

# 1 *Private emergencies and institutions*

Moral training and behaviour in keeping with it are geared to the normal case. Most of us have been taught not to lie, but as preparation for the sort of life in which telling the truth does not put one's life at risk. We are told to keep our promises, but against a background in which breaking promises does not normally make the difference between death and survival. Where situations facing agents overturn these understandings, it is not so clear what they ought to do. Thus, no one would criticize an Albanian in Kosovo for having lied about his ethnic background to a Serb soldier during the Balkan conflict; and no one would blame someone who has promised to look after someone else's groceries for eating them when she finds herself stranded and disabled far from any help. *In extremis*, ordinary moral obligations either lapse or may excusably be broken. Doing the right thing is supposed to interfere significantly with well-being or survival only exceptionally, and moral training does not normally treat cases in which there is a risk of suffering violence or death in the same way as situations in which the costs of doing the right thing are negligible or non-existent. A hero or a saint might die before breaking an ordinary moral obligation, even *in extremis*, but that would not show that the ordinary moral obligation *had* to be discharged, even *in extremis*. Someone who failed to do so could be blameless.

My interest in emergency is an interest in a special case of a departure from what moral training and conventional morality in our sort of community take as normal.<sup>1</sup> An emergency is a situation, often unforeseen, in which there is a risk of great harm or loss and a need to act immediately or decisively if the loss or harm is to be averted or minimized. There are important differences between, on the one hand, public emergencies – emergencies facing whole states or large numbers

<sup>1</sup> This theme is anticipated in my *Moral Theory and Anomaly* (Oxford: Blackwell, 2000), esp. pp. 182–186.

of people, which are usually the responsibility of public agencies and their officials – and, on the other hand, emergencies confronting individuals in a private capacity. I shall start with an emergency that crops up in an individual life, where the one who has to do something is a person acting in their own right or in a private role and not as an official. I shall discuss criteria for excusing and not excusing normally wrong acts done to face emergencies in private life, and with how far it is urgent to prevent or avoid emergencies that can be prevented or avoided.

I shall argue that not every kind of *private* emergency is morally necessary to avoid, even where doing so is quite easy. This relative lack of urgency is connected to the presence of, or need to develop, public institutions and practices that ‘domesticate’ emergencies – make their ill effects manageable. If the public institutions exist, they tend to reduce the dangers faced personally by individuals in emergencies. If they do not exist, then people need to face danger in a controlled way in order to create them, keep them effective, or make themselves able to cope without them. If no one took any life-threatening risks, that would not eliminate emergency, and it would disable emergency response. Prevention and avoidance are clearly obligatory not in relation to occasional or disciplined risk-taking on the part of individuals, but in relation to foreseeable, large-scale emergencies facing a citizenry or population. This is because of the numbers of lives threatened, the moral priority of life-saving, the likelihood of overwhelming emergency services, if they exist, and the status of the right to security on the part of citizens.

Public emergencies not only threaten lives in their own right: they multiply private emergencies – with their moral and other demands on the sometimes very helpless people who survive them. Among the moral demands is that of playing God in personal decisions about rescue where not everyone can be helped. The conclusion I will eventually reach in this chapter is that in order for the moral demands of even private emergency response to be tractable, public institutions in general and public institutions for public emergency response in particular are morally compulsory. Because of the role of institutions, the ethics even of *private* emergency engages emergency *politics* – the theory of which institutions are needed to address different kinds of large-scale threats to large numbers of people. Public emergencies will get the lion’s share of attention in this book. But I begin with private emergencies.

**Private emergencies and excusable wrongdoing**

Emergencies are both practically and theoretically challenging. To begin with theory, emergencies seem to create exceptions to moral precepts, and moral precepts are sometimes thought to be distinguished as a class by admitting of *no* exceptions. They are sometimes thought to be categorical or unconditional and addressed to all rational agents. That way of understanding moral precepts may be open to the charge of hyper-rigourism, but it is at any rate familiar in moral philosophy, with no less respectable an advocate than Kant. On Kant's view, if it is wrong to lie, then *no one* ought *ever* to lie, not even to protect an innocent person from a murderer.<sup>2</sup> Kant associated immorality with putting the satisfaction of one's desires or the pursuit of one's own happiness before duty, and with taking oneself to be somehow exempt from requirements that everyone else is under. Consistency and universality are written into morality, according to Kant, and help to explain its inescapability. Attempts to reduce its universality to mere generality, or to make the demands of morality conditional on other things, are, for him, invitations to immorality.

What about the challenges that emergencies pose for moral *practice*? At least three such challenges can be identified. First, emergencies present agents with life and death decisions – the most serious that arise in personal morality. Although many agents living in well-resourced, well-ordered countries never face such decisions personally at all, or face them only because they have chosen to enter certain professions, life and death decisions can in principle crop up in any life. Second, emergencies present agents with decisions that have to be made urgently. Third, they present a heightened demand for doing something effective, not merely for doing *something*, and doing it *now*. The need to be effective in a short time makes agents less discriminating about means; so, in a good cause, things can be done that, in different circumstances, the very same agents would have considered flatly wrong.

To fix ideas, let us consider an example. An elderly man and his adult son are out for a walk after a visit to a pub. The elderly man has a heart condition and starts to experience chest pains. There is no

<sup>2</sup> *On the Supposed Right to Lie from Altruistic Motives*, Akademie, ed. vol. viii, p. 427.

quick means of summoning an ambulance, which may in any case take too long to get there. The son breaks into the nearest car, jump starts the engine, and drives his father to the nearest accident and emergency department, breaking the speed limit dangerously, and nearly running over a child along the way. How are we to judge the agent in such a case? Probably not unsympathetically. Admittedly, he has damaged and stolen other people's property and nearly killed someone, but only because he thought he had to act quickly to save his father's life. What is more, he has succeeded in getting his father to people who are in a position to save his life if the chest pains are a heart attack. What is even more, he has shown presence of mind and ingenuity in a situation where other people might have panicked or succumbed to indecision. Far from having done anything wrong, it might be said, he has done only what is necessary in an emergency.

This reading of the example is far from condemning the son's actions, but it does not imply that those actions are beyond criticism. If a child had been killed in the attempt to rescue the father, then the whole episode would probably count as a tragic failure even if the father survived. The son might even have deserved punishment. The excusing power of emergency, then, is not absolute. It seems to run up against a limit when a life is taken in order to save a life or lives, a point that will be addressed at greater length later on in this chapter. But conceding this much does not take one very far back into Kant's territory. For example, if the son had had to lie in order to get the car, instead of breaking into it, that would have taken very little away from a successful rescue, and would have added very little material for blame to a failed rescue. The reason is that the lie is a one-off, that it is produced in a one-off good cause, and that the bad of a one-off lie is typically much smaller than the bad of anyone's losing their life.

That said, there are types of factor that, intuitively, seem to reduce the excusing power of emergency even when rigorism is completely abandoned. In the example before us, it makes a difference whether the chest pains were an emergency that, as the phrase has it, was 'just waiting to happen'. Suppose that the father has a history of heart problems. When he complains of chest pains after the visit to the pub, they are at first dismissed as indigestion by the son. Suppose that the son had been asked by the father to bring along a car, in case the father started to feel unwell, and the son could not be bothered to find a parking space, so that he had no transport when there was a sudden

need for it. Then perhaps he is not so admirable after all. He made things worse by not having been prepared.

In general, the more an emergency is foreseeable, and preventable by morally harmless and undaunting precautions, the less the *ad hoc* wrongdoing involved in coping with the emergency is justifiable or excusable, all things considered.<sup>3</sup> This principle explains judgements in the version of the example where the son is casual about the father's heart condition, and it explains our unwillingness to excuse totally those people whose presence of mind in an emergency is counterbalanced by their bringing about the emergency. Someone who ignores weather advice to climbers to stay off a dangerous peak and then predictably gets into life-threatening trouble when he climbs that peak probably places an unjustifiable burden on the rescue services, even if he has to display immense courage and resourcefulness to get himself to a place where the emergency services can help him.

There are cases that straddle the boundary between emergencies waiting to happen and blameless action in a morally tainted environment. A whites-only neighbourhood will sometimes be dangerous for non-whites entering it; however, many of the non-whites in the neighbourhood only mind their own business while they are there. Is the fact they simply enter the area, when they know what kind of neighbourhood it is, an emergency waiting to happen? If they are assaulted,

<sup>3</sup> The distinction between justification and excuse in criminal law defences is relevant here. There is an excuse for an action if, though contrary to the law, the agent could not help performing it. An action is justified, on the other hand, if, even though it is contrary to law, and the agent is fully responsible, it is for a highly valuable social purpose, and therefore not to be punished. 'I only did it to save a life' can be such a reason even where what is done is criminal. My category of excusable action is closer to justified action in the legal sense than the category of action for which there are excuses in law. What I am getting at is a type of action that, though normally morally wrong relative to its typical purposes, can exceptionally be done for some morally good and indeed overriding purpose. People often lie to save face, or escape condemnation they deserve, or to manipulate others for their own purposes. When, atypically, a lie is told only to save a life, and the lie could not otherwise be avoided, it does not cease to be a lie. It may even achieve its good purpose by manipulating someone. In this way it has some of the character of the typical lie, including part of what makes a lie bad. But the lie is excusable because the obligation to save life overrides the obligation not to manipulate someone, when manipulation is a means of saving a life. For a general account that is broadly congenial to my approach, see Marcia Baron, 'Justifications and excuses' *Ohio State Journal of Criminal Law* 2 (2005), pp. 387–406.

or face an attack, do they contribute to the emergency? In such a case it is what taints the environment that makes for the emergency waiting to happen. The normally blameless action of walking along minding one's own business is, if tainted at all, tainted by what taints the neighbourhood – racism. If a non-white entering a whites-only area is on its own an emergency waiting to happen, it is an emergency for which the preventive treatment is whatever cures racism, rather than avoiding action on the part of non-whites. It is a borderline case of an emergency just waiting to happen. When I speak in what follows of 'emergencies waiting to happen', these border-line cases will be disregarded.

Emergencies waiting to happen in the preferred sense can be distinguished from unexpected emergencies and from sought-out emergencies. If emergencies just waiting to happen excuse less than wholly unexpected emergencies excuse, then emergencies that are sought out excuse least of all, if they excuse anything. Someone who, for the thrill of it, *only* climbs mountains when climbers are warned strenuously against it, and who frequently has to call in the rescue services; someone who, for the thrill of it, penetrates no-go areas in periods of war but then feels no scruples about asking others to face great danger in order to get him out; such a person probably does not act excusably at all, even though he will lose his life if he does not call others to the rescue.

Emergencies that no one could reasonably have expected – let me refer to them simply as 'unexpected emergencies' – are at the other end of the spectrum. Why do they excuse as much as they do, morally? For at least two reasons. First, avoiding or minimizing significant harm is morally important, and emergencies are cases where significant harm has to be avoided or minimized. Second, the importance of minimizing significant harm is usually reflected in the appropriateness of longer and more careful practical deliberation than usual – precisely what unexpected emergency rules out. In unexpected emergencies one is usually forced to decide quickly when the stakes are high. So there is less to be said against whatever it occurs to the agent to do – so long as what the agent does makes sense as a means of rescue or minimizing harm. Again, the usual mechanism for deciding quickly is disabled in unexpected emergencies. The usual mechanism – habit – would probably lead to *bad* choices. One's habitual aversion to breaking into things and stealing, for example, is just what *shouldn't* be engaged when one has to decide how to get treatment for someone else's heart

attack, and breaking and entering a car provides a quick solution. One's usual inclination to run a mile from blood and gore is just what shouldn't be acted upon where there is a chance of being helpful at the scene of a road accident. Unless an emergency is of a *domesticated* type,<sup>4</sup> one has often to think quickly *and* in an unaccustomed way in order to respond to it. Since these things are very difficult, it is excusable to be ineffectual in an emergency. The more effective one is, the greater the achievement, and the more that can be excused in the means chosen.

### Emergencies and moral latitude

Is it morally urgent for emergency to be avoided where it is predictable, and domesticated where it is not? The same factors that give emergencies their excusing power make them likely to produce major harm if they are not avoided, and it seems reasonable to claim that major harm that can be avoided altogether (as opposed to minimized after the fact) should be. Furthermore, there is something about the prospect of an overwhelming emergency that may be corrosive of conventional morality, and that may require potentially overwhelming emergencies in particular to be domesticated. The greater the harm and the more imminent it seems, the more it may appear to an agent caught up in an emergency that *anything* goes. Not just anything that may avert the harm, but anything the agent can do to make it less bad for himself. This is what I mean by the corrosiveness of overwhelming emergency. A man who dressed as a woman or as a crew member in order to board

<sup>4</sup> Not all unexpected emergencies are equally daunting, because in many countries there are publicly recognized routines for dealing with standard emergencies, and some unexpected emergencies are standard. Lifeboat drills on ships; fire drills in schools; first-aid training; the practice of giving safety instructions to passengers at the beginning of flights: these keep us from being mired in dither if the worst happens. In many developed countries, all of these drills co-exist with construction and maintenance standards that soften the effects of the relevant emergency and that lengthen the time available to reduce the danger or get away from it. Taken together, the drills and standards work to *domesticate* emergencies. Although they do not take the threat of harm out of emergencies, they keep us from being at a loss in the face of them. Designing public buildings with lots of fire escapes does not necessarily make the occurrence of a fire any less of a danger, but having the fire escapes and going through fire drills makes available a mechanism for dealing with at any rate a medium-sized fire more or less automatically.

a lifeboat on the *Titanic* probably did not do all he could to maximize the smallish-looking chances of survival of the women and children, but perhaps that did not seem to matter when his own prospects were so bleak. If any of us were suddenly to be told that a violent tidal wave was about to produce an overwhelming flood, or that a giant piece of space debris was days away from striking the earth and devastating it, it might seem as if anything gratifying that could be done in the time left was permitted, no matter how many scruples that gratifying thing might normally engage.

In what follows, I shall first investigate the question of whether overwhelming emergency is urgent to prevent because it seems to license a radical permissiveness. I shall express scepticism about this suggestion. Then I shall come back to the question of whether the large-scale harm threatened by emergency makes it compulsory to avoid. My answer is, 'Not necessarily', if the emergency is private and small scale: facing emergencies can be part of becoming personally more capable and useful; it can also be part of the process of domestication. Even engaging in activities that are dangerous enough to be mistaken for cases of asking for trouble may be excusable or justified if it increases private and public capability for emergency response. The strength of the case for avoiding emergencies that can be avoided increases with the numbers of lives threatened and the scale of injury that they bring with them. At the same time, the requirement that large-scale emergencies be avoided by *public* institutions, and not by the heroic efforts of individuals or groups, becomes inescapable. In this sense the ethics of emergency seems inseparable from politics, and not just emergency politics.

Let us go back to the tidal wave and the prospective annihilating collision of the earth with the space debris. If one knows the end is virtually certain to be near, one may clutch at any pleasure while one can and perhaps feel thoroughly justified in doing so. And emergencies like the tidal wave or the impending collision with the space debris impose such death sentences on large populations. Whether one actually *is* justified in taking the corresponding liberties is a hard question to answer if the end of the world really is nigh, or is reasonably believed to be. It must depend on the liberty being taken. Credit card fraud or theft before the collision with the space debris takes place is one thing; rape or torture is another. But much of everyday bourgeois morality could seem pointless if the emergency were imminent enough, enveloping enough, and final enough. The moral black hole that some



emergencies can threaten to suck us into may seem even more repulsive than the desperate measures that emergencies justify or excuse when desperate measures are a way of minimizing the harm they bring. So perhaps emergency is urgent to domesticate twice over: first, because it can produce a black hole; second, and more mundanely, because it is better to avoid the situation of having to cope, probably hurriedly and ineffectually, with a significant harm.

I doubt that every kind of unexpected emergency is morally urgent to try and avoid, and I doubt in particular that unexpected private emergency is always the site of a black hole. By a 'black hole' I mean primarily a situation in which many or all interacting agents at a place and time lose the scruples inculcated into them for behaviour in normal times. They behave as if under the policy that everything is permitted. Since emergencies appear even from the standpoint of theory to generate permissions or exceptions to the moral injunctions of conventional morality, the phenomenon of the black hole cannot really be detached from the theoretical question of whether, even *in extremis*, the reasons for doing what morality requires still have authority. I shall suggest that the danger of the black hole and a scepticism about the authority of moral reasons in desperate circumstances are both likely to be exaggerated.

Fears of a black hole may make sense where what is in question is an overwhelming *public* emergency, as when a state is in the midst of an unexpected all-out military attack. In that case it might seem to an agent that there was no alternative to a policy of every man for himself, or no real objection to a policy of anything goes. If that is so, then there is an important reason for preventing attack or being equal to it – *apart* from the loss of life it leads to. Again, if a state of all-out war is what we would be reduced to by the collapse of political institutions, as in Hobbes's prototype of the general emergency, then perhaps what has to be seen to before anything else is the security of those institutions, which may involve elaborate mechanisms for defending the economic, transportation, and communication systems, and not only the channels through which legitimate political authority flows. It may well be more urgent to devise these mechanisms – and therefore domesticate general emergency – than to do anything else, a point I shall return to. But many smaller scale emergencies are not like this, and the moral danger they pose is not that of encouraging the idea that all things are permitted or that it is every man for himself.

Legal cases that ostensibly occasion a necessity defence against a charge of murder are relevant here. In one of the most famous, *R v. Dudley and Stephens*,<sup>5</sup> three men and a boy were cast adrift in an open boat with very little food and water. After 18 days, when all were starving and the boy was the closest of the four to death, two of the men killed him, and all three fed on the body. The third man had previously pleaded with the other two not to kill the boy. Four days later, and nearly on the point of death, the three men were rescued. Though the jury found that they could not have survived except by their acts of cannibalism, the judgement in the case was that the killing of the boy was not necessary and that it therefore amounted to murder. According to the decision of Judge Coleridge, the boy was killed because he was the weakest and offered no resistance, but any of the men was appropriate to kill if the boy were, Judge Coleridge held. If the decision to kill was always to be left to the subjective judgement of the people affected in a case where all but one could survive, the judgement continued, the weakest would have the least good chance, when what they deserved was an equal chance. Again according to the judgement, it was possible, in some sense, that all three could have been picked up before any died, so that it was unnecessary for anyone to be killed.

The judgement seems to impose a very high standard of reasonableness on starving men, and if the question is not the legal one of the classification of the killing as murder but the moral one of the excusability of the killing, I think that it *was* excusable. On the facts the two men who killed the cabin-boy did not resort to the desperate measures they took unduly quickly or casually, nor did they immediately hit upon a plan of killing the weakest in the group. They had proposed drawing lots. In any case, it is asking a great deal for someone *in extremis* to view his own death as no more of a misfortune than that of the other people in the boat with him.<sup>6</sup> Things stand differently, of course, if what is at stake is not survival itself but mere freedom from hunger. But after 18 days, it is plausible that survival was indeed

<sup>5</sup> [1884]Q.B.D. 273.

<sup>6</sup> There is apparently a tradition in English law of regarding the killing of the innocent, even in the cause of saving a loved one, as legally indefensible. Hale's *Pleas of the Crown* (1736) and Blackstone's *Commentaries on the Laws of England* (1857) both state that a man under duress ought rather to die himself than kill an innocent. See [www.lawteacher.net/Criminal/Duress%201.htm](http://www.lawteacher.net/Criminal/Duress%201.htm).