The Moral Significance of How Things Seem

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Recommended Citation
Marcia Baron, The Moral Significance of How Things Seem, 60 Md. L. Rev. 607 (2001)
Available at: http://digitalcommons.law.umaryland.edu/mlr/vol60/iss3/8
1. The prospectus for this Symposium spoke of assessing the significance of appearances, and my assignment was to examine the expressive dimension of our actions. To what extent is it morally important? As I reflected on the topic and my assignment, I felt sure that the expressive dimension of our actions is very important indeed, but I was less convinced of the importance of how our actions appear to others. I decided to address both questions, with an emphasis on their divergence.

To what extent are the expressive dimensions of actions morally important? To what extent and in what way are appearances morally important? The questions differ, because appearances need not be reality, and indeed, we usually mean the word “appearances” to contrast with reality. My gesture can appear warm without being so. By contrast, my action cannot express warmth unless there really is warmth there. For my action to express warmth, there has to be warmth in or behind the action, and the warmth has to be conveyed to another—to someone toward whom I have warm feelings. Appearances often contrast with reality, but an action cannot express $x$ unless $x$ is really there.¹

I should clarify that in saying that for the action to express warmth, the warmth has to be conveyed to another, I do not mean to be asserting that there has to be an “uptake.” I am not claiming, in other words, that for it to be true that my action expresses warmth, the intended “recipient” has to be aware of the warmth that my action expresses. I do not mean to be taking a stand on this. It seems clear that, in general, an action can express something without it being the

¹ There is an unclarity in the notion of an action expressing something that I am ignoring for now. I said that an action cannot express $x$ unless $x$ is really there, but where exactly is “there”? Must $x$ be an attitude or feeling belonging to the actor? No; the action can express an attitude in virtue of the standard meanings of certain symbols and gestures. This may not be true of all things that we say an action expresses—warmth, for example—but there are things that an action can express without the actor having the relevant attitude or emotion.
case that the person toward whom the expression is directed recognizes the expression for what it is. This is certainly true of disrespect. A disrespectful action expresses disrespect even if the recipient doesn’t realize it is disrespectful.² (Draco Malfoy’s hurling the epithet “Mudblood” at Hermione Granger was no less disrespectful for the fact that Hermione had no idea what “Mudblood” meant.³) It may be, though, that there are exceptions to this general rule, and that expressions of warmth are such an exception.

2. I’ll start with the first question. In what ways and to what extent is the expressive dimension of an action morally important? To focus the discussion, I’ll talk mainly about two broad types of action: beneficent acts and respectful acts. Beneficent acts are structurally different from respectful acts because beneficent acts have as their point to aid another, while a wide range of aims can be the aim of a respectful action. The aim of the respectful action may even be completely unconnected to respect (except negatively—certain aims, for example, to trick someone into doing something he wouldn’t otherwise do, are incompatible with the action being respectful). The respectfulness will lie in the tone or manner in which the act was done and in the underlying attitude of the actor; respectfulness may not be evident in the aim. By contrast, the beneficence of a beneficent action lies in the aim—in that which the actor aims to do.⁴

Beneficent acts themselves come in many varieties, though they all have in common the aim of aiding another. This needn’t be the sole aim, but it has to be one of the aims; and if it is subordinate to

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². Curiously, it is not clear that this holds for respect. Does a respectful action express respect even if the recipient does not realize it is respectful? Maybe; but we are reluctant to view an action (or decision, or policy) as respectful if the recipient thinks it is disrespectful. This has to do with “moral deference,” as Laurence Thomas calls it. See Laurence M. Thomas, Moral DefERENCE, in THEORIZING MULTICULTURALISM: A GUIDE TO THE CURRENT DEBATE 359 (Cynthia Willett ed., 1998). Moral deference involves a presumption in favor of assertions of those who belong to what Thomas calls a “diminished social category,” e.g., id. at 363, 374, assertions regarding the painfulness of behavior they report finding painful—certain remarks, displays of certain symbols, and so on. Although Thomas doesn’t say so, I take it that moral deference also involves a presumption in favor of such a person’s claim (in the face of the actor’s denial) that something is disrespectful.


⁴. Arguably, the beneficence of an act might also depend on the actor’s reasons for doing it. The qualification is necessary only if we understand “aim” narrowly. In an example made famous by John Stuart Mill, a man saves someone from drowning in order to torture him. JOHN STUART MILL, UTILITARIANISM 25 & n.3 (Samuel Gorovitz ed., 1971) (1861). The act surely is not beneficent. This can be captured either by saying that the man’s aim was not to save someone from drowning, but to save someone from drowning and then torture him, or by saying that because of the man’s reasons for saving him from drowning, the act was not beneficent.
another aim, it would be peculiar to call the act beneficent, particularly if the primary aim is contrary to the spirit of beneficence—as is humiliating someone or “putting him in his place.” The expressive dimension of what outwardly looks like a beneficent action may lead us to conclude that the aim wasn’t really to aid, and therefore that the action wasn’t really beneficent after all. Generally, this is only the case when the expression is so horrible that the material benefit pales in comparison, leading one to say, “It wasn’t worth it.” We’ll see an example of this later, from a scene in *The Grapes of Wrath.*

Some beneficent acts shade into what are sometimes called “expressive acts.” Expressive acts are those whose value lies entirely in what is expressed, or in the fact that one is attempting to express concern (or warmth, or whatever; and the value may lie not in the fact that one is attempting to express the precise thing one is attempting to express, but that one is attempting to express something of that sort). The clearest example is an expression of concern or sympathy to someone, where the aim may be simply to express one’s concern, or sympathy, or sadness. Another example of an expressive act is A’s expressing to B that B means a great deal to A. These are acts whose value lies solely in the expression, unlike acts of changing a tire for someone, or providing a ride to the airport.

Acts of comforting another and, in some instances, gift-giving closely resemble some expressive acts, but are slightly different. Comforting another is not simply an act of expressing one’s sympathy or concern, for the aim is to comfort the other; and an act of expressing

5. JOHN STEINBECK, THE GRAPES OF WRATH (1939); see infra notes 9-11 and accompanying text.

6. I note that here again the question arises as to whether an act can be said to express sympathy or sadness or how much B means to A if B doesn’t get the message. I am inclined to say that it can, but also recognize that there is an excellent case to be made for the opposing answer. Imagine the following exchange: “That [referring to something the speaker said] was an expression of sympathy [or concern].” Respondent: “I didn’t read it that way” or “It didn’t seem like that to me.” Surely the reply does not show that the expression was not what the actor says it was. And it would be unreasonable for the respondent to suppose that if he didn’t see it as an expression of concern, it was not an expression of concern. However, one might argue that if we want to call it “an expression of concern,” it is because we think the speaker intended to express concern, or felt concern, but (the suggestion continues) really, it was just an attempt to express concern. Although “expression” and “communication” are not equivalent terms, in the case of what I have been calling “expressive acts,” it is plausible to hold that the act fails if A does not succeed in communicating the concern or the warmth. It would be natural to say that although the actor tried to express concern or sympathy, he failed. My leaning, though, is to stand by the distinction between expression and communication and hold that, in this instance, the actor expressed concern, but did not successfully communicate it to the intended recipient.
sympathy needn’t have that as its aim, or even one of its aims. The actor may believe the person to be beyond comfort, but nonetheless want to express his concern.) And when it is one of the aims, still the aim of expressing one’s concern is distinct from the aim of comforting another. One can try to comfort another and succeed in expressing (and indeed communicating) one’s concern, but fail to comfort.

Gift-giving can be done with a variety of different aims, one of which is to show someone how much the other means to the giver. But usually one wants, in giving a gift, to give the person something that she will really like, not merely to show someone how fond one is of her. Of course one can best do the latter by doing the former. The extent to which one makes plain, by giving the gift, how fond one is of her, or how important the other is to her, will be affected by one’s success in giving her something that she will really like. This is particularly the case if one gives a gift that suggests a very poor grasp of the other’s interests—for example, one gives a pair of hiking boots or a book on hiking the Appalachian Trail to someone who hates the outdoors and has no intention of ever hiking. So we should bear in mind that the two dimensions—expressing something to the other and giving her something she’ll really like—are intertwined. But subtly. If I give a friend a book, and he already has it, but there is no reason why I should know this, then if my choice of the book shows that I have a good sense of his interests, the expression is unlikely to be damaged by the fact that the book is not a good present for him.

Picture a continuum with expressive acts at one end and acts that render clear “material” aid—such as changing someone’s tire, or providing a jump-start—at the other. At the “material aid” end of the continuum, what matters is that the tire is properly changed or the jump-start successful (with no injuries or property damage incurred in the process). Also at this end of the continuum are the spectacular, heroic deeds. The expressive dimension is far less important here than in the case of expressive acts, where the expression is everything.

To see the moral importance of the expressive dimension of our actions, and how that importance varies from one type of action to another, it helps to look at what taints an action (or even ruins it altogether). An expressive act is a complete failure if what is expressed by someone who takes himself simply to be expressing his concern for

7. I am not thinking now of the “corrupt” cases, where one’s aim is to impress someone, to put the other in one’s debt, or to show off one’s wealth.
8. Not that the value cannot reside in the expression. Typically it does not, but one could tell a story in which what mattered most to the recipient was the friendship or commitment expressed by the deed.
his ill friend is “I told you so!”—as in “I told you you’d get cancer if you didn’t quit smoking!” At the other end of the continuum, the expressive dimension is by no means entirely absent. A good deed whose significance lies primarily in what is accomplished—in the material assistance—may be tainted by an expression of resentment concerning the time it is taking. I’ll still be glad that my car is now running, but if the person who offered the jump-start showed great irritation while helping me, made disparaging remarks about the folly that must lie behind the demise of my car battery, or grumbled about all the things he would rather be doing, the beneficent act is certainly tainted.

In extreme cases, the insult expressed in the manner in which the benefit is conferred is so terrible that it leaves the “beneficiary” feeling worse off. The Grapes of Wrath provides an example. The context is as follows: Jessie is perturbed that Mrs. Joyce allowed her children to become malnourished when at the government camp where they all reside, food is provided to those who cannot pay, with the request that they pay when—and only if—they find work. When Jessie demanded, “How come you let your girls git hungry?” Mrs. Joyce replied, “We ain’t never took no charity.”9 Dissatisfied with this answer, Jessie protests to Annie (after Mrs. Joyce has exited the scene), “She got no right to be stiff-necked. She got no right, not with our own people.”10 Annie tries to explain why someone might let her children go hungry even in such circumstances:

“If a body’s ever took charity, it makes a burn that don’t come out.” . . .

....

.... “Las’ winter ... we was a-starvin’—me an’ Pa an’ the little fellas. An’ it was a-rainin’. Fella tol’ us to go to the Salvation Army.” Her eyes grew fierce. “We was hungry—they made us crawl for our dinner. They took our dignity. They—I hate ’em! An’—maybe Mis’ Joyce took charity. Maybe she didn’ know this ain’t charity. Mis’ Joad, we don’t allow nobody in this camp to build theirselves up that-a-way. We don’t allow nobody to give nothing to another person. They can give it to the camp, an’ the camp can pass it out. We won’t have no charity!” Her voice was fierce and hoarse. “I hate ’em,” she said. “I ain’t never seen my man beat before, but them—them Salvation Army done it to ’im.”11

10. Id. at 432.
11. Id.
This is far worse than the person who expresses resentment while, for example, still doing me the favor of changing my tire. The person changing my tire is, it seems, ambivalent; she feels she should help, but really hates having to take the time to do so. But her aim is still to help me by changing my tire. By contrast, the Salvation Army "soldiers," at least by Annie's report, seem to have had as their aim not helping, but humiliating. (More precisely, helping seems to have been subordinate to humiliating.) It is annoying to have someone render assistance grumblingly, but it does not rob one of one's dignity. When, however, the affluent act as if their affluence shows them to be more virtuous, and exact obeisance from the needy, the expressive dimension ruins the deed, and it suggests that the real aim was to exploit the situation so as to have the pleasure of "lording" it (a telling expression) over the needy, expressing in no uncertain terms who is beholden to whom.

Beneficent acts by the affluent for the less well-off are especially easily tainted, as Annie's story shows, even if they are rarely as thoroughly spoiled as the Salvation Army's were. Immanuel Kant saw how delicate acts of charity are, and cautioned:

[W]e shall acknowledge that we are under obligation to help someone poor; but since the favor we do implies that his well-being depends on our generosity, and this humbles him, it is our duty to behave as if our help is either merely what is due him or but a slight service of love, and to spare him humiliation and maintain his respect for himself.\(^\text{12}\)

Kant also advised that it is best, when possible, for the wealthy to aid the poor anonymously.\(^\text{13}\)

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13. Id. at 202 (6:453). It is often held that, ideally, private charity, not the government, would provide for the needy. One common reply is that even if this is ideal, private charity is not to be relied on, and therefore, government programs are essential. Steinbeck's discussion via his characters suggests that even if it were reliable, private charity would not be the ideal vehicle. Kant's discussion also lends some support to this thought, if we conjoin to the passage just quoted the following reflection:

Having the resources to practice such beneficence as depends on the goods of fortune is, for the most part, a result of certain human beings being favored through the injustice of the government, which introduces an inequality of wealth that makes others need their beneficence. Under such circumstances, does a rich man's help to the needy, on which he so readily prides himself as something meritorious, really deserve to be called beneficence at all?

Id. at 203 (6:454); see also id. at 100-01 (6:326) (arguing that the government may constrain the wealthy to care for the needs of the poor). At least some forms of aid to the needy ought to be delivered by the government to avoid a situation in which the more fortunate "build themselves up" by being (or appearing to the recipients to be) the only source of
3. Notice that when acts whose point is to offer material assistance are tainted, it is typically not because too little is expressed, but rather because something is expressed that indicates contempt, resistance to providing the help, or a disturbing ulterior motive. Simply providing the material assistance in a perfunctory way would not taint the act. One would need to be extraordinarily full of himself to be distressed that a motorist who stopped to help change his tire did not show pleasure in doing this favor, or that someone who rescued him from an accident did not adequately express sorrow over his injuries. By contrast, an act of giving a gift, or offering solace, or letting someone know how much one cares for him can indeed be tainted by too little expression—by performing the act in a perfunctory way—as well as by the wrong sort of expression (for example, a sense of superiority).

There are a lot of contextual details that make a difference here. To name just a few: whether the person providing aid is legally required to do so; whether the person providing aid is someone close to us, a casual acquaintance, or a complete stranger (and if someone close to us, the history of the relationship also clearly bears on the expressive dimension). And within a friendship whose depth is unclear, the aid could be a way of signaling a deeper commitment than had hitherto been indicated, in which case the expressive dimension could take on special importance.

Rather than explore the contextual details, I want to look briefly at the beneficent acts that are midway on the spectrum and consider how they can be tainted and then sum up and suggest a general conclusion regarding beneficent acts. I’m thinking of acts that are intermediate between purely expressive acts, such as acts of expressing sympathy, on one end of the spectrum, and on the other, providing desperately needed food, or assistance on a hiking trail to someone who has twisted an ankle, or providing a jump-start. In between these are, among the other beneficent acts, acts of gift-giving. Gift-giving is easily tainted if the giver seems to be dumping on the recipient an unwanted item, while presenting the item as if it were a genuine gift. (A professor of my acquaintance gave as a Christmas present to the sustenance for the very needy. If the aid is provided by the government, moreover, the message can be, depending on how the aid is dispensed, that the recipients are entitled to the benefits. Charity from private individuals is more likely to send a different message, that is, that the beneficiaries are simply getting a hand-out. It might be, of course, that those who oppose government welfare programs oppose them in part because they do not think that the aid is something to which the needy are entitled, and thus prefer that if they are helped at all, they be helped in a way that sends the message that they are getting a hand-out, and perhaps also that they are indeed inferiors.
department secretaries tile leftover from the renovation of one of his bathrooms.) Gift-giving can also be tainted by intrusiveness and an implicit judgment that something is amiss in the recipient's life, even though the recipient has never volunteered to the giver that it is. For his birthday, I give a friend a book entitled *How to Save Your Marriage.* He has never expressed to me any concerns about his marriage, but frequently bickers with his wife in my presence. Or, I give *How to Take Off Weight and Keep It Off* to an acquaintance who is obese, but who has never discussed the matter with me; or *Raising a Difficult Child* to a friend who has never indicated that she regards her child as unusually difficult, but whose child has been defiant and unruly at my home.

In summary, an otherwise good deed is tainted, sometimes even ruined, if the act expresses contempt, condescension, determination to keep at arm's length the people one is helping or (usually worse) to control those whom one is helping, or simply the view—never encouraged by the recipient—that the recipient's life (or marriage, or child, or health) is a mess. Expressive acts are easily tainted both by the expression of something negative and by the absence of whatever it is that one means to express; and insofar as a beneficent act approximates an expressive act, it too can be tainted either way. But usually, if a beneficent act is tainted, it is by the expression of something negative (though, as noted, depending on the context, absence of a positive expression can taint it). In such circumstances, the act is tainted either by signs that the actor is seeking to manipulate, control, or reshape the person, or by an attitude of superiority (in virtue, social class, or possibly skill or expertise), or self-importance. In each instance the actor may not intend to convey the message and may not even be aware of his attitude. In all such cases, what the action expresses is a lack of respect.

Some might hold that if what is expressed is a lack of respect, then the problem, contrary to what I have been saying, is a lack of a positive expression. I have been suggesting that, usually, if a beneficent action is tainted, it is not by the absence of something that should be expressed, but by the presence of something that shouldn't be. But if what is expressed, in all those cases, is a lack of respect, does this mean that what is needed is a positive expression of respect? I don't think so. A beneficent act expresses respect unless there is

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14. Expressions of superiority in skill or expertise are less likely to taint the action than are other expressions of superiority unless the actor seems to be trying to "rub it in." By contrast, expressions of self-importance and superiority in virtue or social class can easily taint the beneficent action, even if the recipient does not believe that the actor intends to draw attention to the presumed superiority.
something in it that we can pinpoint that expresses disrespect. I men-
tion this because I think it is a mistake to hold that an action is gener-
ally lacking in respect unless the actor makes a point of showing
respect. In some situations this is the case, but it does not hold as a
general rule.  

Deeds in the middle of the spectrum, because of their expressive
dimension, can be tainted by the absence of whatever it is that one
means to express as well as by the expression of something negative.
In addition, acts of gift-giving can be tainted by the clash between the
message expressed by the gift chosen and the message that is sug-
gested by the very fact that the item is presented as a gift. Saying to
the department secretaries—or someone else—"Do you happen to
have any use for bathroom tile, or know someone who would? I have
a lot left over, and if someone were redoing a small bathroom, it
might be enough. I hate just to throw it away, and would like to give it
to someone who could use it" would be completely unobjectionable.
What is objectionable is presenting the tile as a gift, acting as if the
gesture is on par with bringing them gift certificates or boxes of choco-
lates. It is, as we say, the thought that counts, and the thought here
does not seem to have been a very nice one.

4. Before completing the shift I have already begun from benef-
icent actions to respectful actions, I want to mention another type of
expressive act: acts of expressing regret. A particularly interesting in-
stance is an act done by someone who genuinely regrets something he
feels he must do (or has done, feeling he had no choice but to do it).
I am thinking of cases of what might be called "moral regret," to be
contrasted with, for example, the regret felt when one has to miss an
excellent concert. With moral regret, one realizes that one’s choice
is probably very hurtful to another, perhaps (though not necessarily)
wronging him. An example would be a decision to leave an unsatisfy-
ing marriage, knowing that one’s spouse and children will suffer be-
cause of the decision, and recognizing the possibility that, from their

15. It may hold as a general rule for respect in its non-egalitarian sense, according to
which respect is to be shown to certain people because they are one’s superiors. This will
more commonly require doing something—for example, addressing someone as “Sir” or
“Madam.” I mention this to bring attention to the fact that when “respectful action” is
used to refer to an action whose aim was to show someone respect, we are sometimes
talking about the non-egalitarian form of respect. It is important to pay attention to what
sort of respect it is that we are being called upon to express. Many of us will think it far
more important to take care that our conduct and public policies express egalitarian re-
spect than that they express non-egalitarian respect.

16. I am imagining that the agent was not supposed to perform in the concert.
perspective, nothing will ever make up for the initial anguish to the extent that they will say, "It was painful, but it was all for the best." Another example would be a decision to find a new home for a very troublesome pet, a pet that one's children love; another would be a decision to have an abortion, even though one's partner would prefer that the pregnancy not be terminated. In each of these instances, the act of explaining one's decision to a party who will be unhappy about it will have a very important expressive dimension. It is not uncommon for films and novels to vividly illustrate how much worse things can go if one expresses regret badly (or doesn't express it at all). We wince watching the film, *Room at the Top*, at the manner in which Joe informs Alice that he is terminating their relationship, and we wish that he would convey, rather than conceal, his anguish over having to do so. Less memorable are the instances where the expression makes an unfortunate action a little more tolerable, as when Hermione, in *Harry Potter and the Sorcerer's Stone*, aptly expresses very genuine regret to Neville just after casting the "full Body-Bind" spell on him so that he won't stop them from getting the Stone before Voldemort or his agents do.

In the context of a close relationship, what needs to be expressed is not just respect—though that is certainly part of what should be expressed. Those who are unlikely ever to feel "It was painful for quite some time, but it was all for the best" want to hear that the other person's choice is painful for him, that it is not easy to cause so much pain to loved ones, and that he feels the pain too. One wants to hear (in the case of the troublesome pet) both that he will miss the pet and that he is genuinely pained at the sorrow that the loss of the pet will cause the child. Where one party terminates a relationship (a human-human relationship) despite the wishes of the other, one wants to hear even more: that the person who has chosen to terminate the relationship feels at least some kind of strong emotional attachment, some love, and is not simply indifferent to or, worse, disgusted with, the other.

For the purposes of this Symposium, it is not the expressive dimensions of such actions as these that mainly concern us. Other expressions of regret are far more significant. I am thinking here of apologies to those we have wronged, or to those who were wronged by our ancestors, or who differ from the wrongs of our "forefathers," wrongs which, though our ancestors did not commit them, our ances-

tors did nothing to stop or to try later to rectify. These apologies are all expressions of regret that do not occur within the context of a close relationship. Examples include apologies with reparations to Japanese-Americans who were interned in camps by the United States government, apologies to descendants of slaves in the United States, Germany’s reparations to various victims of the Nazis, and German companies’ reparations to those whom they used as slave laborers during the Third Reich.

It is noteworthy that the apologies, even without reparations, seem to mean something to the recipients even when, as is very often the case, the apologies do not come unbidden. (Of course there are exceptions, a noteworthy one being an apology that seems to be offered in lieu of reparations or some other action that the survivors are demanding.) More often than not, the apologies come only after the absence of any apology is repeatedly noted and protested or lamented. The apologies matter insofar as those apologizing accept responsibility, possibly for the deeds themselves, but possibly for not having opposed the actions, for turning a blind eye, or for simply failing—perhaps refusing—until now to acknowledge that what happened was wrong. Acceptance of responsibility is important, and dodging responsibility (“Yeah, it was wrong, but I wasn’t the one who made the decision”) is more than annoying. But equally important is the acknowledgment that what was done was seriously wrong, that these people were wronged, and that they count. The apology is a reassertion, in the light of what seem to be contrary claims—and years of silence that seems to suggest concurrence—that they too are persons and fully deserve to be treated as persons.

Apologies and reparations are not the only way to express this. Other ways include abandoning an offensive mascot at the request of the group that says it is offensive (for example, “Chief Illiniwek” at the University of Illinois, so far not abandoned) and ceasing to fly the Confederate flag or to display it on one’s truck. Another meaningful gesture—indeed, a gesture that may well be crucial if apologies are not to ring hollow—is Germany’s renaming of a military base.\(^\text{19}\) Instead of being named for a general who was never linked to any atrocities in his military actions, but who agreed in 1942 to become an “honorary judge” of the People’s Courts of the Third Reich (“vehicles

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19. See generally Roger Cohen, New Model for Soldiers in Germany, N.Y. TIMES, May 9, 2000, at A3 (discussing Germany’s decision to rename a military base that was originally named for Günther Rudel, a general who “had been held up as a hero and example in the first decades after World War II”).
for the administering of Hitler’s brutal whims”20), the base is now named for Anton Schmid, an army sergeant who saved more than 250 Jews while stationed near Vilnius, and who was executed by the Nazis for his acts.21

In the cases of mascots and the Confederate flag, the decision may require “moral deference” to members of the oppressed group—of “diminished social category,” as Laurence Thomas puts it22—if those in favor of the mascot or flying the flag believe that what they champion is in no way disrespectful. Moral deference involves listening—really listening—“until one has insight into the character of the other’s moral pain,”23 and most importantly, it involves “a presumption in favor of the person’s account of his experiences.”24 On the question of whether something is offensive to a certain group, moral deference involves a recognition that members of that group have insight into the matter that outsiders lack.25

In each of these cases, what is shown, above all else, is respect. This is particularly true when moral deference is involved because moral deference involves a willingness to set aside one’s own take on the issue at hand and listen to that of another, crediting the other with an insight one realizes one may lack.26 As Thomas says, “[m]oral deference is meant to reflect the insight that it is wrong to discount the feelings and experiences of persons in diminished social category groups simply because their articulation of matters does not resonate with one’s imaginative-take on their experiences.”27 Moral deference involves overcoming, or at least temporarily shelving, arrogance.

5. Reflecting on expressions of regret has led us to the topic of respect, and it is not surprising that it has, since the expression of respect seems to be at the heart of what makes apologies and the like meaningful, at least outside the context of close interpersonal relationships. Within interpersonal contexts, there are various reasons

20. Id.
21. Id.
22. Thomas, supra note 2.
23. Id. at 377.
24. Id. at 374.
25. See id. (noting that members of a diminished social category speak from a vantage point to which nonmembers do not have access). This is perhaps an extension, on my part, of Thomas’s concept. I think Thomas would agree with my statement, but he does not speak to assertions that something is offensive. I should note that significant disagreement among members of the group as to whether a particular symbol is offensive or not complicates the issue.
26. See id.
27. Id. at 375.
why apologies and expressions of moral regret are meaningful to the recipient; outside of that context, in the context of law and public policy, what explains their importance is in large part the respect that is shown to the recipient. Respect is expressed in many ways—in the willingness to acknowledge wrongdoing (and to acknowledge that particular others were wronged and that the wrongs were not minor), in welcoming input, in not silencing dissent or criticism, and in not expecting the others (those who have been wronged) to take a "back-seat" role in the discussion of policies or the nature of the wrong at issue.

We should note that in many contexts an action is respectful simply by not being disrespectful. But against a backdrop of disrespect, it may take more than an absence of disrespect to be respectful. (Or we might say that in not addressing the disrespect, one may be treating it as unimportant, and this itself shows disrespect.) So although it is generally the case that an action is respectful by virtue of not expressing disrespect, in some circumstances I can only express respect by saying or doing something that aims to correct, or at least recognize, a wrong against the person. If I am at a gathering where someone (not present) is being discussed in a dismissive or scoffing manner, I might show respect for that person by taking issue with the disrespectful remarks. Or I might show respect for a graduate student who is bravely speaking up at a department meeting only to be silenced, by supporting her in her point or by urging (even if I do not agree with her on the point she raised) that we take the matter seriously.

In addition, there are policies and courses of conduct that aim at expressing respect, in the manner noted in the last Section. The German government’s decision to rename a military base so that it bears the name of a man who sought to thwart Nazi atrocities rather than the name of someone who lent his imprimatur to them represents one such course of action (unless the aim was quite different—for example, simply to improve the image of the military). Public acknowledgment of a grave injustice after years of silence expresses respect to those who were wronged because it serves as recognition that, contrary to what had previously been implied, those persons do indeed count.

Before leaving this topic, I want to mention a rather different instance of a policy whose importance lies, in no small part, in its ex-

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28. And at related aims, including setting a good example and taking care not to lend moral support to white supremacists or to those who wish to forget or minimize injustices.

29. See supra notes 19-21 and accompanying text.
pression of respect—and in its acknowledgment that the positive expression is needed because of the past wrongs: affirmative action policies. Shaping affirmative action policies in one way rather than another, and opting for them in the face of certain familiar objections, expresses respect. This is nicely brought out by Thomas Hill, Jr., in The Message of Affirmative Action, from which I will quote at length. Hill claims that it is a mistake to suppose that “social policies can be settled entirely by debating the rights involved or by estimating the consequences, narrowly conceived apart from the messages that we want to give and the messages that are likely to be received.” Discussions of affirmative action programs have by and large neglected the question of “what message we should try to give with affirmative action programs and what messages we should try to avoid.”

Focusing on public universities, Hill suggests that the message they should aim to convey is “something like this”:

“Whether we individually are among the guilty or not, we acknowledge that you have been wronged—if not by specific injuries which could be named and repaid, at least by the humiliating and debilitating attitudes prevalent in our country and our institutions. We deplore and denounce these attitudes and the wrongs that spring from them. We acknowledge that, so far, most of you have had your opportunities in life diminished by the effects of these attitudes, and we want no one’s prospects to be diminished by injustice. We recognize your understandable grounds for suspicion and mistrust when we express these high-minded sentiments, and we want not only to ask respectfully for your trust but also to give concrete evidence of our sincerity. We welcome you respectfully into the university community and ask you to take a full share of the responsibilities as well as the benefits. By creating special opportunities, we recognize the disadvantages you have probably suffered, but we show our respect for your talents and our commitment to ideals of the university by not faking grades and honors for you. Given current attitudes about affirmative action, accepting this position will probably have drawbacks as well as advantages. It is an opportunity and a responsibility offered . . . as part of a special effort to . . . encourage minorities and women to participate more fully in the university at all levels. We believe

31. Id. at 190.
32. Id.
that this program affirms some of the best ideals implicit in our history without violating the rights of any applicants. We hope that you will choose to accept the position in this spirit as well as for your own benefit."

Reflection on the message we should send and the messages we should avoid sending provides a reply to a familiar objection to affirmative action. It is often claimed that unless those implementing affirmative action look at each case separately (and thoroughly) to determine whether the applicant really has suffered a significant loss of opportunity because of racism or sexism, a number of those who benefit most from affirmative action will be people "who have actually had, on balance, as much opportunity as white males." Examining each case thoroughly is hopelessly impractical. Should we then choose not to have an affirmative action program at all? Hill asks us to consider what we would be saying if we made this choice. The message, he suggests, would be this:

"We cannot find a way to ensure precisely that each talented and hard-working person has an equal opportunity over time; and, given our options, we count it more important to see that none of you women and minorities are overcompensated than to try to see that the majority of you have more nearly equal opportunities over your lifetime. Your grievances are too subtle and difficult to measure, and your group may be harboring some who were not disadvantaged. We would rather let the majority of white males enjoy the advantages of their unfair headstart than to risk compensating one of you who does not deserve it."

That we would be sending such a message by choosing, for the reasons indicated, not to have an affirmative action program is a very weighty reason against such a decision.

6. I find it so obvious that the expressive dimensions are morally important that it is difficult to explain why they are morally important. I am far less convinced of the moral importance of appearances (apart, of course, from those instances where the appearances are no different from the reality). It seems to me unquestionable that we should pay attention to the expressive dimensions of our conduct, and

33. Id. at 209-10 (footnote omitted).
34. Id. at 208.
35. Id.
36. Id.
37. I limit my discussion to instances where appearances differ from reality, because when they do not, there is no question but that the appearances are morally significant.
to the messages sent by court rulings and by having or eliminating certain laws. But it is far less obvious that we should pay attention—or at least as serious attention—to how our actions might appear to others, or how a court ruling or a legislative change might appear to others.

Consider affirmative action. It is one thing to say, as both Hill and I do, that (A) in considering the pros and cons of affirmative action (and of a particular affirmative action program), we should factor very seriously the message it expresses. It is another matter to hold that (B) if adoption of affirmative action programs will appear to some to indicate that those favoring the programs believe that women and members of the relevant “minorities” are intellectually inferior to white males, then this is a strong reason not to have affirmative action programs. I am not claiming that (B) is patently false, but it is different from (A) and, if true (as I doubt), is not obviously true.38 To be sure, that some will see affirmative action as confirming racist or sexist suspicions is a problem that needs to be addressed. And one way to address the problem is to devise affirmative action programs in such a way that they do not express that message. But even if the programs do not, there may well be some who see the existence of the programs as an indication that women and non-whites really are intellectually inferior, or at least that those who support the programs think they are. This is not a strong reason against having such programs.39

What, one might ask, warrants taking the message our actions express more seriously than how our actions might appear to others (where it is not the case that how they appear is equivalent to what

38. Its truth hangs to some extent on how common that reaction to affirmative action is, but not entirely. Surely it would be much better to address the reaction, taking care to shape the affirmative action program properly and not dilute standards, rather than to take the reaction as a fixed point that has to limit our options. Its truth also depends in part on who has this reaction. I agree with Sarah Buss that if the people who thought that affirmative action insults minorities were the intended beneficiaries themselves, then this would have moral significance. Sarah Buss, In Defense of Appearances: A Reply to Marcia Baron's “The Moral Significance of How Things Seem,” 60 Md. L. Rev. 642 (2001).

39. Hill writes:

Hill, supra note 30, at 211.

We can do quite a bit to address misunderstandings, but it is very hard to do anything about willful refusal. What we can do is not cater to it—not allow their willful refusal to shape our decision.
they express)? In a nutshell, it is this: I have a responsibility to attend to what my actions express. And it is not terribly burdensome or disruptive to do so; in fact, it seems part and parcel of good conduct. By contrast, there is no end to the possible mistaken beliefs to which my actions might give rise, and it would be destructive to peace of mind, and perhaps to good character, to try to anticipate all the possible mistakes. To have to alter my conduct accordingly would be more burdensome still. There are exceptions, and I will enumerate them via a discussion of examples. But in general, we should not hold ourselves responsible for the mistaken beliefs to which our conduct gives rise. There are situations where the consequences are so severe that we may judge that, regrettably, we had better alter our conduct lest dangerous, mistaken beliefs arise; but the consequences have to be very dire indeed. By contrast, if my conduct expresses disrespect, I ought to alter it, and this needn’t be for consequentialist reasons (much less because of really dire consequences).

7. What about situations where my goal in acting in a certain way is to influence others to act similarly? There it will matter enormously that others see my action accurately. If (unlike most vegetarians) I choose to be a vegetarian mainly with the aim of influencing lots of others (by my example and my good vegetarian cooking) to also be vegetarians, and I have people over to a dinner that includes what tastes remarkably like meatballs, but are in fact made of soybeans, it will be important (at least if they taste good) to announce loudly that these are indeed made of beans. Even so, it would be a little far-fetched to say that I would be wrong to serve soyballs without announcing that they are soyballs, even if I am a committed vegetarian. The same point holds for the example (discussed both by Julia Driver and by Deborah Hellman in her contribution to this Symposium) of someone wearing faux fur that looks very much like real fur. I don’t see that it is wrong to wear remarkably convincing fake fur; still, if my aim is not to support the practice of trapping and killing animals for their fur, either directly by buying the furs or by (even inadvertently) encouraging others to do so, it would be unwise to wear fake fur without at the same time donning a button decrying fur coats or, as Driver suggests, a “Great Fake” button. In these two examples,
part of my aim in avoiding animal products in certain forms is undermined if I replace them with a terribly convincing substitute. If I do act wrongly (and it seems to me a stretch to say that I do) in serving convincing soyballs or soyburgers, or in wearing faux fur that looks very much like the real thing, the wrongness consists in my undermining my aims. 43

But in many instances where we are enjoined to pay attention to appearances, it is not because our own aims will be undermined if we do not. When I was in high school, my parents urged me to stay home on the Jewish high holy days even though we weren’t observant and would not be spending the day in the synagogue. They reasoned that if I attended school, some ignorant people, knowing that I am Jewish and that many Jewish students stay home on Rosh Hashanah and Yom Kippur, would judge that if I go to school on those holidays, Jewish students who stay home surely don’t really need to and are just exploiting the situation to have some days off. It seems to me now, as it did then, that it was not my responsibility to worry about the fallacious inferences that others might possibly draw from my conduct. I knew I belonged in school, and that is where I wanted to be.

Consider a different example. A male professor is scheduled to teach abroad the following year in a study abroad program affiliated with his university. He is asked to pick a graduate student who will be his teaching assistant in the overseas program. He picks a female student, someone who has assisted him before, in his home university, and whom he knows to be excellent and highly reliable. Some of his colleagues are very perturbed by his choice. They worry that others will think that he and the graduate student are lovers, and that this will reflect badly on the university. Under pressure from his colleagues, the professor reluctantly decides he’ll have to choose someone else instead, and he tells the student that, regrettably, she will not be able to participate after all. Clearly, the cost of allowing “appearances” to enter in here is very high for the student, and as long as most of the faculty are male, and are, or are presumed to be, heterosexual, the female students (except, perhaps, those who are openly lesbian) will be at a considerable disadvantage if such worries are allowed to shape decisions about who will serve as the teaching assistants in the study abroad program. And it is easy to generate other examples of the same sort. Indeed, it is easy to think of other stories that, like the one about the study abroad decision, are true. In a department where I recently taught, female graduate students who re-

43. It matters that the aims are not unworthy and arguably are very good aims.
ceive a lot of attention from their male professors are often rumored to be having an affair with one or more of those professors. Rumors are enthusiastically disseminated by some of the male graduate students who seem anxious to explain away the successes of successful female graduate students. The behavior giving rise to the rumors varies from having long discussions alone with the professor in his office, to having dinner or coffee alone with him. Should the male professor avoid being seen alone with the female student? There are two ways to avoid this (apart from meeting with the students two or more at a time, or in some other way arranging to have another person present during their discussions). The most obvious one would be not to give the female student the attention that she would get if she were male, or if the rumors weren't flying. To do this would mean depriving her of the graduate education to which she is, as a student in the program working on a dissertation, surely entitled. Another way would be to meet secretly so that the nosy, resentful graduate students hopefully do not see them together. This would of course create its own dangers (confirming the suspicions, if the meetings are discovered) and might well make the student and the professor uncomfortable in any case.

Still, reactions will differ as to whether any effort at all should be made to avoid giving the appearance of having an affair. In a discussion of such problems as the rumor problem just noted, one faculty member agreed that the rumors, and especially the accusatory remarks addressed to the graduate student, were uncalled for, but also said that the faculty member and the graduate student really should not dine out alone together, as it would likely give rise to suspicions. (When asked if this wasn't unfair to women graduate students, he said that there should be no one-on-one dinners between graduate students and faculty members, regardless of gender. I'm not sure if this was a case of biting the bullet, or if he genuinely held this opinion.) My own view is that they should not have to avoid going out to dinner together, much less avoid talking at length in the professor's office. It is understandable if either chooses not to meet anywhere outside the professor's office because they find the prospect of rumors too annoying; but surely they are not to be faulted if they choose to meet for dinner. Nor do they forfeit the right to complain when rumors circulate and she is said to have received a fellowship or a teaching award only because of her (alleged) affair with him. The matter is different if the issue is not whether to ignore rumors and go out to dinner together, but whether to allow the rumors to affect how long or how often they talk in his office about her dissertation and related matters.
If the professor decides to keep discussions with female thesis students to a shorter time period to avoid giving rise to rumors, something is very wrong. Likewise, if she doesn’t feel free to go to his office very often because it requires walking past the office of some nosy, resentful graduate student, something is very wrong.

8. So what reason is there for thinking that appearances are morally important, and should factor seriously into decisions about how to conduct ourselves? What reason is there for thinking that, as Julia Driver has claimed, to appear to be acting immorally may itself be immoral?\textsuperscript{44} In this Section and the next, I will consider what can be said in support of this position, and I will also try to locate the underlying disagreements between those who support it and those who reject it.

Consider first an objection that might be raised concerning the examples I have given. It might be objected that the reason why many of us do not find the appearance of an amorous relationship between a professor and a graduate student objectionable is that we are not convinced that such relationships are always morally objectionable in the first place. So let’s consider conduct we’ll all agree is very wrong indeed. We’ll all agree that murder is wrong; ditto for child molesting, rape, and robbery. Is it clear that appearing to commit such a crime is itself wrong? I don’t think so. Nor is it clear that one should put any energy into not appearing to a bystander to be committing such crimes. There is surely a cost to a habit of worrying, or simply thinking about, whether one’s actions might be misperceived by others and, if so, whether this might, as Driver says, “corrupt” the onlooker’s “morals.”\textsuperscript{45} Caution lest one is thought to be molesting a child could result (perhaps has resulted) in too few hugs and caresses for children on the part of camp counselors, teachers, and possibly even relatives. With a qualification to be noted in a moment, it seems

\textsuperscript{44} Driver writes:

I shall explore the question of whether an action that is not immoral in virtue of any independent reasons can be bad, or immoral, in virtue of resembling an immoral action. The answer will be “yes.” What is surprising about this answer is that it means that, in an important class of these cases, the immorality of some actions will depend completely on the mistaken beliefs of other people.

Driver, supra note 40, at 331.

\textsuperscript{45} See id. at 333. I also find her examples of instances where there is such a risk implausible. “If someone witnesses an action that she thinks is directly immoral, then the witness's morals could be corrupted.” Id. How so? “A person who witnesses the desecration of some bodies, for example, may become callous and brutal.” Id. Well, maybe; I’d think it at least as likely that witnessing atrocities would leave one outraged, determined to try to do something to prevent further atrocities.
to me that to the extent that one should worry about how one’s conduct might appear to others, it is only for prudential reasons. A scene in Spike Lee’s *Jungle Fever* comes to mind: when Flipper and Angie are having fun, playing around, an onlooker, seeing an African-American man pushing a Caucasian woman down onto a car, calls the police. It might well have been imprudent of the couple to engage in such fun in public, though one would hardly want to advise interracial couples (more specifically, those in which the woman is Caucasian and the man African-American) to avoid doing anything that might appear to an onlooker, who assumes that white women wouldn’t consent to any physical intimacy with African-American men, to be an assault. But in any case, surely we would not consider their conduct to be immoral simply because it could have been predicted, given the prevalence of racism, to give rise to a false belief that an assault was taking place.

Now if the situation is one where someone knowingly (even if unintentionally) induced or gave rise to a fear on the part of the would-be victim that he or she was about to be murdered, raped, or seriously injured, then I agree that it is wrong (unless necessary under the circumstances) to have so acted. The same holds even if the actor only recklessly or negligently gave rise to this fear—that is, the actor was aware of the likelihood that the other would fear this, or wasn’t aware but should have been. But notice that the actor’s conduct is wrong not just because it induces a false belief, but because it induces a fear on the part of the would-be victim. Note too that its wrongness hinges on it being a foreseeable fear.

There are other reasons to take the appearances to be morally important. If in some of the examples given earlier the risks had been much more serious, the force of the consequentialist considerations would be much stronger. If there had been a serious possibility that my fellow students would be expelled from high school for staying home on the high holy days, when I, also Jewish, did not, I imagine I

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47. Id.

48. I don’t mean to be placing emphasis on its being a fear, as opposed to a belief that one faced an imminent danger. What is important (in addition to its being foreseeable) is that it was not just the belief of a bystander, nor a belief that, say, the other was about to tickle him.

49. The fear needn’t be reasonable—though of course reasonableness is relevant, because it is much more likely to be foreseeable if it is reasonable. If I know that the other person will believe I am about to attack him—because I know him well enough to know his irrational reactions—I act wrongly if I proceed anyway (assuming it was not necessary under the circumstances). That his fear was unreasonable doesn’t change the wrongness of my conduct.
would have been willing to stay home.\textsuperscript{50} Certainly, that would have been a strong reason for me to do so—assuming that there was no other way around the problem, such as explaining when a teacher asked (as one in fact did), “What are you doing in school, Marcia?” that Jews, like Gentiles, differ in the degree to which they observe the holidays and the various religious prohibitions. If, by dining alone together, the professor and the student ran the risk that the professor would be fired and the student expelled (let’s imagine that this is a very strict religious school, and that this would be considered adequate evidence that the two were romantically involved), they would have a strong reason to refrain from doing so. Even so, it would not be immoral for them to do so, but only unwise.

9. An underlying disagreement between those, like Driver, who take appearances to have considerable moral significance and those, like me, who take the significance to be slight, is simply how attentive we should be, as agents, to possible consequences of our actions—consequences that might arise because of innocent mistakes, ignorance (culpable or not), or unreasonableness. Related to this, we differ about the extent to which we should hold ourselves responsible for such risks, altering our conduct accordingly lest we occasion, or contribute to, a misperception that has consequences of some moral significance.

To the extent that the worry is that someone’s morals will be corrupted\textsuperscript{51} (rather than, as in my example about Jewish religious observance, the risk that others will be ill-thought of because of one’s actions), another difference enters in. This difference concerns the extent to which we should try to improve, or at least not “corrupt,” others’ characters. My own view is that, generally, it is not really my business to worry that others, seeing me do x, will mistakenly believe

\textsuperscript{50} Notice, though, that this does not lend support to Driver’s claim that to appear to be acting immorally may itself be immoral. See supra note 44. This is an instance, rather, where my conduct may (inadvertently and only because of others’ stupidity and mistrust) make the conduct of others appear to be immoral.

\textsuperscript{51} I am referring here to Driver’s repeated concern about the corrupting effect of a mistaken belief that action x, which is not immoral, is in fact action y, which is. Driver explains:

If an action resembles an immoral action, then it is not surprising that it could be misunderstood as independently immoral in some contexts. \ldots Such misconstrual can corrupt the morals of others \ldots .

\ldots For example, in the Caesar’s wife case, the witness thinks that Pompeia has committed adultery when in fact she has not, and comes to the conclusion that adultery must be all right after all.

Driver, supra note 40, at 334.
that I am doing $y$, which they correctly hold to be wrong, and will then decide that if I am doing $y$, it must be okay for them to do it.

First, just as an empirical fact, it seems to me unlikely that my choices would so strongly influence other adults. It is different with children, especially my own. I certainly should pay attention to possible misunderstandings my child might have of what I am doing, misunderstandings that might lead him to think that something is permissible that in fact is not. If I am practicing my part for a play behind closed doors, and my child, overhearing me, thinks I am screaming at someone over the phone, he might judge that civility cannot be all that important if this is how his mom talks to people. Very few other people are likely to be swayed, by my supposed election to engage in a certain activity, into thinking that what they had hitherto thought was wrong must actually be all right after all.\footnote{So much for the empirical point. But what if, in a particular instance, the risk of misconstrual really is high? I am willing to grant that if, for some reason, the risk is high, and the issue is a serious one, I should modify my behavior accordingly. But again, the stakes would have to be very high. In general, however, I think that we should leave the task of character improvement (and character maintenance) to the owner of the character.}

So much for the empirical point. But what if, in a particular instance, the risk of misconstrual really is high? I am willing to grant that if, for some reason, the risk is high, and the issue is a serious one, I should modify my behavior accordingly. But again, the stakes would have to be very high. In general, however, I think that we should leave the task of character improvement (and character maintenance) to the owner of the character.\footnote{In general, however, I think that we should leave the task of character improvement (and character maintenance) to the owner of the character.}

\footnote{If I were a very important person, things might be different. Those who are looked up to as moral paragons—religious leaders, judges (in limited contexts), and elected officials (also, arguably, in limited contexts, though expectations vary wildly on this) have special responsibilities. Note, though, that we should not simply take as a fixed point the expectations of exemplary conduct. Another possibility might be to resist the expectations. I gather from a friend who was a schoolteacher in a small town in the South that there are places in the United States where teachers (or is it only female teachers?) are expected to be models of virtue. It is easy to imagine communities in which professors (at least of certain subjects) are expected to be wise people with impeccable conduct. I imagine most of us would believe such expectations should be resisted, if possible, if we lived in such a community. Whether professionals and elected officials should be held to have special responsibilities as moral exemplars is not an issue I will address in this Article.}

\footnote{This marks a sharp difference between my view and Driver's. \textit{See} Driver, \textit{supra} note 40, at 341-42.}

\footnote{I recently faced this question with regard to a relative whom I love dearly—a fine person with, however, a rather severe tendency to hoard. Knowing that most floors in her home are covered with piles of clothing and miscellaneous items, I wondered if I really should be offering her goods that I am getting rid of. I recalled Immanuel Kant's admonition that although it is one's job to improve one's own character, not those of others, one should not give a pillow to a lazy fellow so that he can pass away his life in sweet idleness, or see to it that the drunkard is never short of alcohol. \textit{Kant, supra} note 12, at 224 (6:481). I decided that the vice was not serious enough that I should worry about my very modest support of it, and I went ahead and offered her the items. Concern not to abet vices has to be weighed against the demands of respect, which calls for leaving it to others to choose their own course of self-improvement, and indeed to embark on any such course. This being the case, it seems silly to worry, with regard to competent adults, that they might
10. The last difference reflects a disagreement between consequentialists and non-consequentialists. This difference can be seen as reflecting a tension within consequentialism (and more specifically, within utilitarianism), as well as a disagreement between consequentialists and non-consequentialists. It encompasses two issues: (1) how concerned we should be to avoid giving offense (I’m thinking here of unwarranted offense), and relatedly (2) to what extent we should take as fixed points people’s likely reactions to certain kinds of conduct. We can distinguish between two utilitarian approaches. The first approach takes the likes, dislikes, sources of pleasure and pain—the likely affective reactions—as givens. Put more simply (though a bit artificially), it takes preferences to be fixed points, to be factored as such into any utilitarian calculus. There is no thought that those preferences might well change, that deciding against taking them to be fixed points might facilitate such change, and that such a change would be salutary (from a utilitarian perspective). The second approach, that of John Stuart Mill, takes a longer-range, more optimistic view, hoping that the preferences—reactions, sources of pleasure and pain—may change, and that the change will be helped along if we do not treat the preferences as fixed points. This approach takes into account not only the likes and dislikes as they now are, but also the likes and dislikes as we can project they might well be if we do not cater to the current likes and dislikes. The first approach is usually seen as more purely utilitarian, but provided that there is sufficient reason to anticipate a change in people’s preferences, the latter surely can also count as utilitarian—indeed, as no less utilitarian. Which approach is better?

In raising this question, I have in mind the following example from Julia Driver’s *Caesar’s Wife: On the Moral Significance of Appearing Good*:

mistake my actions for a different sort of action—one that is morally wrong—and might then “copy” me.

55. This emerges especially clearly in *On Liberty*, a work some find hard to even reconcile with utilitarianism because they are so used to thinking that utilitarianism has to factor in actual preferences or what, given people’s current likes and dislikes, will promote happiness. But Mill lets us know that he thinks of utility differently: “I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being.” JOHN STUART MILL, *ON LIBERTY* 10 (Elizabeth Rapaport ed., Hackett Publ’g Co. 1978) (1859). It is clear throughout the work that he is thinking of people as they can be, with sufficient education and sufficient liberty, and with a social climate in which individuality is appreciated.

56. By contrast, it is not at all clear that distinguishing between higher and lower pleasures, as Mill does, and discounting lower pleasures, are consistent with utilitarianism. See MILL, *supra* note 4, at ch.2.
Misconstrual can . . . lead to giving unnecessary offense to others. When I visit my grandmother, for example, I am careful not to take along any book that might have ‘sex’ in the title. Even though any such book in my possession would be a purely scholarly work, my grandmother probably would not realize this, and become distressed and offended.57

A different approach would be to go ahead and take the book along if that is the reading material she is currently engaged in, figuring that it wouldn’t kill her grandmother to learn that there are respectable books on the topic, or that respectable people read books with “sex” in the title. Driver could chat with her about the content of the book if she feared that her grandmother would assume the book was about how to devote one’s life to sexual pleasure, giving up everything else just for (the hope of) more intense, or varied, or frequent sexual ecstasy. Utilitarian deliberation would take into account not only the displeasure that her grandmother might feel upon glancing at the title, but also the possibility that seeing the title, and then hearing what it was in fact about, might lead her to revise her views, to substitute truth for error, and, if not actually to read the book herself, at least to cease to look askance at anything with “sex” in the title. This will in turn mean that Driver no longer has to screen her selection of books to take along on visits to her grandmother—all in all, a net gain in utility.

Although Driver doesn’t consider this possibility, she does address a somewhat related response to her example: doesn’t the unreasonableness or reasonableness of misconstruals factor in?58 She acknowledges that such misconstruals as the one she anticipates from her grandmother may well be unreasonable, but she denies that the unreasonableness bears on the question of whether one should alter one’s conduct to prevent misconstrual.59 She rejects the view that “the agent is only responsible for reasonable misconstruals that others make—not the unreasonable ones.”60 “A consequentialist will argue,” she says, “that this distinction is basically irrelevant since, as long as the misunderstanding can be predicted, it must figure into the agent’s calculations.”61 But although the misunderstanding must figure in, consequentialists should also factor in the long term effects. Catering to such beliefs about sex or books with “sex” in the title may hinder...

57. Driver, supra note 40, at 341-42.
58. Id. at 342.
59. Id.
60. Id.
61. Id.
social progress, just as (say) a woman's choice to change her name to her husband's when she gets married just because not doing so will be disturbing to her in-laws helps to entrench the custom—and to entrench negative reactions to the choice not to change one's name. The same is true of a lesbian couple's choice not to hold hands in public. In each of these cases, there may be compelling reasons for the decision in question. Driver's grandmother might be so easily undone and in such shaky health that the risk of disturbing her is too great; good relations with one's in-laws may be too important; and the risk of violence against the couple who hold hands in public may be too high.

The general point is this: altering our conduct, lest it give rise to distress, is problematic not only because we should not have to be responsible for unwarranted reactions, including reactions based on unreasonable mistakes. It is also problematic on purely consequentialist grounds (if we take a long-range view): social progress is stifled if we allow the predictable reactions to the action in question to determine our options. This is true in all cases where the mistaken belief, or outrage, or distress arises because of narrow-mindedness (believing that there is something wrong with reading any book about sex; thinking that all Jews surely have identical religious practices and are all equally observant, together with suspicion that they might be trying to pull something over on one; finding homosexuality disgusting).  

11. There is another reason, related to the very consequentialist one mentioned above, for crediting appearances with considerable moral significance. So far we have looked at four sorts of cases. First, a type emphasized by Driver, where someone thinks that I am engaging in x when I am not, and an observer for some reason thinks that x, which he had hitherto regarded as wrong, must be all right after all if I do it. Second, also mentioned by Driver, is the case where someone is offended—hence pained—because she believes (falsely) that I am doing x, which she finds unseemly, when in fact I am doing y. A third case is one in which something I do or omit leads others to think that something others are doing must be wrong. (This is the case of think-

62. I have been focusing on cases where the reactions are unwarranted (though in some instances predictable). What about cases where the reaction was predictable and not unwarranted? For example, S is aware that the shrieks that are a part of the theatre role she must rehearse at home are audible to one of her neighbors, and that her noise may alarm him, perhaps even lead him to call the police. I grant that S should notify her neighbor that she is an actress and rehearses her part at home. The effort needed on her part is slight and surely called for under the circumstances. Thanks to Cheshire Calhoun for this example.
ing that if one Jew doesn’t stay home in observance of a Jewish holiday, those who do stay home must be playing hooky.) A fourth case (which could, with a different twist, be assimilated to the first) is the one where the professor and student who spend a lot of time talking together are supposed by others to be having an affair, and the circulation of this rumor leads to assertions that the student’s professional success is due to her alleged affair with her professor.

Let’s consider a variant on the first case. Seeing that I am doing $x$, an onlooker may think, “If she can get away with that, I bet I can, too” or “If she is going to do that, why shouldn’t I?” This points to a reason for regarding appearances as morally weighty. Some social conventions are important, and their survival arguably depends on widespread belief that there is general conformity to the conventions. Insofar as we need social conventions so as to know what to expect of each other (regarding, for example, property and privacy), and insofar as our motivation to abide by the conventions is dependent on our belief that others will also abide by them, appearances are morally significant, and it behooves us to take care lest we give rise to a mistaken belief that might undermine the convention. Take any convention you think is important. (Keeping secrets, not invading others’ privacy by reading their mail without their permission, refraining from sneaking into others’ gardens to pick their vegetables, or whatever.) If it is the case that most individuals are motivated to adhere to the convention only if they believe that virtually everyone else also adheres to it, then it will be important not to appear to be flouting it.

This is a fairly strong argument for the moral importance of appearances in some circumstances: insofar as there are social conventions that are very important to maintain, and insofar as conformity to the conventions is motivationally dependent on the belief that everyone else (or almost everyone else) is conforming strictly to the conventions, we will not want others to think that we are not strictly conforming our conduct to these conventions. But note all the quali-

63. Driver mentions this risk as well: “[W]itnessing the supposedly immoral act causes there to be less pressure on [the observer] to avoid those immoral acts. Thus he will go ahead and do them.” Driver, supra note 40, at 334.

64. I do not mean to endorse this claim, but only to be presenting an argument that might be put forward in favor of regarding appearances as morally weighty.

65. In some cases, what matters is that this particular convention remain our convention. In others, it matters that a convention of roughly this sort persist. And in yet others, it doesn’t really matter what the convention is, but it matters enormously that there not be chaos and confusion: we need to know whether our convention is to drive on the left side of the road or on the right.
fications: it has to be very important that the convention remain a convention, and it has to be the case that individuals' motivation to abide by the convention is dependent on their belief that everyone else (or most others) are also abiding by the convention. Even then we need to weigh the value of upholding the convention against its costs. If, in order to maintain the convention, a great deal has to be sacrificed so as not to weaken it by acting in ways that might give rise to the false belief that the convention is being violated, it is likely that the cost outweighs the value. Perhaps the (important) interests served by having the convention can be served, at less cost, in some other way. If so, we might well judge that there is no point in avoiding conduct on the grounds that it threatens to undermine the convention, for the convention isn’t worth it.

It is important not to underestimate the costs. They include not only having to conform one's conduct to the conventions and having to ensure that others think—indeed, feel quite sure—that one is abiding by the conventions. There is also the cost of having to pay attention to whether others think one is so conforming one's conduct, to what might lead others to mistakenly believe that one is not, and to what one needs to do in order not to give rise to such mistaken views. The cost is not only the nuisance, though that is itself considerable. Paying so much attention to appearances makes it difficult to develop or retain a proper appreciation for what really matters. Honesty is likely to be devalued. What comes to matter most to us is what others think we are doing, not what we really are doing. This point holds in general for attending to appearances, whether or not the argument for doing so is couched in terms of conventions: more than a very small amount of attention to appearances risks screwing up our values (if they are not already screwed up). And we should note that the same considerations that would support not doing x if it might give rise to the belief that I am doing y, which will lead others to feel less obliged to refrain from doing y, would also support pretending to do z, if this will encourage others to do z-type acts (supposing that z is a morally desirable act and y is a morally undesirable act).

66. I remember seeing a stack of pre-written, pre-addressed postcards a friend of my mother’s had given her to send, every few days, to the friend’s son. Her son was at summer camp; she was going on a vacation for a few weeks and didn’t want to have to think about sending postcards to him while on vacation. What matters, she thinks, is only that her son get these postcards and feel that his mother, while off on a vacation, is thinking of him fondly, writing him postcards every few days. What matters is how it appears to her son (whom she for some reason assumes will not notice the postmark).
Perhaps one difference between those who attribute considerable moral significance to appearances and those who do not concerns how common they think it is that the conditions indicated above obtain (that is, that general conformity to the convention really is important, that it will only happen as long as there is a general belief that there is general conformity, and that the costs of general adherence—and in maintaining the general belief that there is general conformity—do not outweigh the value of the convention). Clearly, there can be a number of different disagreements here: the value of the conventions, the nature and seriousness of the costs, and so on. And more broadly, they may differ over their conception of what morality is, some viewing it as primarily a set of conventions or moral rules to which we want everyone to conform. If we believe that the whole point of morality (or most if it, anyway) is to have a set of rules to which we all conform, and to uphold these rules and help or pressure others to conform to them as well, then appearances will be very significant indeed.67

Even if we think that conventions are only one part of morality, we might hold that appearances are important because of their role in upholding the conventions. To appreciate more fully what their role is—and the costs of emphasizing the appearances—let’s look at the richest and most nuanced account of conventions in the history of ethics—that of David Hume.

Conventions are by no means all there is to Humean morality. Only the artificial virtues, not the natural virtues, are defined in terms of conventions. Some virtues, like benevolence, are, Hume holds, just part of human nature (provided it isn’t perverted by a terrible childhood, or by the delusory influence of some religious teachings). Other virtues, most notably justice, are not part of human nature, but are extremely important.68 The latter virtues, “artificial virtues,” are dependent on conventions. They are virtues only thanks to a convention of so regarding them, a convention which indicates how we are to act; and we are motivated to act justly (and in other ways in accor-


68. “[T]here are some virtues, that produce pleasure and approbation by means of an artifice or contrivance, which arises from the circumstances and necessity of mankind. Of this kind I assert justice to be . . . .” David Hume, A Treatise of Human Nature 477 (L.A. Selby-Bigge ed., Oxford Univ. Press 1973) (1739).
dance with the artificial virtues) only to the extent that we believe that most others in our community are likewise conforming their conduct to the convention that defines the virtue in question. Justice, for Hume, is in essence a matter of abstaining from taking others' property without their permission; property, contrary to John Locke's claims, is not part of nature. It is an "invention." But whereas "[m]ost of the inventions of men are subject to change" and "depend upon humour and caprice," this is not the case with justice, Hume emphasizes, nor with the other artificial virtues. "The interest, on which justice is founded, is the greatest imaginable, and extends to all times and places. It cannot possibly be serv'd by any other invention." The "invention is obvious and absolutely necessary."

Now if, as Hume thinks, our motivation to abide by the conventions regarding property is dependent on our belief that others are abiding by them, it will be important that people not suspect that others are violating the rules governing property. Believing it vital that the conventions regarding property not disintegrate, we will each be concerned that others think that we are observing the rules regarding property. (I'll skip over the reasons why Hume thinks we'll be motivated actually to observe the rules, rather than simply to make others think we are observing the rules; but even though the focus is on the former, it makes good Humean sense to take an interest not only in observing the rules, but also in not giving the impression that one ever violates the rules.)

As noted above, the value of following the conventions in order not to undermine others' motivation to comply with the conventions has to be weighed against the costs. And since we not only have to follow the conventions, but also have to avoid appearing as if we are not following them, the costs may be considerable. Consider the set of conventions that fall under the headings of chastity and modesty—virtues whose requirements apply much more fiercely to women than

70. Hume, supra note 68, at 620.
71. Id.
72. Id. at 484.
73. Briefly, he holds that "we never fail to observe the prejudice we receive ... from the injustice of others," and via sympathy, we come to feel the disapproval which others would feel toward us if we acted unjustly. Id. at 499. In this way we come to see acts of injustice as not merely imprudent, but morally wrong. (And being an internalist, Hume holds that to see that something as morally wrong is to be at least somewhat motivated to refrain from so acting.)
74. For a more detailed account of Hume's artificial virtues, see Marcia Baron, Hume's Noble Lie: An Account of His Artificial Virtues, 12 Can. J. Phil. 539 (1982).
to men. Hume's discussion of chastity and modesty brings out the purpose the conventions serve, and although he speaks approvingly of the convention, his explanation at the same time gives an idea of their hefty cost.  

Chastity and modesty are, for Hume, decidedly not natural virtues. He does not hold that it is part of human nature to refrain from sex outside of marriage—nor that it is part of female human nature to do so. People refrain, he thinks, thanks to an artifice—to a convention, and an ideology that goes with it. The expectation that women do so—and the view that it is less important that men do so—Hume explains via the following points: There must be a "union of male and female for the education of the young," a union of "considerable duration," and "to induce the men to . . . undergo cheerfully all the fatigues and expences, to which it subjects them, they must believe, that the children are their own, and that their natural instinct is not directed to a wrong object, when they give a loose to love and tenderness." Where it is easy for women to know that their offspring is theirs, it is not easy for men to know (though, of course, today it is considerably easier to attain certainty in this matter than it was in Hume's time). It is to give men security in this matter that women are expected to refrain from sex with anyone other than their husbands, and that shame is attached to female infidelity. Indeed, because of the difficulty in imposing punishment (because of the difficulty obtaining legal proof in these matters), we instead "attach a peculiar degree of shame to their infidelity, above what arises merely from its injustice, and . . . bestow proportionable praises on their chastity." And that is not all. Women, even very young girls, are expected to be

75. Hume, supra note 68, at 570-73. In a later work, A Dialogue, Hume sounds far less supportive of the strict requirement that women never engage in sex outside of (or prior to) marriage. Hume states:

The consequence of a very free commerce between the sexes, and of their living much together, will often terminate in intrigues and gallantry. We must sacrifice somewhat of the useful, if we be very anxious to obtain all the agreeable qualities; and cannot pretend to reach alike every kind of advantage. Instances of licence, daily multiplying, will weaken the scandal with the one sex, and teach the other by degrees, to adopt the famous maxim of La Fontaine, with regard to female infidelity, that if one knows it, it is but a small matter; if one knows it not, it is nothing.

76. Hume, supra note 68, at 570.

77. Id. at 570-71.

78. Id. at 571.

79. Id.
modest, and women are expected to lack an interest in sex. It is necessary, Hume says, that “beside the infamy attending such licenses, there shou’d be some preceding backwardness or dread, which may prevent their first approaches, and may give the female sex a repugnance to all expressions, and postures, and liberties, that have an immediate relation to that enjoyment.” Moreover, women past childbearing age “have no more privilege” than younger women, because if extramarital sexual relations were permissible for them, it would no longer be possible to maintain the conventional view that sex outside of marriage is shameful for women. If that “peculiar degree of shame” were no longer attached to sex outside of marriage—to women’s engagement in it, that is—the motivation to abstain from sex outside of marriage would weaken, and the convention would be undermined.

This is a complex illustration of the costs involved in upholding appearances. The appearances that are being maintained here are both the appearances of behaving a certain way, and a fiction—or, put differently, an ideology. First, it is as crucial that women appear to be faithful to their husbands as that they be faithful—indeed, it is more crucial that they appear to be faithful. What matters, given Hume’s story, is how things appear to their husbands. (Were Hume not so eager to endorse the convention, including the greater demand it imposes on women than on men, perhaps he would observe that husbands would be a lot more confident that their wives were faithful to them if the prohibition on sex outside of marriage—and the shame attending its violation—applied as strictly to men as to women.)

But, as Hume recognizes, other appearances have to be upheld as well. The fiction maintained by the convention and necessary to its survival is that something is very shameful when, in fact, given Hume’s views, it is merely imprudent, and even then, only in limited circumstances. This is how it is with the artificial virtues. Although they (and the conventions that define them) do indeed have a foundation in human nature and the circumstances in which humans live, their continued existence is due in part to an ideology that exaggerates their importance. This is especially true of chastity, less so of justice, but it holds for justice, too.

80. Id. at 571-72.
81. Id. at 572.
82. Id. at 572-73. “[T]he general rule carries us beyond the original principle, and makes us extend the notions of modesty over the whole sex, from the earliest infancy to their extremest old-age and infirmity.” Id. at 573.
83. For a defense of this claim, see Baron, supra note 74.
Now the high cost involved in upholding some conventions and the dubiousness of the conventions do not tell against the moral significance of appearances. However, the costs are an indication that one of the strongest arguments in favor of regarding appearances as morally important—that part of morality consists in conventions, and that at least some conventions depend heavily for their survival on a general belief in general compliance to them—is weaker than it might first appear. We need to consider the value of the conventions, whether their demise would be a significant loss, whether they have not perhaps outlived their usefulness (if indeed they were ever worth preserving), and the costs of maintaining them. Only by considering these matters can one defend the importance of endeavoring not to prompt a false belief that one is flouting a convention.

12. In the preceding five Sections, I offered only very qualified support for the view that we should accord moral significance to appearances—to how our actions appear. By contrast, I take the expressive dimensions of our actions to have very clear moral significance. Why, one might ask, such a disparity (even allowing that when I talk about how our actions appear, I am only talking about those appearances that clash with reality—those instances, that is, involving a mistaken belief about the nature of the action, or about what it expresses)? After all, if the idea is that I should attend to the expressive dimension of my actions, how different is this from saying that I should attend to how my actions appear to others?

Let me first summarize my position regarding how our actions appear. I am reluctant to hold that we ought to—that is, are wrong not to—attend to the appearances, except in the following circumstances, in which cases it seems clear that we should attend to them: (1) situations in which our conduct is likely to give rise to a fear (reasonable or not) of some serious harm to the observer—for example, a fear that I am about to stab the observer; (2) situations where the likelihood of dire consequences is high enough that even if the observers’ mistake is due to their prejudice or eagerness to find fault, we should, particularly if the harm will befall someone other than ourselves, consider altering our conduct so as not to give rise to the appearance of wrongdoing; (3) situations where I have a special responsibility as a moral exemplar, as I do to my child (but I would not include under this the responsibility of professionals, except in very limited domains—judges need to appear, as well as be, impartial, but they need not, it seems to me, be or appear to be model citizens); and (4) instances where a misperception of our behavior will contribute significantly to undermining a convention, where it is crucial that
the convention survive. One other situation deserves mention: (5) if there is, or recently was, a climate of mistrust (especially, but not only, if we are partly responsible for that climate of mistrust), the importance of (re)establishing trust may call for special attention to how our actions may appear. (Of course this can backfire; if our actions and words seem too carefully calculated to give off the right appearance, they may seem less genuine.)

Why, if only in those situations it is the case that we should—are wrong not to—attend to the appearances, do I think that we should in general attend to the expressive dimensions of our conduct? The expressive dimensions of our conduct are important for two reasons. First, if an attitude or sentiment is morally important, so is its expression in an action. If we think that respect is important, then clearly it is important that our actions express respect—either by not expressing disrespect, or, in a context in which others' conduct (or one's own former conduct) expressed disrespect, by acting in a way that reasserts the value of the person who was treated dismissively or demeaningly. The second reason concerns the rather different sort of case where the action may express x even if x is not something that the actor feels or thinks. The action (flying a Confederate flag or displaying it in one's window; using a certain phrase, epithet, or gesture, and so on) expresses x, or has a certain meaning, because the community or the culture gives it that meaning. Wearing a swastika expresses something; the protest, "But I just like the shape! I don't mean to express support for Nazism or White Supremacy; I don't mean anything by it at all" in no way undoes that. When the meaning of a symbol is clear and generally known, it makes sense to hold people responsible for expressing something, or conveying a message, by their use of the symbol. Actions, gestures, and the wearing of symbols all have public meanings, and it is surely not unreasonable to hold ourselves and others responsible for attending to those meanings.

Holding people responsible for unintentionally giving rise to a mistaken belief that their actions (or someone else's, as in the example of staying home on the Jewish high holy days) are immoral is a different matter altogether. The very fact that the belief is mistaken makes it less plausible to hold the actor responsible for anticipating it;

84. Reflection on Deborah Hellman's contribution to this conference has helped me to see the need to add (5). See generally Hellman, supra note 41.

and even when one does anticipate it, it is by no means clear that it is
the actor's responsibility to alter her conduct accordingly. A lot hangs
on the culpability of the observers: are they eagerly looking for some-
thing to gossip about, or worse, to get someone in trouble? Does their
mistake arise because of bigotry? Even if the observers held the mis-
taken belief through no fault of their own, unless the matter was a
serious one and the mistake was easily foreseeable, I do not think ac-
tors should be held responsible for attending to the possibilities of
mistaken beliefs about their conduct. It is far more important to mon-
itor all the things we really should attend to, and there is a limit to
how much we can adequately attend to. In addition, as noted above,
attention to how our actions appear to others runs the risk of dis-
torting our sense of what really does matter. The appearances come
to matter too much. There is no such risk in the case of attending to
the expressive dimensions of our conduct—unless what is attended to
is the possibility that this expression just might express, to some,
something we definitely do not want to express.

Sometimes the public meaning of a symbol is contested. If it is by
no means clear whether our action expresses x or not, the responsibil-
ity to attend to the expressive meaning of our action is somewhat
weaker—and all the more so if the possibility that it does express x is
not one that many people would recognize. "Might this seem to some
to signify x?" is a question that some, in some occupations, will have
to attend to often; university administrators, for example, are bur-
den with such responsibilities. So there is a point of convergence
between the question of appearances and the question of the expres-
sive dimensions of our conduct; they converge if the action does not
express an attitude or sentiment of the actor's, and if the public mean-
ing is contested. Apart from that, however, it seems to me that the
responsibility of the actor to attend to appearances is considerably
weaker than is her responsibility to attend to the expressive dimen-
sions of her conduct.

86. As noted, it also hangs on how dire the consequences are, and how hard or easy it is
to alter one's conduct so as not to give rise to the mistaken belief.
87. Or, framing it without any hint that we are only asking about the appearances:
"Will this, to some, express x?"