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Hollis M & Howe D (1987) 'Moral risks in social work' *Journal of Applied Philosophy* 4:123-133

Think of her [the SW] as deciding in which of two categories the child belongs. Category A comprises children so much at risk that they should all be removed to a place of safety; category B comprises those who will be safe, if left at home. The child's death proves that it belonged in category A. Must she not have been incompetent in assigning it to category B?

'she had ... the duty ... to prevent the death'

deaths are 'results which it was the social worker's duty to prevent'

When she fails, the social worker is in breach of conflicting imperatives. Like some heroine of an Ancient Greek tragedy, she is pursued by implacable Furies, arraigned on charges of *hubris* and visited with *nemesis*. There is the same refusal to allow that the agent of an irremediable system of conflicting duties is not responsible for the results of her action. While the state remains in the business of protecting children, it embodies a potential conflict between welfare and justice. While each remains implacable, verdicts will be reached by examining results. This is our explanation of why social workers are held strictly liable.

*Hollis and Howe: 130*

Before taking final stock of the burden, we wish to block another apparent way of shifting it. Social work departments hold case conferences and try to give team support to their members. It may seem that responsibility shared is responsibility shed. But here too facts and decisions cannot be separated. The social worker, whose case it is, has the best information, including the best informed judgement of relevance and likely consequences. ... Responsibility is perhaps shared but is not thereby diminished or shifted.

*Hollis and Howe, p 132.*

So the final question is whether the social worker is morally at fault for her decisions, when they turn out badly because the system licences greater risks than welfare alone would approve. Our harsh verdict is Yes. She became a social worker by her own choice and, even if her predicament dawned on her only in midstream, she chose to continue.

*Hollis and Howe; 132.*

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*A Child in Mind: Protection of Children in a Responsible Society: the Report of the Commission of Inquiry into the Circumstances surrounding the death of Kimberley Carlile*

We are entitled to judge a person's actions by reference to what was and should, reasonably, have been in his or her mind at the relevant time. We are not entitled to blame him or her for not knowing, or foreseeing what a reasonable person would neither have known or foreseen. In assessing whether a reasonable person would have known or foreseen an event, we are entitled to have regard to what actually happened, though, of course, the fact that an event occurred does not mean that a reasonable person would necessarily have known that it would occur or would have foreseen its occurrence. But the fact that it *did* occur (and was not an Act of God but the result of human action or inaction) gives rise to a presumption - either that there was knowledge that it would occur, or that foresight would have indicated its likely occurrence.

*p32*

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Honoré, A (1988) 'Responsibility and Luck' 13th Blackstone Lecture, Pembroke College, Oxford (*Mimeo: Sixth Edition*)

But outcome-allocation can be defended on grounds deeper than the overall balance of benefit over burden ... For outcome-allocation is crucial to our identity as persons; and unless we were persons who possessed an identity, the question of whether it was fair to subject us to responsibility could not arise. If actions *and outcomes* were not ascribed to us on the basis of our bodily movements and their mental accompaniments, we could have no continuing history or character. ... In the real world, fortunately, human bodily movements and their mental accompaniments are with some exceptions interpreted as actions and decisions. They are ascribed to authors, who accordingly count as persons ... As the

counterpart of this status we are responsible for our actions *and their consequences* ... To ascribe personhood and responsibility to people in this way is to apply normative principles. It is not merely that others attribute to us an identity and a character, but that we are entitled to claim them for ourselves and to ascribe them to others. Others in turn not only hold us responsible for our actions *and their outcomes* , but are entitled to do so.

*Honoré 1988:21*

In their off-duty moments even those philosophers and theologians who in theory cleave to fault alone assign credit and discredit for actions *and their outcomes* in cases where blame and praise are not in point. Take a non-moral example: the contrasting fortunes of X and Y, two footballers playing in a needle match. X miskicks but a gust of wind carries the ball into the opposing goal. He is credited with a goal, but not praised for scoring it. It would be better, of course, had he been skilful as well as lucky, for he would then both be credited for the goal and praised for scoring it. Y aims a skilful shot at goal, but this time a gust of wind diverts it. He is praised for his good shot but not credited with a goal. It would have been still worse for him had his shot been a bad one. X is lucky, Y unlucky; but it is the outcome of their actions, not what they deserve, that primarily determines credit or its absence.

*Honoré 1988:22*

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**Lipsky M 1980 *Street-level Bureaucracy: dilemmas of the individual in public services***

... street level bureaucrats work with a relatively high degree of uncertainty because of the complexity of the subject matter (people) and the frequency or rapidity with which decisions have to be made. Not only is reliable information costly and difficult to obtain but for street-level bureaucrats high case loads, episodic encounters, and the constant press of decisions force them to act without even being able to consider whether an investment in searching for more information would be profitable.

*Lipsky 1980:29*

Street-level bureaucrats characteristically have very large case-loads relative to their responsibilities. The actual numbers are less important than the fact that they typically cannot fulfil their mandated responsibilities with such case loads.

*Lipsky 1980:29*

... street-level bureaucrats must make quick decisions because of the social reality that they are in the presence of clients who will interpret indecision as incompetence or lack of authority ...

*Lipsky 1980:30*

Street-level bureaucrats often experience their jobs in terms of inadequate personal resources, even when part of their inadequacy is attributable to the nature of the job ... Some jobs just cannot be done properly, given the ambiguity of goals and the technology of particular social services.

*Lipsky 1980:30*

A distinct characteristic of the work setting of street-level bureaucrats is that the demand for services tends to increase to meet the supply. ... Appreciation of the demand-supply dilemma in street-level bureaucracies does suggest that the problem of the *quality* of service delivery is not likely to yield easily to any imaginable resource increments.

*Lipsky 1980:33,38*

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Nagel T (1979) 'Moral luck' pp24-38 in *Mortal Questions* Cambridge University Press, Cambridge

'However jewel-like the good will may be in its own right, there is a morally significant difference between rescuing someone from a burning building and dropping him from a twelfth-storey window while trying to rescue him. Similarly there is a morally significant difference between reckless driving and manslaughter.'

*Nagel (1979:25)*

'The driver [who accidentally runs over a child], if he is entirely without fault, will feel terrible about his role in the event, but will not have to reproach himself. Therefore this example of agent-regret is not yet a case of *moral* bad luck. However, if the driver was guilty of even a minor degree of negligence - failing to have his brakes checked recently, for example - then if that negligence contributes to the death of the child, he will not merely feel terrible. He will blame himself for the death. And what makes this a case of moral bad luck is that he would have to blame himself only slightly for the negligence itself if no situation arose which required him to brake suddenly and violently to avoid hitting a child.'

*Nagel (1979:28-29)*

'Actual results influence culpability or esteem in a large class of unquestionably ethical cases ranging from negligence thorough political choice.

That these are genuine moral judgements .... is evident from the fact that one can say *in advance* how the moral verdict will depend on the results. If one negligently leaves the bath running with the baby in it, one will realise, as one bounds up the stairs toward the bathroom, that if the baby has drowned one has done something awful, whereas if it has not one has merely been careless.'

*Nagel (1979:30-31)*

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Smith, Adam *The Theory of Moral Sentiments* (Clarendon Press, Oxford 1976 edition)

Every body agrees to the general maxim, that as the event does not depend on the agent, it ought to have no influence on our sentiments, with regard to the merit or propriety of his conduct. But when we come to particulars, we find that our sentiments are scarce in any one instance exactly conformable to what this equitable maxim would direct. The happy or unprosperous event of any action, is not only apt to give us a good or bad opinion of the prudence with which it was conducted, but almost always too animates our gratitude or resentment, our sense of the merit or the demerit of the design.

*Smith TMS II.iii.3.1 (1976 ed:105)*

This irregularity of sentiment, which everybody feels, which scarce any body is sufficiently aware of, and which nobody is willing to acknowledge ...

*Smith TMS II.iii.intro 6 (1976 ed:93)*

There is another species of negligence, which consists merely in a want of the most anxious timidity and circumspection, with regard to all the possible consequences of our actions. ... That timid circumspection, which is afraid of every thing, is never regarded as a virtue but as a quality which more than any other incapacitates for action and business. ... [Yet], by the Aquilian law, the man, who not being able to manage the horse that had accidentally taken fright, should happen to ride down his neighbour's slave, is obliged to compensate the damage. When an accident of this kind happens, we are apt to think that he ought not to have rode such a horse, and to regard his attempting it as an unpardonable levity; though without this accident we would should not only have made no such reflection, but should have regarded his refusing it as the effect of timid weakness, and of anxiety about merely possible events, which it is to no purpose to be aware of. ... To make no apology, to offer no atonement, is regarded as the highest brutality. Yet why should he make an apology more than any other person?

*Smith TMS II.iii.2.10 (1976 ed:104)*

It is even of use that the evil which was done without design should be regarded as a misfortune to the doer as well as to the sufferer. Man is taught thereby to reverence the

happiness of his brethren ... As, in the ancient heathen religion, that holy ground which had been consecrated to some god, was not to be trod upon but upon solemn and necessary occasions, and the man who had even ignorantly violated it, became piacular from that moment, and, until proper atonement should be made, incurred the vengeance of that powerful and invisible being to whom it had been set apart [*Smith is thinking of the religion of ancient Rome. A person who had unwittingly violated certain religious laws was required to make atonement, and the word 'piaculum' was used both for the trespass and for the act of expiation - Eds*] ... A man of humanity, who accidentally, and without the smallest degree of blameable negligence, has been the cause of death of another man, feels himself piacular, though not guilty. During his whole life he considers this accident as one of the greatest misfortunes that could have befallen him. If the family of the slain is poor, and he himself in tolerable circumstances, he immediately takes them under his protection, and, without any other merit, thinks them entitled to every degree of favour and kindness. If they are in better circumstances, he endeavours by every submission, by every expression of sorrow, by rendering them every good office which he can devise or they accept of, to atone for what has happened, and to propitiate, as much as possible, their, perhaps natural, though no doubt most unjust resentment, for the great, though involuntary, offence which he has given them.

*Smith TMS II.iii.3.5 (1976 ed:106-7)*

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Williams, B (1976) 'Moral Luck' PASS, reprinted in *Moral Luck and Other Essays*

[imagine a] creative artist who runs away from definite and pressing human claims on him in order to live a life in which, as he supposes, he can pursue his art...[let us call him Guaguin]

*For the purposes of his argument, this Guaguin is not a man who simply does not care about the claims of others, but one who:*

is concerned about these claims and what is involved in their being neglected (we may suppose this to be grim), and that he nevertheless, in the face of that, opts for the other life ... which (for the sake of argument, he sees as) ... a life which will enable him really to be a painter. ...

The perspective of deliberative choice on one's life is constitutively *from here*. Correspondingly the perspective of assessment with greater knowledge is necessarily *from there*, and not only can I not guarantee how factually it will then be, but I cannot ultimately guarantee from what standpoint of assessment my major and most fundamental regrets will be. ...

In these cases, the project in the interests of which the decision is made is one with which the agent is identified in such a way that if it succeeds, his standpoint of assessment will be from a life which then derives an important part of its significance for him from that very fact; if he fails it can, necessarily, have no such significance in his life. ...

One should be warned already, however, that, even if Guaguin can be ultimately justified, that need not provide him with any way of justifying himself to others, or at least to all others. Thus, he may have no way of bringing it about that those who suffer from his decision will have no justified ground of reproach.