

The Partial Coherence of Cicero's *De officiis*

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ABSTRACT: Martha Nussbaum has provided a sustained critique of Cicero's *De officiis* (or *On Duties*), concerning what she claims is Cicero's incoherent distinction between duties of justice, which are strict, cosmopolitan, and impartial, and duties of material aid, which are elastic, weighted towards those who are near and dear, and partial. No doubt, from Nussbaum's cosmopolitan perspective, Cicero's distinction between justice and beneficence seems problematic and lies at the root of modern moral failures to conceptualize adequately our obligations in situations of famine and global inequality. And yet a careful reading of Cicero's *On Duties* shows many duties that appear to be partial. It is hard to believe that Cicero's discussion of these "partial duties" was a mere oversight or omission on his part. Rather, Cicero seemed to have no problem endorsing what I will call the "partial coherence" of duties in the work—namely, the claim that asserting that duties are exhaustively partial or impartial is a false dichotomy. With the help of conceptual analysis by Richard Kraut, my paper aims to establish and defend Cicero's "partial coherence" against Nussbaum's criticisms.

Keywords: Cicero, duty, *On Duties* (*de officiis*), partiality, impartiality, Stoicism

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Introduction

Modern eyes, at first glance, may find Cicero's *On Duties* (*De officiis*) a bit puzzling. Consider the following casuistical passage, which comes from a discussion of the relationship between what is morally obligatory (the *honestum* or what is honorable) and what is beneficial (or *utile*). The example, in dialogue form, concerns the duty that a son owes a father who exhibits less than honorable aspirations and actions:

T1: 'Suppose that a father despoil a temple or dig a tunnel to the treasury, will his son denounce him to the magistrates?'

'That would be impious (*nefas*). He should rather defend his father if he is charged.'

'Does one's country not, then, take precedence in all duties (*patria praestat omnibus officiis*)?'

'Yes, indeed. But it actually assists one's country to have citizens who revere their parents.'

'And if a father should try to impose a tyranny, or to betray his country, will the son keep silent?'

'He will beseech his father not to do it, and if he has no success, he will rebuke him and threaten him. In the last resort, if the affair would lead to the ruin of his homeland, he will put the fatherland's safety before that of his father (*patriae salutem anteponet saluti patris*).'¹ (*Off.* 3.90)¹

On the one hand, we have what looks like an obvious example of partiality and indeed almost mafiosi corruption: if a father robs the treasury, his son should not only *not* rat him out to the authorities, but he should even defend his father if he is charged. And yet on the other hand, if the father exhibits tyrannical aspirations, the son is the supposed to intervene, admittedly, at

¹ I cite *On Duties* by book and paragraph number. Passage T1 (which I discuss at length in the second and third parts of my paper) comes from a collection of duties preserved by the Greek Stoic philosopher Hecaton (fl. 100 BCE). My quotations from Cicero derive from the editions of Griffin and Atkins (1991) for *On Duties* (*Off.*) and Annas and Woolf (2001) for *On Moral Ends* (*Fin.*). Winterbottom (1994) provides the Latin text for *On Duties* and Reynolds (1998) for *On Moral Ends*.

first by argument and verbal persuasion. But as the third book of *On Duties* makes clear, the son may even have the patriotic obligation to commit homicide (that is, tyrannicide and thus patricide [Off. 3.19]). However much one dislikes the likes of a Trumpian tyranny in the United States, such a command seem like a rather onerous burden for the likes of an Eric or Donnie Trump Jr. (his two eldest sons).

At least since 18th C. moral philosophers such as Immanuel Kant, Adam Smith, or Jeremy Bentham, modern moral philosophy has understood the concept of duty within the framework of impartiality or as Smith puts it in the *Theory of Moral Sentiments*

We suppose ourselves the spectators of our own behaviour, and endeavour to imagine what effect it would, in this light, produce upon us. This is the only looking glass by which we can, in some measure, with the eyes of other people, scrutinize the propriety of our own conduct. (*TMS*, III.1.5.)²

Such an “ethics of impartiality” decenters the self (and its nearest relations) in ethical deliberations on the grounds that one’s own interests have no privileged status when determining what is morally the right action to pursue. Thus, when a modern moral philosopher such as Martha Nussbaum examines Cicero’s *On Duties*, she find a deep incoherence within a tradition that distinguishes duties of justice as impartial, strict, exceptionless norms from duties of material aid, which are partial, flexible, and admit of exceptions (2019, 20–21). By contrast, other modern moral philosophers such as Richard Kraut find in Cicero’s *On Duties* an implicit

² Smith’s articulation of impartiality is just one of many one could invoke; for a brief overview of the historical context, see Feltham (2010, 12–21). The relationship between Kant and Cicero is especially complicated, because there is historical evidence that Kant wrote his *Grundlegung zur Metaphysik der Sitten* (1785) in response to Christian Garve’s translation and popularization of Cicero’s *On Duties*. See further Visnjic (2021, 101–119) and Zande (1998).

argument “that when we look at the universe from an impartial perspective, we find reasons for arranging human society in a way that charges us to favor certain people over others” (2017, 285).

My paper argues that many of the apparently incoherent “partial duties” in Cicero’s *On Duties* are in fact coherent along the lines of the argument suggested by Kraut. Further, I argue that Nussbaum’s depiction of Cicero’s distinction between the duties of justice and the duties of beneficence (which she somewhat inaccurately characterizes as “duties of material aid”) overlooks the particularism or situational nature of Cicero’s account of duty. Such particularism deflates the apparent tension between justice and beneficence, even if it leaves us with the challenge that inspires Nussbaum’s critique, namely the justification of transnational duties in the age of globalism, pandemics, climate change and other cosmopolitan ethical demands. In order to present such a case on behalf of Cicero’s *On Duties*, the first part of my paper examines those aspects of Cicero’s theory of duties that are clearly impartial within the framework of modern moral philosophy, for instance his universal duty that one never gain at the unjust expense of another. The second part of my paper examines those aspects of Cicero’s theory of duties that appear to be partial within the framework of modern moral philosophy, namely those duties that appear to privilege one’s own self, one’s own family, or one’s own country. Finally, the third part of my paper examines whether partial and impartial aspects of Cicero’s theory of duties are incoherent and evaluates the arguments of Nussbaum and Kraut in order to defend my conclusion that Cicero’s *On Duties* ultimately exhibits a “partial coherence” that justifies

privileging some individuals over others even within the impartial framework of modern moral philosophy.

Part I: Cosmopolitan impartiality in Cicero's theory of duty (*officium*)

Towards the beginning of *On Duties*, Cicero characterizes ethical theory generally as follows:

T2: The whole debate about duty is twofold. One kind of question relates to the end of good things (*ad finem bonorum*); the other depends upon advice (*in praeceptis*) by which one ought to be fortified for all areas of life. The following are examples of the former: are all duties complete? Is one duty more important than another? And other questions of that type. The duties for which advice has been offered do indeed relate to the end of good things, but here it is less obvious, because they appear rather to have in view instruction for a life that is shared. (*Off.* 1.7)

In Cicero's philosophical corpus, the treatise *On Moral Ends* addresses the former question by considering the accounts of the end or goal of life, most prominently those espoused by the schools of Epicureanism, Stoicism, and the Academy. By contrast, *On Duties* addresses the later question by specifying those duties or "appropriate actions" that are productive of such an end, namely those actions that are "what it belongs to us to do" or "what accords with our nature."³ Although Cicero claims that there is overlap among the different schools about the nature of the end, in *On Duties* he claims that he will "follow the Stoics above all, not as an expositor, but, as is my custom, drawing upon their fountains when and as it seems best, using my own judgment

³ Cicero notes that Stoicism distinguishes between "complete duty" (*perfectum officium*) or "right" (κατόρθωμα) and "middle duty" (καθῆκον); the former is the fully perfect action of the sage whereas the latter is an act for which a persuasive reason can be given (*Off.* 1.8, 2.7, 3.14). Cicero notes in numerous places that his account of duties concerns such "middle duties," which are possible for non-sages. In scholarly literature, the καθῆκον is often translated as "appropriate action" rather than duty, although Visnjic (2021, 7-31), critiques such a translation. In general I will render Cicero's term *officium* as "duty."

and discretion” (*Off.* 1.6).⁴ Thus, throughout *On Duties* Cicero proposes to take as the end or goal of life “the honorable” (*honestum* in Latin, καλόν in Greek).⁵

Cicero defines duty as following the commands of reason and compelling impulse or desire to obey; put slightly differently, Cicero in several places characterizes duty as acting only in the case that one can provide a persuasive justification (*ratio probabilis*) of one’s actions.⁶ To specify such duties, Cicero—drawing from the 2nd C. Greek Stoic Panaetius of Rhodes⁷—offers a complex but compelling interrelation of the honorable, the four virtues, the useful, and what he calls a “rule of procedure” (*formula*) to distinguish what is useful (which always corresponds with what is honorable) from what is only (but erroneously) apparently useful. With respect to the honorable, the virtues, and duties, Cicero describes it to his son Marcus (the work’s addressee) as follows:

T3: You are seeing, my son, the very face and form, so to speak, of the honourable....Everything that is honorable arises from one of four parts: it is involved either with the perception of truth and with ingenuity [i.e., wisdom]; or with preserving fellowship among men, with assigning to each his own, and with faithfulness to agreements one has made [i.e., justice and liberality]; or with

⁴ I side-step the difference between Cicero’s dialogues, such as *On Moral Ends*, in which he has historical characters present various views, and *On Duties*, in which Cicero speaks in his own voice, ostensibly to his son Marcus (*Off.* 1.1–4, 2.1–8, 3.5–6), which is an exegetical subtlety that goes beyond the detail of my presentation.

⁵ I side-step the question of which school Cicero’s *On Duties* ultimately supports, whether it is Stoicism, the Academy, the Peripatetic school, or some novel combination of all of them (see, for instance, *Off.* 1.1–2, 1.6, 2.7–8). In general, I tend to follow Long (1995) in interpreting *On Duties* ultimately in political rather than philosophical terms, although those are hardly mutually exclusive.

⁶ On reason and impulse, see: *Off.* 1.101, 1.103, 1.132, 1.141, 2.18; on duty as being able to provide a persuasive justification, see: *Off.* 1.8, 1.101, 2.7–8, 3.20, 3.33.

⁷ See *Off.* 1.6–10, 1.152, 1.161, 2.16, 2.35, 2.60, 2.88, 3.7–12, 3.33–34. See further Brunt (2013) and Griffin (2018).

greatness and strength of a lofty and unconquered spirit [i.e., courage]; or with order and limit in everything that is said and done [i.e., moderation]. (*Off.* 1.15)

What Cicero seems to have in mind, for example in the case of justice, is as follows: human reason provides dictates that promote human fellowship, the practice of which can be characterized more narrowly as the virtue of justice (*Off.* 1.12); the first (and most important) “duty” of justice is “no man should harm another unless he has been provoked by injustice” (*Off.* 1.20). Such a duty not only takes a “negative” form, insofar as it prohibits harming another, but also a “positive form,” insofar as we have a duty to prevent harm to others, insofar as we can (*Off.* 1.23)—both of which I will discuss further below. Thus, the commands of reason manifest themselves as parts or aspects of the honorable and are differentiated into specific duties or obligations under one of the four cardinal virtues.⁸

Although Cicero’s depiction of duty and virtue specifies that the honorable is the good, he also claims (consistent with Panaetius’ “Middle Stoicism” of the 2nd C. BCE) that the Stoics “hold that everything that is honorable (*honestum*) is beneficial (*utile*), and nothing beneficial that is not honorable” (*Off.* 3.11).⁹ Stoicism, like all forms of ancient ethical theory, ultimately espouses a form of eudaimonism in which the good person is one whose virtues constitute the

⁸ I side-step Cicero’s discussion of the “four personae” in *Off.* 1.107-121, which entails that humans not only have duties related to their rational or human nature, but also with respect to their ascribed and elective roles as individuals, on which see further Gill (1988). Woolf (2008) persuasively argues that such an account cannot be captured by rule-based reasoning and corresponds with a notion of “integrity,” like that found in the work of B. Williams.

⁹ For the claim that everything that is honorable is beneficial, see *Off.* 2.9, 3.11-12. The honorable, beneficial, and their interrelationship thus provide the structure of Cicero’s *On Duties*: the first book concerns the nature of the honorable, the second concerns the nature of the beneficial, and the third concerns instances in which they appear to conflict (*Off.* 1.9, 1.152, 2.9).

well-being and “happiness” of the good person.¹⁰ At the root of Stoicism is the claim that self-love is a primary feature of human nature, one which directs every human towards what is truly beneficial for that individual. But at the same time, Cicero claims that there exists “a fellowship of the entire human race” (*in universi generis humani societate* [Off. 1.50]) whose benefit humans are also obligated to improve as part of the common advantage. Cicero describes such a cosmopolitan fellowship as follows:

T4: The fellowship between men and their common bonding will be best preserved if the closer someone is to you the more kindness you confer upon him. Perhaps, though, we should examine more thoroughly what are the natural principles of human fellowship and community. First is something that is seen in the fellowship of the entire human race. For its bonding consists of reason and speech, which reconcile men to one another, through teaching, learning, communicating, debating and making judgements, and unite them in a kind of natural fellowship. (Off. 1.50)

At the heart of Cicero’s appropriation of Stoic cosmopolitanism is the claim that humans are rational beings who are naturally sociable and who have obligations to other human beings as such, regardless of their membership in other fellowships, such as families, friendships, and political communities.¹¹

The cosmopolitan impartiality of Cicero’s *On Duties* is most clear in his accounts of three different duties, namely the duty not to harm, the duty to protect others from harm, and the duty of what I will call universal beneficence. Let me briefly explore each to illustrate the “impartial duties” of *On Duties*. As noted above, the first duty of justice is “no man should harm

¹⁰ See further Annas (1993, 4), but with Kraut (2017, 265), Visnjic (2021, 2), Schofield (2021, 185).

¹¹ Scholars debate the prominence of Stoic cosmopolitanism in *On Duties*, with Atkins (1990) and Woolf (2015) finding little role for it and Reydams-Schils (2022) and Schofield (2021) finding a robust place for it.

another unless he has been provoked by injustice" (*Off.* 1.20). Scholars have noted that the "no harm" duty is pervasive throughout *On Duties*, but its cosmopolitan elements are most clearly articulated in Cicero's account of the "formula" or "rule of procedure" he provides to adjudicate what is truly beneficial (and thus honorable) from what is only apparently beneficial (and thus not honorable).¹² In its shortest form, the formula states that one cannot benefit at another's expense (and thus that any selfish advantage that stems from the harm of someone else is by definition not a benefit).¹³ Cicero writes that

T5. All men should have this one object, that the benefit of each individual and the benefit of all together should be the same. If anyone arrogates it to himself, all human intercourse will be dissolved. Furthermore, if nature prescribes that one man should want to consider the interest of another, whoever he may be, for the very reason that he is a man, it is necessary, according to the same nature, that what is beneficial to all is something common. If that is so, then we are all constrained by one and the same law of nature; and if that also is true, then we are certainly forbidden by the law of nature from acting violently against another person. The first claim is indeed true; therefore the last is true. (*Off.* 3.26–27)

The claim that we should harm no one derives from the obligation that humans have, as such, to benefit each other simply insofar as they are human. Cicero imagines that someone might object and claim that we only have such an obligation to a parent, brother, or fellow citizen; he denies such an objection (he claims that such a view will "tear about the common fellowship of the human race" [*Off.* 3.28]) and explicitly notes that the obligation not to harm another extends to foreigners.

¹² For the pervasiveness of justice in *On Duties*, see Atkins (1990, xx) and Schofield (2021, xx). Compare Woolf (2015, xxx) who makes the case that "seemliness" (*decorum*) is the main virtue of *On Duties*.

¹³ REF

The second duty I would like to focus on, namely the responsibility to protect others, also stems from Cicero's account of the virtue of justice.¹⁴ He describes it as follows:

T6: Of injustice there are two types: men may inflict injury; or else, when it is being inflicted upon others, they may fail to deflect it, even though they could. Anyone who makes an unjust attack on another, whether driven by anger or by some other agitation, seems to be laying hands, so to speak, upon a fellow (*socio*). But also, the man who does not defend someone, or obstruct the injustice when he can, is as fault as if he had abandoned his parents or his friends or his country. (*Off.* 1.23).¹⁵

Note Cicero's clever play on partiality and impartiality: when someone attacks another without provocation, it is as if someone had attacked one's ally—namely someone with whom you have a history of alliance. And the failure to defend a stranger is just like as if one failed to defend an attack on one's parents or country. Cicero strengthens the bonds of impartiality by likening them to our strongest partial bonds (which I will discuss further in the second part of my paper). Although Cicero conditions the responsibility to protect on the basis of one's ability to respond, his comparison of the responsibility to a patriotic duty—such as fighting for one's country in armed conflict, including the possibility of dying for one's country—seems to raise the bar for expectations rather high.

The final impartial duty I would like to look at is what I will call universal beneficence, namely the obligation of aid or assistance that we to all human beings as such. Cicero classifies justice and beneficence as two different parts of the virtues of sociability; whereas justice is

¹⁴ My allusion to the doctrine of "Responsibility 2 Protect" (a contemporary justification of humanitarian intervention) is intended; as Schofield (2021, 165) notes, all doctrines of humanitarian intervention ultimately stem conceptually (and also historical, in the works of modern natural lawyers like Grotius and Puffendorf) from Cicero's account of justice in *On Duties*.

¹⁵ See further 1.23, 3.74, others?

concerned especially with the question of harm, beneficence (and liberality) are generally concerned with the reciprocal exchange of “kindnesses” or “favors” (Latin). Although there are duties of beneficence that are fundamentally partial (which I will examine below), Cicero does identify a duty of beneficence that we owe universally to all human beings as such. He describes the duty as follows:

T7: The most widespread fellowship existing among men is that of all with all others. Here we must preserve the communal sharing of all the things that nature brings forth for the common use of mankind...The things that are common to all men seem to be of the kind that Ennius defines in one case, from which we can extrapolate to many cases. ‘A man who kindly shows the path to someone who is lost lights another’s light, so to speak, from his own. For his own shines no less because he has lit another’s.’ With this one instance, he advises us that if any assistance can be provided without detriment to oneself, it should be given even to a stranger....But since the resources of individuals are small, but the mass of those who are in need is infinitely great, common liberality must be measured according to the limit laid down by Ennius, that his own light shine no less; then we shall still be capable of being liberal to those close to us. (*Off.* 1.51–52)

Although Nussbaum (and others) will object that Cicero’s universal beneficence or liberality is insufficient, note first that the duty is truly universal, demanded even of an unknown person or stranger (*ignoto*). One cannot deny assistance to another on the basis of familiarity or partiality. Secondly, note that the goods that Cicero has in mind are generally “common” or “public” goods (he mentions specifically the sharing of clean water and energy sources, like fire from another’s fire). One can certainly imagine “public goods” like clean air or renewable energy sources that could be included within Cicero’s universal beneficence.

Rather clearly, impartial duties constitute an important component of Cicero’s *On Duties*. They seem to stem from Stoic notions of universal humanity in which all humans are cosmopolitans, namely fellow citizens of the cosmos (rather than citizens of specific political,

territorial, or linguistic groups) and are grounded in human rationality and natural sociability. The responsibility to protect and universal beneficence impose significant expectations upon us—expectations that are perhaps less stringent than those of contemporary philosophers, but which are largely unprecedented within the ethical and political theories of classical antiquity (except for the school of Stoicism). As Atkins (1990) notes,

If the virtue of justice matters because the just man has a healthy a virtuous soul, as is the case with the justice of the fourth book of Plato's *Republic* or of the early Stoa, then there seems no good reason to be specifically concerned with another's unjust activity. If, however, someone values justice precisely because it preserves and strengthens society, then he will be concerned not only that he himself act justly, but also that others do; indeed, his acting justly will involve his helping to ensure that others do so too. (267–268)

If Atkins is right, then Cicero's incorporation of a responsibility to protect others as a duty of justice is a truly novel theoretical twist in his account of duties.

Part II: Apparent partiality in Cicero's theory of duty (*officium*)

The first part of my paper makes clear that Cicero's theory of duty clearly draws upon the framework of an ethics of impartiality. And yet at the same time, Cicero's theory of duty exhibits aspects of what looks like partiality with respect to one's self, one's family, and one's political community. Although we owe the stranger assistance with communal goods, like access to running water or sage advice, Cicero also claims that "were there a comparison, or competition, as to who ought most to receive our dutiful services, our country and our parents would be foremost; for we are obligated to them for the greatest kindnesses" (*Off.* 1.58). At first glance, Nussbaum appears correct to claim that Cicero's cosmopolitan theory of duties is at odds with the partiality that he quite explicitly endorses. In this part of the paper I would like examine how

Cicero deals with the issue of partiality in three separate cases, namely that of the self, the family, and one's political community.¹⁶ Once we have a clearer understanding of how Cicero mixes partial and impartial elements into specific domains within his theory of duty we can then evaluate more accurately the coherence of Cicero's theory.

Partiality and the self in Cicero's theory of duty

Cicero's theory of duty is grounded in the assumption that

T8: From the beginning nature has assigned to every type of creature the tendency to preserve itself, its life and body, and to reject anything that seems likely to harm them, seeking and procuring everything necessary for life, such as nourishment, shelter and so on. (*Off.* 1.11)

What Cicero seems to have in mind is the Stoic doctrine that "all by nature have self-love" (*Fin.* 4.32]) from which follows our initial duty, which is "to preserve oneself in one's natural constitution" (*Fin.* 3.20).¹⁷ But although humans are hard-wired, as it were, to be concerned about ourselves individually, Cicero also believes that "we are not born for ourselves alone, to use Plato's splendid words, but our country claims for itself one part of our birth, and our friends another" (*Off.* 1.22).¹⁸ Humans are fundamentally social and indeed, *On Duties* claims that

T9: It is not true, as some claim, that men embarked upon communal life and fellowship in order to provide for life's necessities just because we could not manage, without others, to provide ourselves with our natural requirements. In that case, if everything needed for sustenance and comfort were provided by a magic wand, so to speak, then any talented man would drop all his business and

¹⁶ For reasons of space I omit discussion of Cicero's account of impartiality and partiality in the case of friendships, although I note that in both his essay on friendship and *On Moral Ends*, Cicero places duties to the republic above those to friends (see *Am.* 56–61, *Fin.* 3.71). See further Lockwood (2019).

¹⁷ Cicero uses the language of self-love (*se diligo*) explicitly at *Fin.* 3.16; see also *Fin.* 5.24, 5.27–30, and 5.61. REF: Doctrine of self-love/cradle argument contra Epicureans.

¹⁸ NOTE: problem of attributing *oikeiosis* to *De Officiis* see Atkins (1990) vs. Reydams-Schils (2002) and (2022).

immerse himself completely in learning and knowledge. But it would not be like that: he would flee from loneliness, seeking a companion for his studies; he would want both to learn and to teach, both to listen and to speak. (*Off.* 1.158)¹⁹

As Reydams-Schils (2022) notes, Cicero appears to be making use of two doctrines from Stoicism: both that we have a fundamental love for ourselves and that we are naturally sociable creatures who crave the community of others. Such sociability naturally interests us in the interests of others for their own sakes.

Nonetheless, Cicero also recognizes that we can “love ourselves too much”; he writes that

T10: we shall now be able to judge with ease what is our duty on each occasion—that is, if we do not love ourselves too much (*nosmet ipsos valde amabimus*). For it is difficult to be concerned about another’s affairs (*rerum alienarum*)....we do tend to notice and feel our own good and bad fortune more than that of others, which we see as if a great distance intervenes; accordingly, we do not make the same judgments about them and about ourselves. It is good advice therefore that prevents you from doing anything if you are unsure whether it is fair or unfair. For fairness shines out by itself, and hesitation signifies that one is contemplating injustice. (*Off.* 1.29–30)

Clearly, Cicero agrees with the descriptive claim that humans are partial to their own interests. But the theory of duties supplies normative guidance about what impartiality demands. Cicero’s position on partiality to self emerges most clearly in his casuistical discussion of the formula that rules out benefiting from another’s disadvantage. He takes up two scenarios in which the honorable and the beneficial appear to be at odds: First, whether a corn merchant has an obligation to disclose market information that will result in a lower price to his buyers, and second, whether a home owner has an obligation to disclose structural damages to the house’s

¹⁹ REF: displacement of wisdom in de officiis and cicero’s answer to philosopher kings. See further Reydams-Schils (2022).

potential buyers (*Off.* 3.50–57). Cicero composes the scenarios as if they were a debate between the Stoic philosopher Diogenes of Babylon (who argues against disclosure) and his student Antipater (who argues for disclosure): whereas the former argues from premises of self-interest, the latter argues from premises about human fellowship and common benefit.²⁰ But Cicero concludes both debates by claiming that the formula requires disclosure; here is his reasoning:

T11: Well then: it seems that the corn dealer ought not to have concealed anything from the Rhodians, nor the seller of the house from its buyers. For it is not concealment to be silent about anything, but when you want those in whose interest it would be to know something that you know to remain ignorant of it, so that you may profit. Who cannot see what this kind of concealment is like, and what sort of man practices it? Certainly not one who is open, straightforward, well bred, just or good; but rather a twister, mysterious, cunning, tricky, ill-intentioned, craft, roguish, and sly. Surely it is not beneficial to subject oneself to all these allegations of viciousness and many others? (*Off.* 3.57)

The key to Cicero's determination, as Atkins 1989 notes, is the question of whether the seller is silent "deliberately in order to profit at another's expense" (121 n. 1). Non-disclosure is dishonorable, and thus not beneficial, when its purpose is to generate an unfairly high price that profits the seller and disadvantages the buyer.

But such non-disclosure comes with a significant trade off: one who practices such non-disclosure develops a negative reputation and is incapable of living his choices, as it were, out in the open. The selfishness of such partiality is correctly perceived as greed, which makes it very difficult for the non-discloser to operate in the open society that his or her sociability craves.²¹

²⁰ REF: Annas v. Schofield on the characterization of Diogenes of Babylon.

²¹ REF: Woolf (2015) on ethics of openness. Cicero cites with approval Chrysippus' claim that life is a running race in which one strives to succeed, but tripping or pushing fellow competitors is forbidden (*Off.* 1.42).

The combination of self-love and sociability produce a harmonizing effect between partiality and impartiality. In financial transactions, I fully disclose information detrimental to my interaction to avoid the negative reputation that impedes my sociability.²² In sum, Cicero's theory of duty has a clear and consistent solution to the phenomenon of partiality towards one's self.

Partiality and the family in Cicero's theory of duty

Cicero claims not only that self-love is natural, but that the drive to procreate "is by nature common to all animals" and thus produces "the first fellowship within marriage itself, and the next with one's children" (*Off.* 1.54).²³ Although self-love and family are thus natural, the familial fellowship adds something radically new, namely it puts one in relationship to others and generates obligations to those others. More specifically, in the case of justice:

T12: The same nature, by the power of reason, unites one many to another for the fellowship both of common speech and of life, creating above all a particular love for his offspring. It drives him to desire that men should meet together and congregate, and that he should join them himself; and for the same reason to devote himself to providing whatever may contribute to the comfort and sustenance not only of himself, but also of his wife, his children, and others whom he holds dear and ought to protect. (*Off.* 1.12)

Justice imposes the impartial duty to protect anyone from wrong, in so far as one is able; but it also imposes a more stringent and partial duty, namely the duty to protect specifically and especially those with whom one shares a fellowship. Partiality and impartiality coexist, side by side.

The co-existence and adjudication of partial and impartial duties is most clear in Cicero's particularist account of promise-keeping. Cicero appears to claim that all duties are situational or

²² Cicero's example recollects that of Kant's "prudent merchant" (Gr. I: AK 397–398).

²³ Cicero asserts the naturalness of the familial fellowship also in *Fin.* 3.62 and **de amicitia XX.**

context dependent.²⁴ Thus, although it is true that justice requires that we keep our promises (*Off.* 1.23), Cicero also claims that

T13: Therefore promises should not be kept if they are disadvantageous to those to whom you made them. Nor, if they harm you more than they benefit the person whom you have promised, since it is not contrary to duty to prefer the greater good to the lesser. For example, if you have made an appointment to appear for someone as advocate in the near future, and in the meantime your son had fallen seriously ill, it would not be contrary to your duty not to do as you had said. (*Off.* 1.32)

On a general level, Cicero evaluates duties from the perspective of their common benefit. Thus, keeping a promise—like returning a weapon to a crazy person—is wrong if fulfilling the duty is ultimately detrimental or harmful.²⁵ Cicero’s claim that a promise is non-binding in the case of its harm seems an extension of the impartial duty not to harm another. But in Cicero’s example above, promise keeping is viewed through the lens of one’s partial duties. Failing to serve as one’s attorney may have harmful consequences for one’s client, but the presumption is that such harmful consequences are outweighed by the obligation to care and protect one’s sick child. The basis for breaking the promise is not that “any someone” is sick, but because one’s own child is sick and one has special duties to protect one’s children and family members more generally. Here we seem to have a partial duty that trumps an impartial duty. Although benefiting from wronging someone else is always wrong, regardless of whether that someone else is family, fellow citizen, or a stranger (3.28), the duty to protect others from harm becomes more stringent the closer one is to the person being threatened.

²⁴ REF: rules and judgments in Cicero (Inwood, Woolf, Schofield, Visnjic.

²⁵ NOTE: difference between appropriate action and right action.

Cicero also ascribes partial duties within the framework of liberality or beneficence. As noted in the first part of my paper, Cicero identifies the impartial duty of general liberality: one must aid a stranger if such aid comes at no cost to oneself. Beneficence consists in a reciprocated relationship of benefits that can take the form of benefits from a benefactor and forms of gratitude from the beneficiary; but it can also consist in reciprocated benefits, for instance in the case of two friends who mutually and reciprocally benefit each other (*Off.* 1.55–56). Like all virtues, actions of beneficence are constrained by justice: the private property that Sulla and Caesar confiscated is theft, even if that property is redistributed to others (*Off.* 1.42–43).²⁶ Although benefits should be distributed in part according to need, Cicero insists that they should be distributed primarily in terms of *dignitas* or “standing.” Thus Cicero writes that

T14: in granting favors, on the other hand, and in requiring gratitude, the most important function of duty (if all else is equal) is to enrich above all the person who is most in need of riches. But people generally do exactly the opposite; for they defer above all to him from whom they expect the most, even though he does not need them. Also, the fellowship between men and their common bonding will best be preserved if the closer someone is to you the more kindness you confer upon him. (*Off.* 1.49–50)

But after Cicero outlines the different forms of human fellowship—between fellow human beings, fellow race or languages, fellow citizens, fellow city-dwellers, friends, and family members (both immediate and extended)—he imagines a comparison or “competition” as to who ought most deserve our benefits or favors; he answers that

T15: were there a comparison or competition as to who ought most to receive our dutiful services, our country and our parents would be foremost; for we are obliged to them for the greatest kindnesses. Next would be our children and our whole household, which looks to us alone and can have no other refuge. Then our

²⁶ NOTE: Long (1995) on private property a function of critique of Caesar’s property confiscations.

relations, who are congenial to us and with whom even our fortunes are generally shared. Therefore whatever is necessary to support life is most owed to those whom I have just mentioned; on the other hand a shared comfort, and sometimes even reproofs, flourish most of all in friendships; and friendship is most pleasing when it is cemented by similarity of conduct. (*Off.* 1.58)

How can Cicero justify such clear instances of partial duties weighted towards those who are closer relations to us?

As noted above, beneficence must be understood within the framework of reciprocity. As T15 notes, the paradigm case of reciprocal beneficiaries is the case of two friends, a point that Cicero echoes in his essay on friendship. But in the case of parents and one's family, we have asymmetrical benefits.²⁷ Parents bestow life upon and care for their children, and thus their grown children have the obligation to reciprocate those benefits to the extent that they are able. But in the case of one's children or one's household, and an adult stands in a different relationship, not only as the benefactor—but more importantly—as the children's provider and protector. As T15 notes, children and members of one's household "look to us alone and can have no other refuge." Beneficence is in an important sense a zero-sum game: the benefits that I bestow upon party A are unavailable to bestow upon party B. Cicero's intermingling of justice and beneficence is explicit:

T16: The second need for caution is lest one's kindness exceeds one's capabilities. For those who want to be kinder than their possessions allow first go wrong by being unjust to those nearest to them; they transfer to strangers resources which would more fairly be provided for, or left to, them. (*Off.* 1.44)

²⁷ Siblings have symmetrical obligations: Cicero explicitly condemns Romulus for violating his family obligation (*pietatem* [*Off.* 3.41] when he killed his brother Remus.

In a pre-modern society lacking any rudimentary form of social-welfare net, those who are dependent or needy look first and foremost to their family members, especially their parents, who have an obligation of justice to care and protect them from harm.²⁸ We clearly have impartial duties not to harm others and to benefit others insofar as we are able without depleting our own resources. But Cicero also clearly believes that we have partial duties to protect and benefit those who are primarily dependent upon us and who have a just claim to our support and protection. In the case of the protection and care we owe others, duties that appear to be partial trump those that are impartial.

Partiality and the republic in Cicero's theory of duty

As T15 makes clear, within the “competition” of beneficence, the republic comes first. Thus, scholars have long recognized that Cicero espouses a form of “patriotic cosmopolitanism” that embraces both universal and impartial duties and those that are partial to one’s own political community.²⁹ Such patriotic obligations ultimately trump even one’s familial obligation to one’s parents. As noted in the introduction of my paper, one of Cicero’s casuistry examples concerns the duty that a son owes a father who exhibits tyrannical aspirations (which he presents in dialogue form):

T1: ‘Suppose that a father despoil a temple or dig a tunnel to the treasury, will his son denounce him to the magistrates?’

‘That would be impious (*nefas*). He should rather defend his father if he is charged.’

‘Does one’s country not, then, take precedence in all duties (*patria praestat omnibus officiis*)?’

²⁸ REF: *Off.* 2.72–85 re benefits to nation, but no taxation or violation of private property. Quote Atkins (1990) on gap between our notion of virtues and Roman notion of beneficence.

²⁹ REF: Appiah (2006), Atkins (2022), Atkins (forthcoming), and Brown (forthcoming) on patriotic cosmopolitanism.

'Yes, indeed. But it actually assists one's country to have citizens who revere their parents.'

'And if a father should try to impose a tyranny, or to betray his country, will the son keep silent?'

'He will beseech his father not to do it, and if he has no success, he will rebuke him and threaten him. In the last resort, if the affair would lead to the ruin of his homeland, he will put the fatherland's safety before that of his father (*patriae salutem anteponet saluti patris*).'³⁰ (*Off.* 3.90)

For a son, familial piety consists in revering, supporting, and even defending a parent's unjust actions on the general grounds that such piety is generally beneficial to one's political community, since as the quote shows, such piety "actually assist's one's country." But such piety appears partial because it appears to place loyalty above legality and in Cicero's example, even to defend theft. But according to Cicero's theory of morally justified tyrannicide, tyranny is the death of a republic and killing a tyrant is both generally beneficial and honorable, even if involves not only homicide but also patricide.³⁰ Filial piety, in the extreme case of tyranny, is trumped by one's obligation to one's political community.

The gap between patriotism and cosmopolitanism is most clear if we consider the nature of the "common advantage" which justice obligates us to seek (*Off.* 1.22). In *On Moral Ends*, Cicero has Cato espouse the orthodox Stoic view of the cosmopolis or universal city. Cato claims that

T17: The Stoics hold that the universe is ruled by divine will, and that it is virtually a single city and state shared by humans and gods. Each one of us is a part of this universe. It follows naturally from this that we value the common good more than our own. Laws value the welfare of all above the welfare of individuals. In the same way one who is good and wise, law-abiding and mindful of civic duty, considers the good of all more than that of any particular person including oneself. Even to betray one's country is no more despicable than to neglect common

³⁰ REF: JC and tyrannicide. See further Atkins (1991), Long (1995), and Schofield (2021).

advantage and welfare for the sake of one's own. (*Fin.* 3.64; cf *Leg.* 1.18–32, *Rep.* 3.33–41)

Cato's report clearly envisions a cosmopolitan community in which all humans are equal and a utilitarian calculus is not delimited to one particular political community but embraces the universal city of humans and gods.

Contrast Cato's cosmopolis with another casuistical example from *On Duties* 3:

T18: 'If a foolish man in a shipwreck seizes a plank, will the wise man wrest it from him if he can?'

'[Hecaton] denies that, because it would be an injustice....'

'Well, suppose there is one plank and two sailors, both of them wise men. Would each of them grab it for himself, or would one give in to the other?'

'One should give in to the other, that is, to the one whose life most matters for his own or the republic's sake (*vel sua vel reipublicae causa*).'

'What if such considerations are equal for both?'

'There will be no contest, but one will give in to the other as if losing by lot, or by playing odds and evens.' (*Off.* 3.89–90)³¹

Stealing a plank to save oneself while drowning from another clearly violates the formula: the advantage accrues to me because I harm another (even if that other person is foolish and only grabbed the plank minutes before). But, if e.g. a political community's sole doctor took the plank to provide for the medical care of the doctor's political community, then the doctor's existence contributes to the common good of that community and thus, according to the formula, is a permissible action. Although the example employs a quasi-utilitarian calculus, the denominator,

³¹ At *Off.* 3.30 Cicero considers a similar example: would a wise man, dying from hunger, steal food from another? Cicero answers that if the theft is solely for your own benefit, then it violates the formula; but this time he claims that "if you are the kind of person who, if you were to remain alive, could bring great benefit to the political community and to human fellowship (*multam utilitatem reipublicae at que hominum societati*), and if for that reason you deprive someone else of something, that is not a matter for rebuke."

as it were, is just one political community—not the universal community of human fellowship. Which community does Cicero have in mind in *On Duties*? He seems split.³² In Cicero’s discussion of the virtue of justice, when he discusses the “common stock of things that benefit everyone” (*communes utilitates* [1.22]) like the common goods that we owe to even strangers, then he seems to have a cosmopolitan common good in mind.³³ But when Cicero discusses courage or greatness of spirit, a virtue which subordinates one’s own advantage to the common benefit, his Roman exempla clearly are acting on behalf of the good of Rome, not the cosmopolis.³⁴

But even within such a patriotic framework, Cicero recognizes cosmopolitan obligations that we owe non-citizens, including—more specifically—“foreigners” (*peregrini*) or non-citizens seeking to perform commercial functions within Rome. As noted previously, Cicero explicitly rejects the claim that the formula that forbids benefit at another’s cost applies only to fellow citizens and not to foreigners (*Off.* 3.28). Although non-citizens residing in Rome are denied the right to participate in the public business of the state, nonetheless Cicero claims that

T19: Nothing cruel is in fact beneficial; for cruelty is extremely hostile to the nature of man, which we ought to follow. They act badly who prevent foreigners from enjoying their city and banish them; Pennus did this in our fathers’ time, and Papius recently. It is right not to allow one who is not a citizen to act as a citizen:

³² As are commentators. For instance, Atkins (1990) and Long (1995) take *On Duties* to eschew cosmopolitan duties like those described in *On Moral Ends*. By contrast, Nussbaum (2019), Reydams-Schils (2022), and Brown (forthcoming) take Cicero to be articulating universal cosmopolitan duties.

³³ See, for instance, *Off.* 1.22, 1.31, 1.51; cf. 3.26. In the debates between Antipater and Diogenes of Babylon, Antipater appears to invoke the common benefit of the cosmopolis (e.g., 3.52, 3.55).

³⁴ See, for instance, *Off.* 1.62–63, 1.83, 3.24; cf. 3.28. Cicero also recommends Plato’s advice in the *Republic* about the obligation to benefit the entire polis, an example which clearly speaks of a political community rather than the cosmopolis (1.85). Cicero wryly notes that dancing openly by daylight in the forum for a million sesterces is not dishonorable for a wise man, as long as he contributes the money to the republic to meet some important contingency (*Off.* 3.93).

the wisest of consuls Crassus and Scaevola carried that law. However, to prevent foreigners from enjoying the city is surely inhuman. (*Off.* 3.46–47)³⁵

Another striking example of impartial duties is Cicero’s recognition of obligations within the framework of armed conflict, namely that of “just war” (*iura belli* [*Off.* 1.34–41]).³⁶ Cicero recognizes obligations to enemies during wartime, including restrictions on nefarious forms of warfare (for example, the use of poison), the treatment of civilian populations, and showing quarter and mercy to combatants who surrender. At the same time, he describes war as a contest for glory and praises Rome’s extended network of allies, which he characterizes as a “protectorate” rather than an empire.³⁷ Once again, we find Cicero mixing notions of apparent partiality and impartiality alongside each other: one’s ties and obligations to fellow citizens are weighty, but it does not follow from that that one has no obligation to non-citizens, including one’s enemies across the battlefield.

Part III: The coherence of Cicero’s ethics of partiality

Although the first part of my paper documented the clearly impartial elements within Cicero’s theory of duty—for example, his duties of non-harm, responsibility to protect, and common liberality—the second part of my paper documents that Cicero identifies a number of apparently partial duties, often co-existing alongside examples of impartial duties. As noted in the introduction to my paper, Martha Nussbaum and Richard Kraut, two major scholars of ancient

³⁵ On the ethical or political status of foreigners, see *Off.* 1.124, 1.149, and 2.64.

³⁶ A full account of Cicero’s philosophy of just war goes beyond the limits of this paper, but I have dealt with the subject at length in Lockwood (forthcoming). See also Atkins (forthcoming).

³⁷ See *Off.* 2.26–7, 2.85. Cicero’s characterization of the Roman empire as a protectorate (*patrocinium*) prior to Sulla is controversial, to say the least.

social philosophy have interpreted the evidence of partiality and impartiality in opposite fashions: whereas Nussbaum finds incoherence in Cicero's asymmetrical treatment of the duties of justice and beneficence, Kraut argues that Stoic impartiality can appeal to the common benefit to justify partial social arrangements without any inherent incoherence with respect to other impartial social arrangements. Let me review their arguments and explain why although I think Nussbaum has her finger on a major problem in contemporary social philosophy, I think Kraut provides a more accurate interpretation of Cicero's treatment of partiality in *On Duties*.

Although Nussbaum has much praise for Cicero's *On Duties*, she blames the work for establishing an asymmetrical relationship between "duties of justice" and "duties of material aid," a relationship that has undermined the conceptualization of transnational obligation towards those in need of development and basic goods such as clean water, health services, and adequate nutrition. On her reading, the general line that Cicero takes is that

T20: duties of justice are very strict and require high moral standards of all actors in their conduct across national boundaries. Duties of material aid, however, allow much elasticity, and give us a lot of room to prefer the near and dear. Indeed, Cicero thinks that we positively ought to prefer the near and dear, giving material aid to those outside our borders only when that can be done without any sacrifice to ourselves. (2019, 20–21)³⁸

To translate slightly: what Nussbaum calls "duties of material aid" are the reciprocal obligations that Cicero calls "beneficence" or "liberality," which I examined in the second part of my paper. What she calls "duties of justice" is a subsection of the duties of justice that I examined in the

³⁸ Although Nussbaum (2019) is a book-length study of cosmopolitanism that goes far beyond Cicero, its second chapter often repeats material from Nussbaum (2000). Nonetheless, I cite the 2019 version for ease of reference.

first part of my paper, primarily the obligation of promise keeping with one's enemies during armed conflict (viz., a "trans-national" obligation between warring parties). To be clear, to treat justice as if it only concerned transnational obligation or to view liberality as "material aid" rather than reciprocated giving or benefacting is not an entirely accurate reading of Cicero's *On Duties*. Nonetheless, I think Nussbaum is on to an important distinction that resonates in western society. If combatants of the Russian Federation torture, execute, and rape the non-combatants of Bucha or Izium Ukraine, we view those acts as war crimes that not only violate the four Geneva Conventions (to which the Russian Federation is a signatory party), but that are fundamentally immoral or in Cicero's words, dishonorable. But if monsoon rains destroy hundreds of thousands of dwellings in Pakistan, we view those events as deprivations or a natural disaster that—in so far as we are generous or charitable—individuals should aid individually, regardless of the efforts of non-governmental organizations or the rescue efforts of the Pakistani government. If an individual fails to donate to rescue efforts in Pakistan, one might view that individual as uncharitable, but the framework of international obligations denies that such an uncharitable person has committed a wrong. I think Nussbaum accurately depicts the conceptual gap that currently exists in our understanding of transnational moral obligations. I am less convinced that we can lay the responsibility for such a gap on Cicero's account of justice and liberality in *On Duties*.

Since Nussbaum's analysis of Cicero's account of justice and material aid (2019, 24–33) covers much of the same terrain as parts I and II of my paper above, I will not restate her exegetical points that coincide with my analysis in those sections. Nonetheless, I offer two points

of exegetical clarification. First, on her reading “Cicero’s duties of justice are fully global. National boundaries are morally irrelevant, and Cicero sternly reproves those who think them relevant” (2019, 29–30). No doubt, at *On Duties* 3.21–22 and 3.27, Cicero clearly describes the formula—that one cannot benefit from another’s injustice—as transnational and he does indeed criticize those who view the formula as applying only to family or fellow-citizens (as I discussed above in Part I of my paper). But her depiction of all duties of justice as universal, exceptionless, and fully cosmopolitan goes substantially beyond what I have shown above in Cicero’s discussion of obligations towards self, family, and most importantly, towards one’s political community.

Secondly, on her reading

Cicero proposes a flexible account that recognizes many criteria as pertinent to duties of aid: gratitude, need and dependency, thick association—but which also preserves a role for flexible judgment in adjudicating the claims when they might conflict. We have a great deal of latitude in considering the cases. What is clear, however, is that people outside our own national always lose out. (2019, 33)

Although Nussbaum acknowledges that gratitude is a criteria of mutual aid, missing from her account is any sense that Cicero’s notion of benefice is grounded in reciprocity between benefactor and beneficiary.³⁹ As I have documented in the second part of my paper, underlying Cicero’s account of beneficence is the assumption that our “gifts” or “gratitude” towards others are structured around the “gifts” and “gratitude” that we have received from them. Although

³⁹ Atkins (1990) notes that “We, who live in a society that stresses the impartiality of justice and is suspicious of favoritism in public life, would tend to contrast our version of the two virtues [of justice and beneficence]; Cicero’s society, however, was bound together by a network of relationships of service, protection, kinship and affection, and by the social rules that govern these” (266).

Cicero's account of beneficence includes his famous discussion of the "natural principals of human fellowship and community" (*Off.* 1.50–57), it is preceded by an extensive discussion of the reciprocal relationship between granting favors and requiting gratitude (*Off.* 1.46–49). No doubt, need is part of that equation; as Cicero notes, "you should assist your neighbor sooner than your brother or companion in gathering the harvest; but you should in a suit in the lawcourts defend a relative or friend rather than your neighbor" (*Off.* 1.59). But one aids a brother, companion, neighbor, or friend precisely because in those roles have those persons come to one's aid. Within such a framework of reciprocity, there is a very good reason I aid my neighbor more than a stranger living across the globe, which is that my neighbor is far more likely to assist me when I am in need.⁴⁰

Having noted those exegetical omissions in Nussbaum's analysis of Cicero's *On Duties*, let me consider her critique of Cicero's position and try to restate what I take to be her two main arguments against the asymmetrical characterization of justice and beneficence:

A1: Cicero is the source of a tradition that distinguishes duties of justice as impartial, strict, exceptionless norms from duties of material aid, which are partial, flexible, and admit of exceptions. (2019, 24–33)

A2: Cicero downplays the significance of material aid because he embraces the strict Stoic view that external goods have little to no bearing upon our well-being, which lessens the importance and rigor of duties of material aid. (2019, 34–35)⁴¹

⁴⁰ Kant's account of the imperfect duty to aid others is grounded on precisely the same reciprocity: his claim is that the proposition denying aid to one in need is capable of universalization (Gr. II, AK: 423).

⁴¹ Nussbaum presents a cluster of arguments that presuppose the correctness of A2, for instance that Cicero's distinction between duties of justice and material aid is internally incoherent because justice is an external good that carries with it administrative costs and thus is as

I take it that argument A1 is relatively clear based on my restatement of Nussbaum's position. But let me contextualize argument A2. Orthodox Stoicism claims that virtue is the only good and that external goods, such as property, bodily health, material goods, and esteem of others are unnecessary for one's happiness; rather, such goods are entitled "indifferents" (since they are not necessary for happiness), although they can be preferred or dispreferred.⁴² Nussbaum claims that Cicero's account of the duties of material aid presuppose such an orthodox view and results in the position that

If people are really good they do not mind the loss of externals, so, by implication, if they do mind them that shows they are morally defective. That does not mean that we should not aid them—but it does color our sense of why that aid is needed, and what its limits may be. (2019, 35)

By contrast, Nussbaum rejects Stoic orthodoxy concerning external goods; she notes that

Poverty is just an external: it does not cut to the core of humanity. But of course it does. The human being is not like a block or a rock, but a body of flesh and blood that is made each day by its living conditions. Hope, desire, expectation, will, all these things are shaped by material surroundings. People can wonderfully rise about their conditions, but that does not mean that the conditions themselves are not important, shaping what they are able to do and to be. (2019, 39)⁴³

expensive as duties of material aid (2019, 36–39). But since I believe that A2 is unsuccessful, I also believe those other arguments lose their force.

⁴² My summary of Stoicism derives from the account that Cicero attributes to Cato in *On Moral Ends* (3.22–61), especially the account of wealth as a "preferred indifferent" (3.49–50). Needless to say, I simplify what is a very complex debate that ranges throughout different generations and philosophers of the Stoic school. Woolf (2015, 152–155) summarizes the relevant passages from *On Moral Ends*.

⁴³ Nussbaum's claim about poverty is an excellent précis for her capabilities approach, which she discusses further in relationship to Cicero (2019, 236–245)

In sum, Nussbaum embraces the cosmopolitan impartiality of orthodox stoicism but rejects its account of the good and its disvaluation of external goods.

How would Cicero (or one of his defenders) respond to Nussbaum? Let me first speak to A1, namely Nussbaum's characterization of Cicero's position as making a fundamental distinction between the impartial, strict, and exceptionless duties of justice and the partial, flexible, and variable duties of material aid. First, as noted in the second part of my paper, Cicero's actual treatment of self, family, and country is a far more nuanced mix of partial and impartial elements existing side-by-side. Although there are passages, like those that Nussbaum cites, that present the formula or the common benefit as strictly cosmopolitan, there are many other passages that exhibit "patriotic cosmopolitanism," namely that some duties are oriented towards others as such, but many other duties are oriented towards others because of the ascribed and elective relationships that humans find themselves in.

Secondly, it is somewhat misleading to characterize the duties of justice as strict and exceptionless in contrast to elastic and flexible duties of material justice. Simply put, almost all of Cicero's duties are contextualized, situational, or particularized.⁴⁴ Nussbaum is right to note that the benefits of beneficence and liberality change with circumstances (*Off.* 1.59–60). But she omits Cicero's discussion of the same point within the framework of the duties of justice, in which he claims that

occasions often arise when the actions that seem most worthy of a just man, of him whom we call good, undergo a change, and the opposite becomes the case. For example, from time to time it becomes just to set aside such requirements as

⁴⁴ See further Inwood (1999, 124–126), Woolf (2007, 330 n. 20), and Schofield (2021, 194–196).

the returning of a deposit, or the carrying out of a promise, or other things that relate to truth and to keeping faith, and not to observe them....Such actions alter with the circumstances, and duty alters likewise, and is not invariable. (*Off.* 1.31)

Nussbaum is right to note that Cicero places special emphasis on the case of Regulus, who abides by the promise that he made to the Carthaginians even though it results in his death (2019, 183, 185). But the case of Regulus, which Cicero details at length (*Off.* 1.39, 3.99–111), appears to be an outlier in need of its own explanation.⁴⁵ Cicero has no problem claiming that one can break one's words during hostilities with brigands because they are not "a proper enemy" (i.e., the fail to fall under the definition of legal combatants). But that it just to say that during armed conflict, promise-keeping needs to be adapted to circumstances.

Let me turn to argument A2, namely Nussbaum's claim that Cicero's depiction of duties of material aid as flexible and optional reflects his commitment to a strict Stoic interpretation of the good which dismisses material goods as dispensable and ultimately unnecessary for one's happiness. As Nussbaum notes admiringly in her original article on Cicero, *On Duties* was written at an extraordinary time, mere months following the tyrannicide of Julius Caesar and mere months until the murder of Cicero by henchmen of Marcus Anthony and it is hard to fault the work for exacting expectations of compositional completeness. Indeed, she writes that "one cannot help feeling respect for this statesman who was struggling to write philosophical advice while fighting for his life, and for this philosopher who was putting his life on the line for the republic" (2000, 180-81). Nonetheless, there is substantial textual evidence that goes against Nussbaum's claim that Cicero embraces some form of strict Stoicism. First, in several places *On*

⁴⁵ On the case of Regulus, see further Lockwood (unpublished).

Duties discusses the contrast between Stoicism and Peripatetic philosophy (namely, that of Aristotle) that lies at the basis of Nussbaum's claim. For example:

If we are born for honourableness and that should be sought alone (as Zeno held) or at least should be thought entirely to outweigh everything else (as was Aristotle's view) it is necessary that what is honourable is either the only good or the highest good; and whatever is good is certainly beneficial, and so whatever is honorable is beneficial. (*Off.* 3.35; cf. 1.6)

What Nussbaum calls "strict Stoicism" is what Cicero here characterizes as Zeno's view, namely that honorableness is the only good (and external goods are at best preferred indifferents). And yet, when Cicero introduces this distinction, he does so largely to downplay the difference between orthodox Stoicism and peripatetic philosophy and to invoke both schools in his account of duty (in opposition to Epicureanism). Further, there are numerous passages in *On Duties* that favorably invoke Peripatetic philosophers or their doctrines.⁴⁶ Indeed, the first book includes a discussion of "the kind of house of which I would approve for a man of the first rank who has achieved political honors" (*Off.* 1.138) within the framework of seemliness and the whole second book of the treatise concerns that which is beneficial, namely external goods such as glory, liberality, and health. Although preferred indifferents have a complex place within Stoicism, it is hard imagining Cicero devoting such extended discussion to an entire category of goods that he thought were irrelevant. But if Nussbaum's argument A2 is undermined, then the accusation of

⁴⁶ See, for instance, *Off.* 1.2, 1.6, 2.16, 2.8, 2.24, 2.56–60, 3.35. Of course, Cicero's son Marcus—the addressee of *On Duties*—is studying with the eminent Peripatetic philosopher Cratippus in Athens. It seems somewhat odd to think that Cicero is covertly trying to undermine his son's study of Peripatetic philosophy by secretly offering an account of duties based upon an orthodox Stoic view of the highest good.

internal incoherence—for example, that justice has aspects of an external good, such as administrative costs—also falls by the wayside.

By contrast, Richard Kraut has provided a quite persuasive way to understand apparent partiality in Stoic philosophy more generally (and Cicero's *On Duties* more specifically). Presented with the evidence of partial and impartial duties co-existing side by side in *On Duties*, Kraut writes that

T23: Should we accuse the Stoics of having accepted conflicting ideas, or can we find a way to acquit them of this charge? The answer is that they are innocent. We can say, on their behalf, that when we look at the universe from an impartial perspective, we find reasons for arranging human society in a way that charge us to favor certain people over others. The human community is best served, in other words, if we do not all aim to give equal attention to all its members, but specialize in attending to the well-being of this or that group or individual. (2017, 285)

The common benefit that I have examined above at length does the conceptual work that Kraut has in mind, not unlike a form of rule-utilitarianism. All (except perhaps Socrates and the Cynics) recognize that the family is a valuable social institution for the nurturing of incomplete humans. And yet, as Kraut notes,

T24: a rule that told parents to randomize, choosing indifferently between their own child and the child of a stranger, would obviously lead to great insecurity within the family. Children would know that when they are in danger their parents will be as likely to save a total stranger as them. The trust and security that are essential to good family would be endangered. (2017, 285)

Do we find Cicero making or implying similar arguments?

Kraut supplies the short answer: he uses Cicero's discussion of who should receive the plank following a shipwreck to show that Cicero is using a form of rule-utilitarian reasoning in his justification of leaving the plank to the person who is most beneficial to the community (see

above T18). But I think we find a quite similar form of reasoning in the passage with which I began my paper, namely the passage concerning whether filial piety entails that a son should fail to report the misdeeds of his father to the authorities (except in the case of tyranny). Let me recall the pertinent section of the text:

T1: 'Suppose that a father despoils a temple or dig a tunnel to the treasury, will his son denounce him to the magistrates?'
 'That would be impious. He should rather defend his father if he is charged.'
 'Does one's country not, then, take precedence in all duties?'
 'Yes, indeed. But it actually assists one's country to have citizens who revere their parents.' (*Off.* 3.90)

The dialogue between two philosophers imagines a reconstructed argument something like this:

P1: Familial piety produces reverent children who learn how to respect authority in a reasoned fashion.
 P2: Developing respect for authority promotes the common advantage of a political community.
 C1: Therefore, familial piety is generally beneficial and thus honorable.
 P3: But familial piety requires trust and loyalty from children towards their parents.
 P4: Making criminal accusations against one's parents undermines trust and loyalty between them and their children.
 C2: Therefore, familial piety requires that children do not make criminal accusations against their parents.

No doubt, one may criticize any of these premises in its details and I think it quite relevant that the argument includes the expectation that a child reasons with his father before the father enacts a tyranny. Nonetheless, Cicero's articulation of the argument makes quite explicit that the apparent partiality of defending the wrong-doing of a father presupposes something like P2. And as Jed Atkins notes, Cicero's "patriotic cosmopolitanism" presupposes a similar premise, justifying partiality to the *res publica* because "it is the social unit that is the primary focus for

meeting human needs” (forthcoming, 14). If Nussbaum’s interpretation of Cicero’s treatment of the duties of justice and beneficence is unpersuasive, then Kraut’s proposal for Stoic impartial arguments justifying partiality seems preferable way to argue for Cicero’s partial coherence.⁴⁷

⁴⁷ I am grateful to Eric Brown, Jed Atkins, and John Wynne for sharing with me drafts of their forthcoming work on Cicero’s *On Duties*.

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