

MORALITY: WHAT IN THE WORLD IS IT?

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ABSTRACT: Half a century ago, Elizabeth Anscombe reminded us that we of the West think of morality as a kind of *law*—viz., a moral law. As originally conceived, this law consisted of heavenly commands delivered to a favored clan and known only by the privileged few who could read sacred scripture. However, the history of philosophy has been largely a tale of attempts to show that a law-like morality is binding on all men everywhere and known, like the truths of arithmetic and logic, by an exercise of a priori reason. Yet, morality as everywhere practiced is neither divine commands nor universal principles of thought. Instead, it is variable customs worked out by the members of diverse groups to help them get along with each other while they serve their biologically based needs. These customs are taught using rewards and punishment, they are revealed by observing behavior, and they are evaluated by measuring how they contribute to group welfare and individual flourishing. It follows that if we want to understand our morality, and perhaps improve it, we must put behavioral science before theological speculation and economic analysis before utopian dreaming. In short, we must return to Earth.

Key words: morality, moral intuition, moral law, custom, reason, law, utility, Aquinas, Kant, Plato

The Law Conception of Morality

Some fifty years ago, in a now-classic condemnation of utilitarian moral theory, Elizabeth Anscombe castigated as not just misguided but also wicked the notion that the morality of a form of conduct can be measured by determining its utility, the balance of good over evil (Anscombe, 1958). Equating utilitarianism with parlous belief that you can justify punishing an innocent man if it will do more good than harm, Anscombe declared this idea to be evidence of “a corrupt mind.” In Anscombe’s contrary view, behaving morally is not doing good as that is determined using human standards; it is obeying divinely instituted moral law. Anscombe baptized this idea as “our law conception of morality.” The present essay consists of a summary history and criticism of this conception followed by an equally summary statement of a more empirical conception (for a more detailed treatment see Hocutt, 2000).

As Anscombe notes, the law conception of morality originated with that tribe of nomads for whom the Torah was a sacred book; but in the high Middle Ages,

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Anscombe's hero St. Thomas Aquinas, now the official philosopher of the Catholic church, followed the Roman Stoics in declaring moral law to be divinely made "natural law" and a norm valid for the conduct of rational beings everywhere. Following Aristotle, Thomas also declared prudence in serving one's God-given needs to be a virtue, and he did not deny that the benevolent deity who made "natural law" blesses with happiness those who obey it. But Catholic doctrine since St. Augustine had been that we must seek to do what pleases God in faith that things will work out for the best. So, Anscombe warns us not to conclude, with some misguided utilitarians, that we can discover God's law simply by finding out what pleases us or has results that please us.¹

One question that has baffled many a philosopher, including the present writer and most of Thomas's contemporaries, is whether the Aristotelian elements of this doctrine are congruent with its more dominant Platonic and Christian elements. The main problem is the obscurity and vagueness of the concept of natural law. According to Thomas, natural law for human beings is just our innate, because God-given, capacity for reason, the fundamental principle of which is the injunction "Do good and avoid evil." What is confusing about this veritable but vacuous piece of advice is that it is not we but God who determines what counts as good and evil, and who then makes the difference known to us through the medium of His church. So, although in theory we can know natural law by means of natural reason, or anyhow that portion of it which is sufficient for earthly happiness, in practice we might do better to rest on faith in the wisdom of the holy Catholic Church, especially if we also desire heavenly bliss.²

Unfortunately, declining faith in the wisdom and holiness of Aquinas's church eventually gave rise to Reformation doubts about its reading of God's will. Then, noticing that rational prudence can dictate violating or ignoring the imperatives of moral law, the Enlightenment philosopher Immanuel Kant took a new tack: He assayed to rationalize morality by redefining reason. It would no longer be analytical *Verstand*, the empirically based faculty for calculating means to personal ends that Aquinas had commended in the spirit of Aristotle. Instead, in the spirit of Plato, it would become intuitive *Vernunft*, the "higher" reason of an impersonal social principle. For Plato, as we shall see more fully later, that principle had been archetypal Justice, an other-worldly ideal—an *ens rationes*—that commanded rule

¹ Anscombe was right to attribute this understanding of utilitarianism to Henry Sidgwick, a devout Christian who took the benevolence of God to imply that we can use our happiness as a metric of His will (Sidgwick, 1981). As I show elsewhere, however, Jeremy Bentham, the atheistic father of utilitarianism, denied the reality of divinely made law so never claimed that its imperatives could be discovered using his "principle of utility." He merely wanted to use that principle in evaluating old and making new law (Hocutt, 2005).

² See Aquinas (1988). It was, of course, David Hume (1978) who first pointed out both the empirical meaninglessness of conceiving laws of nature as divine commands and the incoherence of treating something as both *natural* and a form of *law*, so at once descriptive of and prescriptive for behavior.

MORALITY: WHAT IN THE WORLD IS IT?

by philosophers. For Kant, it would be the Golden Rule of *New Testament* Christianity, which commands charity for your fellow man.

God's gift of autonomous wills capable of controlling desire rather than being ruled by it would make obedience to the Golden Rule possible; but what could make it rational? Kant's answer was that consistency is the first rule of reason, and there is no consistency, only contradiction, in doing to others what you would not want them to do to you. Kant evidently thought this argument dispositive, but it is patently fallacious. If I desire to steal your goods or rape your wife but do not want you to reciprocate, my attitude will doubtless be reprehensible, and proclaiming it or acting on it will be imprudent as well as immoral. However, there is *self-contradiction* in it only if I have agreed beforehand that I should do to you only what I could want you to do to me, which is the proposition that was in question. Immoral disregard of others is certainly condemnable, and it can in many cases be self-defeating, but it is not always and necessarily illogical or irrational. What is irrational is to do what you know will not only not serve your ends but might defeat them. Kant proved the contrary by presuming it—a nice example of circular reasoning.³

A lover of jargon that sounded precise but was merely opaque, Kant renamed the Golden rule the Categorical, then the Practical, Imperative. He then explained that it presupposes the equal and inherent worth—the “dignity” he called it—of all human beings, however degraded.⁴ Acknowledging that there is no proof of God's reality, Kant had promised to leave theology out of the discussion, but he was committed as a Christian to the proposition that even the most depraved human being is sacrosanct because created in God's image. So, never mind that human beings are unequal in every empirically determinate respect, and some are worthless or worse. Equal and inherent worth would be a postulate justified by Kant's Christian faith. Lacking empirical warrant for this postulate, Kant solved that problem by declaring it to be a truth of Pure Practical Reason on a footing with $2 + 2 = 4$. In his *Critique of Pure Reason* (Kant, 1964) Kant had called this sort of postulation a *transcendental deduction*, as if it were a special kind of proof. It was, in fact, an act of obscurantist redefinition; but to many it appeared to restore the authority of the Golden Rule, which was Kant's aim.⁵

³ It is likely that Kant did not notice the difference between the true claim that immorality can be *self-defeating* and the false claim that it is inherently *self-contradictory*; it was not a distinction known in his day, when standards of logic were looser. Conceivably, Kant might also have confused the Golden Rule, which commands treating others as you would *like* to be treated, with Tit for Tat, which recommends treating others as you *expect* to be treated. The former is a principle of Christian morality; only the latter is a candidate for a universal rule of practical reason (see Axelrod, 1984).

⁴ If memory serves, it was C. D. Broad who once quipped that “Kant contrived to be technical without managing to be precise.”

⁵ Kant's account of morality is in his *Critique of Practical Reason* and *Metaphysical Foundations of Morality* (Kant, 1949).

Kant's method set a pattern for subsequent philosophers. Even though most of them scorn the Pietistic Lutheran faith that had inspired it, they have continued to postulate an innate moral law that is supposedly discovered, like the axioms of logic, merely by thinking about it. As Jean Paul Sartre once caustically remarked, these philosophers still believe in a God-given moral law; they just no longer believe in the God who gave it. Yet Anscombe was right. A moral law without God to make and enforce it is a contradiction in terms, being an institution that nobody has instituted, regulations that do not regulate, requirements that are not required in practice, and obligations that people are not actually obliged to fulfill. The surprise is how many philosophers subscribe to this contradiction while failing to notice that, if moral law were like logic, it would, in Hume's words, be impotent to "move the will." Yet, belief in the power of abstract philosophical reflection to discover a moral law has, in some quarters, become an unacknowledged orthodoxy.

True, few philosophers outside of seminaries now talk of moral law. Even more anxious than Kant to distance themselves from the connotations of that theologically burdened term, they prefer the single word *morality*. However, this word is still meant to denote a universally binding set of moral commands. We are just forbidden to ask who issued these commands, how they are enforced, or why they should be obeyed; for when asked about moral law, these questions have only theological answers that have to be taken on faith. We shall see next, however, that the same questions have empirically verifiable answers when asked about the laws and moralities by which human beings actually live.

Customs Versus Utopias

As the much-maligned sophists of ancient Greece had pointed out over two millennia before Kant appeared on the scene, behaving *morally* is nowhere in the world a matter of obeying either a universal law or a universal principle of a priori reason; it is everywhere a matter of conforming to some particular group's mores. Furthermore, despite the wholly unjustified but widely accepted assumption of both Aquinas and Kant, behaving *rationally* is most certainly *not* acting, however consistently, to serve impersonal principle; it is doing what is calculated to achieve your personal ends.⁶ Since morality does always require giving weight to the ends and desires of one's fellows, clarity of thought requires distinguishing it from rationality. Let us agree, then, to put rationality aside for the duration of this essay, so that we might focus on morality.

What, then, is morality? Protagoras, the greatest of the Greek sophists, got the answer right when he argued that morality is social practices. Morality in the real world consists not of a priori principles but of customs and conventions, tacit understandings about what conduct will be accepted and what will not. Members

⁶ Personal ends must not be confused with selfish ends; you can aim at your own benefit or at the benefit of others. Contrary to a widespread misconception, rationality does not require unmitigated selfishness, but morality does require some degree of altruism.

MORALITY: WHAT IN THE WORLD IS IT?

of diverse groups, we human beings are each of us subject to rules made *by* our group *for* our group, so applicable *to* our group and no other. These rules, some more important than others, are not written down anywhere and, being ad hoc adjustments to contingent circumstances, are always unsystematic and ill defined; furthermore, they are subject to change. They exist, however, in the form of more or less regular practices reinforced by more or less effective sanctions. As B. F. Skinner once put it, they exist in the contingencies of reinforcement. Moralists are people who make a profession of abstracting these rules from these empirically determinate “contingencies” and touting them as matters of transcendent principle that originally issued, as it were, from the mouths of gods.

Because of the contingency and fallibility of these rules, we cannot discover them by thought alone or by using the test of utility. Instead, we learn our moralities by being rewarded for complying with them and punished for contravening them—methods that teach us to feel good when we “do the right thing,” guilty when we do not. Furthermore, our duty to obey these rules has nothing to do with culturally transcendent standards. Duty consists entirely in the fact that obedience to the rules is a condition of good standing in the group. We human beings are certainly rational animals, but we are even more fundamentally tribal animals; and while prudence is a dictate of reason, morality is largely tribal instinct and group custom. We are bound to it in the first analysis by a genetically based need for the approval of our fellows and in the final analysis by their coercion to behave as they desire—not, as Kant erroneously claimed, by choice of an undetermined will. In fact, as even the intellectually honest Kant admitted in the end, the idea of such a will is unintelligible.

It was Plato who first obscured all of this by drawing attention away from the real moralities of actual societies to an otherworldly standard that, according to him, only intellectuals like himself could know.⁷ Calling this standard Justice, Plato declared it justification for rule by philosophers and attributed to it two distinguishing features. First, he said, it is an ideal or archetype, not an actually existing entity. So, it is a prescription for, not a description of, behavior. In other words, it is a model for how human beings *ought* to behave, whether, in fact, they ever *do* so behave or not. Therefore, second, it can neither be known a posteriori, like the moralities of actual human societies, by observing behavior, nor discovered experimentally, by seeing what works best to achieve our various ends. Rather, it has to be discerned a priori, just by thinking, which is why only trained philosophers can know it. Ordinary men are too tied to their senses.

Since Plato invented this self-serving metaphysic, intellectuals have been in thrall to the delusion that privileged insight into a transcendent standard qualifies them to be, if not kings, at least advisors to holders of high office. The result has

⁷ It was also Plato who invented the idea of an autonomous will, though it was Augustine who made it a fixture of Christian dogma. Plato thought only a select few possessed the capacity for self control, while Augustine maintained that God had given this ability to everybody; some just don't use it.

been predictable. If we exclude such outliers as Machiavelli, Hobbes, and Nietzsche, social thought has consisted largely of utopian schemes woven out of the whole cloth of philosophical imagination and wishful thinking in disregard of the facts of human biology, the laws of economics, and the lessons of history. Thus, Plato's misnamed *Republic* (Plato, 1964) envisioned a military dictatorship run by intellectuals, Augustine's *City of God* (St. Augustine, 1948) described a social order peopled by Christian saints, Thomas More's *Utopia* (More, 2002) was a communist theocracy, and John Rawls's celebrated *Theory of Justice* (Rawls, 1971) is a proposal to order society according to a plan recommended on the improbable ground that we would accept it if we forgot everything that we know about ourselves and ignored everything that is important to us.

Defects of the Idea of Universal Morality

Unfortunately for these utopian projects, the idea of a universal standard for justice and morality has fatal philosophical flaws, not the least of which are its indeterminacy and subjectivity.

This universal standard is supposed to be everywhere the same, and its requirements are supposed to be evident to rational men everywhere. Yet every philosopher conceives it differently, according to his own preferences or his society's traditions. Thus, aristocrats favor rule by the few, democrats rule by the many; socialists want equality, capitalists freedom; Muslims approve of polygamy while Christians condemn it; and some think it fair to take from the haves to give to the have nots while others think it unfair to "take from the mouth of labor the bread it has earned." Such diversity of opinion does not comport with belief that there is a universal standard with requirements that are self-evident. A more plausible hypothesis is that belief in such a standard is an exercise in wishful thinking and special pleading.

That is problem enough, but there is an even more fundamental difficulty. A universal standard is an ideal, not a reality. It exists only in the minds of those who believe in it, which means that it does not really and truly exist. Plato obscured this fact by claiming that ideals are more real than their concrete counterparts, and this misconceived notion is repeated in Aquinas's declaration that human laws count as laws only to the extent to which they imitate divine law. The truth, however, is that the notion of an ideal entity is oxymoronic. The phrase "ideal X" is syncategorematic; in it, the word *ideal* is not an adjective designating a *kind* of X; its use is to indicate an *ideal for* X. Thus, a man with a real horse and an ideal horse does not have two horses; he has one horse and one ideal for a horse. Similarly, a polity with a real system of justice and an ideal one does not have two systems of justice; it has one system of justice and one ideal for a system. *Ideal* justice is no more a kind of *justice* than an *ideal* horse is a kind of a *horse*. In short, ideal justice is not justice; it is merely somebody's ideal for justice.

Nor, despite Plato, is resemblance to an ideal Morality what makes a set of rules to be a system of morality—no more than resemblance to an archetypal

MORALITY: WHAT IN THE WORLD IS IT?

Shape is what makes things shapely.⁸ Shape is universal, of course, but only in the sense that every object has some shape or other; there is no universal Shape—no shape that everything in the universe has. Likewise, morality is universal in the sense that every intact and functioning group of human beings has a morality. Still, in frustration of persistent efforts to find one, no identifiable Morality has been discovered to be in force everywhere. Instead, moralities vary from place to place and time to time. What makes a morality to be an instance of morality is not its resemblance to an ideal Morality but its resemblance to another real morality. Despite dogged attachment to it, the idea of a universally binding Morality is devoid of determinate empirical significance.

Morality is, of course, universal in the sense that all moralities—all instances of the abstraction “morality,” which is a collective term, not a proper name—have similar functions; that, indeed, is what makes them all to be (i.e., constitutes them as) moralities, instances of morality. Thus, all moralities appear to be aimed at reducing mutually harmful conflict and promoting mutually beneficial cooperation, usually with the goal of enhancing the integrity and survival of the group by serving the needs of its members. Also, the more basic of these needs—for food, sex, water, shelter, love, security, protection, procreation, friendship, child care, etc.—are the ingredients of human nature; so they too are universal. Rooted in the human brain’s genetically determined program, they are much the same everywhere.

But although human needs and instincts are more or less uniform, what might be available to satisfy them is not. Thus, practices that work in dense jungle or lush valleys will not do in arid desert or icy tundra; nor will what suffices in times of plenty be functional in scarcity. Also, what one group of human beings knows how to do in a particular time or place is not necessarily known by other human beings in a different era or distant locale. So far as morality is concerned, then, the rule is variability, not uniformity. Variability is the rule even in what are rightly called moral universals. Thus, every society has rules regulating mating and modesty, and every society prohibits murder, manslaughter, and mayhem. But every society defines these differently. So, the proposition that societies are all governed by the same Morality still makes no clear sense. The concept of a single universally binding Morality has yet to be given determinate meaning.

Regarding universality, the most that can be said on the basis of evidence is that people everywhere have sociable instincts that make them amenable to moral education, for such instincts are necessary to society, which is necessary to its members. In particular, as Hume speculated and such socio-biologists as E. O. Wilson now confirm, most of us appear to have a biologically rooted instinct to

⁸ Plato, it will be remembered, held that things count as square or circular according to whether they *resemble* the ideally perfect Square and the ideally perfect Circle. See Plato’s *Phaedo* (Plato, 1964). This was the essence of his famous and disastrous, because logically confused, theory of forms, or ideas. No such entities as the perfect Circle and perfect Square are found in the real world; they are mere ideals. So, nothing resembles them, for there is no reality to resemble.

sympathize and get along with those with whom we live and interact, because in evolutionary time they would have been the ones with whom our ancestors shared most genes, hence the ones they would have cared most about. Furthermore, the species probably could not have survived if these altruistic and cooperative instincts had not existed. But although these instincts are common to men everywhere and essential to all morality, they do not amount to knowledge of a well-defined standard of conduct that everybody everywhere is obligated to obey. Instead, as Hume also knew, moral rectitude—he also called it justice—is determined by local and temporary convention, so it has to be learned on the spot, after the fact.

The empirical evidence for this proposition is now undeniable. By contrast, belief in a universal Morality is founded entirely on uncritical faith. So, grant the correctness of Anscombe's analysis of "our law conception of morality." We may still wonder whether this conception is rooted in reality. Does it exist anywhere but in the minds of those who believe in it? Assuming it does, how, given the inscrutability of the divine will, are we to know its provisions? And what obligates everybody to obey it, especially when doing so contravenes their personal interests and their society's customs? Anscombe's reply—that talk of moral law is unintelligible without belief in God—was certainly correct, and so was her protest against Sidgwick's muddled but pious conflation of morality with utility, the measure of rationality. However, the right counter to her *ponens* is a *tollens*: If there is no moral law without God and no proof of God, then maybe there is no moral law.

To be sure, modern votaries of an archetypal Morality think that they have found a better basis for their devotion than religious faith—viz., their "moral intuitions," contemporary jargon for what was once called the conscience and regarded as the voice of God within.⁹ Presuming that deeply seated moral feelings reveal an archetypal standard known innately, these votaries conclude that the thing must exist, for how could they know it if it were unreal? In response to skeptics, Michael Bayles has replied that if we want to know moral law we must depend on our admittedly fallible moral intuitions despite their admitted fallibility, because there is nothing else to go on (Bayles, 1984). But if archetypal Morality does not exist, it cannot be known; so, moral intuition cannot be a way of knowing it, and if fallible moral intuition is our only means of knowing it, we are up the creek with a broken paddle.

The simple truth is that moral intuition is too inconstant to serve as a guide to anything but personal preference and variable social custom. As even the paradigmatic intuitionist Sidgwick had to admit in the end, intuitions about right and wrong vary with the group, the person, and sometimes the occasion or the mood, so they have no claim to reliable authority. The moralist who builds his epistemological house on such shifting sands must not be surprised if the seas of skepticism wash it away.

⁹ Recall Kant's awe at "the starry heavens above and the moral law within."

Sociology and Psychology as Propadeutic to Moral Philosophy

It appears that Protagoras was right. Presuming moral philosophy to be inquiry into the requirements of a culturally transcendent but universally binding standard is starting at the wrong end. It is no wonder, then, that many philosophers end up lacking answers to some obvious and necessary questions: In what form does this supposedly free-standing standard exist? How are its provisions to be known? Why must we obey them? And so on. Yet, true and empirically verifiable answers to these questions are readily available when the table is turned to the man-made but philosophically scorned moralities of particular groups.

So, if we wish to engage in serious and productive inquiry into the causes and conditions of morality, we must not begin with an unreal and unknowable Morality postulated to exist in some Neverland during No-time. Instead, we must begin with the empirically discernible and variable, if imperfect, moralities that are to be found in real societies in the real world. Our prototypes must not be the wishful thoughts of ivory tower philosophers engaged in grandiose reverie; they must be the actual practices of human beings trying to make their way in a world that was not designed for them. In short, it is only from study of our various Earth-bound moralities that we can expect to learn what real morality is, how it comes into being, and what makes conformity with it obligatory.

The obvious conclusion is that moral philosophy ought to begin with empirical psychology, sociology, and anthropology. Of course, these behavioral sciences won't tell us what moralities we *ought* to have, but unlike gaseous talk of archetypal Justice and theological talk of moral law, they will tell us something about the moralities that we *do* have and perhaps enable us to understand why we have them, which might enable us to figure out how to improve them. Once we understand the uses and deficiencies of these moralities, we might be able to see how their purposes could be served more effectively.¹⁰ That, at least, was Bentham's hope, and it can be ours too. Preoccupation with the supposed requirements of other-worldly ideals will just distract us from this needful task. Platonic utopianism is no substitute for serious thought.¹¹

Once stated, the point seems obvious, but it will strike most in the trade as wildly paradoxical. It is certainly heterodox. In the currently received view, it is a definitional truth that morality consists of culturally transcendent standards revealed to us by our moral intuitions. But grant that we must resort to our moral feelings if we want to know our moral minds. Pace Sidgwick's follower W. D. Ross, our unreflective moral convictions do not rival the insights of

¹⁰ So, we needn't embrace the preposterous view that one society's morality is as good as another's, or the presumptuous doctrine that our own morality is necessarily the best. If moralities are made, they can be made well or poorly, like everything else. It is in judging how well they are made that Bentham's principle of utility—the concern of economics—becomes relevant. Evaluating moralities does not require comparing them to a transcendent Morality. They can be compared to each other.

¹¹ For eloquent discourse on this theme, see Popper (1945/1966).

mathematicians or even the laboratory observations of trained scientists (Ross, 1930). Nor are our moral intuitions the voice of Zeus speaking from the clouds; they are the excrescence of deeply felt prejudices—in Hume’s word, *sentiments*. If these sentiments are our only basis for belief in a transcendent and universally binding Morality, then we have no basis for such belief.

We must not expect, in short, to find moral obligation in ideals dreamed up in some philosopher’s head and justified by forms of special pleading called moral intuitions. Rather, we must seek it in the norms that happen to be observably in force in the practices of diverse human societies. It is these that must serve as our prototypes.

Empirically Real Morality

What can we learn from these prototypes? That while morality as we conceive of it when we theorize about it, rationalize it, or idealize it may be a divine dictate, a free-standing ideal, a law of nature, an a priori postulate, or some other esoteric object of unsupported faith, aspiration, or sentiment, morality as people everywhere know it in practice is neither of these. Instead, real moralities are empirically discoverable features of human culture: They consist in the myriad ways human beings regulate each other’s behavior so as to promote harmony among them while they try to serve their biologically based needs.

As already noted, the mores (i.e., the informal and entirely contingent customs) that happen to result from these efforts are created and sustained by regular practices of praising and rewarding desired conduct while censuring and punishing undesired conduct. Members of the group are required to conform to these rules in order to enjoy the praise and rewards reserved for those who do and to avoid the censure and punishments that are the lot of those who do not. That is why we call these regularly reinforced requirements *duties* and say that it is our *obligation* to fulfill them.

Contrary to the usual idea, this means that a duty, or obligation, may be *defined* as a socially imposed and regularly enforced requirement.¹² Duly socialized and reflective members of the group will want to go along with these requirements because they will feel in their bones that the group’s welfare depends on it, as does their own.¹³ But unless a feeling of obligation is confused with an obligation, wanting to fulfill a requirement is not what makes it obligatory; what does so is liability to duly enforced sanctions. Where these are likely, obligation is real; otherwise not. Thus, you may feel an obligation and not have it, or have it and

¹² This is not to say that those who speak of duty have such a definition in mind. We are talking about what actually determines moral judgments, not what those who make these judgments think about them when theorizing or introspecting. In other words, we are talking about denotation, not connotation.

¹³ Furthermore, they will probably be right. Any morality that has survived has served its purposes, at least so far. A society with a seriously dysfunctional morality has already gone the way of the Dodo bird or eventually will.

MORALITY: WHAT IN THE WORLD IS IT?

not feel it. Hence, you must repay borrowed money whether you like it or not; the choice to forgo the debt is up to your creditor and will depend on his desires, not on yours. Contrary to Kant, we do not choose our duties; we are assigned them.

It will be replied that there is only one valid reason to do your duty—viz., failure to do it would be *wrong*. This is certainly true; but like other tautologies, it is also uninformative.¹⁴ Usually, the best way to do right is to do your duty, and the best reason to do that is that it is a condition of good standing in your group. As a member of some group, you are subject to censure and punishment if you fail or refuse to do what is required of you, and you might be eligible for praise and reward if you do it. Since you desire to avoid the ill will and enjoy the good opinion of your fellows, you are normally well advised to do what you are obliged to do by their rules. In short, you should usually go along to get along.

If you have been well brought up, that consideration will not be what you have in mind, and you may even regard it as wicked or demeaning; but, as any good psychologist will tell you, it will be the best explanation of the guilt (i.e., the anxiety; the unconscious fear of punishment or censure) you would feel if you failed to do what others expect. Of course, there are also things you ought to do for more personal reasons (e.g., exercise to improve your health or work for the well-being of those you love), but until these are required by standing social sanctions, they are matters for personal *prudence*, not moral *obligation*, which is irreducibly social and conventional, like law.

To be sure, morality is not, in most ways, like law. Though both are human institutions that serve to regulate conduct, they are made and enforced in different ways by different people. Law is made and enforced in officially recognized ways by officials of government, morality in unofficial ways by ordinary persons. So, law comes from on high; morality from below. The differences between them are such that regarding morality as a kind of law, as many people do, is mistaking popular custom for governmental diktat, a serious conflation of importantly different institutions. Morality may be superior to law, but it is not super law. Morality is the foundation of society; law is merely the roof and requires walls to support it.

As described by Adam Smith in *Theory of Moral Sentiments* (Smith, 1982), the creation—better, the *evolution*—of morality usually involves a kind of tacit bargaining process (Otteson, 2002). Person Y does something to or for person X, who responds in like manner, generally—except in the case of family members and close friends, where behavior is governed more directly by instinct—according to the rule of Tit for Tat. Although there may be no intent to set a precedent or create a rule, the eventual result of countless such informal interactions and exchanges will be the gradual development of a general understanding of what will count in the group as acceptable behavior. When this understanding is taught to children as

¹⁴ Furthermore, it is ambiguous. Is the “wrong” act the one that has bad consequences or the one that breaks the rules? These might not be the same.

a standard to be followed, morality and etiquette will have come into being. They are the true basis of social order and human comity (Sumner, 1940).

Every functioning society has both morality and etiquette; there can be no society without them. However, only politically organized societies (i.e., polities) have law. For as H. L. A. Hart reminded us, law consists of rules made in officially prescribed ways by officials (i.e., kings, presidents, legislatures, bureaucrats, judges, etc.) acting in their official capacities to control the behavior of citizens or subjects (Hart, 1961). Of course, every modern society is politically organized, and few readers of the present essay will have lived without the supervision of government. Therefore, law is a familiar thing and likely to be regarded as the prototype for all regulation. It has been so since the beginning of human history. However, it was not always so. For perhaps a million years—99% of human existence—men lived in what 17th century philosophers felicitously called the state of nature.

Knowing little about this state of affairs, some of them got it entirely wrong. Two great philosophers mistakenly supposed the state of nature to have been a condition in which individuals lived alone, either at war (Hobbes) or in peace (Rousseau). This supposition conflated lack of government with lack of society, an error John Locke was careful not to make. We still do not have full or exact information about the state of nature, but thanks to anthropologists and archaeologists we have some idea what it was like. Individuals did not live alone like orangutans, as Rousseau seems to have imagined. Instead, our best hypothesis is that they usually lived in nomadic bands of perhaps 50 to 150 hunter-gatherers united by ties of blood, common need, and what David Hume once called natural lust. These primitive tribes had leaders—usually a patriarchy of elders or a group of the wise or brave. They also had morality and etiquette, for there is no society without these. In short, they had rules; the integrity and survival of the band depended on them, as did the prosperity of the individuals that lived in them. However, these primitive societies had nothing that we would recognize as rulers or laws.

Apparently, rulers and law came into being only about six thousand years ago, perhaps four thousand years after the development of settled agriculture in fertile plains and river valleys. Then bands of marauding warriors accustomed to taking what they wanted and moving on realized that it would be convenient to stay behind in order to impose themselves more effectively on the hard-working but pacific farmers whose produce they wanted to tax and whose labor they wanted to exploit. Not incidentally, these warrior conquerors also protected their more docile subjects from competitive bands; sometimes they were even hired for the job.

In this way conquerors made themselves rulers. Employing armed thugs to collect the taxes, soldiers to fight off competitors, skilled craftsmen to make luxury goods, and accountants to keep up with the take, these conquerors set up cities, created bureaucracies, and promulgated laws. In short, they produced the State and, with it, civilization, the artificial form of culture that is so familiar to modern man but was unknown to his primitive forebears. It appears to have happened in a

MORALITY: WHAT IN THE WORLD IS IT?

number of places—Mesopotamia, India, Egypt, China, etc.—at roughly the same time and in roughly the same way. We owe much to these ancient conquerors, not all of it bad.

Needing a way to make their often barbarous and cruel rule more palatable, these ancient conquerors would have found it ready to hand in the religious modes of thought and feeling that were already natural to their subjects, who were long accustomed to attribute their traditional ways to dead and deified ancestors. Exploiting this superstitious habit of mind, self-appointed rulers declared themselves to be either gods or agents of gods and assured their subjects that the laws now being imposed on them came from on high and were for their own good. Since challenging these claims was mortally dangerous, dissent was infrequent and usually unvoiced. Eventually, a habit of forced compliance would turn into a reflex of unquestioning belief. Thus were the correlative myths of divinely instituted law and the divine right of kings brought into being, piggybacked on credulity and fear.

So used are we to large, complex, multi-racial societies ordered, arranged, and ruled by the protection and extortion rackets that we call “governments” that we now have trouble imagining how things could be different. A society without government and law is liable to strike us as a contradiction in terms for which the only name is the dreaded word *anarchy*. But despite Hobbes, anarchy is not chaos, absence of order. As Locke knew, there had been human communities before there were human polities, and these communities had had moralities before they acquired rulers.¹⁵ As the people usually believed, however, their morality had been made by the community’s forebears, and it was not law but custom which deserved and received respect because it had sustained the group for unmeasured time.

Methodological Remarks

At this point in the discussion the reader may fairly wonder how I know what I have said in the last few paragraphs about the origins of law and morality. The answer is that I do not remember the diverse sources from which I, who am not an historian, have acquired these ideas during a lifetime of desultory reading.¹⁶ Furthermore, these sources were in the nature of the case highly speculative, involving imaginative reconstruction of undocumented events in the distant past. These reconstructions would have been made on the basis of the scant physical evidence uncovered by antiquaries and archeologists. Therefore, as I meant to indicate by using the word “apparently” several paragraphs back, my remarks about origins are offered not as proven fact but as a plausible hypothesis. This hypothesis, which is heterodox but not immodest or baseless, is recommended on the grounds that it can explain what is known about human societies. Several considerations stand out when we consider the evidences of history.

¹⁵ It was these rules that Locke called “laws of nature” and attributed, wrongly, to God (see Hasnas, 2005).

¹⁶ Among others, I would have to mention V. Gordon Childe, *Man Makes Himself* (Childe, 1948).

First, the hypothesis being offered describes the few primitive societies that we have been privileged to study up close. Good examples are the small family bands that once roamed the plains of the United States in pursuit of game. Although we talk as though these bands had “chiefs,” there is clearly much projection in this usage. The leaders of these bands were not rulers with authority to tell others in the band what they must do. Their authority was usually that of persuasive talkers, whose suggestions were supported by past success or present wisdom. In fact, nobody who did not relish a fight gave an Indian brave a peremptory order. He had to be talked into it. Yet he was usually eager to do what his family, friends, and fellows expected of him.

The explanation of this evident fact cannot be that the brave feared authority or was obeying what we would call law. The more obvious explanation is that he would have been ashamed to fail in meeting the expectations of his companions. Conformity to the mores of his group would have been a trait of character gradually stamped on the brave’s personality from the date of his birth. It was not something imposed on him by his superiors, for there were none. Rather, it was something that he had to respect if he wanted to get along with his companions. Not that he would have seen it that way. More likely, he would have seen the distinction between right and wrong as a fact of nature or a gift of the gods. Like the distinction between birds and bees, it was something he noticed to his benefit or failed to notice to his detriment (see, for example, Grinnell, 1915).

Second, it is common knowledge that governments have more often than not been composed of a small hereditary class originally established by conquest over a larger subject population, and this ruling class has usually justified its rule by claiming that it had the sanction of divinity. Thus, priesthood and rule were combined in ancient Egypt, and association between government and religion has been commonplace in most of the world. In Western Europe, belief in the divine right of kings was a fixture of medieval political theory, and a similar attitude towards rulers appears to have been a feature of Chinese civilization. In the Middle East even now, Mohammed is officially a prophet of Allah, and many Muslims come within a whisker of deifying him. Why would such deification or sanctification of rulers have been accepted if not on the basis that the denizens of primitive societies were already predisposed to attribute their institutions and practices to deified ancestors?

Finally, third, our modest theory explains still deeply entrenched, if now somewhat eroded, attitudes. In the unsophisticated view of its members, a primitive group’s morality determined what to count as the right way of doing things—no ifs, ands, or buts. Other ways (e.g., burning the dead or eating them instead of burying them) would be so outlandish as to be literally unthinkable. The requirements of morality being seen as matters of fixed fact, not choice, nobody in the group would regard its morality as something he or she might improve; for, by definition, no change could be an improvement. A desire to change the group’s customs, or to flout them, would be perceived as wicked, because dangerous; never mind that it might seem to have temporary advantages or yield transient pleasures.

MORALITY: WHAT IN THE WORLD IS IT?

In such a circumstance, would-be reformers—including budding rationalists and incipient utilitarians—would have been feared and despised. So would moral skeptics and relativists. If an encounter with an alien tribe revealed that other groups had different customs, these would not be different forms of *morality*; they would be forms of *immorality*. Ethnocentric belief in the superior morality of one's own group would have been an instinct, not a disputable hypothesis—as would conservative respect for tradition. These attitudes are still familiar to us because, for the most part, we still have them.

Though they are not conclusive, these lines of evidence seem to me sufficient to make my hypothesis about origins eminently worth considering. Besides, it should be noted that the main thesis of this essay—the superiority of empirically defined and testable concepts of morality and law to concepts that lack empirical definition and tests—does not depend on the truth of speculations about origins. That ontological distinction has a sound epistemological basis even if our speculations are so wholly misguided that they turn out to be completely false, though that seems unlikely.

Nevertheless, captious philosophers will find room to cavil about the details of this distinction, and many of them will regard it as an irrelevant exercise in sociology having no value for moral philosophy. In support of this unfavorable estimate, there will be talk of “naturalistic fallacy,” meaning confusion of what *is* with what *ought to be*. There is no space here to discuss this much exercised issue.¹⁷ The point being urged here is simply that if we want to begin with something that we can understand, we must begin with what discernibly exists, even if that is not where we end up. For if meaning can be attached to talk of a free-standing Morality, it can only be the result of abstraction from and comparison with the real moralities just summarily described. Should that abstraction and comparison fail, as it will in many particulars, we have reason not only to be suspicious of the idea of such a Morality but also to doubt its very legitimacy.

If this is correct, Anscombe's hero Aquinas had the cart before the horse when he said that man-made law, under which heading he included moral custom, is binding only to the extent to which it imitates or resembles God-made law. Here the Saint not only conflated morality with law, he also reversed the order of our knowledge. Contrary to his claim, it is man-made law and morals that we understand first and best, because it is these with which we are most familiar. In fact, as Feuerbach famously noted, so-called God-made law is just man-made law writ large by a deity conceived as a cosmic potentate and imagined to differ from His earthly counterparts in having magnanimous motives and magical powers (Feuerbach, 1957). Although this theological idea is real in the sense that we have it, nothing *in this world* answers to it, so it is an idea without a determinate and demonstrable referent.

Why, then, does the other-worldly idea persist? The most obvious reason is that it is a vessel into which people can pour heartfelt desires that they know no

¹⁷ For full treatment of this issue see Hocutt (2000).

other way to promote. Everybody has desires, but your desires are in conflict with mine. So, “You are not doing what I want you to do” will be ineffective in altering your behavior unless you happen to care about what I want, which you may have little or no reason to do. By contrast, “You are violating moral law” appears, on the surface at least, to be an impersonal appeal to something that you are obligated to care about whether you want to or not. Therefore, a popular way to lend authority to one’s personal desires and turn them into impersonal obligations is to declare them requirements of impersonal morality or law.

There is nothing wrong with doing this if the morality and law invoked are real. Nor is there anything wrong with having moral ideals so long as these are recognized for what they are and enable us to cope with known realities. But representing mere ideals as realities, and mere wishes as universally binding requirements, is misleading. Worse, acting on the basis of ideals and wishes without giving due consideration to the problems presented by reality inevitably results in dysfunctional practice. Gradual melioration aimed at solving concrete and well-defined problems is almost always a more prudent and effective policy.

Conclusion

With that platitude, it is time to sum up and close this long and perhaps overly ambitious essay. What has been attempted is to describe, criticize, and offer an alternative to the other-worldly conception of morality that has dominated Western thought for nearly two millennia and is almost certainly much older than that.

According to this long-dominant and still prevailing conception, true morality must be sought in laws that have issued from heaven because it cannot be found in the real world. In the original version of this conception, morality was constituted by the commands of an invisible deity whose will was known first and best by priests. In subsequent philosophical variations on this essentially religious theme, moral law has been transformed into “reason” variously interpreted. Following Aristotle, St. Thomas Aquinas declared moral law for human beings to be the natural, because God-given, faculty of choosing means to good ends, meaning the ends set for us by the same deity.

Reverting to the Christianity of St. Augustine, Immanuel Kant appealed to a higher form of “reason,” one requiring disregarding personal desire to pursue an impersonal moral ideal, the Golden Rule of *New Testament* Christianity. Moral philosophy since Kant has consisted largely of attempts to demonstrate the same principle without presupposing the truth of Christianity. This has generally meant embracing Plato’s conviction that society ought to be run by intellectuals—in other words, self-anointed secular priests in charge of the government. The trouble with all of these rationalizations for special power is that they lack empirical basis and meaning. There is no empirical test of the will of a transcendent God or of the validity of a merely rational ideal. So, despite inveterate talk of “reason,” philosophical discussions of morality smell of special pleading and wishful thinking.

MORALITY: WHAT IN THE WORLD IS IT?

By contrast, the moralities by which we actually live and that we know best are empirical entities discoverable by observing behavior. These moralities, which vary with the group, the time, and the place, consist of practices developed by groups of human beings striving to avoid mutually harmful conflict and promote mutually beneficial cooperation in the service of their biologically rooted needs. Among these are needs for food, water, shelter, security, love, reproduction, child care, beauty, etc. Being biologically based, these needs are much the same everywhere, but the practices that each group has developed to serve them are not. Because what worked in one set of circumstances did not work in another, or was never tried, each group has ended up with its own distinctive mores.

Although all of these diverse mores are aimed at promoting what is believed to be good, they are not always equally proficient at it. Instead, because life requires making tradeoffs, some of these mores serve one purpose or group at the expense of another. Also, whatever men do, they do well or poorly, so the mores of some groups are better designed than those of other groups. Nevertheless, morally correct behavior in a society is simply behavior that comports with its mores, as legally correct behavior is behavior that comports with a society's laws. Furthermore, why we should be guided by our group's mores and laws is obvious. Since others in our group encourage it or demand it, our welfare depends on it, and if we were raised right, the disposition to do it has become second nature.

The moral of the story is this: Wishful thinking and proleptic discourse are no substitute for serious philosophy. If we want to know what sort of thing real morality is, how we are obligated by it, and why we should obey it, we must begin with empirically determinate realities, not religious myths and utopian ideals. Only by focusing on real moralities can we hope to understand what it means to say that morality exists and imposes obligations on us. Furthermore, it is only by comparing existing moralities to each other that we can hope to discover which of them does a better job of performing its proper functions.

Starting with an other-worldly ideal as the basis for concrete moral judgment and practice is undertaking to design a building from an antecedently fixed plan without asking who will use the building, the use they will have for it, the weather it will have to withstand, the materials that will be available for building it, the labor that will be required, and so on. Such pre-conceived policy invites disaster. No, it guarantees it. The evil human beings have done in pursuit of their ideals is unrivalled. If you doubt it, think of the colossal disasters and enormous tragedies caused by twentieth century government planners pursuing the loftiest ideals.

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