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The Theory of Morality

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of which the doer may be mistaken, is that by which, successfully or unsuccessfully, he tries to do his will.[36]

In the Hebrew-Christian tradition, as I understand it, all questions of common morality are either first-order ones about the permissibility or impermissibility of actions or intentions, or second-order ones about the culpability or inculpability of agents. Of course, the tradition sanctions evaluative questions about actions which are not reducible to these. But we must remember that it does not reduce all questions about the evaluation of actions to moral ones.

Yet some philosophers have questioned whether a morality confined to questions of these two kinds is not impoverished. R. M. Chisholm, for example, has inquired whether an adequate morality would not find room for questions of at least two more kinds.[37]

Questions of the first of the two additional kinds are about whether actions of certain kinds are or are not supererogatory: over and above the call of duty. Here a distinction must be drawn. As traditionally conceived, a supererogatory action is one which promotes an end which it is morally obligatory to promote but in a way which is not obligatory because it demands too much of the agent. Traditional morality, of course, acknowledges that there are such actions, and its conceptual resources are adequate to describing them. There are also actions which are extraordinary, in that the agent meets extraordinary demands, but in which the end, while recognized as a good either by individuals or by societies, is one it is permissible but not obligatory to pursue. Such ends are: business success, scholarly achievement, athletic prowess. Extraordinary actions in pursuit of such ends are quite properly praised, especially by those who think the ends pursued to be worth pursuing; but only confusion could result from treating questions about praiseworthiness of this kind as moral.

Questions of the second of Chisholm's two additional kinds are about whether actions of certain kinds are not demeritorious or objectionable, even though they are not impermissible. (Chisholm's term for them is "offensive.") However, it is not clear that there are actions which are morally offensive but permissible. Thus offences such as self-righteousness, sloth, and want of consideration are morally impermissible; and, provided that there is no want of consideration, ill-breeding, affectation, and coarseness, while

demeritorious, do not seem to be morally offensive. Here again, confusion would result from treating questions about offensiveness of the latter kind as moral.

2.4 The Fundamental Principle

Both Jewish and Christian thinkers have always held that the numerous specific precepts of morality are all derivable from a few substantive general principles, even though the conception of those precepts as binding upon rational creatures as such is compatible with the new intuitionist doctrine that the fundamental principles from which they derive are many. No Jewish or Christian moralist would dispute that the part of morality having to do with duties to God, which lies outside the scope of this investigation, derives from the principle in the Mosaic Shema: that God is one, and is to be loved with one's whole mind and heart (Deut. 6:5). And most of them have held that the part having to do with rational creatures, in their relations with themselves and with one another, also derives from a single first principle. Here, however, tradition has diverged, and two different principles have each won some recognition as fundamental. Some traditional moralists have maintained that the two, despite their obvious differences, coincide at a deeper level. Of these, the most distinguished was Kant, whose first and second formulas of the fundamental principle of morality philosophically restate the two apparently different traditional principles, and who declared that those formulas "are at bottom merely . . . formulations of the very same law."[38]

The more familiar of the two traditional candidates for recognition as the fundamental principle of morality, with respect to the relations of rational creatures to themselves and to one another, is also the more recent. In Judaism, its authority is talmudic. According to the Babylonian Talmud, a gentile once demanded of Hillel that he be taught the whole Law while he stood on one foot. "Do not do to your fellow what you hate to have done to you," Hillel told him. "This is the whole Law entire; the rest is explanation."[39] A similar saying of Jesus is preserved by Matthew: "All things whatsoever ye would that men should do to you, do ye even so to them."[40] Although one of these formulations is negative and the other positive, they are in fact equivalent; for to forbid an action of

a certain kind, and to command one of its contradictory kind, are equivalent. The precept formulated in these two ways has become known as "The Golden Rule."

Two objections are commonly made to receiving the Golden Rule as the fundamental principle of morality. First, it excludes the possibility that it may be right to do anything to another which you would hate to have done to you. Yet, as Kant pointed out, the Hebrew-Christian code calls upon parents, teachers, and judges to do many things to others, for their good or for the common good, which most plain men would hate to have done to them. How many judges would not hate to be sentenced, if they were guilty?[41] Second, the Golden Rule *prima facie* fails to condemn any action which affects the agent alone (as suicide may), or any action between consenting persons, to which there is no other party.[42] Yet common morality as traditionally conceived certainly recognizes the existence of duties to oneself, and hence must forbid actions contributing to violations of those duties when done at the behest of somebody else.

Such objections can be forestalled by appropriate interpretations. For example, with respect to Hillel's formulation, a moralist might distinguish natural hating from unnatural; then, having laid it down that, in the Rule, hating is to be interpreted as natural hating, urge that it is unnatural either to hate getting one's just deserts or not to hate such wrongs to oneself as suicide. By such an interpretation, certain substantive principles of duty are in effect absorbed into the Rule. Other substantive principles can be introduced into it by other interpretations.

That the common objections to it can be forestalled by such interpretations, which are neither dishonest nor arbitrary, points to a characteristic of the Golden Rule which not only exposes its inadequacy as a first principle but also explains its ubiquity. For it is ubiquitous. The earliest known version of it, one very like Hillel's, is credited to Confucius; and others appear in all the major religions. It is a proverb in many languages. Nor does the evidence suggest that it was diffused from a single source.[43] The explanation is simple. What a man would or would not have another do to him is in part a function of the mores he has made his own. Hence in cultures whose mores differ radically, what the Golden Rule is taken to require or forbid will differ radically too. And so any system of conduct that can be put forward as rational can include it.

The variability of what, in different cultures, the Golden Rule is taken to require or forbid shows that it is accepted because of its

form. It expresses the universality of the precepts of whatever system incorporates it. Its force is therefore, as Sidgwick pointed out, that of a principle of impartiality: in no system that incorporates it can it be permissible for A to treat B in a manner in which it would be impermissible for B to treat A, "merely on the ground that they are two different individuals, and without there being any difference between the natures or the circumstances of the two which can be stated as a reasonable ground for difference of treatment."[44] In its original form, Kant's first formula, "Act only according to that maxim by which you can at the same time will that it should become a universal law,"[45] has the same force. It is a rubric for an act of self-examination by which anybody may verify whether his judgement of how he may treat another has a place in the system of conduct he accepts, or whether it is an exception made in his own interest. But, obviously, no principle of impartiality that is common to different systems of mores can serve as the substantive first principle that distinguishes any one of them from the others.

Although the Golden Rule has always enjoyed popular esteem and has recently been recognized as an adequate substantive principle by so eminent a moralist as R. M. Hare,[46] most traditional moral theologians and philosophers have attached more weight to the second of the two traditional candidates for recognition as the first principle of morality. It is presented in a well-known passage that precedes the parable of the Good Samaritan in Luke's gospel.

> And behold, a certain lawyer stood up, and tempted [Jesus], saying, Master, what shall I do to inherit eternal life? He said unto him, What is written in the Law? how readest thou? And he answering said, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength, and with all thy mind; and thy neighbor as thyself. And he said unto him, Thou hast answered right; this do, and thou shalt live (10:25–28).

With the approval of Jesus, the "lawyer" (that is, student of Torah) here offers, as the fundamental principle governing the relations of human beings to themselves and to one another, an injunction from Leviticus, 19:18, *Love your neighbor as yourself.*

Although Jesus went on to interpret "neighbor" as standing for any human being whatever, in the passage from Leviticus the term strictly refers only to one's countrymen, so that a Jew's neighbors in a Jewish state would be his fellow Jews. However, rabbinical teaching as codified in Maimonides' *Mishneh Torah* joined the

passage in Leviticus to another in Deuteronomy, the two together being equivalent to the principle in Leviticus as Jesus interpreted it:

> 206. To love all human beings, who are of the covenant, as it is said, 'Thou shalt love thy neighbor as thyself' (*Lev.* 19:18).
> 207. To love the stranger, as it is said, 'Ye shall love the stranger' (*Deut.* 10:19).[47]

In his most revealing philosophical remarks about common morality, which are to be found in the treatise *de lege veteri* in his *Summa Theologiae*, Aquinas recognized the two precepts in the passage quoted from Luke as the first common principles of that morality (*prima et communia praecepta legis naturae*).[48] To these two precepts, all the precepts of the Mosaic decalogue, in which the whole of common morality is in some sense contained, are related as conclusions to common principles (*sicut conclusiones ad principia communia*).[49] The first common principles are self-evident (*per se nota*) to human reason, and the precepts of the decalogue can be known from them straight off with a little thought (*statim ... modica consideratione*). As for the more specific precepts of morality, although they can be inferred from the precepts of the decalogue by diligent inquiry (*per diligentem inquisitionem*), only the wise are capable of carrying out such inquiries. Ordinary folk will therefore receive the more specific precepts by instruction (*mediante disciplina sapientium*).

In the system of morality thus sketched, confining attention to the part of it that is independent of any theological presupposition, there is a single fundamental principle, held by Aquinas to be *per se notum*, that human beings are to love one another as they love themselves. From this primary and common principle (which Aquinas also referred to as a *principium communissimum*)[50] all the precepts of the Mosaic decalogue that do not rest on a theistic premise, that is, all but the first four, can be derived with a little thought. And from the precepts of the decalogue, in turn, skilled moralists can derive the more specific precepts needed for resolving problems of casuistry.

A problem, however, remains. In his preliminary discussion of natural law in the treatise *de lege* (*Summa Theologiae*, I-II, 90-97, esp. 94, 2) Aquinas did not even mention what in *de lege veteri* he went on to recognize as its first and common precepts. Instead he described the natural law as deriving from a "first precept" which he also called "the first principle in practical reason (*primum principium in ratione practica*): namely, that "good is to be done and pursued, and evil shunned" (*bonum est faciendum et prosequendum, et malum vitandum*).[51] What was the relation, in Aquinas's mind, between this first principle and the nontheistic *principium communissimum* that one is to love one's fellow human beings as oneself?

Germain Grisez has offered the only answer known to me that is consistent with what Aquinas wrote about both principles. The principle that good is to be done and sought, and evil avoided, is not primarily moral. It defines the fundamental condition that any movement or abstention from movement must satisfy if it is to be accounted an action at all. For no bodily movement can intelligibly be called an action unless it is presented as seeking or attempting some good, or shunning some evil. Even actions contrary to practical reason require "at least a remote basis" in it.[52] Wrong actions, so far as they are actions at all, are done in pursuit of something that seems good to the agent. However, any human being who thinks clearly must recognize that there are certain goods fundamental to human flourishing—to a full human life as a rational being: they include life itself, communicable knowledge, and friendship. With regard to human beings, whether oneself or another, the principle that good is to be pursued and evil shunned first of all forbids any action whatever directed against those fundamental goods; secondarily, it commands every human being, as far as he reasonably can, to promote human good generally, both directly (by actions good in themselves, such as acquiring knowledge) and indirectly (by producing the means for human flourishing, such as growing food). But the disposition to act and abstain from action in accordance with these commands and prohibitions is what loving yourself and others consists in. Hence the primary and common principle of the natural law may also be formulated as: *Act so that the fundamental human goods, whether in your own person or in that of another, are promoted as may be possible, and under no circumstances violated.* It is a principle of what Kant thought of as respect (*Achtung*), but of respect for certain fundamental goods. And, so interpreted, it plainly follows immediately from the first principle of practical reason.

Aquinas implicitly distinguished the love (*dilectio, amor*) of our own and others' humanity demanded by natural reason from the theological virtue he called *caritas* ("charity"; in Greek, *agape*). For he declared that all natural virtues—all dispositions to act as the

natural law requires—"are in us by nature as an undeveloped aptitude, and not as fully perfected" (*secundum aptitudinem et inchoationem, non . . . secundum perfectionem*), whereas the theological virtues, the greatest of which is charity, are infused by divine grace, "wholly from the outside."[53] Aquinas's doctrine of charity, which is fundamental to his moral theology, falls outside the scope of this inquiry. Roughly, he maintained that the virtues which are exhibited in actions done according to common morality, and are directed to natural human goods, must be "perfected" by directing them to man's ultimate supernatural end as divinely revealed, for which the infused theological virtue of charity in needed.[54] Charity comprehends every action demanded by the common morality required by natural reason, but directs them all to a further end, and an even more demanding one. Hence grace perfects nature. By affirming that the ends of theological virtues are not the same as those of the natural ones as such, but are more remote and comprehend more acts, Aquinas implied that his theory of the natural virtues—of common morality—does not logically presuppose his moral theology, and can be studied in its own right.

Although distinctions of this sort were once common property of orthodox Christianity in all its branches, there have recently been movements in Protestant moral theology to repudiate the doctrine that natural human reason can generate any moral laws at all: to proclaim *agape* (as theologians like to call it) as the sole valid guide for action; and, as the sole and sufficient rule of conduct, "Love, and do what you will!"

How this Augustinian injunction is supposed to guide conduct is far from clear, as W. K. Frankena has remarked; for the verb "to love" is desperately ambiguous.[55] In the mouths of orthodox theologians like St. Augustine or St. Thomas Aquinas, for whom traditional morality as embodied in the Mosaic decalogue is an expression of charity, one of the things enjoined is that the traditional moral law be obeyed. This position has been called "pure rule-agapism" by Paul Ramsey.[56] Others, taking what Frankena has judged "the clearest and most plausible view," have interpreted the law of love as a combination of a principle of benevolence, that we must produce good as such and prevent evil, with a principle of distributive justice.[57] Agapism of this sort would be a modified form of utilitarianism. Yet others have identified it with one or another of the pure forms of utilitarianism and have grappled with the familiar difficulties incurred (see below, 6.4–5). And finally, there are those

who, confounding *agape* with diffuse affectionate sentiment, have reduced "Love, and do what you will!" to "Having ascertained the facts of your situation, allow nothing—and especially not the precepts of traditional morality—to deter you from what your affectionate sentiments may prompt!" It should surprise nobody that the results of this vulgar "situation ethics" are sloppy and incoherent.[58]

Except for the first, all these positions are incompatible with the traditional doctrine that the system of common morality embodied in the Mosaic decalogue is strictly derivable from the primary and common principle that humanity is to be loved as such. And the first position, "pure rule-agapism," has to do, not with the rational character of common morality but with its relation to the theological virtue of charity. Our task is to inquire into the meaning of the primary and common principle, understood as knowable by ordinary human reason. And, as regards that inquiry, the only alternative to the interpretation of Aquinas proposed by Grisez, correctly, as I shall hereafter assume, is Kant's second formula of the fundamental principle of morality, *Act so that you treat humanity, whether in your own person or in that of another, always as an end, and never as a means only.*[59] Although, like Aquinas's, according to the interpretation by Grisez which I accept, this formula is teleological, it takes the ends of actions to be human beings themselves, not the human goods that may be realized in them.

In recent generations, many British moralists have objected that humanity, or rational nature, is not the sort of thing that can be an end in itself. "[B]y an end," Sidgwick complained, "we commonly mean something to be realized, whereas 'humanity' is, as Kant says, a self-subsistent end."[60] Ross dilated upon this, arguing that "ends . . . in the ordinary sense of the word men are not. For an end is an object of desire, and an object of desire is something that does not yet exist." And on no better ground, he complacently pronounced "the notion of self-subsistent ends" to be "nothing but an embarrassment to Kant."[61]

Far from embarrassing Kant, it is more probable that such cavils would have astonished him. Nor do I think he would easily have been persuaded that, among Sidgwick's and Ross's countrymen, the belief that the ultimate end of an action is the existing being for whose sake it is done was any less common that it was among his own.

For this familiar conception he might, indeed, have invoked

theological authority. "[T]he ultimate end of any maker, as a maker, is himself," Aquinas wrote; "we use things made by us for our own sakes, and if sometimes a man makes a thing for some other purpose, this is referred to his own good, as either useful, or delectable, or fitting [*honestum*]."[62] Obviously, a man who makes things for his own use or pleasure does so ultimately for his own sake; but even when he does something as "fitting," for example, when he observes the terms of his contract with his employer, Aquinas held that he does so as due to himself as well as to his employer. Nor should it be forgotten that not all actions are primarily directed to the use or pleasure of the being who is their ultimate end. This is most evident in actions whose ultimate end is God; for, since God is perfect, nothing anybody does can benefit him in any way at all. "God is the end of things," Aquinas explained, "not in the sense of something set up, or produced, by things, nor in the sense that something is added to him by things, but in this sense only, that he is attained by things."[63] Nor are actions done for the sake of a human being, oneself or another, necessarily or always directed to that person's use or pleasure. The most commonplace examples are acts of courtesy, which may well neither be useful nor pleasing, nor believed to be, but be done and accepted wholly out of mutual respect. Actions of abstaining from injuring or offending others are also of this kind: they are neither pleasing nor useful (for refraining from harming somebody does him no good); but they are morally obligatory, as done out of respect for an already existing being whom practical reason recognizes as an end in itself.

Kant's and Aquinas's versions of the primary common principle that humanity is to be loved for its own sake, although they converge, do not coincide. For while most acts of respecting human nature as an end in itself are also acts of respecting certain fundamental human goods as to be promoted and never violated, not all are. For example, respecting as an end in itself one human being who attacks the life of another, who is innocent, does not appear to exclude using deadly violence on him, if only so is the life or fundamental well-being of his innocent victim to be safeguarded. A man is not degraded to a mere manipulated means by being forcibly prevented from degrading somebody else to a mere manipulated means. But respecting every human life as an inviolable fundamental good does exclude using deadly violence on

anybody, even to safeguard innocent lives. Hence Aquinas's version of the *principium communissimum* can only be reconciled with the received Christian doctrine that killing in self-defence or in defence of the innocent is licit, by such devices as confining its application to direct actions and drawing a distinction between direct and indirect killing (see 5.3).

There are three reasons for preferring Kant's interpretation of the primary and common principle to Aquinas's. First, it is simpler. If the principle that one is to love one's fellow human beings as oneself is to be understood as a principle of respect, as it must be to play the part it does in Jewish and Christian moral thinking, then it is most straightforwardly read as ordaining respect for human beings, not for fundamental human goods. Second, as the examples of self-defence and the safeguarding of innocent lives show, received Jewish and Christian moral conclusions are derivable more directly from the principle as Kant interpreted it. And finally, although the question itself will not be investigated until the final chapter, the principle appears to be more defensible in its Kantian form than in its Thomistic one.

In what follows, therefore, I take the fundamental principle of that part of traditional morality which is independent of any theological presupposition to have been expressed in the scriptural commandment, "Thou shalt love thy neighbor as thyself," understanding one's neighbor to be any fellow human being, and love to be a matter, not of feeling, but of acting in ways in which human beings as such can choose to act. The philosophical sense of this commandment was correctly expressed by Kant in his formula that one act so that one treats humanity always as an end and never as a means only. However, Kant was mistaken in thinking this formula to be equivalent to his formula of universal law, in which he captured the philosophical truth underlying the inaccurately stated Golden Rule.

Since treating a human being, in virtue of its rationality, as an end in itself, is the same as respecting it as a rational creature, Kant's formula of the fundamental principle may be restated in a form more like that of the scriptural commandment that is its original: *Act always so that you respect every human being, yourself or another, as being a rational creature.* And, since it will be convenient that the fundamental principle of the system to be developed be formulated in terms of the concept of permissibility

analysed in the preceding section, the canonical form in which that principle will hereafter be cited is: *It is impermissible not to respect every human being, oneself or any other, as a rational creature.*

2.5 The Structure of the First-Order System

The structure of any system of morality whose sole first principle is that which has been identified in the preceding section must be logically very simple.

It cannot be an axiomatic system; for in axiomatic systems a body of theorems is rigorously derived from a small set of unproved propositions, the "axioms," which are stated by means of a few primitive terms. Except for additional terms introduced as abbreviations, and which therefore could be dispensed with, neither theorems nor demonstrations contain any term not mentioned in the axioms. The primitive terms remain uninterpreted at the end, as they were at the beginning. Such systems explore what follows on the assumption that their axioms hold true for everything that satisfies their primitive terms.

The structure of the fundamental principle is itself simple. It contains only one concept peculiar to moral thought, that of (moral) permissibility. And its sense is that no action which falls under the concept of not respecting some human being as a rational creature can fall under the concept of being permissible. The second concept it contains, that of (not) respecting some human being as a rational creature, is not peculiar to moral thinking. It has a place in descriptions of human conduct in anthropology and psychology, and of course in everyday descriptive discourse.

Of those precepts derivable from the first principle which are needed for the solution of serious moral problems, virtually all turn on the concept of respecting a human being as a rational creature, and virtually none on the concept of permissibility. There are, indeed, serious problems about the construction of formal systems in which "it is permissible that" figures as a modal operator, and which are investigated in deontic logic; but their philosophical interest is logical rather than moral. The problems that will occupy us in what follows all have to do with what falls under the concept of respecting a human being as rational, and what does not.

None of these problems can be solved by means of the logical operation of substituting for one expression another that, by definition, is synonymous with it. The concept of respecting a human being as a rational creature is not usefully definable for our purposes. Thus to define it as treating a human being, by virtue of his rationality, as an end in itself, while perhaps clarifying, does not furnish us with a useful substituend. Yet it does not follow that the process of deriving specific precepts from the fundamental principle is arbitrary and unreasoned.

The formal character of such derivations is uncomplicated. Consider the three schemata of specific moral precepts that were listed in 2.3 above: namely,

(1) It is always permissible to do an action of the kind K, as such;
(2) It is never permissible to do an action of the kind K;
(3) It is never morally permissible not to do an action of the kind K, if an occasion occurs on which one can be done.

Now let us ask what are the simplest additional premises by which precepts satisfying these schemata can be validly inferred from the fundamental principle

(P) It is impermissible not to respect every human being, oneself or any other, as a rational creature,

and a truth about the system of common morality being investigated, namely,

(S) The principle (P) is the sole first principle of common morality.

Precepts falling under schema (1) require a proposition derivable from (P) and (S), namely,

(1a) No action of a kind which, as such, does not fail to respect any human being as a rational creature, is impermissible as such,

and an additional premise, namely, one satisfying the schema

(1b) No action of the kind K, as such, fails to respect any human being as a rational creature.

Precepts satisfying the schemata (2) and (3) are each directly derivable from the fundamental principle (P) together with one

additional premise. Thus precepts satisfying (2) follow from (P) and a premise satisfying

(2a) All actions of the kind *K* fail to respect some human being as a rational creature;

and those satisfying (3) follow from (P) and a premise satisfying

(3a) If an occasion occurs on which an action of the kind *K* can be done, not to do it will fail to respect some human being as a rational creature.

Premises satisfying the schemata (1b), (2a), and (3a) may be called "specificatory premises," because they each identify a species of action as falling or not falling under the fundamental generic concept of action in which every human being is respected as a rational creature.

Although simple derivations of these three kinds raise no serious logical questions, the question of how specificatory premises satisfying the schemata (1b), (2a), and (3a) are obtained is both serious and difficult. Nor has it been much studied by philosophers. Of processes analogous to those that are required, perhaps the closest are those by which courts apply legal concepts to new cases.

In common law, as Edward H. Levi has observed, a "circular motion" is perceptible in the reasoning by which concepts are first elicited from cases and then applied: in the first stage, a legal concept is created by comparing and reflecting on cases; in the second, that concept, more or less fixed, is applied to new cases; and in the third, reasoning by example with new cases goes so far that the concept breaks down, and a new one must be created.[64] Those who accept traditional morality, without necessarily believing that it originated in a divine command, can hardly escape concluding that its concepts were created by just such a "circular" process; and they will read both Hebrew and Greek literature as containing evidences of it. But they must go further. To accept traditional morality is to accept its fundamental principle as true, and hence to be confident that the concepts in terms of which it is formulated are not liable to break down when applied to new and unforeseen cases. With regard to that principle, although not to the more specific of the specificatory premises by which it is applied, they must hold that a point has been reached beyond which only reasoning of the kind found at the second of Levi's stages is called for. And this has been accepted by some common lawyers, for example Lord Atkin, who

pointed out, in an opinion which dislodged a number of entrenched legal concepts, that the common law of tort is an application of the moral principle that you are to love your neighbor, interpreted restrictively, because of the practical difficulty of providing legal remedies, as "You must not injure your neighbor."[65] Quite evidently, Lord Atkin would have dismissed any suggestion that the concept of injuring your neighbor might break down and have to be replaced.

Legal reasoning, in which a concept is applied to new cases, presupposes that the concept has a content which in part is comprehended by members of the law-abiding community and in part remains to be determined by reflecting on cases to which it and related concepts have been applied. And it further presupposes that the determination of that concept, and its application to new cases, is not arbitrary: that, even though up to a point bad judicial decisions must be allowed to stand, according to the doctrine of *stare decisis*, there is an objective distinction between correct judicial opinions and incorrect ones. The rational processes by which such opinions are arrived at can be pronounced sound or unsound, although they cannot be usefully formalized, because they depend in large measure on weighing likenesses and differences between cases on principles which, although received, are acknowledged to be corrigible.

The analogy to legal reasoning of the unformalized reasoning by which specificatory premises in morals are established has recently been made much of by Hare, although he has not taken the same view as I of the analogue.

> If a normative or evaluative principle [Hare wrote] is framed in terms of a predicate which has fuzzy edges (as nearly all predicates in practice have), then we are not going to be able to use the principle to decide cases on the borderline without doing some more normation or evaluation. If we make a law forbidding the use of wheeled vehicles in the park, and somebody thinks he can go in the park on roller skates, no amount of cerebration, and no amount of inspection of roller skates, are going to settle for us the question of whether roller skates are vehicles 'within the meaning of the Act' if the Act has not specified whether they are; the judge has to decide whether they are *to be* counted as such. And this is a further determination of the law. The judge may have very good reasons of public interest or morals for his decision; but he cannot make it by any physical or metaphysical examination of roller skates to see whether they are *really* wheeled vehicles.[66]

The chief difficulty in Hare's argument is that he considers only one feature of the predicates in terms of which the moral principles in question are formulated, namely, whether they have fuzzy or nonfuzzy edges; and that feature is itself fuzzy. He does not make clear whether or not he takes the mere fact that it is disputable whether a predicate applies to a certain species of case to be a sufficient condition of its having fuzzy edges; or whether, in addition, he demands that disputes about its application be intrinsically irresoluble.

Suppose that a child is directed to sort toy building-blocks of various shades of blue and green into two boxes, putting the blue into one and the green into another. Of some bluish-green (or greenish-blue) blocks he complains that he has not been told which box to put them in; for as bluish they are not green and as greenish they are not blue. Somebody more theoretically minded may have added that the predicates "green" and "blue" have fuzzy edges; that in order to decide in which box to put the blocks that lie within the fuzzy region, he must make further determinations of what is to be accounted green or blue; and that neither further scrutiny of the blocks nor cerebration about the meanings of "green" and "blue" can settle the matter. Within the terms of what he was directed to do, it is intrinsically irresoluble.

Hare's case of the roller skates, as far as can be told from his sketch, is not of this kind. He rightly remarks that nothing in it turns on differences about what roller skates are, as to which all parties may be expected to agree, although he does not point out that cases having to do with complex machines may well be different. (In the moral case to which he applies his example, that of abortion, questions about the nature of a foetus more resemble those about the nature of a complex machine than those about the nature of roller skates.) But on what ground does Hare conclude that no amount of "cerebration" by a judge about the nature of wheeled vehicles "within the meaning of the Act" could settle the question whether roller skates are wheeled vehicles? While the predicate "wheeled vehicles within the meaning of the Act" has fuzzy edges in the superficial sense that disputes can arise about what it applies to, it does not follow that it has fuzzy edges in the deeper sense that those disputes can be resolved only extrinsically: that is, by considerations, whether of public interest or of morals, which according to received canons of statutory interpretation are not implicit in the words of the Act.

It is true that positivist legal systems are possible in which questions about what an expression in a legal instrument applies to, when that is not explicitly settled either in that instrument or in some other pertinent enactment or ruling, are expressly required to be settled by additional acts of "normation or evaluation" by judges. But only a tiny minority of students of the law consider that a logically coherent legal system must be of that kind, much less that British and American common or statute law is. Any British or American bench, called upon to determine whether the words of an Act forbidding the use of wheeled vehicles in a public park apply to roller skating, the Act itself specifying neither that it does nor that it does not, would normally be able to do so by the ordinary process of statutory interpretation. It is almost unthinkable that it would have to legislate under the guise of giving judgement.

The respects in which moral reasoning is not analogous to legal, of which the chief are that it is not confined to questions of rights which courts can practically enforce, and of wrongs which they can remedy or punish, and that it is not practically obliged to accord authority even to bad precedents, in no way impair the objectivity with which in moral reasoning general concepts are applied to specific cases. The fundamental concept of respecting every human being as a rational creature is fuzzy at the edges in the superficial sense that its application to this or that species of case can be disputed. But among those who share in the life of a culture in which the Hebrew-Christian moral tradition is accepted, the concept is in large measure understood in itself; and it is connected with numerous applications, as to the different weights of which there is some measure of agreement. This is enough for it to be possible to determine many specificatory premises with virtual certainty and others with a high degree of confidence.

The moral system that may be derived from the fundamental principle in this way may with equal truth be described as a "simple deductive" system according to Robert Nozick's classification,[67] or as an informal analytical one. The structure consisting of fundamental principle, derived precepts, and specificatory premises is strictly deductive; for every derived precept is strictly deduced, by way of some specificatory premise, either from the fundamental principle or from some precept already derived. But that structure is not the whole of the system. For virtually all the philosophical difficulties that are encountered in deriving that structure have to do with establishing the specificatory premises; and that is done by

unformalized analytical reasoning in which some concept either in the fundamental principle or in a derived precept is applied to some new species of case. As with the legal reasoning to which it is analogous, many specimens of thinking of this kind are beyond dispute. Others, however, especially those having to do with the more specific and complicated cases, are not. And a further difficulty is that different thinkers sometimes do not agree about what is seriously disputable.

One strategy for indirectly establishing specificatory premises, which will be adopted in a number of the cases that follow, ought to be described in advance. Often direct analysis is not the most effective way to establish a specificatory premise; for the problem is that, while it is evident that certain kinds of action in most cases fall under a certain concept (for example, killing people in most cases is failing to respect them as rational beings), in some cases they do not, or are thought not to (for example, killing in self-defence is not failing to respect the person killed). How is a moralist to determine what the fundamental principle requires with respect to such kinds of action?

A natural approach is to begin by showing that it is impermissible to perform actions of that kind at will, and then to go on to determine the kinds of cases in which it is permissible. Accordingly, with respect to killing human beings, one would begin by establishing that:

(K1) To kill another human being *merely at will* is not to respect every human being (in particular, the one killed) as a rational creature.

This would not be denied by any Jewish or Christian moralist. And now an attempt is made to find in what kinds of cases killing another human being is legitimate. For example, it might be argued that:

(K2) To kill another human being who is attacking you, and concerning whom you reasonably judge that he may well kill or seriously injure you, and that his attack can only be stopped by killing him, is not to fail in respect to another human being as a rational creature, even to the one killed.

To the extent that it is possible to be assured that a complete list of such cases has been found, it will be possible to infer that:

(K3) To kill another human being, except under the circumstances specified in (K2) and the other propositions obtained from the search, is to kill him merely at will.

From (K1) and (K3) it follows that, except under specified circumstances, killing a human being is impermissible. And this conclusion is equivalent, as an appropriate definition will show, to a prohibition of murder.

The chief weakness of this strategy is that it is seldom possible to eliminate all doubts of the completeness of the survey. How can we assure ourselves beyond doubt that no significant case has been overlooked? Nozick goes so far as to state that many who have ceased to assent to "any or very many exceptionless moral principles" although at one time they did so—by which I take him to refer, among others, to the many who have repudiated the traditional morality in which they were brought up—have done so because "more and more complicated cases" forced them into what seemed an interminable process of revision.[68] And he ventures the suggestion that such a history would be common among lawyers, who know by experience how difficult it is to devise, in advance, rules adequate to "all the bizarre, unexpected, arcane, and complicated cases which actually arise."[69]

This misplaces the difficulty by comparing a moralist's task to that of a legislative draftsman, to which its resemblance, despite Hare, is slight. The task of legislative draftsmen is seldom to formulate specific precepts derived from a fundamental legal principle: almost always it is to contrive a set of regulations to further the complex and politically determined objects of public policy. Thus they attempt to solve such problems as how to frame legislation by which the rich will not be able to escape income tax, but also by which municipalities may continue to raise money by selling bonds at low interest, given that the established method, exempting such interest from income tax, enables the rich to avoid income tax. Moralists and judges do not have tasks of this kind. Their business is not to contrive ways of furthering a variety of ends, many of them hard to reconcile, and all of them subject to change; they have only to work out what rationally justifiable moral and legal principles really do require, however disconcerting the result may be.

The difficulties that arise for moralists in any tradition mostly consist of discrepancies between precepts derived by established methods from their first principle or principles, and what seem to be

intuitively evident applications of those first principles to cases falling under those precepts. To invert the example given above: it is an established doctrine in the Hebrew-Christian tradition that it is permissible to kill another human being in self-defence; but to some, for example Quakers, killing another human being seems to be quite evidently incompatible with respecting his humanity. Such problems have arisen, as a matter of history, far less often from "bizarre, unexpected, arcane, and complicated cases," than from deeper reflection on cases already considered in what is now a very long tradition. And that is why Nozick seems to have exaggerated as well as misplaced the difficulty of surveying all the possible kinds of circumstances in which an action, impermissible if done merely at will, is permissible. Unusual and unexpected cases are unlikely to make much difference. The chief source of doubt is the suspicion of having overlooked the significance of some feature of a case already known.

3 First-Order Precepts

3.1 The Classification of First-Order Precepts

In proceeding to determine what system of specific first-order precepts follows from the principle that has been identified as fundamental to common morality, two reminders may not be out of place. First, the precepts to be derived, like the fundamental principle itself, have to do only with that part of what the Hebrew-Christian tradition takes to be common morality which does not presuppose any theological doctrine. That part, however, is large; and it comprises almost everything those who are not theologically minded treat as belonging to morality. Second, while the derivations to be presented are mine, in that I think them valid, almost none will be original. Most of them will be critically selected from the writings of the moralists whose work has shaped traditional morality.

Although the first-order precepts to be derived may be classified in a number of ways, for reasons to be given I have divided them into three groups, according as they have to do with: (1) the duties of each human being to himself or herself; (2) the duties of each human being to other human beings as such; (3) duties arising out of participation in human institutions. Those of the third group are further subdivided, according as the institutions giving rise to them either (*a*) are among the varieties of purely voluntary contract or (*b*) are in one way or another imposed on individuals by the civil or noncivil societies of which they are members. To the last of these groups belong the precepts arising out of possession of property and out of membership in a family or in a civil society.