

AXIOMS, CASUISTRY, ELITISM

In order to criticize some actual or proposed action, John cites a moral rule of the Ten Commandments variety ("Thou shalt not commit adultery," for example). Mary can reply that her act is not one of adultery, or that adultery in her books is not a sin. But she can also reply, "Life is more complicated than you think: adultery, though ordinarily wrong, is acceptable under these circumstances."

John has a choice of replies:

(J1) "Yes, life is complicated, and whether adultery is wrong is a matter for case by case judgment. In this case, it is legitimate (or wrong, as the case may be)."

(J2) "No, life is *not* complicated, or not as complicated as you think. Adultery is always adultery, and as such always wrong. Those who think otherwise, in G.E.M. Anscombe's phrase, 'show a corrupt mind.'"

(J3) "Adultery is sometimes justified (and in fact is justified in this case). But those of us who are intelligent enough to discern the cases where adultery is acceptable ought also to be prudent enough to keep quiet in front of those whose control over their instincts, and whose capacity to make moral distinctions, is weaker than ours."

(J4) "Yes, life is complicated, but its very complexity requires that some possibilities be excluded from moral deliberation. Married life is complicated enough as it is, without admitting adultery as a legitimate possibility." (Those who reject answer J1 or J4 for adultery may still accept it for murder, rape, or selling dope to children.)

By examining John's replies we will be evaluating not only ways of resolving moral questions, but also ways of sustaining or challenging moral absolutes. The argument of chapters 2 and 3 suffices to refute answer *J2*, which denies the complexity of human life. But it is not evident what is the best way of dealing with life's complexity: answer *J4* admits complexity while preserving the norm. In this chapter and the two following, I survey the various moves made in disputes about moral absolutes, beginning with appeal to some moral axiom.

3.1. Axioms

Consider the following propositions:

(A1) One ought always do good and avoid evil.

(A1a) One ought always to produce the greatest net good.

(A1aa) One ought always to produce the best possible balance of pleasure over pain.

(A2) One ought to act only on those maxims that one can will as universal laws (of nature).

(A3) One ought always treat humanity as an end in itself, never as a mere means.

(A4) One ought always observe the mean, as defined by the man (or woman) of practical wisdom.

(A5) One ought always obey the conventions of one's society (so far as these can be rationally defended).

(A6) One ought always to perform the duties of one's station.

(A7) One ought always to do the most loving thing possible (toward God and neighbor).

(A8) One ought always act in accordance with the constant teaching of the Church or the plain meaning of Scripture.

(A9) One ought never offend God.

Such propositions -- call them *moral axioms* -- purport to govern all of our conduct. All are sometimes defended with the claim that they provide the sole alternative to "moral" judgments that reflect nothing but the inclinations of the individual or the prejudices he has absorbed from his group. Judgment is required in their application. Axiom *Alaa* -- the principle of utility interpreted in a hedonistic sense -- comes closest to implying concrete rules for conduct. But it can also be challenged by appeal to intuitions reflecting a deontological or partialist perspective. Why should I kill, deceive, or inflict pain upon my wife or mother, just because the greatest net happiness will be advanced, perhaps only slightly, by my doing so?

And all moral axioms can be challenged in a more fundamental way, by arguments supporting an anti-theoretical approach to ethics. The first step in the argument for anti-theory is the fact that -- whatever else it may be -- morality is a feature of human social life before it is a matter of philosophical reflection. Unless we already had a conception of happiness and right conduct, or of virtue and rights, at work in our moral language, moral philosophers would have nothing to work with. It is perhaps possible to imagine a world in which no one ever asked whether inherited conceptions of the good and the right were defensible, but hardly one that consisted only of philosophers proceeding on principles that they had adopted after critical reflection. The latter kind of society would contain no children.

Michael Oakeshott (ch. 8)ⁱ distinguishes between morality as a habit of affection and conduct, and morality as the application of criteria (including the self-conscious pursuit of moral ideals and the reflective observance of moral rules). And he concludes that, while the second sort

of morality may be an appropriate endeavor for an individual, only the first sort is proper for a society. In his own words, "human life is a gamble; but while each individual must be allowed to bet according to his inclination, society should always back the field" (p. 186).

There is, however, something absurd about Oakeshott's undertaking. One cannot decide, in advance of the situation, how much either an individual or a society should rely on habitual responses, and how much on reasoned reflection, in making decisions. Oakeshott may be right in complaining that "the predicament of Western morals ... is first that our moral life has come to be dominated by the pursuit of ideals ... and secondly that we have come to think of this dominance as ... an achievement of which we should be proud" (pp. 202-3). But he has not produced a persuasive argument for this conclusion.

Nonetheless, some philosophers have regretted the fact that they exist as members of society before they begin to criticize its practices. Descartes goes so far as to complain that

Given the fact that we were all children before being adults and that for a long time is our lot to be governed by our appetites and our teachers... it is almost impossible for our judgments to be as pure or solid as they would have been had we had the full use of reason from the moment of our birth and never been led by anything but our reason.ⁱⁱ

To reject such a position is to advance the discussion a little.

The next step in the anti-theoretical argument is a critique of philosophical attempts to define an extra-historical starting point from which inherited standards can be critically evaluated. Here Wittgenstein's work is helpful. For he introduces the human element by way of an *a priori* reflection on the nature of knowledge. He concludes that what is given in cognition is not sense data but practices -- what he calls "forms of life" or "language games." Hence he rejects the priority of the first person singular advocated by Descartes, in favor of a perspective that makes

knowledge depend on a language that enables one to share one's conclusions with others, and enables others to scrutinize and correct one's results. And the only languages available for this purpose are those transmitted from past generations, though each generation modifies its inheritance in some way.ⁱⁱⁱ Applied to ethics, Wittgenstein's argument supports an approach like that of Hegel. As Hegel sums it up with uncharacteristic lucidity, "When a father inquired about the best method of educating his son in ethical conduct, a Pythagorean replied, 'Make him a citizen of a state with good laws.'^{iv} For only such a state -- or rather, only such a community, -- will support the full array of concepts, practices, and motivational incentives needed for sound moral reasoning and the putting of its conclusions into practice. But no more for Hegel than for Wittgenstein is the essential argument about education. Hegel's contention is that a morality of abstract principles is empty until filled out by the concrete morality of a community, transmitted through its moral language. (Such a community need not, despite Hegel, be the nation-state, but can range from a pair of friends or lovers to the human race as a whole.) Words like *theft*, *murder*, and *love* make possible concrete moral and evaluative judgments.

The third and final step is an observation concerning the nature of inherited morality, one that makes it resistant to restatement in axiomatic form. Human beings pursue a multitude of goods, by way of a multitude of practices governed by a multitude of norms. (The phrase *by way of* should not be allowed to conceal that many of the goods human beings pursue -- friendship for example -- are internal to the practices by which they pursue them.) And they admire, and try to practice, a multitude of virtues. That business, friendship, family life, politics, education, religion, and art should all be governed by the same principle, or short list of principles, is credible only to those committed, on a priori«MDUL»«MDNM» grounds, to the existence of such principles.

There is a large gap between any proposed fundamental principle and the concrete decisions that form the moral life. In order, for example, to establish contact between the consequentialist axiom *A1* and the moral life it is necessary to apply it not only to individual acts, but also to attitudes, rules, institutions, and methods of moral education. And since the effects of any one of these will depend largely on the character of the others, we will end up evaluating entire ways of life. Or rather, since it is not possible to create a way of life out of nothing, we will need to evaluate proposed changes in our way of life, taking into account the fact that both change and failure to change may have unexpected and sometimes unwelcome effects. We have thus moved very far from the prospect, originally presented by utilitarianism, of reconstructing our moral tradition from without. The same argument will apply to any other moral axiom -- including those I have listed at the head of this section -- that one might use for such a purpose.

The conventionalist axioms *A5* and *A6* might seem to yield a more determinate result, at least if one ignores the possibility of radical critique of existing conventions. But we must distinguish between conventionalism as a moral theory and the moral judgments of conventional people, which are sometimes accompanied by a non-conventionalist moral theory or, more often, by none at all. To apply conventionalist moral theories, one has to identify one's group and then discern its conventions. Both operations present problems, the second as much as the first. Even for the most conventional among us, public opinion polls are no way to settle moral issues; those who attempt to settle them in that way are called "politicians" and held in little respect by the rest of us.

Stuart Hampshire has pointed out the complex, even quirky, character of the inherited rules and attitudes with which the reflective moralist must of necessity deal.«USSX»

Every natural language [he writes] flaunts its idioms and inconsistencies, because they lend the language, spoken and written, its distinctive flavor and spirit. In some important areas of morality, which are least regulated by rational calculation, the rules that support a particular way of life, and its determinate conception of the human good, will be particularly stringent rules. (p. 152)

But the issue immediately arises, whether this defense is not available for the most blatantly irrational institutions. In overtly racist societies like the Old South, intercourse between a black man and a white woman, even in marriage, was strongly tabooed, whereas intercourse between a white man and a black woman, though not in marriage, was regarded as a normal part of a young man's education.

Some people attempt to step outside the *mores* of society and evaluate them as an essential part of our moral tradition. When we undertake the critique of institutions and *mores* we find irrational, we invoke principles that look very much like moral axioms. These have, to be sure, a certain conventional standing, but those who employ them claim on their behalf a supra-conventional force.

The anti-theoretical movement in ethics is sound so far as it casts doubt upon the project of producing an axiom (or short list of axioms), standing outside the moral tradition of our culture, from which moral conclusions can be drawn by applying it to "value-neutral" facts. But to go further, and to reject moral theory as an enterprise, is to condemn oneself to one of two unpalatable positions. Either one must accept the *mores* of one's society without question, however stupid or brutal they appear; or else moral argument turns into a partisan enterprise, subordinate to Polemarchus's principle: *Help your friends and hurt your enemies*. Another possibility is a religious morality, in which one's personal relationship to God or Christ takes precedence over

principles of every sort. But, even on such a view, reflection will be necessary to help us discern what the requirements of this relationship may be.^v

3.2. *Casuistry*

Casuistry attempts to apply received rules and principles to novel situations (and all situations will in some respects be novel). Casuistical reasoning consists in the expansion or contraction of received norms in territories under dispute, in order to resolve contested moral issues. It responds to motley of considerations.

First, each of our crucial moral terms has a descriptive core and at least vague descriptive limits. This observation is consistent with the fact that they are defined with the help of value-laden terms such as *marriage* and *property*. A happily married man away from his wife on a journey sleeps with a woman in order to relieve his boredom and frustration: to defend such conduct means abandoning the concept of adultery in its modern, monogamous sense. And -- however much someone may disapprove of such conduct -- cheating on one's income tax is not adultery, gambling is not cruelty to animals, and contraception is not murder.

But moral terms have more flexibility than literal-minded people might think: St. Thomas Aquinas argued that in cases of extremity all property is in common, so that one who takes what appears to be another's goods to ward off starvation is not guilty of theft -- not that his theft is excusable or even justifiable. And the possibility remains that the sense and reference of our moral language is entirely a historically contingent matter. Some people might think that our moral rule against murder requires massive revision under conditions of overpopulation.

Second, outside the descriptive core, but within the descriptive limits, of the application of a moral word every morally relevant consideration is pertinent. Even if we do not accept utilitarianism or consequentialism, it remains the case that whether we consider a wide range of acts murder is in part a function of whether we deem it advisable to do so. But in the case of murder the value we place on human life and on the uniqueness of each individual will be an important part of the relevant considerations. And there are powerful prudential reasons not to redefine «MDUL»murder«MDNM» or other crucial moral terms to meet every passing moral or political agenda.

Third, the casuist, as opposed to the ethical theorist, works within a framework of rules and principles that he receives but does not create (though this distinction is one degree). The resulting diversity of starting points means that casuistry will be, at least in a broad sense, a theological activity, i.e., the interpretation and application of some authoritative tradition, if only the humanistic tradition of the West.

Fourth, the coexistence of communities with differing moral and cultural traditions requires two sorts of casuistry. On the one hand, the representatives of each community attempt to elaborate its tradition in order to deal with novel situations. On the other hand, there must be rules of coexistence -- what John Courtney Murray calls "articles of peace" -- among these groups, if their relationship is not to be one of endless war. And these rules will require interpretation and application, to questions of civil disobedience for example.

These two forms of casuistry cannot proceed in isolation from one another. The representatives of a community must be concerned with the possibility that the surrounding social world may become increasingly hostile or indifferent to its concerns, and engage in subtle or overt

forms of persecution as a result. And those who elaborate the norms of a pluralistic society cannot be indifferent to the possibility of communities at war with the rest of society.

One important causistical tool is the principle of double effect:^{vi} A classic formulation of this principle is that of J. -P. Gury, S.J.:

It is lawful to actuate a morally good or indifferent cause from which will follow two effects, one good and the other evil, if there is a proportionately serious reason, and the ultimate end of the agent is good, and the evil effect is not a means to the good effect.^{vii}

Those who adhere to moral absolutes require such a principle. For there are circumstances in which, whatever one does, an innocent person will die, someone will acquire a false belief as a result of one's speech or silence, or some other result one is forbidden to produce directly will follow. One needs to be able to say, in such cases, that one is not doing evil that good may come of it, but rather doing good from which evil unfortunately follows. Hence a physician may prescribe pain relievers that, as a regretted or at least an unintended side effect, shorten the patient's life. But it is not necessary to believe in absolutes in the strict sense in order to accept the principle of double effect. Some moralists, without believing in moral absolutes in the strict sense, believe in virtual absolutes (see § 6.3.) or in acts intrinsically evil in the weak sense -- namely that, though they may sometimes be justified, they always require a justification.^{viii} Such moralists also can use the principle of double effect. So long as it makes a difference whether one is doing evil or accepting it as a side effect of one's action, the principle of double effect is a necessary causistical tool.

The credible use of this tool of casuistry requires three conditions. First, there need to be action-kinds resistant to elision into either desired or foreseen consequences. If one can say, "I am not committing adultery, only securing my release from a concentration camp so that I can rejoin

my family," the principle of double effect will be superfluous. And if one is required to admit that one is killing those people whose suicide results from one's literacy campaign, the principle of double effect will have no application.

Second, the fact that the bad consequences of one's acts are regretted or at least unintended must have some effect on one's behavior. We must be prepared to take real care, and in the process take real risks, to avoid killing noncombatants if we are to claim that we do not intend the deaths of those who die as a result of our military actions.^{ix} Likewise, if we decide not to try to prolong the life of a dying person or a severely damaged infant, we must, in order to support our invocation of the principle of double effect, show respect for the patient in other ways (including ways whose importance is symbolic).

Third, the application of the principle of double effect requires a background ethics of "my station and its duties," although this ethics need not be immune to overriding or revision, say on the ground that it reflects a gravely unjust set of institutions (slavery, for example). Failure to do one's conventionally defined duty, or acting in accordance with a defensible interpretation of that duty, has a different intentionality than does the intervention of a stranger.

Two pairs of examples developed by Shelly Kagan make the crucial point:^x

(SK1a) A philosopher expected to win a prize that cannot be awarded posthumously is being kept alive on life-support systems. A rival disconnects him, he dies, and the rival then wins the prize.

(SK1b) A severely injured boy is also being kept alive on life-support systems. His doctor concludes that recovery is impossible, and after consultation with the boy's family, disconnects him. The boy then dies.

(SK2a) Parents fail to feed their children, who then die of starvation.

(SK2b) I fail to feed a homeless person, who then dies of starvation.

Most of us would say that in cases *SK1a* and *b*, the rival philosopher kills and the doctor only allows death; and that in cases *SK2a* and *b*, the parents kill but I only allow death. And since at least one criterion for imputing intention in difficult cases is the distinction between action and inaction,^{xi} we are also likely to say that the rival philosopher and the parents intend the deaths of their victims, whereas doctor and I merely foresee them (at least in the absence of further reason for imputing intention in these cases). But central to our judgments in these cases is the fact that the doctor is fulfilling a conventionally defined role, and the parents are failing to do so. If all such roles are presumptively illegitimate, then these moral distinctions will cease to make sense.

3.3. *Elitism*

One possible source of difficulty is the contemporary belief that all men and women, including those who used to be called the "vulgar," are equally entitled to take part in moral discussion. But a tradition represented by Plato,^{xii} Sidgwick,^{xiii} and Roger Scruton^{xiv} suggests that there is a significant difference between two classes of moral agents -- the common people and the enlightened few.

One way of spelling out this difference is as follows. Moral judgments are matters of convention, and these conventions rest ultimately on will and force, by which superior persons (or the majority) impose their agendas on their inferiors (or the minority). We may add that the element of force and will underlying our morality should be kept from the majority with the help of pious lies. Some such position was attributed to a wide range of other writers by Leo Strauss, and may have been in fact have been that of Strauss himself.^{xv} In another form, this tradition allows a

select class of morally sensitive person to make highly discriminating situational judgments, while leaving the mass of mankind to strict deontological norms.

On such views, religion and conventional morality are fictions necessary to keep the masses in line -- or, more politely, to maintain »social order. Meanwhile philosophers, who have seen through the swindle, are entitled to pursue their ends without regard to inherited moral codes, though they may have codes of their own which place some constraints upon their actions. This strategy makes ample provision for Machiavellianism: philosophers can advise their rulers (and those among their students who seem destined for rule) to depart from communal codes ruthlessly when necessary to preserve the community that sustains them; they can also supply sophistical arguments as necessary to refute indiscreet skeptics.

The hypocrisy required by this strategy renders it unacceptable. Moreover it ignores the fact that there is now a substantial "trickle down" from elite to mass attitudes. Lastly, it supposes, contrary to fact, that philosophers are immune to the physical, intellectual, and emotional limitations that afflict ordinary people. Philosophers as much as ordinary folk are subject to social pressures, including the various forms of "political correctness." Philosophers who undertake propaganda for Machiavellian reasons are likely to end up believing their own lies for the same reason ordinary people are. Philosophers as much as ordinary folk often fail to live up to their own convictions; philosophers as well as ordinary folk must die.

Nonetheless, those who insist, as I would, on the public character of moral judgments,^{xvi} must admit one important qualification. There are strong social conventions against direct expression of disapproval of other people's behavior. Disapproval is usually expressed obliquely, often with qualifiers like "it's all right if that's what they want" Only when the person making the judgment has a personal interest in the matter (including an interest such as raising his children

"right"), or else has an institutional position, say as religious leader, which entitles him to speak out on moral issues, is direct expression of moral disapproval considered appropriate. How far politeness can qualify honesty in moral matters is itself a matter of casuistry, which nothing in the present argument enables or requires me to resolve.

NOTES

ⁱ Parenthetical references, by contributor and chapter or page, in this section are to *Anti-Theory in Ethics and Moral Conservatism*, Stanley G. Clarke and Evan Simpson eds. (Albany: SUNY, 1989)

-- an anthology to which I am much indebted. For an ethics textbook that takes the contribution of anti-theorists into account, see Christina Sommers and Fred Sommers eds., *Vice and Virtue in Everyday Life* (San Diego: Harcourt Brace, 1993).

ⁱⁱ *Discourse on Method*, Donald A. Cress, tr. (Indianapolis: Hackett, 1980), p. 7.

ⁱⁱⁱ I have used the restatement of Wittgenstein's argument in Roger Scruton, *From Descartes to Wittgenstein* (New York: Harper and Row, 1985), pp. 279-84.

^{iv} *Philosophy of Right*, §153 Remark. T. M. Knox, trans. (Oxford: Clarendon Press, 1957), p. 109.

^v I am here indebted to a conversation with my colleague Sandra Fairbanks.

^{vi} See my *Ethics of Homicide* (Ithaca, N.Y.: Cornell University Press, 1978) (paperback ed.; Notre Dame: University of Notre Dame Press, 1990), ch. 4, and the literature cited there. Other pertinent works include my article, "Acting and Refraining/Intention and Foresight," *Dialogue*, spring, 1987; Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), §5.3; Grisez, *The Way of the Lord Jesus*, I (Chicago: Franciscan Herald Press, 1983), ch. 12, app. 3; Bernard Hoose, *Proportionalism* (N.p.: Georgetown University Press, 1987), ch. 5; Richard A. McCormick, "Nuclear Deterrence and the Problem of Intention," *Catholics and Nuclear War*, Philip J. Murnion ed. (New York: Crossroad, 1983), 168-82; Cornelius Van der Poel, "The Principle of Double Effect," *Absolutes in Moral Theology?*, Charles E. Curran ed. (Washington: Corpus, 1968), 186-210; and Michael Walzer, *Just and Unjust Wars* (New York: Basic, 1977), pp. 152-9. Also in point are the following contributions to Curran and McCormack eds., *Readings in*

Moral Theology, No. 1 (New York: Paulist, 1978): Peter Knauer, S.J., "The Hermeneutic Function of the Principle of Double Effect," (pp. 1-39); Bruno Schüller, S.J., "Direct Killing/Indirect Killing" (pp. 138-57), and Albert Di Ianni, S.M. "The Direct/Indirect Distinction in Morals" (pp. 215-43).

^{vii} Quoted, e.g., in Donagan, *Morality* p. 158.

^{viii} Di Ianni, "Distinction," pp. 224-5.

^{ix} See Walzer, *Wars*, *loc. cit.*

^x *The Limits of Morality* (Oxford: Clarendon Press, 1989), pp. 101-6.

^{xi} See in particular my article "Acting and Refraining."

^{xii} *Republic* 414b-c.

^{xiii} *The Methods of Ethics* (New York: Dover, 1966), p. 489: "Thus the Utilitarian conclusion, carefully stated, would seem to be this; that the opinion that secrecy may render an action right which would not otherwise be so should itself be kept comparatively secret; and similarly that the doctrine that esoteric morality is expedient should itself be kept esoteric."

^{xiv} *The Meaning of Conservatism* (Totowa, N.J.: Barnes and Noble, 1980), pp. 139-40. "Like Plato, the conservative may have to advocate the 'Noble Lie'. He might in all conscience seek to propagate the ideology which sustains the social order whether or not there is a reality that corresponds to it."

^{xv} For the attribution of such ideas to Strauss himself, see Shaida Drury, *The Political Thought of Leo Strauss* (London: Macmillan, 1988). Mark Henrie's review of Drury, *University Bookman*, 32, no. 3 (1992), 17-23 spotlights the issues.

^{xvi} See my article, "The Conscious Acceptance of Guilt in the Necessary Murder," *Ethics*, April 1978.