup> poor defendants are more likely to be convicted than rich defendants, even for similar crimes;<sup>18</sup> once convicted, poor defendants are, on average, given longer sentences than rich defendants, even for similar crimes.<sup>19</sup> Because these disparities occur at every stage throughout the process, they cannot be explained away by the (unfounded) assumption that poor people commit more crimes. Such an assumption might explain why poor people are arrested at higher rates, but it cannot explain why, for example, poor people get harsher sentences once convicted for the same crime, or why poor people are more likely to be convicted once brought to trial for the same charges as rich people.

The disparities in our justice system show that there is a tremendous amount of inequality. Thus, like James and Stephanie, lawyers are faced with an opportunity to act in a way that promotes something of significant moral value. Lawyers serve a primary role in the justice system, and as such, they carry a substantial burden to make the system more just.

Substantive views about specific legal professions that serve justice or exacerbate inequality are obviously open questions. Each person, and each law student, will have to decide for herself where she believes specific jobs fall on the spectrum. In so doing, law students should resist the psychological temptation to rationalize decisions based on subtle justifications or narrow logical distinctions. It is far beyond the scope of this Note to prescribe a specific set of rules that identifies every legal profession on one side of justice or the other; the point here is only that we all need to recognize that legal professions have an effect on inequality, and that therefore our choice in legal professions is bound by the demands of justice. Each individual should devote honest and sincere reflection to how she can choose a career that promotes justice, in her own conception of the term.

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<sup>15</sup> *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (plurality opinion).

<sup>16</sup> See JEFFREY REIMAN, *THE RICH GET RICHER AND THE POOR GET PRISON* 114–18 (6th ed. 2001).

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* at 124–28.

<sup>19</sup> See *id.* at 128–37.

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Because we agree that the legal system should be treating people equally, we are faced with a simple task: pursue equal justice under law. This task can be accomplished by two steps: (1) find a job that promotes equality in the justice system and (2) do that job.

#### IV. MORALITY, JUSTICE, AND THE LAW

The purpose of the above discussions about morality and justice should be clarified. Although they are examples of substantive reasoning about morality and justice, they are not strictly intended to advance any substantive position. Instead, they are meant to show that many of our daily decisions should be scrutinized based on our commonly held principles of morality and justice. We may not be obligated to send \$200 to UNICEF, but we should at least justify to ourselves the next time we spend \$200 on tickets to a musical. Similarly, the demands of justice may not obligate us to work in any particular legal job, but we should at least consider how our career choices affect the inequality that permeates our legal system.

Kate's dilemma is most instructive in this regard. When she was confronted with that drowning child on her way to class, we were reminded that the way we choose to spend our time is morally constrained. Kate is not justified in walking blissfully to class when a drowning child needs her help. Similarly, when we choose what legal jobs to pursue, we cannot callously ignore the effects of our choice. In short, our decisions about how to spend our time (our career decisions) must be based on careful reflection, not simply self-interested desires or thoughtless whims. The following section explores how to meet the demand of making career decisions based on *morally relevant* considerations.

##### *A. Legal Career Choices and Morally Relevant Considerations*

Lawyers, like other institutional actors, are in a special position in society because they are bound both by the rules of morality and by the principles of justice. While morality binds all individuals, justice applies to institutions. As a result, individuals who also serve an institutional role are bound by both morality and justice. Because lawyers clearly have an institutional role — their actions affect how people are treated relative to one another in the legal system — they are obligated to pursue justice. But because lawyers are also human beings, they are obligated to follow morality.

Some law students may attempt to justify their career choices by asking, "Isn't it okay if I, as a lawyer, serve neither justice nor injustice? As long as I don't affirmatively exacerbate inequality, isn't it acceptable for me to take a job that doesn't necessarily promote equality?" These questions compel many law students to take jobs that they

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view as “morally neutral” — jobs with no apparent effect on justice one way or the other.

The short answer to this question is seen vividly in Kate’s dilemma. Our time is a matter of opportunity cost. While it is not independently immoral for Kate to go to class, doing so *is* immoral when Kate makes that decision despite a drowning child that she can save. In a vacuum — where actions have no other effects — the act of going to class does not present moral problems. When viewed in the context of a drowning child, however, Kate’s choice to go to class becomes much more problematic.

So too it is with career choices. In a vacuum, it may indeed be morally acceptable to choose a job that neither promotes nor exacerbates inequality. However, law students are not in a vacuum. They have the opportunity to choose a career that actually lessens inequality and serves a deep conception of justice. When confronted with the opportunity to serve justice, it almost certainly is unacceptable to choose a path that might otherwise seem “neutral.”

Economists have long understood the importance of opportunity cost with respect to financial decisionmaking. It is now time for lawyers, law students, and all people to recognize the importance of opportunity cost with respect to moral decisionmaking. Choices about legal careers create a stark moral dilemma precisely because the choice of one job necessarily means the rejection of another job.

As another reason to justify their career choices, many students appeal to the large salary they can earn in certain careers. The overwhelming majority of students at institutions like Harvard Law School choose legal careers in the corporate sector.<sup>20</sup> They become corporate lawyers, working countless hours on behalf of the mega-corporations that have come to dominate our economy and, in many respects, our society as a whole. Given the moral implications of such a decision, the reasons proffered for the choice of jobs must be morally justifiable. For example, it is no excuse for a law student to choose a job simply on the basis that it pays a lot of money. If one job pays less but does more to promote justice, then the fact that another job has a higher salary is not a relevant moral concern. This kind of justification is exactly the kind that Phil faced on those tracks — the possibility of one choice costing thousands of dollars does not change the moral obligation.

It is also worth reminding law students that lawyers in almost any profession earn more than enough to live comfortably. Even a county

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<sup>20</sup> See Harvard Law School Office of Career Services, About Our Students, [http://www.law.harvard.edu/ocs/employers/student\\_statistics.htm](http://www.law.harvard.edu/ocs/employers/student_statistics.htm) (last visited Apr. 5, 2008).

public defender can expect to earn around \$57,000 per year.<sup>21</sup> That figure is actually *more* than the average American family (including both spouses) makes each year.<sup>22</sup> The fact that an *individual* public defender earns more than an average *family* is evidence of the notion that even lawyers on seemingly “low” salaries can live comfortably. Sure, working for a corporate law firm may produce salaries four or five times as high, but Phil’s dilemma reminds us that the luxuries of fine cars, fancy houses, and expensive jeans are not morally relevant desires when something much more significant is at stake.

Law students may be quick to argue that, unlike Phil, they face the prospect of enormous debt. But the point about debt is merely another version of the argument for making lots of money. Debt is nothing more than a monthly payment — it can thus be thought of as a portion out of your salary. Suppose you choose a public interest job that pays \$4,800 per month. If your debt payments are \$500 per month, then your monthly earnings become \$4,300. On an annual scale, that debt turns a \$57,000 yearly salary into a \$51,000 yearly salary. The desire to make a higher wage is no different than before — the fact of debt does not change the moral calculation because it is simply another example of the urge to earn more money.

An additional reason law students might give to justify career choices is that they want a career that generates prestige. This “résumé motive” is a tough explanation to deal with precisely because it is so irrational. Egoism and selfishness may indeed run deeply through law students, but their own desires to hold jobs they view as prestigious should be checked by the reality that being a lawyer in the first place carries with it a fair amount of prestige. The marginal additional prestige generated by a specific job that does not promote justice pales in comparison to almost anything with moral significance. We would not let Kate get away with letting a child drown for the sake of her own prestige. We should not let other law students get away with it either.

Another reason that is often given by law students to support a choice to work in a high-paying job is the belief that earning such a salary is necessary to have a happy family. The empirical reality of this belief is questionable; as noted already, even a public interest legal career can generate salaries higher than the average American family.

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<sup>21</sup> NATIONAL ASSOCIATION FOR LEGAL CAREER PROFESSIONALS, 2006 PUBLIC SECTOR & PUBLIC INTEREST ATTORNEY SALARY REPORT 9 (2006) (stating that the median income of county public defenders with six years of experience is \$57,100).

<sup>22</sup> See CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2006, at 4–5 (2007), available at <http://www.census.gov/prod/2007pubs/p60-233.pdf> (stating that the median income of an American family is \$48,201).

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Law students must ask themselves how much money they really need for their family to be happy. Given that more than half of America's families are living on less than \$50,000, it is hard to imagine that so many law students need four or five times that amount to support their own families. Especially problematic is if a large portion of the increased salary is not going toward "family" at all, but to big houses, fancy cars, expensive social gatherings, and generally high-class lifestyles that underlie the motivations already discussed above.

Perhaps the most common motivation for law students who take jobs that do not promote justice is laziness. Especially for students at Harvard Law School, many jobs come easily because there is an entire system devoted toward placement into corporate careers.<sup>23</sup> This justification, which might be referred to as the "path of least resistance," deserves little comment in this Note. For those who find laziness to be a morally valid justification, the only questions to ask are: (1) What would you do if you were in Phil's position, and you had to choose between your Ferrari and the life of an innocent child? (2) What would you do if you were in Kate's position, and you had to choose between going to class and the life of an innocent child? (3) What would you do if you were in James's position, and you had to decide whether to give your jambalaya to a homeless person or a wealthy young professional? (4) What would you do if you were in Stephanie's position, and you had to decide whether to donate your services to Habitat for Humanity or a group of wealthy homeowners?

What would *you* do in all of these situations? After you have answered these questions honestly, decide whether laziness suffices as a reason to avoid living *your own* life in a manner consistent with *your own* moral principles. At the very least, morality requires that you think deeply about your decisions. Rather than attempting to evade the issue by conjuring up some obscure rationalization or fine distinction, draw a line in a way that sensibly captures your sincere moral beliefs. Then, make an honest effort to live your life according to the line that you have drawn.

It is well beyond the scope of this Note to make substantive arguments about jobs that promote justice better than other jobs. The point here is only that the decisions of law students must be based on morally relevant considerations rather than morally irrelevant considerations. Trivial desires and selfish urges should not enter the discussion — the importance of career choices demands a meaningful examination of the available jobs and the extent to which they promote

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<sup>23</sup> See Harvard Law School Office of Career Services, What We Do, [http://www.law.harvard.edu/ocs/employers/What\\_We\\_Do\\_Recruiting.htm](http://www.law.harvard.edu/ocs/employers/What_We_Do_Recruiting.htm) (last visited Apr. 5, 2008).

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justice. Each law student must decide for herself what the right thing to do is. Then she should do it.

It is also important to note that whether corporate law firms exacerbate inequality is indeed an open question — one that can only be resolved by each individual's substantive beliefs. There may indeed be morally relevant reasons for working at a corporate law firm. For example, some may believe that they can do more good for the world by earning a high salary so that they can then donate all of that money to charity. Such a reason may be morally relevant; the important point is that the reason for any job choice must be sincere. You cannot simply recite it as a rationalization for your job choices. If you sincerely choose a job because *you* believe it is the best way to help people, then more power to you. Just make sure you are actually doing it because you honestly believe that it is the right thing to do.

Lawyers are doing a great service by offering their skills in ways that can help others. Like Stephanie, they should be applauded for their initial decision to spend their time in a way that benefits someone other than themselves. But just as Stephanie must justify her decision about to whom she volunteers her time, so too must lawyers think deeply about the appropriate recipients of their services.

*B. Do the Right Thing at Every Moment;  
Pursue Equal Justice Under Law*

Harvard University is the richest university on the planet, with an endowment of over \$34.9 billion. Amidst a virtual sea of wealth, the statue in Cambridge Common is just one of the many reminders of the world's great tragedies. Its depiction of a wealthy man who is confronted with the suffering of an impoverished woman illustrates the impending moral dilemmas faced by Phil, Kate, and all of the rest of us in a context of global poverty. Its presentation of both rich and poor illustrates the pressing justice dilemmas faced by James, Stephanie, and everyone else who has to choose between helping the wealthy or helping the poor. In these ways, the statue reminds Harvard students of the dual obligations of morality and justice.

Unfortunately, many other reminders are not statues, but real life human beings. They are people who spend every day begging for enough money to get them through the next meal. They are people who have no family, no friends, and no place to go. They endure some of the coldest winters imaginable. They are Boston's homeless population, and they can be found throughout, around, and amidst Harvard's 5000 acre campus.

Even during Boston's most frigid winter nights, there are living, breathing human beings *sleeping on the sidewalk* within fifty feet of the richest university on the planet. There is injustice everywhere. The last place there should be injustice is in the justice system.