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The Fundamental Problem

The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before. This is the fundamental problem of which the Social Contract provides the solution.

Rousseau, *The Social Contract*

In this chapter I provide an overview of the main ideas and problems that I shall address in this work and sketch some approaches to their solutions. Section 1 introduces the idea of a “social morality.” Social morality, I argue in Part One, constitutes the basic framework for a cooperative and mutually beneficial social life. Social morality provides rules that we are required to act upon and which provide the basis for authoritative demands of one person addressed to another. Section 2 analyzes this authority relation, and its apparent tension with understanding others as free and equal moral persons. How can free and equal moral persons claim authority to prescribe to other free and equal moral persons? A general solution to this problem, advanced by Rousseau and Kant, is that authority and freedom can be reconciled if each freely endorses the authority of morality. As I argue, a publicly justified morality – one that the reason of each endorses – allows each to remain free while subject to moral authority. Although Rousseau and Kant, and later Rawls, point the way to a solution to the

fundamental problem of a free social order, their solutions flounder on the core idea of reasonable pluralism. Individuals with very different values, conceptions of the good life, and other normative commitments are unlikely to have good reasons to endorse the same moral rules; the application of the ideal of public justification under these conditions is indeterminate. How to cope with this indeterminacy is one of the main concerns of Part Two.

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1.1 A MORAL ORDER AMONG FREE AND EQUAL PERSONS

My aim in this work is to provide a general account of social morality that reconciles freedom and the demands of public order in a society in which individuals, exercising their reason about the best thing to do, deeply disagree. Showing how this is possible, I shall argue, is not just fundamental for our understanding of a free political order, but it is also the basic task for seeing how a moral order among free and equal persons is possible. The question that has occupied liberal political theory – whether free and equal persons can all endorse a common political order even though their private judgments about the good and justice are so often opposed – is the fundamental problem of a free moral order. A recurring theme throughout this work is the continuity of the problems of political philosophy and what I shall call “social morality.” This is by no means to say that the solutions to this fundamental problem are the same in these two spheres. The moral and political orders provide, as we shall see, different but complementary solutions to this fundamental problem.

1.2 SOCIAL MORALITY AS THE FRAMEWORK OF SOCIAL LIFE

By “social morality” I mean the set of social-moral rules that require or prohibit action, and so ground moral imperatives that we direct to each other to engage in, or refrain from, certain lines of conduct. Much of what we call “ethics” – including visions of the good life and conceptions of virtue and vice – lies outside social

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morality so understood. Social morality and its limits are the focus of Mill's great *On Liberty*: the subject of "Civil" or "Social Liberty" involves the nature and limits of the moral authority of society over individuals to insist that they refrain from speaking, acting, and living as they wish.¹ It is important to stress that social morality is but one aspect of morality, or the realm of the ethical.² P. F. Strawson certainly understood the plurality of our moral practices. In his important (though underappreciated) paper, "Social Morality and Individual Ideal," he distinguished the broad "region of the ethical" – which includes visions of what makes life worth living and what constitutes a noble or virtuous life – from a system of moral rules that structures social interaction. As Strawson saw it, individuals are devoted to a vast array of individual ideals: "self-obliterating devotion to duty or to service to others; of personal honour and magnanimity; of asceticism, contemplation, retreat; of action, dominance and power; of the cultivation of 'an exquisite sense of the luxurious'; of simple human solidarity and cooperative endeavour; of a refined complexity of social existence."³ Pursuit and achievement of these ideals, Strawson argued, presupposes an organized social life, and for such a life there must be a system of shared expectations about what must and must not be done in our interactions with each other. What philosophers such as Strawson and Kurt Baier called "social morality" has its roots in this requirement of social life.⁴ As Strawson and Baier understood it, the rules of social morality structure social interaction in ways that are beneficial to all and make social existence possible; social morality lays down requirements (including prohibitions) that are to direct people's social interactions. Of course Strawson and Baier stressed that not all such social rules constitute moral rules: to constitute bona fide moral requirements, social rules must meet further conditions. Most important, they must in some way be verified from the requisite moral point of view.

¹ See John Stuart Mill, *On Liberty*, p. 217 (chap. 1, ¶1).

² This is an important point; I address it in some detail in Appendix A.

³ P. F. Strawson, "Social Morality and Individual Ideal," p. 1.

⁴ Kurt Baier, *The Moral Point of View: A Rational Basis for Ethics*, chap. 10, and his *The Rational and the Moral Order*, p. 157, chap. 6.

This Baier-Strawson analysis of social morality has been shared by many in the history of moral philosophy. Hobbes certainly understood the study of laws of nature as the “true Moral Philosophy”; they are rules which, if followed, promote “peaceable, sociable, and comfortable living.”⁵ Despite his many disagreements with Hobbes, Hume too saw the rules of justice as necessary to secure the advantage of social life and social cooperation.⁶ Sometimes these views are understood as insisting that moral rules are nothing but conventional rules, conformity to which promote cooperative social relations, but no such radical constitutive claim is required. Crucial to this tradition is the more modest claim that a necessary function of one type of moral practice (i.e., social morality) is that it serves these social purposes. As we shall see, this is consistent with a number of views about the ultimate character of such rules, for example, whether they are the discovered or constructed. (Recall that Hobbes allows that the laws of nature may be commands of God.)⁷ In recent moral philosophy, I believe, focus on this crucial notion of social morality has been overshadowed by, on the one hand, more theoretical questions, such as the ultimate sources of normativity and the ontological status of moral properties and, on the other, more applied questions, such as the justice of various social institutions.⁸ Nevertheless, the social function of morality is in the background; certainly one of the things morality must do is allow us to live together in cooperative, mutually beneficial, social relations.

Some traditions of moral theorizing, especially those influenced by Hobbes and Hume, have understood that the first step in understanding a free social morality is to understand the necessity of social morality for social existence. Hobbesians such as David Gauthier thus start out with the insight that morality has a role to perform, and there is no point analyzing what “morality requires of us” or “what we owe each other” if we do not grasp why a system

⁵ Hobbes, *Leviathan*, p. 100 (chap. 15, ¶40).

⁶ Hume, *A Treatise of Human Nature*, Book III, Part II, §§1–2.

⁷ Hobbes, *Leviathan*, p. 100 (chap. 15, ¶41).

⁸ Thus Baier’s great 1995 book, *The Rational and the Moral Order: The Social Roots of Reason and Morality* has been largely ignored.

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– and what sort of system – of requirements and “owings” is necessary to human social life. In a very general way, we might call this a naturalistic understanding of social morality; although its demands are verified by reason, they are rooted in the conditions for human social life and cooperation, and so we cannot understand the requirements of morality without understanding the conditions of human social life and the capacities of its participants – and their limitations. I believe this is a fundamental insight that those in the broadly “Kantian” tradition have often overlooked, or at least have not sufficiently appreciated. Often contemporary moral theory seems to suppose that there is some well-defined set of reasons called “morality,” which instruct us what to do, and it is never precisely clear why – indeed, whether – we need it. Unless we can explain why humans need social morality, we might wonder whether we would be better off without it. In our post-Nietzschean world it will not do to start from the assumption that social morality merits our allegiance. Maybe it just is, as Nietzsche would have it, a ploy of the priestly class (which is now headed by moral philosophers) to control *hoi polloi*. “Even apart from the value of such claims as ‘there is a categorical imperative in us,’ one can always ask: what does it tell us about a man who makes it?”⁹ Just as political philosophers are rightly skeptical of political authority and insist that it be justified, so too should moral philosophers critically examine the authority of social morality. As Baier recognized, social morality sometimes requires people to sacrifice what they deeply care about, and, indeed, often seeks to frighten them into complying with its demands. As participants in social morality we blame others if they fail to do what is required; indeed we think violators ought to punish themselves by feeling guilt.¹⁰ One better have good reasons for inflicting all of this on one’s fellows and one-self. And, I will argue, one does: it is fundamental to large-scale human cooperation and social life.

What I shall call the “Baier-Strawson View” of social morality focuses on the relation between, on the one hand, personal values, ideals, or interests and, on the other, social-moral rules that

⁹ Friedrich Nietzsche, *Beyond Good and Evil*, p. 99 (§187).

¹⁰ Baier, *The Moral Point of View*, pp. 1ff.

structure the interaction of individuals whose life is planned around the pursuit of these ideals or interests. The relation is complex; social-moral rules both provide the conditions for the successful pursuit of these ideals and simultaneously constrain our choices about how to pursue them. Once we acknowledge that social morality has a job to perform, the question that immediately arises is whether it is no more than an instrument – no more than a tool to achieve our goals and ends. Those who have most stressed the functions of social morality such as Gauthier have seen it as, in the end, simply a construct of our instrumental rationality. And if so, it has seemed to many that its rules are not categorical imperatives but instructions about how each of us is to best achieve her goals. In the history of moral and social philosophy this has been a deeply attractive idea: if social morality secures our ends, our reasons to obey it must be contingent on it doing so. One of the main aims of Part One is to show that this enticing view is erroneous. Morality has a function, but our reasons to obey it are, to a significant degree, autonomous of its ability to promote our ends and goals. To understand the relation of human ends, goals, and values to the rules of the moral order is one of the most perplexing questions of moral and social philosophy. I hope to make some progress on it in Part One.

1.3 THE AUTHORITY OF SOCIAL MORALITY

(a) *Social Morality as Imperative*

Social morality is imperative: it is the basis for issuing *demands* on others that they *must* perform certain actions. Like the law (again, note the continuity between political and moral philosophy), it instructs us how to act regardless of our personal aims and desires. Charles Larmore has argued that this is a distinctively modern, juristic, view of ethics. Following Sidgwick, Larmore contrasts this modern conception of ethics, founded on the notion of the right, to the view of the ancients, according to which the good is the foundation of ethics:

If the notion of right is replaced by that of good at the foundations of ethics . . . then the moral ideal will no longer be imperative, but rather attractive.

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His [i.e., Sidgwick's] point was that ethical value may be defined either as what is binding or obligatory upon an agent; whatever may be his wants or desires, or as what an agent would in fact want if he were sufficiently informed about what he desires. In the first view, the notion of right is fundamental, in the second, the notion of good.¹¹

As Sidgwick saw it, “[a]ccording to the Aristotelian view – which is that of Greek philosophy generally, and has been widely taken in later times – the primary subject of ethical investigation is all that is included under the notion of what is good for man or desirable for man; all that is reasonably chosen or sought by him, not as a means to some ulterior end, but for itself.”¹² Ancient ethics was teleological, a science of ends; it concerned what a person properly desires or what a proper, virtuous, person desires, or finds attractive. In contrast, modern ethics concerns what we must do – what we are required to do even if we are not attracted by it.¹³ As Mill stressed, morality concerns what can be demanded of one:

This seems the real turning point of the distinction between morality and simple expediency. It is part of the notion of Duty in every one of its forms, that a person may rightfully be compelled to fulfill it. Duty is a thing which may be *exacted* from a person, as one exacts a debt. Unless we think it may be exacted from him, we do not call it a duty. . . . There are other things, on the contrary, which we wish people to do, which we like or admire them for doing, perhaps dislike or despise them for not doing, but yet admit that they are not bound to do; it is not a case of moral obligation.¹⁴

Utilitarianism too is a science of duties. Moralities justifying imperatival notions of right and wrong are part and parcel of the modern condition, in which we constantly confront others whom

¹¹ Charles Larmore, *The Morals of Modernity*, p. 20. See Henry Sidgwick, *The Methods of Ethics*, 7th edition, pp. 105–6; Sidgwick, *Outlines of the History of Ethics for English Readers*, pp. 1–10.

¹² Sidgwick, *Outlines of the History of Ethics*, p. 2.

¹³ Cf. H.A. Prichard's “Does Moral Philosophy Rest on a Mistake?” p. 13.

¹⁴ J. S. Mill, *Utilitarianism*, p. 246 (chap. V, ¶14). Rashdall and Sidgwick realized that this imperatival conception of morality is characteristic of consequentialist as well as Kantian views. See Hastings Rashdall, *The Theory of Good and Evil*, vol. I, pp. 102ff.

we do not know and who typically entertain notions of what is good and desirable that differ markedly from our own. Our moral relations with such strangers must be centered on what actions and forbearances we owe each other and, as Mill says, what we can *exact* from each other. Thus the notions of right, wrong, duty, and obligation become the core of social morality. Seen against this background, neo-Aristotelian virtue ethics is a rejection of modernity rather than a solution to its problems.

(b) The Authority Relation in Social Morality

At the heart of social morality is a fundamental claim to authority over others. This is nicely brought out in R. M. Hare's work (which, alas, like so much good philosophy has fallen the victim of current fashions). Hare's approach is enlightening because it focuses not on the general imperatival nature of social morality but on imperatival utterances, and more generally, imperatival relations between individuals. For Hare, the core of moral utterances is the illocutionary act of telling another what to do: that is, issuing an imperative.¹⁵ Morality is, of course, much more than telling others what to do; it gives us *standing* to tell them what to do. I might "issue" an imperative to you to "Drink better wine!" but even if I have good reason to insist that you should drink better wine, you may dismiss my imperative by telling me that your wine drinking habits are none of my business — I have no standing to instruct you. As Margaret Gilbert observes:

To say that someone has the standing to do something means simply that he is in a position to do it. If someone lacks standing to do it, the question whether he is justified in doing it does not arise. For he cannot do it. One who lacks the standing to make a certain demand or issue a rebuke can, of course, utter a purported rebuke or make a purported demand. He can speak in a rebuking or demanding tone. His target, meanwhile, may have little interest in this if it is possible to question his standing to rebuke or

¹⁵ R. M. Hare, *Sorting Out Ethics*, p. 16. Hare is drawing here on J. L. Austin's distinction between the illocutionary and perlocutionary functions of speech acts. As Hare puts it, "the first being what we are doing *in* saying something" while the latter is "what we are doing *by* saying something" (*Sorting Out Ethics*, p. 13). Perlocutionary aspects of speech acts are related to their pragmatic force.

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demand. His target may well respond in some such words as these: “It’s none of your business, so . . . forget it!”¹⁶

Morality, makes my action your business, and so gives *you* standing to *tell me* what *I* must do (§11.2). I cannot reply to your moral imperative “Keep your hands to yourself!” by saying it is none of your business where I put my hands. Your moral position is that you have standing to issue demands to which I must conform. This constitutes a claim to authority to direct my actions. You believe that morality prohibits ϕ and so I must not ϕ , even if I would rather like to, and indeed even if I do not now see anything especially wrong with it. Stephen Darwall has recently stressed the way in which such interpersonal morality involves “authority relations that an addresser takes to hold between him and his addressee.”¹⁷ When you make this moral claim on me, Darwall points out, you are not making a request that I refrain from ϕ , or calling attention to your view of morality according to which ϕ is immoral: you are issuing an imperative that I must not ϕ .¹⁸

There is an obvious rejoinder. You may insist that you are not demanding that I submit to *your* authority but only to the *authority of morality*. Morality, you might say, provides you *standing* to make my actions your business, but this only involves the authority of morality, not your authority over me. Both Hobbes and Kant recognized the inadequacy of this response – at least in their political philosophy. Despite the common interpretation of Hobbes as concerned only with the clash of self-interest, his analyses of the roots of disagreement and conflict are much more subtle and wide ranging. *Leviathan* focuses on problems of rationality and disagreement that arise when individuals rely on their private judgment of what reason requires. The exercise of our rationality is fallible; “no one man’s reason, nor the reason of any one number of

¹⁶ Margaret Gilbert. *Theory of Political Obligation*, p. 147. See also pp. 103ff, 147ff, 245ff. Gilbert stresses the close relations between the concepts of standing, authority, command, and obligation (p. 46).

¹⁷ Stephen Darwall, *The Second-Person Standpoint: Morality, Respect and Accountability*, p. 4.

¹⁸ *Ibid.*, pp. 10–11, 76.

men, makes the certainty.”¹⁹ Rational people aim at what Hobbes calls “right reason” – true rationality, which reveals the truth. However, because everyone’s exercise of rationality is fallible, we often disagree about what is right reason; the private use of reason leads to disagreement and, thought Hobbes, conflict. Although in such controversies each person claims that the use of his own private reason is “right reason,” these claims only exacerbate the conflict: “when men that think themselves wiser than all others clamour and demand right reason for judge, yet seek no more but that things should be determined by no other men’s reason but their own, it is . . . intolerable in the society of men.” Indeed, Hobbes insists that those who claim that their reason is correct reason betray “their want of right reason by the claim they lay to it.”²⁰ Someone who insists that *his* reason is right reason and so *his* reason should determine the resolution of disputes is not only a danger to society, but because he sees “every passion” of his as an expression of “right reason,” he is *irrational*; he demonstrates the lack of right reason by virtue of the claim he lays to it. And Hobbes applies this to the interpretation of the basic rules of social morality:

All laws, written and unwritten, have need of interpretation. The unwritten law of nature, though it be easy to such as without partiality and passion make use of their natural reason, and therefore leaves the violators thereof without excuse; yet considering there be very few, perhaps none, that in some cases are not blinded by self-love, or some other passion, it is now become of all laws the most obscure, and has consequently the greatest need of able interpreters.²¹

When we employ our “private reason” there is, says Hobbes, great dispute about the laws – both the laws of nature and civil laws.²² Kant agrees; the insecurity of the state of nature arises from

¹⁹ Hobbes, *Leviathan*, p. 23 (chap. 5, ¶3).

²⁰ *Ibid.*, p. 23 (chap. 5, ¶3). See further David Gauthier, “Public Reason,” p. 27. This same point was made earlier, and in more detail, by R. E. Ewin, *Virtues and Rights*, chap. 2.

²¹ Hobbes, *Leviathan*, p. 180 (chap. 26, ¶20).

²² *Ibid.*, p. 98 (chap. 15, ¶30), emphasis in original.