

## JOEL FEINBERG

Michael S. Moore\*

It is fitting that the articles and commentaries that the *Review* is publishing in this issue honoring Joel Feinberg are in the three areas of philosophy that have most interested Joel and to which he has most contributed in his long and distinguished scholarly career. These are the areas of responsibility, substantive ethics, and that part of political theory having to do with the limits of the liberal state. No doubt this congruence between Joel's scholarly interests and the symposium topics is largely due to the intention to make it so on the part of the symposiasts. What better way to honor Joel than by pursuing topics on which he did the spade-work? But the conference also reflects the fact that the next generation of philosophers represented by the symposiasts here have had their own scholarly agendas influenced by Joel's work. One of the marks of Joel's achievement is the effect he has had in interesting other philosophers in what has interested him.<sup>1</sup>

Certainly that is true of my own interests in these topics. When I began teaching full time in 1972, one of the first books in my library was Joel's *Doing and Deserving*, published in 1970. Those essays, together with Herbert Hart's (*Punishment and Responsibility*, 1968) and Herbert Morris' (*Freedom and Responsibility*, 1961), so convinced me of the ability of the study of philosophy to inform the study of law, and so interested me in topics connected to responsibility, that I set out along the same path. In particular, Joel's *What Is so Special About Mental Illness?*, the last essay in *Doing and Deserving*, not only piqued my interest but also shaped my thoughts about insanity and responsibility for a long time to come.

There is a lesson to be learned about Feinberg's work that can be seen by his own contribution to this symposium, his article on moral luck. In introducing the oral version of the paper last October Joel said that eventually most moral philosophers wend their way to the problem of moral luck, and since he had not done so before he was going to do so now. Actually, I think that eventually most moral philosophers wend their way to the larger questions of substantive ethics, such as the truth of consequentialism and agent-neutral views versus deontology and agent-relative views. And they wend their way even further "upward" (in terms of abstraction from concrete moral problems) into the issues of metaethics, such as the bivalence of moral discourse, the existence of moral qualities, the truth values of moral propositions.

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\* Leon Meltzer Professor of Law, and Professor of Philosophy, University of Pennsylvania.

1. In addition to this Symposium, see fifteen original essays written in his honor and collected in *IN HARM'S WAY* (Jules Coleman and Allen Buchanan, eds., 1994).

It is a salient feature of Feinberg's moral and political philosophy that, with the exception of his work on the nature and existence of rights, these more abstract concerns of ethics and metaethics are not central. Feinberg's focus has rather been on the more substantive and concrete moral issues that face everyone, both in their personal decisions and in the design of legal institutions—issues like that of his present essay on whether results give greater blameworthiness.

This scholarly choice by Feinberg is of a piece with one of his salient personal characteristics, one that so garners loyalty and friendship from his many admirers. I refer to the forthrightness, modesty, and the absence of arrogance, self-promotion, or pomposity, that marks Feinberg the person as much as the work of Feinberg the scholar. My guess is that the one thing Joel must hate is a stuffed shirt. Such a trait is always to be admired, but even more so in the academy where such characteristics have a lower base rate than is true of the population as a whole. Reading Feinberg is like knowing Feinberg, in that one discovers a scholar with patience and curiosity enough to investigate thoroughly whatever he is working on, one for whom the insight is its own reward and thus has no need of self-promotion or the accoutrements of academic fame. It is nice that the world of legal and ethical philosophy is meritocratic enough that despite Joel's modesty he is rightly regarded as one of the greatest philosophers of our time.

Aside from the style of presentation, which is refreshingly free of "impressive" obscurities or a pretense of certainty greater than any one really possesses, Joel's modesty and honesty also finds a number of non-stylistic modes of expression in his work. Unburdened by a precommitment to some one abstract system, be it consequentialism, Kantianism, or anything else, he can take the intellectual terrain as he finds it rather than molding it to fit his preconceived notions. The result is an unapologetic eclecticism that Feinberg can cheerfully acknowledge. As he said in the opening pages of his four volume master work on the limits of the criminal law in a liberal state:

It would be folly to speculate whether the moral theory implicit in this work is utilitarian, Kantian, Rawlsian, or whatever. I appeal at various places, quite unselfconsciously, to all the kinds of reasons normally produced in practical discourse, from efficiency and utility to fairness, coherence, and human rights.<sup>2</sup>

Another virtue of Feinberg's work, again stemming from the character of the man, is its undogmatic nature, its capacity to grow and become more insightful, and, even better, the honesty to admit that there has been change and progress. This again is in marked contrast to the work of some other philosophers, whose motto could be, "I never met an idea of mine I didn't like too much to give up." Joel's work is free of such hubris. For example, consider his discussion of one of his earlier essays, *Human Duties and Animal Rights*, on the occasion of reprinting the essay:

The primary flaw in *Human Duties and Animal Rights* is its suggested answer to the question "why an animal should have any underived claim to life-as-such at all." I...suggest that the biological impulse to self-preservation is a "demand," and that it therefore establishes the "value" of every animal life. As an argument, however, that reasoning is a

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2. JOEL FEINBERG, HARM TO OTHERS, 1 THE MORAL LIMITS OF THE CRIMINAL LAW 17-18 (1984).

flagrant *ignoratio elenchi*. The conclusion that was to be established is not that animal lives have value but that all animals have a *claim*...to continue living, and that is quite another matter.<sup>3</sup>

Finally, there is no route-hiding in Feinberg's work. He takes us through the intellectual explorations that lead him to his conclusions, rather than covering up any missteps or omitting whatever might impede a popular "sale of the product." Feinberg cares about ideas, and his patient honesty in exploring them makes it easier for others to follow up and continue his explorations.

Joel has also of course been a great teacher as well as a pathbreaking scholar. This is much in evidence in this symposium, where many of the symposiasts are his former students. Joel's concern with teaching is also evidenced by his authorship and editorship of six textbooks, one of which I use regularly in a course on the philosophy of law.<sup>4</sup> In his teaching too, of course, Joel the man comes through Joel the teacher. And again, Joel's honesty and modesty are much in evidence. Consider his notice to the first year law students on the first occasion on which he taught criminal law at the Law School of the University of Arizona. Joel posted a notice to the effect that his prospective students should know that he had never taught criminal law before and he had never himself attended law school. Given the dangers of chumming shark-infested waters just before one is to go swimming, such actions by Joel not only express again his forthrightness and modesty, but also his courage.

One of the advantages of the academic professions is that "retirement" need not mean the end of career it often means in other callings. Indeed, it need mean no more than shifting one's compensation base and a greater freedom to select one's scholarly and teaching opportunities. I hope that Joel's contribution to this Symposium symbolizes such a "retirement" for him, a retirement in which new scholarship and continued collegueship by him enriches the lives of his many friends and admirers.

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3. JOEL FEINBERG, *RIGHTS, JUSTICE, AND THE BOUNDS OF LIBERTY* xii (1980).

4. *PHILOSOPHY OF LAW* (Joel Feinberg and Hyman Gross, eds., 5th ed. 1995).