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Law, Fiction, and Moral Standing

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Abstract:

A model of legal standing used in U.S. law is compared to possibilities for standing with respect to moral judgement and judgement of fiction. The legal notion of standing, that requires establishing harm and potential for redress, is argued to provide a loose but valuable model for understanding our position in relation to moral judgement. Jenny Erpenbeck's novel *Go, Went, Gone* is discussed to motivate and illustrate the argument.

1. Introduction

When is a person in a good position to make a judgement? By 'judgement' I mean something broad, encompassing evaluative and more narrowly normative judgements. A judge in this broad sense should be in a position to assess how well a situation or other object of judgement meets a standard. The standard might be fairly idiosyncratic ("these shoes fit me best" or "this phone ring is less annoying than that one") or it might aspire to some kind of universality ("this trail is too icy to be walked on," "short airplane journeys are unjustifiable," "this is the director's finest film," "breaking a promise is wrong"). A natural thought is that having knowledge, knowledge both of the standard and of the object to be judged, is the crucial requirement. If we have these pieces of coordinating knowledge, we are in a position to judge whether or not something meets a standard. This discussion aims to consider the relevance of a further, non-knowledge-focused condition that I will call *standing*, on the model of a term used in the U.S. legal system. The notion of standing expands the issue of judgement, so that there is not just a question of being in a position to make a correct or well-justified judgement, but a question of being in a position to call for a judgement to be made and for that judgement to be responded to. Perhaps the most important goal in this discussion is to ask whether standing in this sense can be seen as relevant to moral judgement. I approach that question through a

comparison of morality with two other domains – law and literary fiction – that allow us to consider different models of standing.

There is a literary inspiration for this discussion, Jenny Erpenbeck’s novel *Go, Went, Gone* (*Gehen, ging, gegangen*). The novel’s relevance to these issues is complex, partly because the story concerns moral judgement *of* law, and because the novel seems to have moral aims as a work of fiction. All three contexts of judgement – law, fiction, and morality – interact in the workings of the novel. I will assert more than argue for the novel’s significance to this discussion; I hope this may stimulate readers to see what they make of the novel for themselves. The story follows a recently retired classics scholar, Richard, as he gradually notices the presence of African refugees in Berlin. He becomes curious about them, visits and talks to them, and ultimately immerses himself in their struggle to make a home in Germany.¹ The novel shows a person being moved to change his life radically in order to help others who seem to have no special claim on him. It is a wonderful vision of moral possibility, and I suppose, despite its sober, patient mode of storytelling, it has an element of ethical fantasy or wish-fulfilment. But the narrative provides a rationale or deeper accounting for Richard’s transformation that I take to have a non-fantastic, constructive bearing on an ordinary ethical matter: how we position ourselves in morally significant situations.²

The novel traces Richard’s emerging sense of his *standing* in relation to the refugees’ situation. He begins at a distance, wanting to occupy a position of neutral curiosity. He attends a meeting for the refugees early on and leaves before it is his turn to introduce himself. “But how is it anyone’s business he was there? He isn’t trying to help anyone, he doesn’t live near the school, and he wasn’t sent by the Senate. He just wants to watch and be left in peace while he’s watching” (Erpenbeck 2017, 30). Knowledge in basic respects is relevant to how he moves away from this distanced position. He conceives of himself as having a research project to investigate “the transition from a full, readily comprehensible existence to the life of a refugee, which is open in all directions – drafty, as it were” (Erpenbeck 2017, 39). This justifies asking the refugees a miscellany of factual questions. As he learns more and more about the refugees’

¹ See Erpenbeck’s 2008 *Heimsuchung*, which has been read as “reminding us that realizing the dream of *Heimat* is always premised on the deterritorialization of others. [...] the self is always potentially, and often de facto, a disenfranchised other” (Cosgrove 2012, 72). See also Pye (2013).

² A terminological note: the terms ‘ethical’ and ‘moral’ can be used interchangeably in colloquial English; their meanings are often distinguished in philosophy: ‘ethical’ taken to concern broadly how one should one live and ‘moral’ to concern a more narrowly specified question, how to live in a way that has a certain justification or basis (e.g., impartiality, non-egoism, rational universalizability, interpersonal acceptability, or apt ties to a particular range of feelings such as guilt and blame). Specifically moral judgements, however they are philosophically interpreted, are intended to have normative force for all concerned, typically meaning all persons. The question of standing with respect to moral judgement in this sense will be my focus.

lives in their original homes, their journeys to Germany, the precise details of their daily lives now, and the law regulating their situation (*Dublin II*), he comes to see himself as someone whose interests and life experiences have parallels with and are implicated in the refugees' circumstances. He himself has been a refugee as a child, and his longtime DDR homeland dissolved under his feet. He comes to see that his now-stable and comfortable life rests on accidents and ungrounded distinctions. He has a secure home and others do not – but why is that? More abstractly, he links his newly retired state, in which he no longer has work to do and senses that he is simply waiting for death, to the refugees' relation to time. They have “fallen out of” time (Erpenbeck 2017, 38). They can do nothing but “think and think,” “waiting and sleeping,” and in this way Richard's suddenly aimless life has a parallel to theirs (Erpenbeck 2017, 48, 50). The reader follows Richard as he realises that he and the refugees have been or are vulnerable in some similar ways. One could say that Richard re-achieves a sense of the sheer geopolitical luck and timing, as well as the fears and prejudices, that benefit him at this moment and could fail to do so at others. He reorients himself so that he feels and understands his stake in whether the refugees receive a morally adequate response. This is simultaneously a matter of Richard coming to recognise and honour the refugees' moral standing.

In the progress of the novel, this developing understanding on Richard's part is tied to a trickle and then a cascade of practical changes: the people Richard talks to, where he goes, what he notices and worries about, and what he does, such as making his home a home for a number of the men. The novel in this way conveys a kind of concrete ambition for moral judgement. He is not merely truth-seeking (e.g., to establish that the refugees are being wronged, in this case through the workings of law itself); his changed standing in relation to a set of moral questions seems inextricable from practical changes that alter his relation to the situation, and that aim to change that situation for the better. It might seem that the goal of moral judgement is to identify and condemn wrongs from whatever position one is in, including positions of secure invulnerability. Erpenbeck's novel made me question that as an ideal. Perhaps the ideal is to test, develop and act on the basis of one's moral standing. That could involve changing one's involvement and vulnerability, treating moral judgement as having a practical orientation or trajectory. That is my speculative suggestion, drawing on the novel. As I hope will become clear, the notion of legal standing provides a helpful context and model for reflecting on this suggestion.

2. A comparison of models for standing

Let me start by sketching an initial contrast between law, literary fiction, and morality. I am trying to capture intuitive thoughts about how to compare these domains, hoping then to complicate or at least raise questions for the comparison. The point of comparison concerns whether and why standing of some kind is relevant to judgement in each context.

Standing is an established, though debated notion within the U.S. legal system.³ Standing is a factor appealed to in determining whether someone can bring a suit before a court. As noted above, standing is not about whether one knows enough or has authority to make a judgement, and in fact one is turning the task of judgement over to the court. To show that I have standing, I need to establish my relation to the issue at hand and show that there is a point in seeking a legal judgement. The key conditions to be met are (1) that I have been harmed or have a concrete expectation of harm, due to the conduct or policy that is the focus of the claim, and (2) that the legal decision can offer redress, a relief from or compensation for the harm. In one of the U.S. Supreme Court decisions in which standing is explicitly discussed, it is emphasised that determining standing is not “a mechanical exercise;” the court may need to ask: “Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?” (*Allen v. Wright* 468 U. S. 737, 751–752). Assessing standing may thus itself call for judgement. Standing can be used to dismiss claims, as in the case of *Lujan v. Defenders of Wildlife*, where U.S. environmentalists challenged overseas U.S. activities that would endanger species in other countries. The plaintiffs were held to lack standing, due to claiming “purely speculative, nonconcrete injuries when they argue that suit can be brought by anyone with an interest in studying or seeing endangered animals anywhere on the globe” (*Lujan* 504 U. S. 555, 556). A plaintiff cannot establish standing, it was argued, by “raising only a generally available grievance about government – claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large” (*Lujan*, 573–574). Citing a public or

³ I discuss the U.S. notion as a non-expert who has sought some guidance from legal professionals. I appeal to it because of some of its basic features (rather than in an effort to offer a scholarly treatment of the U.S. concept). It would be ideal to consider whether there are related notions at work within the German legal system. Advice from Lena Petri and Thomas Miller has suggested that, while there are a number of concepts and principles that relate to standing (such as *Befugnis*, *Gesetzesvorbehalt*, *Rechtsschutzbedürfnis*), there is no precisely parallel notion, and it would be a complex undertaking to map out the relevant relations.

generally shared interest does not suffice; standing requires showing how the plaintiff's concrete individual interest is or will be threatened.

Now, why is it reasonable or good to build a concern for standing into a legal system? How might the value of standing in this context bear on our understanding of other domains? The stated reason why the U.S. legal system appeals to standing in this way involves foundational doctrines specific to the U.S. governmental system. Restricting court adjudication to parties with standing is taken to be necessary to preserving the balance of powers between judicial, legislative, and executive branches of government (see, e.g., *Allen v. Wright* 750; *Lujan* 556). Protecting the individual interests of injured parties seems to be a safely distinct project for the judiciary, not veering too close to the making and execution of laws. Stepping back from that country-specific issue, perhaps one can say that a legal system as a working institution has a practical need to regulate and restrict the claims that it receives.⁴ Another broad reason, relevant to the present argument, is suggested in a concurring opinion on *Lujan*. Rehearsing the harm requirement, that “the party bringing suit must show that the action injures him in a concrete and personal way,” Justice Kennedy asserts that,

This requirement is not just an empty formality. It preserves the vitality of the adversarial process by assuring both that the parties before the court have an actual, as opposed to professed, stake in the outcome, and that “the legal questions presented [...] will be resolved [...] in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.” (*Lujan*, 581; citing *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*)

I want to highlight these ideas: that vitality is a value within a process of judgement, and that vitality is served by seeking judgement within a concrete context and with realistic appreciation of the consequences of judgement. The standing requirement, whatever its doctrinal value within the U.S. system, also promotes those more general goals. The parties involved are forced to think about and to make plain to others what they personally have at stake in a legal decision. This includes considering how the judgement can redress or relieve the harm. The standing requirement attempts to ensure that the legal decision is a vital matter for those concerned, not promising merely an argumentative, intellectual or procedural victory. To return to the role of standing within a larger governmental system, the very general message one might take from this is that conditions for a given kind of judgement need to cohere with the goals of the larger practice to which it contributes. Very broadly, it is worth reflecting on how judgement

⁴ Two other considerations used to restrict cases in the U.S. system are ripeness and mootness, again aiming, though on different bases, to ensure that courts deal with genuinely pressing issues.

functions in relation to further demands on that practice (e.g., supporting, balancing, or filling a gap within that practice).

Finally, though I have so far emphasised the issue of who has standing, the legal context also makes it explicit that standing affects how others need to treat the one who is granted standing. The court needs to hear that party's case. Again, abstracting from the legal context, we might say that the point of standing is to have a bearing on whose claims are heard and responded to.

If we now shift to thinking about standing in the context of fiction, I hope that the contrast seems dramatic. My first thought is that, in seeking to make judgements in relation to fiction, standing is not relevant or even possible. A work of fiction can offer readers a wealth of interesting occasions for judgement by portraying the lives and circumstances of fictional characters. But it seems the audience for fiction cannot be harmed by the actions of fictional agents or the events that unfold in a fictional world. As Kendall Walton puts it,

fictional worlds and their contents seem insulated or isolated in some peculiar way from the real world, separated from it by a logical or metaphysical barrier. [...] A Frankenstein monster may threaten with destruction any character who has the misfortune of sharing its world, but we in the real world are perfectly safe from it (Walton 1990, 191).

If such a barrier is in place, there is no potential for harm and accordingly no redress to be sought. Fiction seems to occupy an opposing pole from the law with respect to the possibility and value of standing. If anything, the value of fiction as a practice might seem to rest on the essential irrelevance of standing. Fiction is rather a practice in which we are entitled to judge fictional parties from any perspective that the work encourages us to take up or that we wish to take up. There is neither need to establish any personal relation to or interest in the object of judgement, nor any obvious scope for concerning oneself with the practical consequences of judgement. How could one achieve anything, such as a constructive response to harm, through judgement of fictional matters? The idea that we might need to listen and respond to others' judgements about fiction also seems hard to defend. Fiction rather seems to thrive on freeing us at least temporarily from public and social constraints on judgement, perhaps serving as a space for experimentation with objects and criteria of judgement.⁵ Fiction has the power to release us from habitual foci of concern and can engage us with imagined interests and forms of suffering quite different from our own (e.g., what would it be like not to care about morality at all?). On this conception fiction presents a sharp alternative to practices

⁵ See John (forthcoming) on fiction as offering an 'open season' for evaluative judgement.

that demand standing. It seems we could say either that standing is indeed irrelevant to fiction or that fiction is a domain in which a radically different and minimal form of standing obtains. Perhaps, if individual audience members find some fictional matter interesting enough to concern themselves with judging it, that is all that it takes to be “in the right position” to make such judgements.

Let me note that an utter freedom from constraint does not in fact do justice to our practices of judgement with respect to fiction. Along with knowledge constraints, of course – that one seek to have relevant knowledge of the fiction and of appropriate evaluative criteria (and granting that this is tricky in the context of fiction) – it seems that we can have interests at stake in works of fiction. This can support a more “vital” position for judgement of fiction than one might expect. Perhaps it sounds implausible to suggest that we can be harmed by works of fiction, and that this could call for judgement and possibly even redress. For the purposes of the present argument, I will primarily leave this as a question raised. But my basic approach to defending our interests in fiction depends on not assuming that we engage in judgement solely of fictional agents and events. For instance, we judge the significance of the judgements we are led to make about fictional entities (does it matter if I celebrate the triumph of a morally debased character?), the choices made in creating a fictional world (why is this narrator’s perspective worth dwelling on?), and the aims and achievements of the work as a whole (does it end up reinforcing problems it supposedly critiques?).⁶ Issues such as those mentioned above – what kinds of freedom and experimentation are possible and worthwhile within a practice of fiction – help to illustrate how the goals of the larger practice can affect constraints or lack of constraint on judgement. Perhaps the practice of fiction needs to leave standing as a question for readers to resolve; we can each ask whether or not a work of fiction raises any vital matters for judgement.

With these two models in view, how might we situate moral judgement? Is some form of standing relevant? My first impulse is to say “yes” and “no,” with a stronger leaning toward “no.” The following line of thought generates this confusing answer. It seems we are all supposed to have an interest in assigning moral worth and status. It should matter to me that wrong is done (though perhaps less so that virtue be recognised?) whenever and wherever this occurs. And we are equally, unrestrictedly, entitled to participate in the court of moral judgement, as it were. We are automatically in the right position to call for and adjudicate moral claims. This is the “yes” side of things: the domain of morality, unlike law, could be construed

⁶ See John (2016).

as endowing each of us with standing (here I ignore issues of how the human “we” might indeed be restricted, e.g., by age or capacity). However, moving onto the “no” reasoning, this seems to miss the crucial point of standing as elaborated in the legal context. As noted above, standing distinguishes different parties in virtue of whether they have been specifically harmed. Standing is not granted to everyone who has an interest in seeing laws be properly obeyed or who shares in a benefit to all, so the fact that each of us has an interest in and is entitled to make moral judgements seems rather to argue that standing is irrelevant. One need have no particular practical relation to a situation, no claim to personal harm, to call for moral judgement of that situation. One might have a strong kind of moral individualism at work: if we are each moral “self-legislators,” what could require us to listen to others’ moral judgements? The further demand of standing, that the judgement can offer redress for the harm, seems even harder to fit into the moral picture. What bearing does moral judgement have on further harms and benefits? Moral judgement seems like an attempt to understand and register moral status adequately, with no further burden of achieving a positive practical consequence.

On the “no” line of thought, moral life is in a sense more like fiction than like law with respect to standing. Moral judgement on this approach is a more abstract, universally accessible project, one that can be properly carried out by anyone who attends to the relevant object or situation. Moral judgement is more restricted in its content and concerns, of course, than judgement in the context of fiction, but the idea of being in a position to judge, in the domain of moral life, places about as few restrictions on people as do works of fiction. Philippa Foot posits this kind of unrestricted moral status:

In matters of morality we do not need experts, and such things as relationships are irrelevant to moral approval and disapproval. If anyone can approve or disapprove on moral grounds, then everyone can do so, or any sane person over a certain age. What is understood is that anyone is to listen to anyone when considerations are brought forward which are moral considerations. (Foot 2002, 202)⁷

Stephen Darwall also emphasises our undifferentiated status as participants in a moral community, as “what is distinctive about morality” is that “it consists of norms that any responsible agent can warrantably be held to [...] as one mutually accountable agent among others” (Darwall 2013, 7). With respect to the general notion of moral authority, “We do not presuppose any such authority as the individuals we are, or as having any particular relation to the wrongdoer. We presuppose it rather as representative persons or members of the moral community” (Darwall 2013, 181). Foot’s and Darwall’s views will be slightly complicated

⁷ Heidi Li Feldman steered me to Foot’s discussion.

below, but they here articulate a compelling idea about morality, that people are all equally well placed for making and listening to moral judgements.

Perhaps one could support the relevance of moral standing by saying that each of us *is* personally harmed whenever wrong is done. Whether or not it is immediately sensed by us, we are immediately affected by moral violation, a tear in the “moral fabric” anywhere weakening the moral whole that we belong to and depend on. I will not attempt to dispute that response, except to note that it still seems to ignore or dilute the crucial goals of standing, as a tool for ensuring practical focus, vitality and constructiveness of judgement. And in any case, I too want to push toward something closer to a “yes” answer, but by a different route. I think it is worth thinking seriously, on less diluted terms, about what having standing in the moral domain could involve.

3. Moral standing: some philosophical context

Before pursuing the “yes” answer directly, let me acknowledge a few views and claims that intersect with this discussion. First, a notion of moral standing has been developed within debates about hypocrisy and what is wrong with it. The hypocrite – who blames another person for doing something the blamer has also done – is sometimes construed as having lost standing to blame.⁸ Marilyn Friedman highlights the fact that standing in this situation is distinct from having the knowledge and epistemic warrant required for blaming someone (if I blame hypocritically, the person blamed may indeed deserve blame, just not from me). The further standing requirement is violated when one has not shown *commitment* in reaching judgements of blame: “Commitment pertains to the motivation to comply with the specific moral norms to which one holds others” (Friedman 2013, 274). The hypocrite has violated a social relationship that matters to moral agency. For people to have standing in that relationship requires demonstrating commitment to “norms that bind them as co-members of the same community” (Friedman 2013, 277). She argues that, on Darwall’s view, we have standing to blame “simply in virtue of being free and rational agents [with] the capacity to comply with moral norms, but not the track record of having actually done so” (Friedman 2013, 277). My specific history with respect to the blameworthy activity can overrule my default moral standing. Friedman goes on to contrast her conception of moral standing with the notion of legal standing, due to the harm requirement in the legal context. Legal standing is a “misleading” model because “moral blaming can be legitimate even if it comes from someone who was not a victim of the

⁸ See King (2019) for a rejection of this construal.

alleged wrongdoing” (Friedman 2013, 278). However, Friedman also returns to the legal model to endorse a different aspect of it for moral purposes, namely that if one has standing, one is entitled to “have one’s blame heard and responded to by other members of the moral community” (Friedman 2013, 281).

Stepping back from the case of hypocrisy, we can say that on a view such as Friedman’s, my own track record of behaviour, whether I have respected or flouted norms, affects my standing to make moral judgements. The practice of moral judgement is a way of participating in a community, and I need to maintain my standing in that community by actually promoting its norms. The further importance of standing, as viewed by Friedman, is that it brings with it a requirement on my peer community members to recognise and respond to my claims. Moral standing, on this conception, puts demands on me as an agent and on my peers in their role as “the court” in which my moral judgements are to be heard. Erpenbeck’s novel is keenly attentive to the way that matters of legal standing and jurisdiction can in fact obscure and defeat such moral claims to be heard. Here is Richard learning about *Dublin II*, the law that determines how the refugees’ cases are decided:

[I]t takes him until it is time to turn on the desk lamp again to understand that all this law regulates is jurisdiction. It doesn’t concern itself with the question of whether or not these men are victims of war. [...] Richard understands: Dublin II allows all the European countries without a Mediterranean coastline to purchase the right not to have to listen to the stories of arriving refugees. In other words, so-called “asylum fraud” is nothing more than telling a true story in a country where no one’s legally obligated to listen, much less do anything in response. (Erpenbeck 2017, 66–67)⁹

Erpenbeck here traces Richard’s developing sense that he has to honour what I would call the refugees’ moral standing, at least by listening to them and, eventually, by responding as practically as he can. In this case, this includes developing his moral judgement of the law being applied to them.

Returning briefly to Foot’s view, Friedman’s emphasis on social relations reflects a broad point that Foot is also concerned to make. In the passage cited above, Foot makes an emphatic claim about equal, unrestricted access to moral judgement. But Foot is further arguing that this access is a matter of social agreement about “the part that other people’s views shall be given in decision making;” because this agreement is so pervasive and tacit we do not readily

⁹ Another passage attentive to legal-moral obstruction: “When Richard first encountered the word *Fiktionsbescheinigung* while reading about asylum issues on the internet, he’d assumed it was a term relating somehow to the English word *fiction* [...] As he soon came to understand, this *certificate of fiction* was merely a confirmation that this person existed who had not yet been granted the right to call himself a refugee. But the certificate itself didn’t entitle its holder to any rights” (Erpenbeck 2017, 82).

“see it as a particular social setting which might be necessary for moral approval and disapproval” (Foot 2002, 199, 203). Setting aside deeper issues as to how much a moral system, like a legal system, depends on social agreement, the relevance of Foot’s point here is that it suggests that decisions can be made (and altered) about access to moral standing. It is not simply a given that, in any moral system, “anyone is to listen to anyone when considerations are brought forward which are moral considerations” (Foot 2002, 202).

Friedman’s approach, on which moral judgement is understood to contribute to a larger practice of maintaining a moral community – rather than being a discrete matter of sizing something up in a morally insightful, knowledgeable way – is ambitious and appealing. Given that I am trying to explore the importance of not-merely-knowledgeable judgement, I am in sympathy with this approach. I cite it here, however, not directly to support Friedman’s view, but to differentiate Friedman’s conception of standing from the one I am considering. Though Friedman does view standing as attaching to specific people (rather than to all members of the moral community), the attachment rests on their commitment to moral norms as demonstrated by their past actions. This continues to allow the actual judgements made to express fully general concern for the wrongdoing at stake. Non-hypocritical blamers would have standing on this view, no matter how they understood their relation to the act or situation calling for blame. They do not in fact need to think about their relation to the object of judgement. As with Darwall’s approach, they just need to activate their membership in the moral community. If they fail to have standing, it will be because of a record of failure to demonstrate commitment, not because their relation to the harm is shown to be too abstract, general or tenuous. Of course, if people’s actions have consistently promoted a given moral norm, it is quite possible, perhaps even likely, that this is due to them having appreciated their own vulnerability to violation of that norm. Nonetheless, standing in Friedman’s sense can be maintained or lost without testing one’s relation to the harm at stake. My interest is rather in a conception of standing that does require such testing and that incorporates some degree of reflective self-orientation to the issue at stake in the moral judgement.

One last piece of philosophical context involves noting that Darwall has a more nuanced view than has been sketched so far. Darwall endorses a notion of moral standing for a specific class of moral claims. There are wrongs done *to* individuals, violating those individuals’ moral rights (in Darwall’s example, if I step on your foot), and in such cases the wrongdoer can be held accountable specifically to the wronged individual.

And if I have a moral claim, as an individual, to your doing A, then the moral law gives me special standing as an individual to demand that you do A and to hold you accountable if you do not, say, to demand that you compensate my injury or to release you from compensation or, even, to forgive you for injuring me. This is a standing I have not as a representative of the moral community authorized to hold one another responsible for moral wrongs in general, but as an individual involved in the transaction. (Darwall 2013, 168–169)

Darwall explicitly links this kind of moral claim to the tort law model of standing needed to bring a claim before a court (Darwall 2013, 180–181). Darwall is making room for moral claims that address concrete local harms between individuals, and the notion of standing here picks out the special status held by the one who has suffered the harm. It seems reasonable to accept this as an example of what it can mean to have specifically moral standing. Nonetheless, as with Friedman’s view, this is not precisely the approach to standing that I want to develop. Roughly, for my purposes, Darwall sticks too closely to the legal model, while Friedman moves too far away from it. If individual moral standing is limited to the cases in which I can be clear about my rights and the harm I have suffered at whose hands – if the concrete harm-bearing activity is utterly obvious – there is not really a need for care to be taken in understanding my relation to the moral judgment. The transformation that Erpenbeck’s Richard goes through would not be called for. It just does not seem that Richard’s moral (or legal) rights have been trampled on, and the idea that he should seek out moral standing in this situation would be hard to motivate.¹⁰ Darwall’s category fits the situation in which I claim that others are morally accountable specifically to me, but that leaves out the situation suggested by Erpenbeck’s Richard. Probably no one is accountable for a harm specifically to him, and yet he comes to see himself as sharing relevant vulnerability and as someone with a stake in making the refugees’ moral claim be listened to. Broadly, Erpenbeck’s novel presses the potential for expanding the scope of standing beyond situations of obvious individual harm and accountability, but without expanding it so far that it dissolves into purely general moral concern.

4. Moral standing: what to take from the comparison with law and fiction

If a notion of moral standing is worth embracing, it will not be for precisely the same reasons that lie behind use of the notion of legal standing. One of the unwieldy points that this

¹⁰ The novel includes an episode in which it seems Richard could claim his legal and moral rights have been violated by someone he has tried to help and befriend (Erpenbeck 2017, 253–262). However, Richard’s sense of having been wronged appears muted and is not acted on; it is plausible to take him as not feeling he has moral standing to claim judgement and redress.

discussion has tried to acknowledge is that a complex practice such as law, fiction, or morality generates distinctive constraints on and expectations for judgement. The conceptual framework and requirements that make sense for each practice will differ. In practical terms, these domains also evolve and are maintained differently. Law, for instance, can explicitly require that certain conditions for standing be met. Morality and fiction are not formal institutions in that sense; they involve social learning, implicit expectations for coordinated behaviour, and values and conceptual frameworks that may evolve without deliberate awareness or articulation.¹¹ Foot claimed that morality is maintained in its distinctive form in part because of a tacit agreement that everyone is to be listened to when it comes to moral matters. I want to take advantage of the possibility that even this kind of agreement can evolve. Would it be better if we did not each proceed on the unquestioned assumption that our moral judgements are all equally significant and to be listened to? Should each of us try to understand how our relations to a moral issue affect how much and in what spirit our judgements should be listened to? This may sound simply wrong, an inegalitarian effort to silence people's moral voices.¹² That is not my aim, but it remains to be seen if this suggestion can be satisfactorily elaborated.

As sketched in the initial exposition of legal standing, the interesting features of that model are its requirements of harm and potential redress and its consequent power to promote the vitality of a practice of judgement. It does not seem possible to follow the legal model too rigidly in these regards, but it seems promising to use them loosely, trying to preserve their more abstract force and function. I offer the following points without much argument, to articulate the conception that seems promising and to note where the legal model seems unhelpful.

One structural difference is that, in the legal system, a party has to be granted or denied standing, and this yes-or-no decisiveness is not appropriate in the moral case. It seems we can have more and less moral standing, or a mixed standing, in relation to a given issue. Perhaps, as suggested by the "free and equal access" claims mentioned above, we are never utterly without moral standing. We could say that we are always in a position to make a moral judgement of some kind, but consideration of standing asks us to achieve as deep and sharp an acknowledgement as possible of our role and stake in the moral issue. The fact that legal standing depends on a public decision procedure, with standing able to be denied to someone against their will, is another difference. The pressure to decide on moral standing is intended

¹¹ See Abell (2020) on fiction as benefiting from aspects of institutional coordination.

¹² See Friedman (2013, 283) for related discussion.

rather to be a pressure on individuals to understand their own relation to a moral claim. I take this to be a partial answer to the worry about silencing moral voices. A concern for moral standing needs to be at work in each party to moral judgement, the idea being that each of us is responsible for tempering, redirecting, lessening or increasing the confidence and “loudness” of our judgements.¹³ It is not intended to serve directly to justify ignoring what someone else says. It is true, however, that if moral standing is taken seriously, it will be a status to be debated, and it will be possible to challenge the moral standing of another. My assumption is that challenging moral standing can be appropriate and important, and ideally even fruitful, as long as everyone accepts the complexity of what could need to be discussed to investigate moral standing. A further hope is that consideration of moral standing in one’s own case would strengthen awareness of the potential array of different relations to a moral claim, encouraging more reflection and less righteousness. Moral judgements commonly do or should raise difficult questions about standing, e.g., my standing in relation to someone else’s end of life, a man’s standing in relation to a woman’s access to abortion, standing in relation to policies that affect different populations and generations differently (immigration, climate, taxation).

In considering the features of the legal model, vitality of course sounds like a good thing, generally to be promoted. But it seems particularly important that moral judgement be a vital practice. The ideal of morality is that it identifies and affirms basic, shared goods and principles, acting as a guide that people can agree is worth living by. It is obviously not straightforward for people to agree on such guidance, but it will certainly not happen at all if people do not actively use and assess the guidance on offer. The practice of moral judgement gives each of us a chance to participate in articulating, understanding, affirming, contesting and proposing moral goods and principles. Aiming to have a vital practice of moral judgement is to name the goal of having people connect the meaning and demands of morality to what they know and care about in their lives. Though I have not given substantive accounts of the ethical views of thinkers such as Friedman, Foot and Darwall, their broader views suggest ways of supporting the need for vitality, e.g., in Friedman on commitment, Foot on social agreement, and Darwall on “second-person” relations in moral life (the latter not explained here). These ideas support the pursuit of vitality roughly from the collective standpoint, considering what is needed to have a functioning morality, but I think the value of vitality in judgement can also be seen from the individual perspective. To the extent that my moral claims become formulaic,

¹³ King, though arguing against requiring standing for blame, urges something similar: “we ought to marshal our criticisms carefully, ensuring that the weight of our responses, the circumstances under which we deliver them, and the worth of such activities relative to other goals and values, justifies our response” (King 2019, 281).

“kneejerk,” general, remote and de-contextualised, it will be harder for me to feel that my moral commitments are central, important resources that genuinely guide me through difficulty. If morality becomes something we pay lip service to, without individually testing its relevance, it risks involving us in a kind of bad faith exercise, committing ourselves to it without taking full responsibility for what it says and asks of us.

Vitality seems important, as well, simply in terms of getting moral judgements to be morally adequate. If judgement requires knowing the object of judgement and the moral standard to apply to it, that does not settle which facts about that object and which standard(s) are relevant. The process of testing one’s standing involves thinking about relevance (what features of a situation matter, what goods are protected or endangered, what principles could one care about in this situation). It seems possible to miss or mistake factors relevant to a moral judgement if the nature of the concerns people have with objects of judgement are not carefully explored. This starts to capture the loose moral counterpart to the harm requirement. For a number of reasons, establishing actual or impending harm seems too narrow as a condition for making or calling for moral judgement, yet something like the harm requirement seems valuable. I will only make a few basic points about this.

The very language of harm and benefit summons up a narrow conception of what we are trying to achieve by living morally. Certainly this involves seeking benefits rather than harms, but there are moral projects that are harder to capture in those terms: holding and defending ideals, making choices with meaning, honouring relationships. Doing such things seems by and large to benefit people, but that does not seem to be the right way to capture what we have at stake in doing those things (roughly, ideals, actions and relationships with meaning that we can affirm). The idea of being harmed in one’s efforts to uphold an ideal, say, is elusive, and yet it seems a moral judgement could legitimately turn on one’s concern to uphold a given ideal.

Further, the terms of harm and benefit, as is intended within the legal context, seem to steer us too directly to the individual’s interests and wellbeing. A powerful objection to the notion of moral standing would be if it inevitably positions each of us to fight our own corner, defending our own interests in a “moral boxing ring.” This broaches larger questions about delineating moral concern that I will leave to others; my minimal claim here takes some conception of moral concern for granted. Individual interests and moral concerns are not separable – morality is important in part *because* we have individual interests – but testing what we have at stake in a moral issue means at least trying to occupy a distinctive perspective on our interests. It is an attempt to identify what has moral meaning and is worthy of moral concern

and affiliation, taking one's given interests into account and being open to taking new or newly understood interests on board. In the case of Richard, he has an ordinary individual interest in having a home. When he starts to feel that he has something at stake in the refugees' situation, one way of putting this is that he grants this interest moral recognition. He sees the importance of home to himself, how much and why it matters, in a way that opens him to an affiliation with others. His interest in having a successful scholarly career, for instance, does not open out in this way; his interest in having some kind of purposive work in his life probably does. Understanding one's moral concerns in a given situation is a mixture of thinking about ordinary goals and interests, and thinking about what in all of that merits deeper, principled protection. Morality indeed involves generalising pressure: the trajectory of concern is from things I have an interest in toward things that I can see as mattering to the lives of others. This trajectory hints at a relation between fiction and moral life. Fiction quite centrally encourages forms of experimental affiliation and appreciation of interests we do not actually have. In the moral case, testing of standing involves some openness to experimenting with one's own interests, trying to understand whether they have moral force and relevance in a given situation, as well as potentially forming new interests that better capture moral significance. The moral context, then, does not assume that my interests, with correlated harms and benefits, are a fixed input into the judgement; moral judgement itself, including scrutiny of one's standing, can prompt revision of one's interests.

One last point about loosening the harm requirement is that testing for moral standing can easily expose a mixed position. That is, in a morally fraught situation one might have both vulnerability to and responsibility for harm and more intangible moral concerns. I can be in a position to call for moral judgement while also contributing to, somehow being implicated in, the problem. This seems to be the position of Erpenbeck's Richard, since he eventually finds himself affiliated both with the refugees and their claims *and* with the governments, laws and histories of economic and racial exploitation that have protected his security and privilege over theirs. Here is a passage in which Richard pursues this kind of accounting for himself. He has just visited the cemetery where his family members are buried.

Owning a cemetery plot where three generations can lie at rest is, if you will, a sort of luxury, but this thought has occurred to him only in the last few weeks.... For much of his life, he's hoped in a tiny back corner of his soul that people from Africa mourn their dead less. Death there has been a mass phenomenon for so long now. Now, this back corner of his soul is occupied instead by shame: shame that for most of his lifetime he's taken the easy way out. (Erpenbeck 2017, 169)

It would be hard to pin down a harm to hold Richard accountable for, but his shame nonetheless seems warranted. He has tacitly discounted a continent's weight of suffering. This seems important to sorting out his moral standing; he is not only the friend and moral ally who supports the refugees' claim to be listened to. It seems, in general, that the project of testing one's moral standing needs to embrace the possibility of mixed and conflicting positions. It is not easy to say how to acknowledge such complex relations to a moral issue. Does it directly diminish one's standing? That is, conceptually, should we count implication in a moral wrong as simply a different issue, or as a mode of moral standing itself, or as a negater of moral standing? Could a mixed position give one better insight into a moral wrong? Does it mean one should try to speak "more softly," letting others with a less mixed position be better heard? It seems, if we follow the legal model, that implication in a wrong could not be the basis for standing, and perhaps that makes sense in the moral domain as well. However, it could nonetheless be crucial in the moral domain that one explore and acknowledge one's role(s) in the situation in question, and then be ready to let the results, for better and worse, figure as aptly as possible into one's claim for standing.

Finally, the third feature of legal standing, that the judgement can offer redress for a harm, is in a way quite hard to transfer to the moral context. A legal judgement will include a specific practical demand if the suit is successful. But that is not built into a moral judgement, as normally understood. Making and defending a moral claim can seem to have its point in the judgement process itself: adequate assessment of morally significant circumstances is offered. Perhaps the intrinsic worth of responding to reality in a morally adequate way is affirmed by engaging in that process. If we loosen the harm requirement enough, to incorporate such things as Richard's forms of shared vulnerability, it also seems to become harder to identify and realise redress. And perhaps moral wrongs just seem un-redressable; they cannot be reversed but hold their meaning and impact. These remarks oversimplify practices of moral judgement, as people do indeed try to do things with their moral judgements, such as promote feeling in others, ask for forgiveness, and urge changes in conduct. But my sense is that it is not inevitably hoped, considered, or intended that there be a practical point to one's moral judgements. The legal model is thus interesting, and I think helpfully provocative, because it foregrounds the question of what good one hopes to accomplish by engaging in judgement. There is no systematic answer to such questions, as far as I can see, but the idea of having that question in view seems salutary. It would be hard to understand why it mattered that we take care to assign moral meaning and value to things, perhaps arriving at judgements of blame, if judgement itself were the crucial outcome. Could judging some practice to be wrong, or blaming someone

correctly for an action, be informed and driven as well by considering what would alleviate the conditions at work in such practices and actions? Briefly, the suggestion of this discussion is that a concern for standing, as part of a process of moral judgement, could promote this kind of practical orientation toward judgement.

Erpenbeck sets up a fictional situation in which a process of understanding a morally significant situation unfolds in a practically elaborated way. Talking to people leads to eating with people which leads to going to their lawyer's office (and so on) which leads to sharing one's home. The novel puts the reader in the position of leaping ahead of Richard in a way, as he seems a little slow to understand and feel outrage or urgency over what is happening. But on the other hand, he is almost shockingly open to making changes in his life activities. In that way he seems to leap ahead of the reader. I will leave this as a hint of the way in which engaging with a novel can support a more substantial relation of standing. It would be hard for a reader of this novel not to think about – and feel and worry about – the ease of recognising a wrong, unaccompanied by efforts to change one's life in the light of that recognition.

This discussion has initiated a comparison between law, fiction, and morality that deserves more complex treatment. I hope at least to have made the interest of the comparison clear. The model of legal standing cannot be followed rigidly into the moral domain, and certainly not into the domain of fiction. Nonetheless, considering how to conceive of standing or lack of standing in these domains is a route into important questions about the respective functions and value of these practices. The question pressed most directly here, if also speculatively, is how the vitality of moral judgement could be promoted through a loose embrace of the legal model of standing.¹⁴

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