

ON THE NATURE, GROUNDS AND LIMITS OF SOCIAL MORAL RULES

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ABSTRACT

ADAM CURETON: On the Nature, Grounds and Limits of Social Moral Rules
(Under the direction of Thomas E. Hill, Jr.)

My dissertation is an investigation into the nature, grounds and limits of what might be called ‘social moral rules’, which are informally established and socially enforced norms that the members of a group, for better or worse, *treat as* properly regulating their conduct. I develop, illustrate and partially defend a non-consequentialist theory of social moral rules that incorporates themes from act-utilitarianism, rule-utilitarianism, virtue ethics, Kant and Rawls. My view includes an improved conception of social moral rules, satisfies common concerns about the *limits* of rules and the need for good moral judgment when applying them, abandons utilitarian conceptions of the common good and has its foundations in a *plurality* of values that we commonly affirm.

An important question to ask about social moral rules is what reasons we have to follow them when they exist. It is common to portray social moral rules as mere *heuristics* that are generally useful as means of social control but should be broken in particular cases when this would produce more good overall.

I argue that the existing social moral rules of a group, which can include some imperfect and defective rules, play a vital and non-instrumental role in the best and most illuminating interpretation of the mid-level moral values of *solidarity* and *respect*. While solidarity and respect can pull against each other in certain contexts, group members

often have non-instrumental reasons to follow their social moral rules as ways of manifesting solidarity and showing respect.

We can have reasons of solidarity and respect to follow the prevailing, and often imperfect, social moral rules of our group. We may even have such reasons sometimes to break our rules as well. But solidarity and respect also give us reasons to *improve* our existing social moral rules and help to set a standard for doing so.

Our focus in developing an ideal moral code, I claim, should be on improving the *periphery* of our code, where the laudable presumptions that make up its core conflict with one another. I show that there are a number of casuistical devices at our disposal to resolve such conflicts.

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“A dissertation,” I was once told, “needn’t be your dying breath on a subject.” I took the advice implicit in this statement seriously, maybe too seriously, and so ventured to produce a final product that was unabashedly a work in progress. My goals, for better or worse, have been exploratory and constructive – I sought to identify some interesting philosophical themes, pursue some promising avenues for investigating them further, and lay groundwork for a much larger investigation I have only begun into the nature, grounds and limits of social moral rules. I may not always endorse each and every position I have taken here, but I am convinced that the settled views (if any) I ultimately take on the issues raised would not have been possible were it not for writing this dissertation.

One idea I develop that continues to resonate with me deeply is that when we are engaged in cooperative activities with others, we often find as much, if not more, meaning in the solidary relationships with those working alongside us as we do in the activities themselves. This is certainly true for me as I look back over my years in philosophy graduate school, first at Oxford University and later here at the University of North Carolina at Chapel Hill. I am especially grateful to Thomas E. Hill, Geoffrey Sayre-McCord and Susan Wolf, at UNC Chapel Hill, and John Broome, Derek Parfit and Joseph Raz at Oxford. I couldn’t have asked for a better set of teachers. I am particularly grateful to my dissertation committee – Tom, Geoff and Susan pushed me in different

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Tom Hill is a remarkable philosopher, teacher and friend who taught me, among other things, the value of having a life's project, to engage with the great philosophers of the past, to be humble, and to find the good in people. Our time together, at K&W and elsewhere, has meant the world to me and for that I am forever grateful. Besides the enormous help he provided with particular philosophical issues, Tom's influence on me extends to philosophical methodology, the appropriate aims of moral and political philosophy, the value of systematic theory building, and the need to study past masters. Any good idea of mine will be a footnote away from Tom, which is not to say that he would endorse all of them, but he has been so effective at instilling in me a tradition of moral and political philosophy running through Kant, Rawls and himself, and in leading me to take this current of thought on as my own, identify with it, and strive to develop it further, that my future work will always be shaped by these three towering figures, and Tom in particular.

Our other friends and neighbors in Chapel Hill and Durham have made our time here very enjoyable and rewarding. Julie, the kids and I owe a special debt of gratitude to Robin Hill for her remarkable energy, generosity and kindness – we have thoroughly enjoyed countless dinners, activities and babysitting that Robin made possible.

My family members have always been extremely supportive of me. My father, who is my best friend, inspires me; my mother, who is my biggest fan, emboldens me; my son energizes me; my daughter befuddles me and my wife, who is the love of my life, completes me. I hope that the next step in our journey together is as good as the last.

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INTRODUCTION

Utilitarians have developed and emphasized some very good ideas about the nature, grounds and limits of what might be called *social moral rules*, which are not the same as habits, customs, norms of etiquette, or laws even though there can be overlaps of various kinds among these things – a socially enforced moral rule, for example, can also be a formally enforced law. When rules of this kind exist, they are part of the informally created and enforced moral code or social mores of a society, which means that in general members of society accept them, see them as moral guides in our decision-making, teach them to our children, and treat them as appropriate standards for condemning, resenting or socially pressuring those who break the rules and for feeling guilt or shame if we do so ourselves. Social moral rules are ‘moral’, in one sense of that term, because of the social role they play in a society even though, in a distinct sense, many such rules have been quite immoral and unjustified.

History has shown, Mill thought, that the existence of certain commonly affirmed, but not necessarily legally codified, social moral rules about theft, promising, beneficence, etc. are essential for us to enjoy even a minimally decent standard of living.¹ Establishing such rules, for example, helps us to coordinate our behavior, form legitimate expectations, act more quickly without having to perform complicated calculations, resist

¹ Mill, John Stuart and Crisp, Roger (1998), *Utilitarianism* (Oxford: Oxford University Press), 5.13, 5.25, 5.32, 5.33, 5.34.

temptations to immorality, overcome our tendency to make unjustified exceptions of ourselves, apply past moral knowledge to unfamiliar situations, educate children and socially pressure others in ways that make them more likely to act as they should. There is little doubt that establishing, maintaining and following a moral code can be instrumentally useful in these and other ways, but is this all that can be said in their favor?

Act-utilitarians tend to think so. The general consensus among them is that social moral rules are at best just heuristics, rules of thumb, or means of coordination that can *for the most part* cause us to act better than we otherwise would. Many of us strongly resist the implication, however, that commonly accepted social moral rules about lying and promising, for instance, must be *broken*, perhaps even secretly, every time this would produce slightly more good overall.

Partially in response to the concern that social moral rules, conceived as mere heuristics, lack any distinctive authority of their own apart from the consequences they tend to produce, rule-utilitarianism promised a purely instrumental justification for having a moral code combined with a more sensible view about when we should follow those rules.²

Details aside, rule-utilitarians claim that (1) the basic moral value is welfare, which is the sort of thing that is to be promoted; (2) welfare is the only basic moral value;

² The most prominent defenders of rule-utilitarianism or rule-consequentialism (which includes fairness as another value to be maximized alongside wellbeing) are Brandt, Richard (1963), 'Toward a Credible Form of Utilitarianism', in Hector-Neri Castañeda and George Nakhnikian (eds.), *Morality and the language of conduct* (Detroit: Wayne State University Press), 107-43, and Hooker, Brad (2000), *Ideal Code, Real World: A Rule-consequentialist Theory of Morality* (Oxford: Oxford University Press).

and (3) the justification of every action depends on its being in accordance with the social moral rules that, if they were generally accepted, would maximize overall welfare.

A common worry, however, is that rule-utilitarians are irrationally fetishizing or worshiping rules because they have difficulty explaining *why* we should follow generally useful rules when it is suboptimal to do so on a particular occasion. Rule-utilitarianism is closer to commonsense views about following good rules, but if asked why we should stick to the rules when we can do more good otherwise, merely claiming ‘them’s the rules’ does not answer the charge. One underlying concern may be that rule-utilitarians cannot give the needed sort of explanation for why we should comply with the rules on these occasions while also remaining true to their utilitarian commitment that welfare is the only basic moral value. Another may be that rule-utilitarians conceive of morality exclusively in terms of rules whereas commonsense says that some areas of life are not appropriately covered by rules; instead, room must be made for moral judgment, virtue, exemplars, ideals, democratic debate, small group decisions, etc.; and when rules are called for, perception of the relevant facts, moral sensitivity and good moral judgment will be needed to apply them.

Act-utilitarians, who rightly emphasize how useful social moral rules can be for producing welfare, are too permissive when it comes to rule-breaking; and rule-utilitarians, who come closer to capturing commonsense ideas about the importance of following good social moral rules, leave unexplained why it is that we should always comply with them. I think the main trouble with both ways of attempting to understand and justify social moral rules, however, is the value theory that they presuppose, and in

particular their myopia about which moral values are at stake in discussions about rules and what sorts of responses those values call for.

Can we nevertheless learn from utilitarian insights about the role and value of rules, but refine those views in a way that incorporates an improved conception of social moral rules, satisfies common concerns about the limits of rules and the need for good moral judgment when applying them, abandons the utilitarian conception of the common good and has its foundations in values that we commonly affirm?³

From a commonsense moral perspective, most everyone accepts and affirms a plurality of mid-level moral values such as freedom, equality, fairness, happiness, human life, integrity, friendship, respect and (arguably) solidarity. They are ‘mid-level’ because they are substantive and widely held values that help to explain and justify particular moral judgments we have about specific cases but are themselves explained and justified by more basic and formal considerations about, for example, treating humanity as an end in itself, acting only in ways that could be justified to others, maximizing the good, acting as the virtuous person would, etc. As in other systems of mathematics, logic or science, it is often the mid-level truths that are most clear to us rather than the foundations of the

³ My understanding of social moral rules has benefited greatly from the following: Hill, Thomas E. (1992), 'Making Exceptions without Abandoning the Principle: or How a Kantian Might Think about Terrorism', *Dignity and Practical Reason in Kant's Moral Theory* (Ithaca: Cornell University Press), 196-225; Hill, Thomas E. (2000), 'A Kantian Perspective on Moral Rules', *Respect, Pluralism, and Justice : Kantian Perspectives* (Oxford: Oxford University Press), 33-55; Hill, Thomas E. (2000), 'Donagan's Kant', *Respect, pluralism, and justice : Kantian perspectives* (Oxford ;New York: Oxford University Press), 119-51; Hill, Thomas E. (2005), 'Assessing Moral Rules', *Philosophical Issues*, 15, 1-24; Hill, Thomas E. (2007), *The Importance of Moral Rules and Principles* (Lindley Lecture; Lawrence, Kansas: University of Kansas Press); Wolf, Susan (2002), 'The Role of Rules', in Walter Sinnott-Armstrong and Robert Audi (eds.), *Rationality, Rules, and Ideals: Critical Essays on Bernard Gert's Moral Theory* (Lanham, Md.: Rowman & Littlefield); and Wolf, Susan (forthcoming), 'Moral Obligations and Social Commands', in Samuel Newlands and L. M. Jorgensen (eds.), *Metaphysics and the Good: Themes from the Philosophy of Robert Merrihew Adams* (Oxford: Oxford University Press).

system or particular conclusions we can draw from it.⁴ Most all of us are for respect, fairness and human life but we tend to disagree about what grounds these values and about what we ought to do in cases in which these values conflict. A central task of moral philosophy, as I see it, is to interpret these somewhat abstract, vague and potentially conflicting values, render them more determinate and apply them to real-world situations in ways that give us consistent and concrete guidance about what to do. The values themselves will have to be explained and justified in a different context, but we can regard them as provisionally fixed for now and ask how they are to be interpreted and applied to the real world. Social moral rules, I argue, can play a vital and non-instrumental role in interpreting the mid-level moral values of solidarity and respect and applying them to our society.

Rule-utilitarians appeal to aggregate wellbeing as a common currency for evaluating social moral rules and for resolving potential conflicts among them – one rule is better than another, they think, if general acceptance of the one would produce more overall utility than would acceptance of the other. This made matters in a way easier because there was just one commensurable and aggregative value for comparing possible rules. If, however, we replace wellbeing with a plurality of non-consequentialist values like freedom, equality, respect, and solidarity that are not aggregated or made commensurate in any simple way and call for being respected, honored and cherished rather than just being promoted, how are we to combine these values into a code of social moral rules? Virtue ethicists, Rossian pluralists, anti-theorists and moral particularists

⁴ Alan Donagan apparently made this point in response to one of his critics, as reported by Thomas E. Hill, Jr.

forcefully press the concern that no set of consistent and coherent rules or principles can codify or systematize, to any real degree, the plurality of mid-level moral values that we commonly affirm – because there is no underlying unity and structure to the complicated set of mid-level moral values, it must be impossible to construct an ideal code of social moral rules. If this were the case then the social moral rules that already exist would be merely part of the background facts against which we must act and the most we could hope for when deciding what to do in real-world situations would be to use practical wisdom well on a case by case basis, perhaps by appealing to a small set of prima facie duties or virtuous traits of character that are drawn from the values.⁵ Once we go down this road, we may even find that nothing is reason-giving in all circumstances because no such reasons exist, so in the extreme, there are not even any mid-level moral values, which, if true, would leave us with only good moral judgment, without the benefit of moral values, rules or principles, to decide how the cluster of particular reasons comes out in individual cases.⁶

It may be tempting to think that morality is not very codifiable because any proposed systematic moral structure is bound to include principles or rules that are just too rigid and inflexible.⁷ Kantians and other principle-deontologists who espouse the importance of moral rules or principles are commonly accused of affirming absolute, exceptionless standards, such as ‘never lie’ or ‘never intentionally kill the innocent’,

⁵ As Ross admits, we may even be able to generalize or summarize the deliverances of reflective intuition into principles of a sort. See Ross, W. D. (1930), *The Right and the Good* (Oxford: Clarendon Press).

⁶ See Dancy, Jonathan (2004), *Ethics Without Principles* (Oxford: Clarendon Press).

⁷ Bernard Williams expresses a view of this sort in his Williams, Bernard (1985), *Ethics and the limits of philosophy* (Cambridge, Mass.: Harvard University Press).

without allowing for commonsense exceptions in clear-cut cases, particularly those involving putative conflicts among the apparently inflexible rules. Even if we were to try formulating less rigid rules, by including all of the needed qualifiers, exceptions and the like, the worry remains that morality is just too complicated for us to have much success at this task; or else we will merely end up with unwieldy philosopher's principles that are not useful for much of anything. Principle-deontologists are also suspected of unjustified rule-mongering because, it is thought, they hold that rules are supposed to be comprehensive standards meant for all aspects of our moral lives, standards that can be deduced from the mid-level moral values and applied using algorithmic decision procedures or more and more specific rules of application.

It may be surprising to some that Kant was also reluctant to make use of social moral rules. In his ethical and political writings, he of course highlights *moral principles* such as the various formulations of the Categorical Imperative, the mid-level principles concerned with law, justice and moral attitudes⁸, and the more specific juridical and ethical duties, but he affords no explicit place to informally enforced, generally accepted *social moral rules*. I think Kant is quite mistaken for mostly ignoring and downplaying such rules, however. Kant divides *The Metaphysics of Morals*, which is his most sustained attempt at describing a system of principles for interpreting the moral law and applying it to broadly human conditions, into “right” (or “justice”), which is concerned with legally enforceable rules and rights that regulate and protect our freedom to act in

⁸ The Universal Principle of Right says: “Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law.” (6:230) and the supreme principle of the doctrine of virtue is: “act in accordance with a maxim of *ends* that it can be a universal law for everyone to have” (6:395).

ways that influence the external freedom of others without taking account of our motives, and “ethics” (narrowly conceived), which is constrained by “right” and within its limits gives unenforceable principles for personal motivation, deliberation and character development.⁹ Interpretations differ, but it is reasonably clear that this division is supposed to run deep and seems to make no room for social moral rules, which intuitively fall in between these two extremes.¹⁰ For Kant, (strict) rights and rightful political authority exist only in a full-blown legal system, which clearly and publicly specifies determinate legal rules that govern (and only govern) intentional external acts that can be assessed in a public court of law, enforces those rules by openly threatening penalties for breaking them and carrying out those threats when needed, unambiguously adjudicates legal disputes among members of society, and has a clear and absolute legal authority with the power and responsibility to do these things. “Ethics”, in his special limited sense, by contrast, deals with principles about setting commitments or goals for ourselves, acting on morally good reasons and motives, exercising our conscience well, and overcoming internal obstacles to doing our duty. These non-juridical ethical duties are legally unenforceable, Kant thinks, because it is not possible to coerce someone to fulfill them. Despite his reputation, Kant is even quite sanguine about moralizing busy-bodies. He thinks that each person is responsible for fulfilling her own ethical duties and for punishing her own ethical transgressions through the rulings of her conscience, so it is

⁹ Two exceptions to this general division are, first, that Kant thinks we have an indirectly ethical duty to fulfill our juridical duties from a motive of duty and, second, he thinks we are sometimes permitted to refuse legal orders to perform grossly immoral acts.

¹⁰ Kant may be implicitly assuming something like social moral rules in his discussions of international relations, history, and perhaps also in his lectures on ethics.

usually not appropriate to apply informal social pressures or sanctions, let alone formal legal punishments, in attempts to lead other people to be good. One way of making room for social moral rules while remaining close to Kant's moral framework, however, is to examine the status of certain important moral principles in the Doctrine of Virtue, such as those requiring us to avoid disrespect, suicide, unnatural sex, ingratitude, and complete indifference to the welfare of others and our own perfection. These relatively abstract principles (once we add some and subtract others) are arguably invariable across cultures, accessible through the common human reason that we share with nearly everyone, and speak to us unbidden through our conscience. They are also socially enforced, not so much by social pressures themselves, which may be illegitimately moralistic and oppressive, but by the ways these pressures from others prick our own conscience and alert us to possible failures to live up to the shared moral code of our ethical community.¹¹ For good moral reasons, then, we might choose to establish, support and follow these principles about respecting others, sometimes giving to charity, etc., codifying them into a shared code of social moral rules that stands alongside, and possibly overlaps with, laws of various kinds and advice for living as a fully reasonable person.

In any case, there is much truth to these concerns, which come from such disparate moral outlooks, that warrant a healthy skepticism about rules and principles and also help to explain why these things have lost prominence among moral philosophers in

¹¹ Kant discusses the possibility of what he calls an 'ethical community' in Kant, Immanuel, Wood, Allen W., and Di Giovanni, George (1998), *Religion within the boundaries of mere reason and other writings* (Cambridge texts in the history of philosophy; Cambridge ; New York: Cambridge University Press), 6:94-5.

recent years. Commonsense morality agrees that there is an important place in our moral lives for laws, ideals, exemplars, virtues, aspirations, personal values, personal relationships of various sorts and good moral judgment, and none of these appears to be all that expressible or codifiable in terms of rules or principles. We can also agree that the parts of morality that are the best candidates for systematization, including some of the mid-level moral values, are unlikely to ground strict deductions of principles or rules and good moral judgment, not more rules, would be needed to apply the principles or rules in particular cases. We must also be careful about how oppressive and stifling social pressures can be and sensitive to the need for publicity, determinacy and impartial enforcement of the rules. In spite of all this, however, can we draw from themes emphasized by utilitarians, Kantians, virtue ethicists, anti-theorists and particularists and mark out a restricted place in morality, alongside virtues, laws, ideals, etc., for social moral rules that play a limited role in interpreting, rendering determinate, expressing and making manifest some of the basic mid-level moral values in our world?

Any system of social moral rules that can serve as a standard for improving our own existing one will have to be worked out holistically using exceptions, qualifiers, secondary rules, etc. But unlike moral principles, the rules will also have to be sensitive to more practical concerns such as being simple enough to be widely known, generally understood, taught to children, useful in everyday moral deliberation, guides in public discussions, or grounds that could reliably move us to act.

John Rawls attempted something what I am proposing when he took commonly held values, such as freedom, equality and impartiality, and set out to specify principles of justice to govern the basic structures of a closed, well-ordered society existing under

reasonably favorable conditions. Rawls began his career doing moral philosophy, however, suggesting early on a practice-based form of rule-utilitarianism and later sketching a procedure for thinking about certain issues of interpersonal morality, but he soon turned his attention to justice and was in time pushed to make his theory even more political and separated from normative ethics and metaethics. There is a left-over, unfinished project that Rawls did not pursue very far but is suggested to some extent by his earlier papers, by his remarks in various places about moral methodology and promise-keeping, and by the structure of the theory of justice he does develop, which is to specify a moral, rather than a political, framework for evaluating, assessing, and justifying moral principles and rules. This is not as simple as applying Rawls' theory of justice directly to ethics because his view is explicitly concerned with justice, conceived as a matter of impartially adjudicating conflicting, mostly self-regarding claims that people press against or the state. Still, we can learn from the way Rawls connects mid-level values with principles of justice by describing a procedure of construction that precisely specifies the problem to be addressed, the standpoint that the representative parties are meant to take up when assessing proposals for resolving that problem, and the motivations of the parties in accepting and rejecting those proposals. It is also instructive that Rawls utilizes several stages or levels of principles, with corresponding standpoints, for progressively applying the most basic principles of justice, which are chosen at the highest stage under strict constraints of information, to more particular questions, which are addressed at the legislative and administrative stages under relaxed assumptions. Rawls also focused initially on easier cases rather than beginning with very difficult ones in which our intuitions are unlikely to be displayed without distortion.

The non-consequentialist ethical framework I envision, which will serve as a central and organizing idea for my future research and picks up on and incorporate some partially lost themes from rule-utilitarianism, virtue ethics, Kant and Rawls, is addressed to the limited moral tasks of justifying the core of our existing moral code, assessing whether these rules include the right sorts of exceptions, qualifiers, etc., and determining what reasons we have to follow social moral rules. The structure of the theory is more complicated than rule-utilitarianism but structurally similar to it: (1) among the plurality of mid-level moral values that we commonly affirm is a set of them, which includes freedom, equality, respect, solidarity and others, that is specifically relevant to answering moral questions about establishing, maintaining, following and improving social moral rules; and these values, in general, are the sorts of things that we have reasons to respect, honor and cherish, and not just promote; (2) the set of rule-specific values are the only ones that are relevant to answering these particular moral questions, but a different and overlapping set of the mid-level values may be at stake when it comes to discussions of other moral issues such as justice or virtue¹²; and (3) *some*, but not all, acts are *partially* justified by conforming to social moral rules that express, manifest and promote the rule-specific values. A theory of this sort is non-consequentialist, then, because it rejects utilitarian views about the common good in favor of a plurality of moral values and

¹² There are many differences between a theory of social moral rules and theories of justice and virtue having to do with the role that rules, justice and virtue are supposed to play – political justice, for example, is arguably a matter of clearly adjudicating conflicting claims on the basic structures of society in a determinate way – and I think for too long moral and political philosophers have not adequately appreciated the differences among these things. We should not assume at the outset, then, that the same values will be relevant to an account of what social moral rules we should establish, what principles should govern the basic legal, political and social institutions of society, and what traits of character individuals should possess.

denies that these values must be maximized and instead affirms that we should manifest, respect, honor and cherish these values as well as sometimes promoting them.

My aim in this dissertation is limited to filling in *some* of the details of this moral framework for deliberating about rules by drawing out some of its implications, partially defending it and illustrating how it might be used to help us think about certain practical questions having to do with what rules to adopt and how to act. The inter-related aspects I have chosen are some of the most crucial for the success of a non-consequentialist theory of social moral rules, but they also raise interesting philosophical questions in their own right. (1) What are social moral rules and how do they compare to laws, conventions and norms of etiquette? (2) What is the moral status of such rules - are they just useful heuristics that help us to coordinate our activities or are they sometimes valuable in themselves in a way that gives us reasons to follow them that do not just depend on what good can be produced by doing so? (3) Must we always follow social moral rules or are there times in which we should, perhaps reluctantly, break them? (4) And how should we go about evaluating and improving the code of social moral rules that prevails in our own society, which has seen great progress over the years but can still do with some serious reform? A theory of social moral rules would answer at least these questions about the nature, grounds and limits of those things.

The first task, of describing the nature of social moral rules and distinguishing them from other similar things, is taken up in the first chapter. Paradigmatically, I claim, social moral rules exist in a group when: (a) the rules are widely accepted, which basically means that many group members believe that the group as a whole has good moral reason to follow the rules, and this makes them generally disposed to use the rules

to guide their own conduct, to feel guilt or shame if they violate the rule themselves, condemn those who break the rules, and to form favorable attitudes towards those who comply with them; (b) the rules are generally complied with; (c) the rules are not created by anyone in particular, and no one has the special authority to modify or destroy them¹³; (d) the rules are socially enforced in an informal way, which means that social enforcement is done by unorganized social pressures such as gossip, mockery and shunning rather than by formal institutions having been specifically assigned that task; (e) and it is widely known in the group that these conditions are met.¹⁴ Conceived in this way, social moral rules differ in important ways from *shared habits, behavioral regularities, social rules, rules of etiquette, conventions, constitutive rules of practices and moral principles* that exist ‘in the head’, although social moral rules can be these things as well.

Answers to the other three questions, about the authority, limits and grounds of social moral rules, can best be found, I think, by investigating what mid-level moral values properly stand behind social moral rules and give us reasons to establish, maintain, follow and improve them. My suspicion, as I have said, is that there are many mid-level moral values that are relevant to why we should follow social moral rules, when we

¹³ The rules may conceivably be created by one person, but only indirectly, as when a cult leader proclaims some dress code and his followers obey. But this is not a paradigmatic example of how such rules come to exist.

¹⁴ This paradigm of social moral rules is similar in many ways to the standard one of H.L.A. Hart, Richard Brandt, Rawls, and Kurt Baier. See Hart, H. L. A. (1994). *The concept of law* (2nd ed.). Oxford New York: Clarendon Press; Oxford University Press. Brandt, R. (1963). Toward a Credible Form of Utilitarianism. In H.-N. Castañeda & G. Nakhnikian (Eds.), *Morality and the language of conduct* (pp. 107-143). Detroit: Wayne State University Press. Rawls, J. (1999). *A theory of justice* (Rev. ed.). Cambridge, Mass.: Belknap Press of Harvard University Press, Section 10. Baier, K. (1958). *The Moral Point of View: A Rational Basis of Ethics*. Ithaca,: Cornell University Press.

should break them and how they should be improved, but these values tend to be vague, indeterminate, and poorly understood. Ultimately we will have to examine the values one by one to see how, for example, freedom, integrity, fairness or self-perfection should be understood for the limited purpose of developing a theory of social moral rules. But for now we can take just two of these values, solidarity and respect, settle on provisional conceptions of them, and then apply them to our questions about the moral status of social moral rules, when we should break them and how they should be assessed and improved. Once we have done the same for the other values and are sure enough that we have not left out any then we will have to fit all of these conclusions together in reflective equilibrium.

I chose to concentrate at this early stage on solidarity and respect because both values are extremely important, commonly affirmed, but under-discussed as mid-level values (respect is more commonly assumed to be a comprehensive requirement to treat people appropriately rather than a mid-level value having to do with not humiliating, degrading or demeaning others). Also, the case for a non-consequentialist account of the value of social moral rules is very compelling when solidarity is emphasized because social moral rules are often integral part of what binds together groups in those sorts of valuable relationships. Social moral rules can also provide some determinate structure to the value of respect by partially specifying what it takes to *express* respect to one another. Finally, even though solidarity and respect are united in providing non-instrumental and sufficient reasons for establishing, maintaining and following a code of social moral rules, when it comes to evaluating the content of our own code of social moral rules and suggesting where it could be improved, solidarity and respect are relevant as well. But

these values tend to pull against each other, with one more likely to favor rules requiring group loyalty, conformity and cooperation and the other tending to favor individuality, freedom of thought and expression and self-respect. The ways solidarity puts pressure on us, for example, to make great sacrifices for the group, prize group members above others and shun those who do not belong while respect for ourselves and others often counteracts these demands. This tension illustrates the most pressing general problem for a non-consequentialist theory of social moral rules of the sort I am proposing, which is how to organize and combine the potentially conflicting mid-level moral values into a consistent and coherent code of social moral rules.

Let's briefly consider solidarity first. Solidarity would probably not make it onto a list of values that most people take themselves to affirm, but in spite of this I think most of us do in fact hold solidarity as one of our most deeply held values even if it would take careful reflection for many of us to realize it – don't we deeply value the solidary bonds that form when we are doing our part in a sports team, a climbing expedition, a widespread effort to clean an oil spill or save a child who has fallen down a well, an army unit fighting in a worthy struggle, an environmental protection organization, a political party, or a community festival? There are many ways for people to be in solidarity with one another, they can be united by shared experiences of oppression, joint history, or common tradition, for example, but one sort of solidarity exists, I argue, when the members of a group of people are engaged together in cooperative activities in support of shared values, ideals, aspirations and ends and value for their own sake the ties among them that form on this basis. Cooperative solidarity, as I call it, is best understood as valuable for its own sake and as most centrally giving us reasons to live up to the

requirements of that relationship rather than just to promote more of those relationships in the world.

Now respect. There is a thin notion of respect having to do with treating people in all the ways they should be treated and a thick one which has more to do with not degrading, humiliating or ridiculing others. While our intuitions are often quite clear about cases in which we fail to respect someone as a person by, for example, laughing with others about their mistakes, defiling their religious texts, forcing them to beg for their food, spitting on them and so on it is difficult to say just what it is to respect someone in this thick sense and why doing so is important. My suggestion is that, paradigmatically, to respect someone as a person (in a thick sense of ‘respect’) is to honor her as a person, which involves both seeing or regarding her as a person rather than as something else and honoring, and not dishonoring, the rational capacities and equal moral status that make her a person. When we fail to see someone as a person, which can happen when, for instance, a boss momentarily sees her assistant as a useful object, when the Nazi’s began to see Jewish people as sub-human, or when people with disabilities are seen more like children than full moral persons, we are not concentrating on the features of her that make her a person, which I claim are her rational capacities of deliberation, thought and action and the equal moral status she has in virtue of having these. The other part of respecting someone as a person is honoring her as such – not defiling, ridiculing or humiliating her – which I claim also centrally involves not demanding or intending to cause her to lose respect for herself by failing to see herself as a person – slave-owners often dishonored their slaves by trying to ‘break them’ and so come to see themselves as something with a lesser moral status than whites. I also think there is a sort of argument

that, when fully developed, can show why we have reason to respect others in this thick sense. Details aside, if we are all rationally disposed to respect ourselves and also rationally disposed to reciprocate with others then it may be that we would settle on some arrangement in which everyone is afforded the freedom to respect herself within limits that afford others the same liberty. We would have good reason not overstep these bounds by attempting to interfere with the respect that others can rightfully have for themselves by, for example, demanding that they lose their self-respect or making it clear to them and others that we do not see them as persons, which can be extremely wounding to how one sees oneself.

One can see how these values can give conflicting advice about which social moral rules to enact. For example, as I explain in the final chapter in an attempt to illustrate how my basic framework can be used to improve codes of social moral rules, the members of sports teams are often in a sort of cooperative solidarity with one another that can lead them to require great personal sacrifice, conformity and bad behavior towards non-team members, whereas respect can require protections for individual decision-making and positive interaction with members of other teams even when these interfere with the team's overall performance. Sports teams may be governed by rules, for instance, that allow friendships with members of other teams as long as secret team information is not passed to others; there must be adequate safeguards against excessive physical and emotional harm during practices and games; players who satisfy a minimum level of skill and work should be given some opportunity to play while those who exceed in either category can be given preference, etc.

With the values of cooperative solidarity and thick respect in hand, we can now turn to our second question about the moral status of social moral rules. My view is that when we are cooperative solidarity with others, united by social moral rules that we have established among ourselves to guide the cooperative activities we are pursuing together in support of our shared ends, the rules we have developed and maintain are a *constitutive part* of our solidary relationships with each other; and it is part of being in cooperative solidarity with our comrades that we are presumptively required to follow the social moral rules that join us together.¹⁵ Similarly, I argue that respecting someone as a person, in the thick sense of respect, not only requires that we see her as a person but also that we are disposed to express this or at least refrain from expressing that we do not see her as such. Often it can happen in a society that our notion of a person is operationalized and instituted in social moral rules that partially define what, for purposes of our society, we take a person to be – much like the way the rules of a game specify what counts as a player of it, the social moral rules of a society set out expectations, requirements, powers, and rights that, perhaps with the laws of our society and other shared moral ideas, define a forensic conception of a person. In our society, then, part of what it is to see someone as a person is to see her as a co-participant in our moral code,

¹⁵ There have been many wonderful discussions of notions that are somewhat related to solidarity, but only a few about solidarity itself. See for example Dworkin, R. (1986), *Law's empire* (Cambridge, Mass.: Belknap Press), Feinberg, Joel (1968), 'Collective Responsibility', *Journal of Philosophy*, 65, 674-88, Rorty, Richard (1989), *Contingency, irony, and solidarity* (Cambridge ; New York: Cambridge University Press), Taylor, Charles (1995), 'Irreducibly Social Goods', in Charles Taylor (ed.), *Philosophical arguments* (Cambridge, Mass.: Harvard University Press), 127-45, Kymlicka, Will (1996), 'Social Unity in a Liberal State', *Social Philosophy and Policy*, 13 (1), 105-36, Bayertz, Kurt (1999), 'Four uses of solidarity', in Kurt Bayertz (ed.), *Solidarity* (Dordrecht ; Boston: Kluwer Academic Publishers), 3-28, Gilbert, Margaret (1989), *On social facts* (International library of philosophy; London ; New York: Routledge), and Shelby, Tommie (2005), *We who are dark : the philosophical foundations of Black solidarity* (Cambridge, Mass.: Belknap Press of Harvard University Press),

and if we see her that way and are disposed to express that we do, then we will be inclined to treat her in accordance with that code. We often have non-instrumental reasons to follow our society's shared moral code, then, as ways of respecting others as persons.

When we are addressing particular moral problems, we must be thinking in part about what applicable social moral rules already exist and what publicly known and socially enforced rules we and others should adopt for situations of that sort. Doing this appropriately will require tailoring the rules to our cognitive limitations, constraints on how much information we can reasonably be expected to have, what sorts of precedents the rules might set, how liable they will be to abuse, what effect social pressures of various kinds will have, how complicated they are, and so on. The relevance of these considerations means that the best social moral rules for a given situation will almost certainly elide over many moral distinctions, but because of the constitutive role the rules play in standing in solidarity with others and showing them proper respect, how we ought to act in particular cases often depends crucially on what the rules are and should be.

Our third question is about breaking the rules. It is widely assumed among those who write about moral rules either that once we have settled on an ideal set of them then these rules should never be broken or that the rules are just heuristics that should be broken (perhaps secretly) when we can produce even slightly more good by doing so. I think both attitudes about rule-breaking are mistaken. When actual, and perhaps imperfect, social moral rules are playing certain roles in keeping a group in cooperative solidarity and helping them to show thick respect to one another then these values give us reasons to follow the potentially defective rules. Such rules, then, deserve our allegiance

even when, on the one hand, following them conflicts with the rules that would be best for our society and, on the other, we could produce slightly more good by breaking them. The reasons we have to continue following the rules even when we know they are defective or the standard justification for having the rule does not apply in an oddball case that is still technically covered by the rule, however, are not absolute. While these reasons must be reckoned with in an overall judgment about what we ought to do, sometimes the same mid-level values that justify having and following social moral rules also give us sufficient reasons all things considered to break them. Solidarity, for example, can give us strong reasons to keep our group together, so while breaking our rule about lying would normally be a way of failing to live up to our solidary relationships with others in our society, in certain extreme cases lying to one of our comrades to avert the destruction of our society may actually be the best way of standing in solidarity with them.

The second and third chapters are concerned with understanding the values of solidarity and respect and then explaining how these values often give us non-instrumental reasons to follow social moral rules but can also give us good reasons to break those rules as well. Our final question, about what it takes to improve our own imperfect code of social moral rules, is taken up in the fourth chapter. There I explain that because the core of our code, which is the part of it that we are most firmly committed to, consists of prohibitions on the most egregious and obvious acts of killing, torture, lying and so on, the part of our code that most needs improvement is its periphery where it makes exceptions to the general prohibitions, interprets those prohibitions and includes rules for more specific circumstances and areas of life. What we need is a

standard to which we can compare our own moral code, an ideal code of social moral rules worked out for our social world that includes the right sorts of exceptions and qualifiers, correctly interprets key moral concepts and helps to justify the core that is common between our actual code and the ideal one for us. The best way to construct an ideal set of social moral rules, I suggest, is by examining our own code piece by piece to see whether, for example, our rules about lying include the right sorts of exceptions, qualifiers and the like, and along the way trying to fit the various rules we settle on into a consistent and coherent scheme. The ideal moral code for one society may be different than that of another, but once we have one in hand for one like ours, with its functioning and more or less liberal legal system and its reasonably favorable social conditions, we must face the problem of utopianism about whether we should immediately begin following it or, as I suggest, working piecemeal to improve our code while paying due deference to the one that has served us well.

A deep suspicion one might have about this task of defining an ideal code of social moral rules for a society like ours, which we can then use as a standard of improvement for our own moral code, is that it is impossible because there is no underlying unity or structure to ethical thought. I explain, however, that solidarity and respect give us strong non-instrumental reasons to maintain and follow a coherent system of social moral rules, that our own moral code can certainly use some improvements, and that many other parts of morality may not be codifiable by principles or rules – my view is that we need social moral rules as an oasis of structure in what may otherwise be a mostly untamable wilderness of moral thought.

We must be sensitive, however, to the worry that an ideal code of social moral rules will inevitably include rigoristic and inflexible rules that cannot be supported by commonsense or else they will be riddled with so many exceptions and qualifiers that they will no longer be able to serve their public social role. The best way to respond to this concern, I explain, is to list out and investigate the devices that are available to us when constructing an ideal code of social moral rules that allow us to avoid absolutism while keeping the rules within grasp of normal people – these devices include not only exceptions but also levels of rules, presumptive rules, thick evaluative concepts, individual decision-making and many others. The remainder of the chapter is devoted to filling in some of the details of a contractualist framework for making the hard choices involved in constructing an ideal moral code, including a fuller account of the mid-level values and what I think justifies them, a conception of the person and society that are drawn from those values and can then be reflected in a point of view for evaluating our moral code, and an account of what we assume would be motivating those who took up that standpoint from which a group of people would be deliberating about what social moral rules would be best for our society.

CHAPTER 1

THE NATURE OF SOCIAL MORAL RULES

Examples of social moral rules

Here are some paradigmatic examples of social moral rules.

(1) Nudist colonies typically have social moral rules that are intended to show proper regard for their common moral belief that nudity and sexuality should be kept separate (as far as possible). One such rule is ‘no staring at others in the camp’, since members do not want others gawking or visiting for sexual reasons. If someone is caught staring at another person while in the camp then that individual is subject to ridicule, shunning, or even exile from the group. Other camp rules include ‘no sex talk’, ‘no body contact with strangers’, ‘no dancing’, and ‘no alcohol’.¹⁶

(2) In many inner-city neighborhoods, there is a social moral rule that says ‘stop snitchin’’, meaning ‘do not ever cooperate with the police under any circumstances.’ Being labeled a ‘snitch’ in these places brings severe ridicule, ostracism, and even physical violence, and the rule is glorified by celebrities in music, movies, and clothing. Most of those who follow the rule seem to do so out of a belief that the police are the

¹⁶ Weinberg, Martin S. (1970), 'The Nudist Management of Responsibility', in Jack D. Douglas (ed.), *Deviance & respectability; the social construction of moral meanings* (New York,: Basic Books), 375-403.

enemy and so should not be trusted, rather than just fear of reprisal from others in their community.¹⁷

(3) The American Medical Association Code of Medical Ethics includes a set of rules meant to govern the behavior of doctors. As is the case with most professional codes of ethics, the people who wrote the AMA code were for the most part attempting to capture the rules that had already been governing the professional conduct of members of their profession rather than trying to create new rules that that would be imposed on them. The following is a sample of some of those rules:¹⁸

A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.

Physicians should not offer financial incentives or other valuable considerations to patients in exchange for recruitment of other patients.

Withholding medical information from patients without their knowledge or consent is ethically unacceptable.

Physicians may use placebos for diagnosis or treatment only if the patient is informed of and agrees to its use.

Sexual relationships between a medical trainee and a supervisor even when consensual are not acceptable regardless of the degree of supervision in any given situation.

It is unethical for a physician to practice medicine while under the influence of a controlled substance, alcohol, or other chemical agents which impair the ability to practice medicine.

A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.

¹⁷ Schorn, Daniel 'Stop Snitchin', *CBSNews* (updated August 12, 2007) <<http://www.cbsnews.com/stories/2007/04/19/60minutes/main2704565.shtml?tag=contentMain;contentBody>>.

¹⁸ AMA 'AMA's Code of Medical Ethics', accessed June 22, 2009.

The AMA code also specifies certain formal procedures, such as convening ethics panels with the authority to issue reprimands of various sorts, to enforce the code. However, studies of the way the AMA code functions in practice suggest that its enforcement usually falls to informal social pressures, most notably those having to do with the reputation of a physician among his peers and the general public.¹⁹ According to these findings, it is rare for cases to be brought before formal institutions of the AMA, in part because doctors are often reluctant to testify against each other, but doctors themselves and the public at large exert a strong influence on them to conform to and accept the rules of the AMA code.

(4) There is a neighborhood swimming pool near my house with a sign that lists ten or so pool rules, which include ‘no pets in and around the pool area’, ‘no running on the pool deck’, and ‘patrons must shower before entering the pool’. There is no lifeguard on duty, and there is no formal mechanism in place for enforcing these rules – informal social pressures such as dirty looks, gossip, and verbal confrontations make sure that the rules are followed. Despite being listed on the sign, the rule about showering, however, does not seem to exist there as a social moral rule since it is usually violated, never socially enforced except in extreme cases, and most people probably do not know all of the specifics of what it requires (how soon before entering the pool must one shower, etc.). Another interesting feature of the rules is that the one about pets probably includes

¹⁹ Hall, O. (1948), 'Stages of a Medical Career', *American Journal of Sociology*, 53, 327-36; Hall, O. (1949), 'Types of Medical Careers', *American Journal of Sociology*, 55, 243-53; and Parsons, Talcott (1991), *The social system* (New edn., Routledge sociology classics; London: Routledge), 471.

an implicitly recognized exception for guide dogs even though this was not included on the sign itself.

(5) Among the nomads of Northwestern Greece, there are social moral rules forbidding what they regard as immodest behavior among married women. This includes prohibitions on laughing and joking because these apparently indicate that one is guilty of sexual transgressions. Once a woman is commonly understood to have violated those rules, a typical punishment is that no ‘honorable’ man will agree to marry any of her daughters.

(6) The Mbuti Pygmies of what was once Zaire possess a highly flexible system of social moral rules. One such rule, which is strictly enforced, is that a Mbuti should not substantially harm another Mbuti, but this rule includes an explicit exception that during one of their ritual festivals, adolescent girls are permitted to attack males with switches and inflict serious harm on them.²⁰

(7) The rule ‘children should be seen and not heard’, which was common practice in some societies, requires that children not speak in the presence of adults. In these social groups, it was widely believed to be a justified way of raising children, teaching them their social position, and showing respect for other adults.

(8) There are certain basic social moral rules that may be nearly universal across different times and cultures.²¹ Some of these include: ‘do not intentionally kill another

²⁰ Edgerton, Robert B. (1985), *Rules, Exceptions, and Social Order* (Berkeley: University of California Press), 139-141.

²¹ See Peterson, Christopher and Seligman, Martin E. P. (2004), *Character Strengths and Virtues: A Handbook and Classification* (Oxford: Oxford University Press) and Walzer, Michael (1994), *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press).

innocent person’, ‘do not engage in pedaphilic behavior with very young children’, ‘do not forcibly take the property of another person’, ‘do not commit adultery’, and so on. Basic rules of this sort may differ with regard to their priority, what exceptions they include, how they are specified, how they are applied, the extent and manner in which they are enforced, and there are no doubt many other respects in which these basic social moral rules can vary across societies, but there is some reason to think that the basic rules themselves exist in most every society.

A Paradigm of Social Moral Rules

Here, then, is a paradigm of social moral rules, which tries to capture some distinguishing features of at least the clearest examples of them. My claim is not that these features are part of the concept of a social moral rule or follow from the meaning of that term. Rather, I hope that this paradigm describes a pervasive, fundamental and recognizable aspect of a wide variety of societies and cultures. I should emphasize that as far as possible this paradigm is meant to be non-normative in the sense that it does not depend on the truth of any normative claim – the term ‘social moral rule’ is not a term of commendation because many of them are quite reprehensible. My aim here is to describe a paradigm of social moral rules as putative objects of moral appraisal before investigating what standards, if any, we should use to assess them. This way of proceeding is similar to certain moral investigations that begin with, or at least presuppose, some account of the nature of actions, personal character traits, basic institutions, or laws. Some social rules may not satisfy this paradigm while it may be indeterminate or too difficult to tell whether others do. My focus, however, will be on

those rules that clearly satisfy the paradigm, while recognizing that other sorts of rules may require a different treatment.²²

There is an ambiguity I need to address first. A social moral rule, such as ‘do not intentionally kill an innocent person’ or ‘do not snitch’, may be thought of as an abstract proposition that specifies a possible way of acting or as an entity that is realized in the attitudes and actions of a group of people.²³ I will consider social moral rules as the latter because these are pervasive features of our social world, so it is worth investigating how, if at all, they should be morally appraised. It may also be that abstract social moral rules are appropriate just in case any realization of them would be morally appropriate as well.²⁴ None of this precludes, of course, trying to specify the standard we should use to assess our moral code by imagining what social moral rules would exist among a group of idealized persons. But this way of conceiving of social moral rules does imply that when proposing improvements to them, we must take in to account various ‘practical’ considerations related to their being widely accepted, known, enforced and otherwise affecting how people act, think, and feel. Social moral rules, then, bare a close analogy to laws, which we typically think of as existing in some legal system or other and which we assess in view of their potential for abuse, enforceability and so on.

²² This paradigm of social moral rules is similar in many ways to the standard one of H.L.A. Hart, Richard Brandt, Rawls, and Kurt Baier. See Hart, H. L. A. (1994). *The concept of law* (2nd ed.). Oxford New York: Clarendon Press; Oxford University Press. Brandt, R. (1963). Toward a Credible Form of Utilitarianism. In H.-N. Castañeda & G. Nakhnikian (Eds.), *Morality and the language of conduct* (pp. 107-143). Detroit: Wayne State University Press. Rawls, J. (1999). *A theory of justice* (Rev. ed.). Cambridge, Mass.: Belknap Press of Harvard University Press, Section 10. Baier, K. (1958). *The Moral Point of View: A Rational Basis of Ethics*. Ithaca,: Cornell University Press.

²³ Rawls makes this distinction with regard to institutions at (1999), *A Theory of Justice* (Rev. edn.; Cambridge, Mass.: Belknap Press of Harvard University Press), 48.

²⁴ See *A Theory of Justice*, 48.

To begin spelling out my paradigm of social moral rules, the acceptance condition says that a social rule exists in a group only when many people accept the rule.

Acceptance of a rule involves having a complicated set of dispositions, which includes being disposed to comply with the rule and to socially enforce it in others, which is a matter of applying social pressures to encourage others to comply with and accept the rule, discourage others from violating or rejecting the rule, and criticizing those who do not follow or accept it. Acceptance of a rule also involves feeling guilt or shame if one violates the rule oneself; forming favorable attitudes towards those who comply with and accept the rule; and forming unfavorable attitudes towards those who do not.

Additionally, there is an ‘internal aspect’²⁵ to accepting a social moral rule: One must judge that the group generally ought to follow and accept the rule, and this judgment is taken as legitimate grounds for fulfilling these various dispositions. For example, if a gang member accepts the social moral rule ‘don’t snitch’ then he thinks that the rule generally ought to be followed and accepted by himself and his comrades, he thinks it justified to disparage and condemn those who break it, he would feel guilt or shame at breaking the rule himself and he would find this appropriate, and so on for the rest of the dispositions involved in accepting a rule.

Three points of clarification about the ‘internal aspect’ of the acceptance condition, which I take to be one of the more important features of this paradigm. First, the judgment that the group generally ought to follow the rule is meant to invoke the moral concept of ‘ought’, so in holding this judgment, one cannot consistently believe

²⁵ Hart, H. L. A. (1994), *The Concept of Law* (2nd edn.; Oxford: Oxford University Press).

that following the rule is just a matter of furthering one's self-interest, satisfying immediate feelings or desires, avoiding social reprisals, or garnering social benefits. Second, this also places some constraints on what sort of rules can count as social moral rules, since we cannot consistently think that rules with certain features morally ought to be followed. In particular, such rules must be general in that they must be articulable without the use of proper names and the like, and they must be universal in that they must hold for everyone to whom they apply (?). Within these broad constraints, people may accept social moral rules on the basis of a wide variety of moral views and doctrines. Third, a person need not think that the group ought to follow the rule in every case – he may believe that breaking the rule is sometimes justified.

The acceptance condition implies that social moral rules are not created by anyone in particular, and no one has the special authority to modify or destroy them.²⁶ Instead, social rules come in to existence only when they are generally accepted by the group, they are altered when the group comes to accept a different rule, and they are destroyed when the group ceases to accept the rule. Whereas the Queen-in-Parliament can make binding laws, the Queen herself can only have a causal influence on what social moral rules exist in her country by, for example, setting an example, trying to convince others of her opinions, establishing public relations campaigns, funding certain groups or projects, or perhaps even being the leader of an appropriately worshiping group of people.

²⁶ Baier, Kurt (1958), *The Moral Point of View: A Rational Basis of Ethics* (Ithaca,: Cornell University Press), 22

According to the compliance condition, social moral rules are normally complied with by the group on the basis of their accepting the rules, though perhaps not invariably so. Next, the informal social enforcement condition holds that social moral rules are socially enforced in an informal way, which means that social enforcement does not rely on any formal institutions having been given that task even though such institutions may also exist. Theft, for example, is often punished by formal legal institutions, but it can also be condemned by informal social pressures. The social pressures that we use for informal social enforcement vary widely. We discourage and criticize non-compliance and non-acceptance of a rule by, for example, using ridicule, mockery, stigmatization, gossip, dishonor, ostracism, exile, or force; and we encourage compliance and acceptance of a rule by celebrating, praising, honoring and rewarding those who do so, guiding others to do the same, etc.²⁷ These social pressures are a pervasive part of our lives. We may exhibit certain mumblings and mannerisms when someone cuts us in line, ridicule a friend who breaks a promise to us, and break off ties with a person who commits spousal abuse. We may also praise children who share with others, honor people who abide by their profession's code of ethics²⁸, and guide others to do better for the environment by pointing out the good reasons for doing so.

Often what makes social pressures so effective is that they are commonly understood to express moral condemnation or approval, in addition to whatever other

²⁷ As Edgerton (1985, 16) explains, in Ancient China, society attempted to prevent rule-breaking by guiding people rather than goading them. See also Falk, W. D. (1986), 'Goading and Guiding', *Ought, Reasons, and Morality* (Ithaca, N.Y.: Cornell University Press), 42-66.

²⁸ Abbott, A. (1981), 'Status and Status Strain in the Professions', *American Journal of Sociology*, 86, 819-35.

costs or benefits they impose. In certain circumstances, moral condemnation by others is severely wounding to us, both because we are committed to maintaining valuable relationships with others of a sort that may be damaged by such attitudes, and because the moral disapproval of others may lead us to reevaluate our own actions and decide for ourselves that we indeed acted wrongly. The reverse is typically true for social pressures that express moral approval – these often help to firm up worthwhile relationships with others and reassure us that we are acting appropriately.

The teachability requirement says that when a rule of social morality exists in a group, there is an effective social mechanism for teaching the rule to others and for transmitting it from one generation to the next. This usually involves explicit instruction in the rules from teachers, parents, siblings, and friends, but we also tend to learn and come to accept rules through the social pressures that others exert on us and our observations of their behavior.²⁹

Finally there is the formal publicity condition: A rule of social morality exists in a group only when it is public knowledge that the rule is to be followed, generally accepted, complied with, socially enforced and taught, all in the ways I have described. Public knowledge is a matter of most everyone knowing these things and knowing that others know them as well. And this knowledge need not be articulable by most people; rather, it can be implicit in their belief systems and manifest in their attitudes and actions.

²⁹ Various psychological studies examining such interactions include: Dunn, J. and Munn, P. (1987), 'Development of justification in disputes with mother and sibling', *Developmental Psychology*, 23, 791-98; Edwards, C. P. (1981), 'The development of moral reasoning in cross-cultural perspective', in Ruth H. Munroe, Robert L. Munroe, and Beatrice Blyth Whiting (eds.), *Handbook of cross-cultural human development* (New York); and Walton, M.D. and Sedlak, A.J. (1982), 'Making amends: A grammar-based analysis of children's social interaction', *Merrill-Palmer Quarterly*, 28, 389-412.

For example, many of us may not be able to state precisely the rules governing how close to stand to others when engaged in everyday conversation, although we know these rules quite well. The formal publicity requirement ensures that there is a shared understanding that the group affirms the rule, and so provides a shared basis for resolving conflicts and engaging in public arguments.

Contrasts

These features, taken together, constitute the paradigm of social moral rules that I will be exploring. As a way of clarifying this paradigm, it may be helpful to contrast it with certain other things, although I emphasize that there may be substantial overlap among all of these.

(1) Shared habits, behavioral regularities and fads are among the normal or typical behaviors in a group. While they exist in virtue of being generally complied with and perhaps accepted (in some minimal sense) by the group, they differ from social moral rules in that acceptance of them need not involve the ‘internal aspect’ of believing that they ought to be followed and accepted. Additionally, these habits and the like need not be socially enforced or taught to others.

(2) A social convention, in the way it is understood by philosophers, is basically a pattern of mutually beneficial behavior that is normally exhibited by a group of people who do their part in the pattern because they believe it to be in their interests to do so and they expect most everyone to conform to it as well.³⁰ Social conventions are also self-

³⁰ See Hume, David, Norton, David Fate, and Norton, Mary J. (2000), *A Treatise of Human Nature* (Oxford: Oxford University Press), 3.2.2 and 3.2.5; and Vanderschraaf, Peter (1998), 'Knowledge, Equilibrium and Convention', *Erkenntnis*, 49 (3), 337-69.

enforcing in that if the group is generally following that pattern of behavior then most everyone has self-regarding reasons to do so as well. Sometimes social conventions are arbitrary in that there is more than one pattern of behavior that would satisfy the interests of each member of the group more or less equally. Driving on the right side of the road is a social convention; other examples may include language, money, property dress codes, and manners.³¹ Contemporary discussions of social conventions have tended to make use of the formal methods of game theory to offer a more precise analysis of them, but they all seem to be versions of this general characterization.³²

Social moral rules and social conventions share certain similarities. Both are social in that they depend for their existence on being complied with and accepted (in some sense), and because they involve a shared understanding about how the group behaves in the relevant contexts. There are important differences, however. First, accepting a social moral rule involves judging that the rule morally ought to be followed whereas someone in the grip of a social convention can regard his reasons for following it as wholly prudential. Second, social moral rules are socially enforced whereas social conventions need not be – openly violating a social convention can in principle be met with no social sanctions. Third, social moral rules involve a more robust notion of

³¹ David Lewis, for example, understands a social convention as a coordinated equilibrium, which is a behavioral regularity in which no one benefits by deviating from it and everyone prefers that everyone else conform to it if all but one do so as well, that are followed as a result of it being.. He also requires that the group abides by this equilibrium out of it being common knowledge in the group that they all prefer to do so, and that there be some incompatible behavioral regularity that could be a coordinated equilibrium. And others have proposed different notions of ‘equilibrium’ at play in an appropriate analysis of social conventions

³² See for example Aumann, Robert (1987), 'Correlated Equilibrium as an Expression of Bayesian Rationality', *Econometrica*, 55, 1-18; Sugden, Robert (2005), *The Economics of Rights, Co-operation, and Welfare* (2nd edn.; New York: Palgrave Macmillan); and Skyrms, Brian (1996), *Evolution of the Social Contract* (Cambridge: Cambridge University Press).

acceptance than do social conventions, most notably in that accepting a social moral rule involves forming favorable attitudes towards those who comply with the rule and unfavorable ones towards those who do not, and feeling guilt or shame if one breaks the rule. Finally, social moral rules are transmitted to others and from one generation to the next.

Social moral rules can at the same time be conventions since conditions for existence of these things are often compatible in that, for example, someone can take himself to have moral and prudential reasons for behaving in some way – truthfulness in what we say and property arrangements, for example, are regulated by social moral rules in our society and they also probably constitute mutually beneficial patterns of behavior that meet the other requirements of being a social convention. This seems to be a good way of understanding certain forms of etiquette, manners, and codes of dress, which on the one hand may be mutually beneficial and also self-enforcing on account of the social pressures that typically accompany them; on the other hand, they may be ways of trying to express proper respect to others, fulfilling legitimate expectations, and being kind, agreeable, or sensitive to the desires of others.

(3) Social moral rules are a subset of social rules. In their paradigmatic forms, both satisfy all five of the conditions I described above, with this difference: social rules need only be accepted on the basis of a judgment that they are to be followed, whereas moral social rules require having the belief that they morally ought to be followed. Additionally, the attitudes associated with the breaking of social rules need not be morally loaded ones, such as guilt, shame, or resentment. Non-moral social rules may include rules of environmental protection, such as those that require recycling. In my

neighborhood, the recycling cartons are quite visible, and neighbors who do not use them suffer mild social criticism, even though most of us think that this is not a moral failing on their part. Other examples include certain of the more esoteric rules of etiquette, speech or dress, which are often accepted as ways to express the natural, though perhaps not moral, superiority of the upper classes and so to distinguish them from others.³³

(4) Positive laws are laws that exist in virtue of being enacted in accordance with social moral rules (or something like them) that specify the social facts that are necessary for creating, modifying or destroying such legal standards.³⁴ Positive laws, then, depend on a group realizing so-called ‘rules of recognition’, which specify, for example, that such laws can be enacted by the legislature, modified or interpreted by judges and so on. The main differences between social moral rules and positive laws are these: First, positive laws are created, changed and annulled by formal institutions whereas social moral rules depend for their existence on being widely accepted, complied with, socially enforced and so on – positive laws can exist even if very few people comply with or accept them, and they can be very complicated and unknown to most people. Second, positive laws are usually enforced by formal institutions whereas social moral rules are socially enforced in an informal way through the use of social pressures of various sorts. Of course, there are many laws that are also social moral rules, but these two sets are not always coextensive – our society has certain social moral rules against adultery between consenting adults but most states have no laws against it, and there are laws here that

³³ Elias, Norbert (1982), *The Civilizing Process* (Oxford: Blackwell).

³⁴ There is substantial debate among philosophers of law about whether all law is typical law or whether there are so called ‘principles of law’, which are intrinsically moral, that are part of the law as well. This is at the crux of the debate between Hart and Dworkin.

govern copyrighted music for which there is arguably no corresponding social moral rule (at least among certain sub-groups).

(5) Constitutive rules are ones that make up a practice by defining certain actions, offices, moves, and excuses.³⁵ Some constitutive rules are social moral rules – those governing promising and marriage in our society, for example, because for the most part we comply with, accept, socially enforce, teach and know these rules – but other ones are not, such as constitutive rules of certain games. The rules that determine how Bishops may move on a chess board are not social moral ones since we do not think that they morally ought to be followed and accepted, although there may be more general social moral rules of sportsmanship that enjoin us to follow the constitutive rules of the games that we are fairly playing with others.

Other distinctions

To conclude this section, I'll briefly introduce a few more distinctions that will be relevant to our discussion. Social moral rules, or 'rules' as I will sometimes say, can vary with regard to the sort of people to whom they apply and the areas of life that they govern. The rules of a nudist colony have a wide range, since they are meant to apply to everyone, not just to nudists, but a narrow scope, since they are meant to govern everyone's behavior in our interactions with nudist colonies. On the other hand, the AMA rule forbidding sexual relationships of any kind between supervisors and trainees has a narrow range, since it only applies to certain people, but a moderately wide scope, since it governs aspects of their lives that go far beyond their professional capacities.

³⁵ Rawls, John (1955), 'Two Concepts of Rules', *Philosophical Review*, 64 (3-32).

Basic social moral rules, then, are those that apply to everyone and are meant to constrain all areas of their lives – suitably abstract rules about murder, adultery, theft, and rape are most likely part of the core of the moral code of most every society.

A related point is that social moral rules are often hierarchically structured, with the basic ones guiding and constraining the more specific ones, which are more sensitive to cultural variations, local needs, historical contingencies, traditions and so on. A society, for example, may accept the more specific rule that their children, though perhaps not those in other societies, should be seen and not heard as a way of interpreting and applying the more basic social moral rule that children should be properly educated.

Secondary social moral rules are those that specify how to react when others have broken other social moral rules, and primary social rules are not secondary ones - they permit, forbid, require, discourage, encourage, or whatever, types of acts in a way that does not make essential reference to the breaking of other rules. Among the Greek nomads I described earlier, it is arguably a secondary social moral rule that no ‘honorable’ man may marry the daughter of a sexually immodest woman.

Social moral rules are rarely absolute and they tend to exist in systems of other such rules. They typically include exceptions, limiting conditions, qualifiers, defeasibility conditions, priority rules, decision procedures, and other devices that allow them to exist as a more or less coherent moral code, although most actual moral codes include inconsistencies, ambiguities, and gaps. Typically a society’s set of basic social moral rules is also limited in the sense that they constrain, but do not determine, all aspects of our moral lives because they usually exist alongside societal values, personal goals and projects, ideals, laws, commended character traits, and recognized exemplars.

Additionally, adequately applying social moral rules usually requires some sensitivity, judgment, and perception of the relevant facts.

CHAPTER 2

SOLIDARITY AND SOCIAL MORAL RULES

When we have established among ourselves what might be called *social moral rules*, which are *informally* established and *socially* enforced standards that members of a group generally *treat as* properly regulating their conduct, the fact that these rules prevail in our group seems to be a new reason for us to follow them.³⁶ Social moral rules are all around us – they exist in our clubs, universities, teams, political parties, neighborhood associations, families, and our society – so we should ask what sorts of reasons we have to follow the norms that our group treats as moral, even when we know that our rules are not as good as they could be.

Here are some examples of prevailing social moral rules that, just in virtue of being *rules of the group*, seem to give members some reason to comply with them: The Mbuti Pygmies of Zaire have a rule according to which a Mbuti must not substantially harm another member of the tribe except during one of their ritual festivals where adolescent girls are permitted to attack the men of the tribe³⁷; the Siriono people of eastern Bolivia enforce a rule against eating raw meat even in the face of impending

³⁶ Uncovering which rules a society treats as its moral ones is difficult, because it is tough to say just what it is to regard a rule as moral, but also because it is difficult to tell whether people have the beliefs, attitudes, emotions and dispositions that are typically involved in doing so.

³⁷ Edgerton, Robert B. (1985), *Rules, Exceptions, and Social Order* (Berkeley: University of California Press), 139-141.

starvation³⁸; residents of a certain halfway house affirmed the rule ‘don’t snitch’, which they took to mean, ‘do not cooperate with the authorities under any circumstances’³⁹; lawyers recognize a rule among themselves to do some *pro bono* legal work⁴⁰; stand-up comedians informally enforce rules about stealing one another’s jokes⁴¹; when I was growing up my family had a rule about eating Sunday brunch together; and the moral code that exists in our own society includes social moral rules about lying and killing.

It is clear from these examples that the prevailing social moral rules of a group are not the same as its *habits, customs, norms of etiquette, or laws* even though the *content* of these things can be the same – a *moral principle* against killing an innocent person, for example, can be instituted as a socially enforced rule and enacted as a formally enforced law. Social moral rules are distinctive in part because they are enforced in informal, unorganized ways. A lawyer who took no *pro bono* cases, for example, would be subject to gossip, mockery and perhaps ostracism by his colleagues while a neighbor who broke a promise to water our plants would not likely be invited for dinner anytime soon. Social moral rules are ‘moral’, in one sense of that term, because of the social function they play in a group, even though, in a different sense, a group can affirm social moral rules that are incorrect and unjustified.

³⁸ Holmberg, Allan (1969), *Nomads of the Long Bow: The Sirionó of Eastern Bolivia* (Rev. edn.; Garden City, NY: Garden City Press).

³⁹ Wieder, D. Lawrence (1974), *Language and Social Reality: The case of Telling the Convict Code* (The Hague: Mouton), 145.

⁴⁰ Carlin, Jerome (1966), *Lawyers' Ethics: A Survey of the New York City Bar* (New York,: Russell Sage Foundation).

⁴¹ Oliar, Dotan and Springman, Christopher Jon (Forthcoming), 'Intellectual Property Norms in Stand-Up Comedy', in Mario Biagioli, Peter Jaszi, and Martha Woodmansee (eds.), *The Making and Unmaking of Intellectual Property*.

When social moral rules prevail in our group, what kinds of reasons (if any) do we have to follow them? A natural response is that the existence of a social moral rule is at most an instrumental reason to follow it. Maintaining and enforcing social moral rules can help us, individually or as a group, to stay connected, survive in a dangerous environment, garner a valuable reputation, or bring about shared ends. This explanation, I argue, does not do full justice to the value of existing social moral rules and the reasons such rules can provide.

My question is: Are the prevailing social moral rules of a group – or, more specifically, the complicated complex of attitudes, dispositions and actions in virtue of which social moral rules exist in a group – valuable *for their own sake*, apart from any *instrumental value* there may be in having those rules; and if the social moral rules that exist in a group are valuable in this non-instrumental way, do they give us *non-instrumental* reasons to follow the prevailing rules? Take, for example, our socially enforced rule against torture, which has been criticized as *defective* by some for allowing too many exceptions and by others for allowing too few. Even if we, as a society, had not managed to establish and implement that rule (indeed, some societies in the past may have had no such rule) torture would still be inhumane, cruel, and painful, which is usually more than enough reason not to torture one another. But we do generally affirm and socially enforce a rule against torture here, so we should ask what sort of value (if any) our prevailing rule has – what good is there in continuing to affirm this rule, appealing to it in public discussions, and pressuring others to comply with it as opposed to leaving such matters to the law or individual conscience. And what *additional* reasons

(if any) does the presence of our rule give us not to torture others that we wouldn't already have if no such rule existed here?

The utilitarian tradition has been at the forefront of discussions about the nature and value of prevailing social moral rules. History has shown, Mill thought, that the existence of certain commonly affirmed, but not necessarily legally codified, social moral rules about theft, promising, beneficence, etc. are essential for us to enjoy even a minimally decent standard of living.⁴² Establishing and maintaining such rules, for example, helps us to coordinate our behavior and makes us more likely to act as we should. There is little doubt that a moral code can be instrumentally valuable but is this the only sort of value it can have? Act-utilitarians tend to think so. For them, when social moral rules exist, they are at best just heuristics, rules of thumb, means of coordination or tools of social control that can *for the most part* cause us to act better than we otherwise would. Many of us strongly resist the implication, however, that commonly accepted social moral rules about lying and torture, for instance, must be *broken*, perhaps even secretly, every time this would produce slightly more good overall. Those who nonetheless favor sticking to the rules, however, are accused of 'fetishizing' or 'worshipping' rules because they leave unexplained *why* we should always comply with the rules even if it makes sense for our group *in general* to maintain and support them.

Partially in response to the concern that existing social moral rules lack any distinctive authority of their own apart from the benefits they tend to produce, rule-

⁴² Mill, John Stuart and Crisp, Roger (1998), *Utilitarianism* (Oxford: Oxford University Press), 5.13, 5.25, 5.32-34. See also Sidgwick, Henry (1962), *The Methods of Ethics* (7th edn.; Chicago: University of Chicago Press) and, for a related discussion of the law, Bentham, Jeremy, Burns, J. H., and Hart, H. L. A. (1996), *An Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press).

utilitarianism promised a more sensible view about rule-following that also retains utilitarian insights about the instrumental value that prevailing moral codes can have.⁴³ Details aside, rule-utilitarianism holds that the justification of every action depends on its being in accordance with the social moral rules that, if they were to exist, would maximize overall welfare. A common worry, however, is that rule-utilitarians have difficulty explaining, in a way that remains faithful to their utilitarian commitments, *why* we should follow generally useful rules when it is suboptimal to do so on particular occasions.

Act-utilitarians, who rightly emphasize how useful prevailing social moral rules can be for producing welfare, are too permissive when it comes to rule-breaking; rule-utilitarians, who come closer to capturing commonsense ideas about the importance of following good social moral rules, leave it unclear why we should always comply with them.

One of my aims is to offer a new and non-consequentialist account of the value of having and following social moral rules, one that explains *why* we should sometimes follow prevailing, but perhaps defective, rules independent of the instrumental benefits there may be in doing so. My other aim is to begin developing a non-consequentialist theory of social moral rules that incorporates an improved conception of social moral rules, satisfies common concerns about the limits of rules and the need for good moral judgment when applying them, abandons the utilitarian conception of the common good

⁴³ Prominent defenders of rule-utilitarianism or rule-consequentialism (which includes fairness as another value to be maximized alongside wellbeing) are Richard Brandt and Brad Hooker. See Brandt, Richard (1963), 'Toward a Credible Form of Utilitarianism', in H.N. Castañeda and G. Nakhnikian (eds.), *Morality and the Language of Conduct* (Detroit: Wayne State University Press), 107-43 and Hooker, Brad (2000), *Ideal Code, Real World: A Rule-consequentialist Theory of Morality* (Oxford: Oxford University Press).

and has its foundations in a host of mid-level values that we commonly affirm, such as freedom, equality, respect and (I would add) solidarity.

My account of the value and reason-giving force of social moral rules can be summarized in this way. When we are in a certain kind of *solidarity* with others, united by social moral rules that we have established among ourselves, the rules we have developed and maintain are a *constitutive part* of our *solidary*⁴⁴ relationships with one another; and it is part of being in this sort of solidarity with our comrades that we are presumptively required to follow the social moral rules that join us together.⁴⁵ This kind of solidarity, in which we are bound together by social moral rules, is widespread and often valuable for its own sake quite apart from any propensity to bring about other good ends. It follows that the social moral rules that hold us in solidarity are often valuable for their own sake as well or, more precisely, they are *non-derivatively valuable in virtue of being a constitutive part of a relationship that is valuable as an end*. And, when social moral rules exist and play an essential role in constituting the intrinsically valuable solidarity of a group, we have non-instrumental reasons to follow the rules because doing

⁴⁴ This word may seem strange, but *OED* defines ‘solidary’ as an adjective that means: “Characterized by or having solidarity or community of interests.”

⁴⁵ Some discussions of solidarity and related notions include: Dworkin, Ronald (1986), *Law's Empire* (Cambridge, Mass.: Belknap Press), chapter 6; Feinberg, Joel (1970), 'Collective Responsibility', *Doing & Deserving; Essays in the Theory of Responsibility* (Princeton, N.J.: Princeton University Press), 221-51; Rorty, Richard (1989), *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press); Taylor, Charles (1995), 'Irreducibly Social Goods', *Philosophical arguments* (Cambridge, Mass.: Harvard University Press), 127-45; Kymlicka, Will (1996), 'Social Unity in a Liberal State', *Social Philosophy and Policy*, 13 (1), 105-36; Bayertz, Kurt (1999), 'Four Uses of Solidarity', in Kurt Bayertz (ed.), *Solidarity* (Dordrecht ; Boston: Kluwer Academic Publishers), 3-28; Gilbert, Margaret (1989), *On Social Facts* (London: Routledge); Shelby, Tommie (2005), *We Who are Dark: The Philosophical Foundations of Black Solidarity* (Cambridge: Belknap Press of Harvard University Press); Durkheim, Emile and Halls, W. D. (1984), *The Division of Labor in Society* (New York: Free Press); and Rawls, John (1999), *A Theory of Justice* (Rev. edn.; Cambridge, Mass.: Belknap Press of Harvard University Press), 90-91; and Scanlon, Thomas (2008), *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, Mass.: Belknap Press of Harvard University Press).

so is often a way of *manifesting* or *expressing* these valuable relationships by living up to their requirements. Breaking the rules can be a way of *betraying* or *letting down* our compatriots. My family's rule about eating Sunday brunch became part of the solidary relationship that we had with one another. We didn't have to settle on this or any social moral rule, but we did, so that rule became *our* rule, and its role in the relationships we developed gave me some reason to show up on Sunday mornings as a way of living out, manifesting and standing in solidarity with my family.

My characterization of the non-instrumental value of social moral rules and the non-derivative reasons we have to follow them is analogous to Aristotle's account of the value of particular justice, which is a matter of repaying debts, keeping promises, etc. In addition to being desirable for the sake of happiness, Aristotle argues that the particular virtue of justice is also desirable for its own sake in virtue of being *part of* the highest good of happiness. According to him, being just to our friends is a way of manifesting or expressing our own happiness. Similarly, I explain how our group's shared moral code can be valuable for its own sake in virtue of holding a group together in solidarity and also how we have non-instrumental reasons to follow those rules as a way of living up to the requirements of our worthwhile solidary relationships.

One feature of my view worth emphasizing is that it partially explains why, within certain limits, we have good reasons to follow *imperfect* or *defective* social moral rules even when we could do more good otherwise or, paradoxically, even when an *ideal* moral code requires us to break the flawed rules we actually have. It is important to think about what an ideal moral code would be like, but our society already has some non-ideal, though still fairly good, social moral rules that unite us in solidarity with each

other, so we have non-instrumental reasons to continue affording *our* rules some allegiance even while working to make them better.

I will proceed as follows. In the first section, I discuss in more detail the nature of social moral rules and distinguish them from habits, customs, rules of etiquette, conventions, laws and abstract moral principles. Then, in the second section, I describe solidarity in a way that shows it to be valuable for its own sake, at least in some contexts. I continue my discussion of the value of solidarity in section three by arguing that it is valuable as an end, to each individual in the relationship rather than in some agent-neutral way, but not in all circumstances – the solidarity among the Nazi’s was not, I claim, valuable for its own sake, but there may be some redeeming value in the solidarity of certain less defective but still imperfect teams, marriages, armies, societies, etc. In section four I explain how relationships of solidarity can be partially constituted by the prevailing social moral rules of a group. I then argue in sections five and six that when social moral rules play this constitutive role in uniting a group in intrinsically valuable relationships of solidarity, we can draw the following conclusions. First, those *potentially defective* rules are valuable for their own sake in virtue of being components of a relationship that is valuable as an end. Second, the members of the group have non-instrumental reasons to follow what may be imperfect social moral rules as ways of *manifesting* the solidarity they have with one another and living up its demands. Third, the solidarity that unites them also gives members of the group non-instrumental reasons to improve their shared rules. Finally, their solidary relationships can sometimes even give them, what may seem paradoxical, reasons to break their social moral rules.

I end with the proposal that we see our society as being in a sort of solidarity, united together in meaningful relationships by values of respect, freedom, justice, etc. and by our shared project of living out those values together, which we do in part by maintaining, following and steadily improving our own code of social moral rules.

Social moral rules

Mill famously said that we “do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, *by the opinion of his fellow-creatures*; if not by opinion, by the reproaches of his own conscience” (my emphasis).⁴⁶ Here are a few more examples the sorts of things I want to talk about, which fall somewhere in between laws and traits of character. Our society accepts social moral rules about giving up bus seats to elderly people or those with disabilities; people who choose to smoke around children are often met with scowls; journalists have an unwritten rule about protecting confidential sources; and police officers generally recognize the “Blue Wall of Silence” not to report the errors, infractions or crimes of one another.⁴⁷

Drawing on similar accounts of social moral rules offered by H.L.A. Hart, Kurt Baier, Richard Brandt and John Rawls, I suppose that, paradigmatically, social moral rules exist in a group when:⁴⁸ (a) the rules are widely accepted as social moral rules in a

⁴⁶ Mill, *Utilitarianism*, 5.12

⁴⁷ Trautman, Neal (2001), 'Truth about Police Code of Silence Revealed', (National Institute of Ethics).

⁴⁸ See Hart, H. L. A. (1994), *The Concept of Law* (2nd edn.; Oxford: Oxford University Press); Baier, Kurt (1958), *The Moral Point of View: A Rational Basis of Ethics* (Ithaca: Cornell University Press); Brandt, op. cit.; Brandt, Richard B. (1996), *Facts, Values, and Morality* (Cambridge: Cambridge University Press), chapter 3; Brandt, Richard B. (1979), *A Theory of the Good and the Right* (Oxford: Oxford University Press), chapter 9; Rawls, John (1999), 'Two Concepts of Rules', in John Rawls and Samuel Richard

way that I explain shortly and (b) are generally complied with; (c) the rules are not created by anyone in particular, and no one has the special authority to modify or destroy them⁴⁹; (d) the rules are socially enforced in an informal way, which means that social enforcement occurs through the use of unorganized social pressures such as gossip, mockery and shunning rather than by formal institutions having been specifically assigned that task; and (f) it is widely known in the group that these conditions are met.

Someone *accepts* the social moral rule ‘respect others’, for example, as a social moral rule if she believes (perhaps implicitly) that everyone in her group has good moral reasons to respect others and she is disposed, in light of her belief, to use that rule in her practical deliberations, to feel guilt if she disrespects someone, to condemn, resent and socially pressure others who do so, and to form favorable attitudes towards people who respect each other. In other words, she sees the rule as appropriately regulating the conduct of the group.

Anthropological evidence suggests that that the moral codes of most societies have a morally laudable core, which is the part of their code that they are most deeply committed to – it is generally against the prevailing rules of any society, for example, to kill another member of the group intentionally for personal gain without provocation when reasonably favorable conditions obtain, and this part of most any code is not likely

Freeman (eds.), *Collected Papers* (Cambridge: Harvard University Press), 20-46; and Rawls, *A Theory of Justice*, section 10.

⁴⁹ The rules may conceivably be created by one person, but only indirectly, as when a cult leader proclaims some dress code and his followers obey. But this is not a paradigmatic example of how such rules come to exist.

to be abandoned easily.⁵⁰ One reason for this is that it is very unlikely that a group can genuinely and sincerely believe that they have good moral reasons to follow rules that require or permit those acts of rape, torture, intentional killing, etc. that are profoundly immoral, reprehensible and unjustified.⁵¹ This leaves ample room, however, for stifling, exclusionary, and otherwise imperfect social moral rules that nonetheless manage to forbid acts that are most obviously wrong. Prevailing social moral rules will still vary greatly with regard to what (if any) *exceptions* they allow general prohibitions on killing, lying, etc., how their most general and widely-applicable social moral rules are to be interpreted and implemented in concrete situations and what non-basic social moral rules they allow for particular groups or restricted areas of life.

It may be helpful to clarify this paradigm by contrasting it with some other things, while keeping in mind possible overlaps in their content. First, *shared habits, behavioral regularities, fads* and other *normal or typical behaviors of a group* exist in virtue of being generally complied with, whereas social moral rules must also be generally accepted. Second, social moral rules are a subset of *social rules*, which include conventional and more or less arbitrary rules of *politeness* and *etiquette*. In order for social moral rules to exist, there must be the widespread belief that everyone has good *moral* reasons to follow

⁵⁰ See Peterson, Christopher and Seligman, Martin E. P. (2004), *Character Strengths and Virtues: A Handbook and Classification* (Oxford: Oxford University Press) and Walzer, Michael (1994), *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press).

⁵¹ A dominant theme of Kant's moral philosophy is the supposed 'fact of reason' that virtually all of us are strongly disposed to be deeply and immediately struck by the seemingly profound difference between morality, which is expressed in the moral law, and self-interest. See, in particular, Kant's claims about the forceful moral judgments we have about giving false witness in certain cases (*KpV* 5:30) and those we have about a shopkeeper giving correct change from moral rather than prudential motives (*G* 397). 'KpV' refers to Kant, Immanuel and Gregor, Mary J. (2007), 'Critique of Practical Reason', (Cambridge: Cambridge University Press) and 'G' refers to Kant, Immanuel, Hill, Thomas E., and Zweig, Arnulf (2003), *Groundwork for the Metaphysics of Morals* (Oxford: Oxford University Press).

them along with corresponding dispositions to have certain appropriate moral emotions when these rules are followed or broken by oneself or others; and codes of social moral rules must have a minimum moral content whereas codes of social rules need not.⁵²

Third, *constitutive or practice-based rules* are ones that make up a practice by defining certain actions, offices, moves, and excuses.⁵³ Constitutive rules can be social moral rules – perhaps those governing promising and marriage are examples – but they need not be, such as constitutive rules of certain games. Fourth, a *social convention*, in the typical way it is understood by philosophers, is basically a pattern of mutually beneficial, self-enforcing behavior that is normally exhibited by a group of people who do their part in the pattern because they believe it to be in their interests to do so and they expect most everyone to conform to it as well.⁵⁴ Even though social conventions and social moral rules share certain similarities, they differ in the following ways: (a) accepting a social moral rule involves having certain moral beliefs and attitudes whereas someone in the grip of a social convention can regard his participation in it as just a matter of prudence; (b) an existing social moral rule may not be mutually beneficial or self-reinforcing in the way that social conventions are; and (c) social moral rules are socially enforced whereas social conventions can be stabilized in other ways. Fifth, positive laws are created,

⁵² Distinguishing ‘moral’ beliefs and emotions from non-moral ones is difficult, arguably requiring not only formal constraints, such as universalizability, impartiality and non-arbitrariness, but also substantive criteria involving values or principles commonly regarded as moral along with a fundamental, widely-held and intuitive distinction between morality and self-interest.

⁵³ Rawls, *Two Concepts of Rules*, op. cit.

⁵⁴ Lewis, David K. (1969), *Convention: A Philosophical Study* (Cambridge: Harvard University Press) and Vanderschraaf, Peter (1998), ‘Knowledge, Equilibrium and Convention’, *Erkenntnis*, 49 (3), 337-69.

changed, annulled and enforced by formal institutions whereas social moral rules depend for their existence on being widely accepted, complied with, socially enforced and so on.

A final distinction worth noting is between social moral rules and *moral principles*, which are sometimes conceived as abstract propositions that do not depend for their existence on being generally accepted and complied with. Social moral rules are meant to regulate the behavior of groups of people, so they must be simple enough to be widely known, generally understood and taught to children; they should also be stable and sensitive to what information is available to those who are regulated by them and to the ways that the rules can liable to abuse.⁵⁵ Moral principles, in contrast, are sometimes conceived as objective criteria of right action that, as such, need not be sensitive to such ‘practical’ concerns.

When social moral rules exist, they are part of the natural order, so we can ask what sort of value, if any, they have when they prevail in a group – what sorts of reasons do members have to maintain, support, and follow them?

First we need some background. The notion of something’s being valuable ‘for its own sake’, we sometimes say, or valuable ‘as an end’ or ‘non-derivatively’ valuable

⁵⁵ G.A. Cohen, for example, argues in his recent (2008) book *Rescuing Justice and Equality* (Cambridge: Harvard University Press) that there exists a fully comprehensive standard that says what each of us deserves, and justice is a matter of getting what God, the Forms or some other independently existing moral order marks out for us. In light of certain general limitations and capacities of human nature, however, it will generally be unfeasible for us actually to employ and institute these standards with any great precision. Practical concerns about the publicity and stability of putative requirements of justice, for example, how liable they are to being abused, and the ease with which they can be made into workable laws are considered mostly beside the point when it comes to identifying what justice truly *is* at its most fundamental level. Rawls, *A Theory of Justice*, 137 disagrees with this characterization of principles of justice arguing instead that such principles are like social moral rules in that the most basic principles of political justice for the basic structures of a closed, well-ordered society existing under reasonably favorable conditions must take into account a whole host of facts about the feasibility of implementing them, including facts about publicity and stability.

basically means that it is valuable and not just in virtue of its tendency to produce, contribute to or make possible other things that are valuable. Saying that something is valuable ‘for the sake of something else’, ‘as a means’ or ‘derivatively’ valuable is roughly to say that its value depends at least in part on having this tendency to promote other good ends. The contrast between ends and means is one way of disambiguating the philosophical terms of art ‘intrinsic’ and ‘extrinsic’ value, and the one I am most concerned with here.⁵⁶ The other is roughly the distinction between value that supervenes on something’s non-relational, ‘intrinsic’ properties and value that supervenes on its relational, but not necessarily causal, properties.⁵⁷

Here is a brief survey of a few of the ways to think about the value of existing social moral rules.

⁵⁶ Important discussions of these matters include Korsgaard, Christine M. (1983), ‘Two Distinctions in Goodness’, *The Philosophical Review*, 92 (2), 169-95; Kagan, Shelly (1998), ‘Rethinking Intrinsic Value’, *The Journal of Ethics*, 2 (4), 277-97; and of course Moore, G. E. (1903), *Principia Ethica* (Cambridge: Cambridge University Press).

⁵⁷ There are all sorts of interesting complexities and puzzles surrounding intrinsic value of both sorts. Others (including Korsgaard, Kagan and Jonathon Dancy) have pointed out that the relation between these two sorts of intrinsic value is not obvious, for it seems that the value something has for its own sake can supervene on its extrinsic properties, such as its being unique, its having been possessed by someone, or, I would add, its being a constitutive part of a meaningful relationship. Is there also a recognizable sense in which something can be valuable for its own sake and its non-derivative value depend only on its property of being a good means to an end? Along with the discussions of Korsgaard and Kagan, see also Dancy, Jonathan (2000), ‘Should We Pass the Buck?’, in Anthony O’Hear (ed.), *Philosophy: The Good, the True, and the Beautiful* (Cambridge: Cambridge University Press), 159-74. There is also the perennial question of whether things are valuable for their own sake because they are valued as ends in some way under certain conditions or do we appropriately value things as ends because they are valuable for their own sake, or is there some third way? We can also ask what things are the bearers of non-derivative value, whether objects, states of affairs, or something else, and whether we should understand the relationship between reasons, values and value-making properties as, for example, a ‘buck passing’ one in which to say that x is valuable is basically to say that x has other properties that provide reasons for respecting, honoring, promoting or otherwise treating x in certain ways. On the last point, see chapter 2 of Scanlon, Thomas (1998), *What we Owe to Each Other* (Cambridge: Belknap Press of Harvard University Press).

One is to deny that social moral rules, when they exist, have any value.⁵⁸ Rules of that sort, it may be argued, are merely part of the morally neutral background norms and understandings against which a moral agent in our world must act. Good moral judgment requires thinking and deciding for ourselves on the basis of the particularities of the individual cases we face. Because of vast moral complexity, it is impossible to codify a simple set of moral principles or to formulate a reasonably accurate and useful decision procedure for ethics. Indeed, preoccupation with principles and rules, it is sometimes thought, can even distort our moral judgments by obscuring morally relevant features of a situation and encouraging rigidity in our moral thinking, leading us to stick to the rules in cases in which we should not do so.⁵⁹

Another possibility is that social moral rules can be valuable, but only instrumentally, as heuristics, rules of thumb or means of coordination. Given certain persistent features of human nature, particularly our susceptibility to social pressures of various kinds, establishing and maintaining rules that we socially enforce in each other can have tremendous instrumental value in helping us, for example, to coordinate our behavior, give and receive assurances, etc. On this conception of social moral rules, the existence of the rules can only give us instrumental reasons to follow them. Sometimes we have good reason to follow the rules when they are serving a useful social role and

⁵⁸ See for example Annas, Julia (2006), 'Virtue Ethics', in David Copp (ed.), *The Oxford Handbook of Ethical Theory* (New York: Oxford University Press), 518; Hursthouse, Rosalind (1999), *On Virtue Ethics* (Oxford: Oxford University Press), chapters 1 and 2; Dancy, Jonathan (2004), *Ethics without Principles* (Oxford: Oxford University Press), 133-4. McNaughton, David (1988), *Moral Vision: An Introduction to Ethics* (Oxford: Oxford University Press), 199, 203.

⁵⁹ Virtue ethicists and particularists, however, may admit that, like laws, social moral rules can be useful social devices. Later I suggest a way for them to allow social moral rules to have non-instrumental value as well.

when doing otherwise would risk undermining general confidence in them; at other times the strong social reprisals we would face for breaking the rules gives us sufficient reason to do what they require. The general hunch, however, is that social moral rules are of secondary importance because they are just another means of social control that can encourage, prod, guide and goad us into acting as we should.

Deontologists who are inspired by W.D. Ross might take a different route by claiming that we can intuit certain social moral rules, such as ‘respect others’ and ‘do not be completely indifferent to their welfare’, and immediately see that we have non-instrumental reasons to comply with them and also that such rules would be non-instrumentally valuable were they to exist. This is not Ross’ own view – he thought that we intuit the prima facie duties, but there is no general principle that specifies our actual duty when these prima facie ones conflict, so in such cases we must use reflective judgment to come to all-things-considered judgments about what we ought to do.⁶⁰ A deontologist who wanted to draw from but go beyond Ross’ theory might instead think that there are a few basic and self-evident social moral rules, which are not derived or generalized from particular moral conclusions about specific cases, and each of them is an absolute duty.⁶¹ Ross also claimed that alongside the self-evident and not merely instrumental goods of justice, knowledge and innocent pleasures is virtue, which includes

⁶⁰ Ross, W. D. (1930), *The Right and the Good* (Oxford: Clarendon Press), Chapter 2.

⁶¹ This is not the only way one might supplement Ross’ view. Another is to define a notion of prima facie social moral rule as roughly a rule that imposes requirements on us and should be implemented as long as there are no other prima facie social moral rules that conflict with it. If there are then we need to use reflective judgment to decide the case. Prima facie duties, in Ross’ sense, are moral principles that need not be sensitive to concerns of feasibility whereas prima facie social moral rules must take into account practical matters of stability, publicity, liability to abuse and so on.

a disposition to do our duty.⁶² According to the deontological view I envision, it is valuable for its own sake, and self-evidently so, when a group of people generally accepts, complies with and socially enforces the social moral rules that are also duties.

Rule-utilitarians have developed and emphasized some very good ideas about the nature and function of social moral rules. On their basic view, (1) the fundamental moral value is welfare, which is the sort of thing that is to be promoted; (2) welfare is the only basic moral value; and (3) the justification of every action depends on its being in accordance with the social moral rules that, if they were generally accepted, would maximize overall welfare. Rule-utilitarians appeal to aggregate wellbeing as a common currency for evaluating social moral rules and for resolving potential conflicts among them – one rule is better than another, they think, if general acceptance of the one would produce more overall utility than would general acceptance of the other. They conceive of morality exclusively in terms of rules and leave largely unexplained why we should comply with rules when we can produce more good otherwise.

There is much to learn from these views about the limits of rules, the need for good moral judgment when applying them, the significant instrumental value they can have when they exist, and the kinds of social roles they can play, but I will now try to show that none of them offers a complete explanation of the value that social moral rules can have when they exist and of the types of reasons we can have to follow them.

Solidarity

⁶² Ross, op. cit., 134-141.

Having described the conditions in which social moral rules exist and raised the question of what value such rules have when they are enacted in a group, I will now characterize *solidarity* in a way that partially exhibits the sort of value it is.

My methodology for justifying why solidarity is often valuable as an end is to reflect from a commonsense perspective on a series of examples and look for an explication of our reflective moral intuitions that shows the reasons and principles that underlie them.⁶³ We sometimes do not have all things considered moral judgments about cases we encounter, and even when we do we recognize that reasonable people may disagree with us, but what I find interesting is how complex our reflective moral intuitions often turn out to be. When looking at various examples, therefore, we can ask what pulls us to judge one way or the other and why we have more confidence in some of our judgments than others.⁶⁴ I take a bottom-up rather than top-down approach here – rather than beginning from moral first principles, I claim that the fullest explanation of

⁶³ The moral methodology I am using here is closely related to what Rawls (1999) describes in his Rawls, John (1999), 'Outline for a Decision Procedure for Ethics', in John Rawls and Samuel Richard Freeman (eds.), *Collected papers* (Cambridge: Harvard University Press), 1-19. The basic idea is to examine and explain the reflective intuitions that conscientious, reasonable people have about particular cases by looking for principles and reasons that stand behind these intuitions. This methodology is different from but also arguably consistent with causal or psychological investigations into our moral beliefs.

⁶⁴ Bernard Williams, in his famous example in which Jim must choose whether or not to kill one person in order to prevent five others from being killed, worries that utilitarians will not only admit that Jim should take this action but also that they will think this is '*obviously right*' (his italics). Williams goes on to say: 'But many of us would wonder whether...even one who came to think that perhaps that that was the answer, might well wonder whether it was obviously the answer. Nor is it just a question of the rightness or obviousness of these answers. It is also a question of what sort of considerations come into finding the answer' (99). Smart, John Jamieson Carswell and Williams, Bernard Arthur Owen (1973), *Utilitarianism; For and Against* (Cambridge: Cambridge University Press) 155 p.

some widely held considered moral judgments about particular cases appeals to a sort of solidarity that commonsense presupposes is often valuable for its own sake.⁶⁵

Solidarity, in general, is a matter of a group of people being united or at one with regard to something (sympathies, interests, values, etc.), having genuine concern for each other's welfare, respecting others as group members, trusting one another not to intentionally undermine or free ride on the group, taking pride in the group as a whole, being ashamed of its failures and suffering loss or betrayal if members of the group do not live up to the requirements that the group places on itself, and perhaps having certain other affections for one's compatriots.⁶⁶

One of the distinguishing features of solidarity, at least in its paradigmatic form, is that people are in solidarity *over, for or with respect to* something. For instance, we can be in solidarity over a shared loss, such as when a child falls down a well or Martin Luther King, Jr. was killed, or in solidarity with respect to common oppression or suffering, as exemplified by African American slaves⁶⁷ and soldiers in times of war.⁶⁸ We may be in solidarity with those in our family or ethnic group; or in solidarity over religious beliefs.⁶⁹ Solidarity can sometimes be akin to pride in one's country and its

⁶⁵ An important role for normative ethical theory, as I see it, is to reveal the underlying structure of our ethical thinking, which is different from but compatible with investigating connections between ethics and science, linguistics and metaphysics.

⁶⁶ The general account draws from Feinberg, *op. cit.*, 234-6, Ronald Dworkin's discussion of what he calls 'true communities', *op. cit.*, chapter 6 and Emile Durkheim's, *op. cit.*, discussion of solidarity.

⁶⁷ For a wonderful discussion of solidarity among African Americans, see Tommie Shelby's book, *op. cit.*

⁶⁸ See, for example, Fraser, George MacDonald (1993), *Quartered Safe out Here: A Recollection of the War in Burma* (London: Harvill).

⁶⁹ See Durkheim, Émile (1965), *The Elementary Forms of the Religious Life* (New York: Free Press), 59.

people, as it seems to have been for the theologian Dietrich Bonhoeffer when he chose to return from America to fight with the German Resistance and “share the trials of this time with my people.”⁷⁰ It can be a matter of sharing certain goals with others, such as fighting breast cancer; we can be united in solidarity by cooperative activities, as sometimes happens in amateur orchestra; or we can be united with others by religious beliefs or rituals.⁷¹ In practice, however, there are usually overlaps among these different ways of being in solidarity – the Civil Rights Movement, for example, involved shared ends and projects along with elements of religious affiliation, ethnic identity, and common oppression.

Being united with others in these ways provides the basis for the formation of the solidary bonds that I just described, which involves respecting one another as group members, caring about each other’s wellbeing, taking pride in the group and so on. These relationships are not just seen by participants as instrumental to individual goals or as mere means to common ends. Rather, members of the group regard their relationships as valuable in themselves, and when this is widely known, it provides further support to the cohesion of the group. They take themselves as having reasons to be loyal to others in the group, trust them, care about them, etc. Over time, members may even begin to

⁷⁰ Bethge, Eberhard and Barnett, Victoria (2000), *Dietrich Bonhoeffer: Theologian, Christian, Man for his Times; A Biography* (Rev. edn.; Minneapolis: Fortress Press), 736. Thanks to Robert Adams for this fascinating example.

⁷¹ Durkheim, op. cit., 59.

identify themselves with the group, seeing its aims along with their joint projects and the corresponding relationships as part of who they are as persons.⁷²

Ties of solidarity can be powerful motivators. Members are strongly inclined to live up to the expectations of others, avoid betraying them, letting them down or losing their trust, and otherwise supporting and maintaining the valued bonds that exist among them. Solidarity can be intentionally undermined when these relationships are targeted. This can happen when someone tries to engender intra-group conflict by playing on individual interests, regional conflicts and sub-group affinities to lead people to focus on differences among themselves rather than their shared aspirations, activities, religious beliefs, etc.

In order to explain and exhibit the nature and value of solidarity more fully, I want to highlight one particularly worthwhile sort of solidarity in which people are united both by *shared ends* and *cooperative activities* in support of those ends. Consider some examples.

First, on August 14, 1980 workers at the Lenin Shipyard in Gdańsk, Poland called a peaceful occupation strike, demanding that the communist government there provide guarantees of freedom of the press, freedom of speech, freedom of worship, the right to organize and maintain trade unions, and better working conditions.⁷³ Soon thereafter delegates from strike committees at 200 or so other factories, mines and shipyards across

⁷² It may even be that a group as a whole can become a sort of plural subject that has the ability to form plans, intentions and beliefs. Margaret Gilbert's work is instructive on this point. See her *op. cit.*, especially chapter 4.

⁷³ One of the standard historical accounts of the Polish Revolution is that of Garton Ash, Timothy (2002), *The Polish Revolution: Solidarity* (3rd edn.; New Haven: Yale University Press). The quote appears on page 32.

Poland, along with members of the intelligencia and the Catholic Church, began arriving at the Lenin Shipyard ready to offer their support. After securing substantial concessions from the government that ended the strike, these groups quickly organized themselves into *Solidarność*, or Solidarity, which became a nationwide labor union of 9 to 10 million members. Solidarity employed highly coordinated tactics such as general strikes, worker slow-downs, and hunger marches in support of the shared values that bound its members together. As one observer wrote: "What we had in mind were not only bread, butter and sausage but also justice, democracy, truth, legality, human dignity, freedom of convictions, and the repair of the republic." He continues that the "intense unity of thought and feeling which previously had been confined to small circles of friends – the intimate solidarity of private life in Eastern Europe – was now multiplied by millions".⁷⁴

Second, many Jews had a special bond with African Americans who were fighting against the oppression of the Jim Crow South.⁷⁵ As active participants in the Civil Rights Movement, many Jews engaged in marches, Freedom Rides, boycotts, sit-ins and legal actions alongside African Americans. These people were moved in part by analogies they saw between the treatment of African Americans and the German persecution of Jews. As one person put it: "I felt that the most important thing that I could do is to work in the Black movement. If anything happened, then somebody didn't have to say to me, what did you do?"⁷⁶

⁷⁴ Garton Ash, op. cit., 32.

⁷⁵ See Schultz, Debra L. (2001), *Going South: Jewish women in the civil rights movement* (New York: New York University Press).

⁷⁶ Schultz, op. cit., 24.

Third, for as long as anyone can remember, the town of Odessa, in West Texas, has been fiercely devoted to its Permian High School football program.⁷⁷ Children are raised admiring the Panthers, as many as twenty thousand fans from a wide variety of backgrounds attend home games, a great many of them travel with the team and regularly attend practices, the booster club organizes very successful fundraising events and is the largest social club in town, Panther apparel is widely worn and their symbols are commonly displayed by local businesses, the marching band, cheerleading squad and dance team are first rate, coaches and trainers relentlessly strategize and prepare for opponents and the players themselves devote extraordinary time and effort to workouts, practices and games. As one fan describes the pride the town takes in its football team and the meaning it has for their way of life: “There is nothing to replace it. It’s an integral part of what made the community strong. You take it away and it’s almost like you strip the identity of the people.”⁷⁸

These examples are very complicated, but they are real-world scenarios in which, it seems, valuable relationships of solidarity formed among people from a diverse range of religious, ethnic and cultural backgrounds who we may not otherwise think of as being united or at one with one another.⁷⁹ This type of solidarity, perhaps unlike some of the others, has the potential to unite pluralistic societies together, taking their cooperative

⁷⁷ See Bissinger, H. G. (2004), *Friday Night Lights: A Town, a Team, and a Dream* (Cambridge, MA: Da Capo Press).

⁷⁸ Bissinger, op. cit., 24

⁷⁹ One of my main interests in solidarity is its potential to unite pluralistic societies together in cooperative activities (including economic activities, social structures, political institutions, social moral rules, etc.) organized around shared ends (such as values of respect, freedom, justice, etc.).

activities (including economic activities, social structures, political institutions, social moral rules, etc.) and shared ends (such as values of respect, freedom, justice, etc.) as the basis for valuable and reason-giving relationships.

When we reflect on what is valuable in the examples, then, part of the answer is that they involve relationships of solidarity among members of a group of people who are *cooperating together* in support of *shared ends* and valuing for their own sake the solidary relationships that form on this basis.

The *shared ends* that can unite people in solidarity are their values, ideals, aspirations and the like, although these things need not actually be valuable – while the aspirations of the Polish Revolution and the Civil Rights Movement were certainly worthwhile, the shared goal of high-school football success is arguably not all that valuable, at least for its own sake. The ends are shared because there is public knowledge in the group that they are generally affirmed, and the group generally takes responsibility for these ends by taking them on as their own and as worthy of their respect and support.

The *cooperative activities* undertaken in support of those ends may involve taking steps to promote them, manifesting and showing respect for them, interpreting them in action, honoring them or participating in them. The joint-projects of the group are not just seen as ways of coordinating their behavior; rather, those involved in cooperative activities do so freely, on mutually agreeable terms, and each enjoys a basic moral standing – none of them is treated as a slave, animal, or mere tool, for example, and the group gives some priority to each of their interests and concerns.

The cooperative activities of the group can be quite organized and structured, or relatively informal. The particular roles that group members play can vary widely, with

some of them actively engaged “on the front lines”, others supporting their efforts, while still others using symbolic gestures or protests to express their support for the cause. We may not even know or meet the people with whom we are cooperating, and some of the details of our joint-projects may be hidden from us, but in general the group knows that they are working with others and know in broad outline the nature of the cooperative activities in which they are taking part. This is true even when the larger project is carried out by a series of interlocking subgroups, who may have their own bonds of cooperative solidarity in addition to the ones that bind everyone as a whole. We may also be engaged in cross-time projects involving the efforts of those in the past and the future. Cooperating with these people in on-going endeavors involves, for example, trying to respect their wishes, show gratitude for their sacrifices, refrain from belittling their accomplishments, and so on. The various parts of a joint project of this sort may not be perfectly integrated, but those in the group know that they are all part of a larger pursuit in support of their common aims.

These three things – cooperation, shared ends, and solidarity – are clearly very different from one another and each can occur without the others, but my suggestion is that when they exist together in the way my examples highlight, when what unites us in solidarity is not just our culture, religion or history but our organized activities in support of our shared ends, the result can be an extremely valuable sort of solidarity. The sort of solidarity I am now emphasizing is an “organic unity” in the sense that the non-instrumental value of the whole is not equal to the sum of the non-instrumental value of

the parts.⁸⁰ From a commonsense perspective, there is an exponential progression of value in the following: An individual by herself promotes, manifests or otherwise supports her ends; a group of individuals coordinates their activities so as to support their common ends more effectively; these people freely choose to cooperate together in support of shared ends on the basis of mutually agreeable terms that afford everyone a basic moral standing; they come to value for their own sake the relationships of mutual concern, reciprocity, pride, loyalty and trust that form on the basis of cooperating with one another in these ways; and the ends that they are supporting together are themselves morally valuable. Odessa was galvanized by their collective support for the Permian football team, but these relationships of solidarity appear to be valuable even though their shared ends were arguably not moral ones. The coordinated efforts of those in the Polish Revolution and the Civil Rights Movement were enormously valuable in their own right because of the way they promoted and manifested laudable ends, but my suggestion is that it seems even more worthwhile that these people were also cooperating together on mutually agreeable terms and forming lasting bonds with one another that were based in their shared vision for a better world and their desire to take concrete steps together in support of it.

More on the value of solidarity

⁸⁰ See Moore, op. cit., 27-28, 96. Moore thought that non-instrumental value is an intrinsic property of things 'in themselves', so that value must be constant, but he surmised that the non-instrumental value that pleasure, for example, contributes to the complex of 'pleasure-in-the-pain-of-another' can vary depending on external circumstances, so he thought there are unlikely to be any useful rules about how the non-instrumental value of things combine together to give the non-instrumental value of their whole. We can retain the spirit of Moore's idea, however, while dropping the claim that non-instrumental value is (or supervenes on) intrinsic properties. For a discussion of this issue, see Dancy, Jonathan (2003), 'Are There Organic Unities?', *Ethics*, 113, 629-50.

I have tried to describe solidarity in a way that exhibits the sort of value it is, in much the way that one could argue for the value of friendship by giving detailed examples of such relationships that most of us would, on reflection, recognize as intrinsically valuable. Solidarity is not on the usual list of moral values, however, but it is something we seem to care about as humans and perhaps also as rational agents. Although I cannot go into details here, there is growing evidence from economics, psychology, neuroscience and evolutionary biology that human beings are strongly predisposed to engage and integrate with others in solidary ways, which may help to explain certain kinds of altruism, reciprocity, and moral concern for others and shed some light on how morality as we know it may have evolved from its familial and tribal beginnings to its current, more inclusive, form.⁸¹ It may also be part of our rational

⁸¹ See, for example, Cacioppo, John T. and Patrick, William (2008), *Loneliness: Human Nature and the Need for Social Connection* (New York: W.W. Norton); Putnam, Robert D. (2000), *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster); Costa, Dora L. and Kahn, Matthew E. (2008), *Heroes & Cowards: The Social Face of War* (Princeton: Princeton University Press); Wong, Leonard, et al. (2003), *Why They Fight: Combat Motivation in the Iraq War* (Carlisle Barracks, PA: Strategic Studies Institute, U.S. Army War College); and Sigman, M., Spence, SJ., and Wang, AT (2006), 'Autism From Developmental and Neuropsychological Perspectives', *Annual Review of Clinical Psychology*, 2, 327-55.

Solidarity may play a key role in the evolution of morality if, as seems likely, proto-morality began in family and small group situations where ties of solidarity were likely to be strong and ground requirements about how to treat one another as matters of loyalty to one another and the group but exclude to some extent those who were not family or tribal members. As groups became larger, moving in the direction of cities and states, more and more people came to be included among those who are seen as 'brothers' and 'sisters', but outsiders were still not afforded equal status with those on the inside. See for example Haidt, Jonathan and Graham, Jesse (2007), 'When Morality Opposes Justice: Conservatives Have Moral Intuitions that Liberals may not Recognize', *Social Justice Research*, 20 (1), 98-116 and Johnson, Gary R. (1986), 'Kin Selection, Socialization, and Patriotism: An Integrating Theory', *Politics and the Life Sciences*, 4 (2), 127-40. Under the wonderful influence of the Stoics, Christianity and the Enlightenment, there came pressure and an aspiration towards a world community that could give moral standing to everyone, even those who had not progressed past a moral focus on their own tribe. Freud ends up with a similar view in Freud, Sigmund and Strachey, James (2010), *Civilization and its Discontents* (New York: W.W. Norton & Company), arguing that even though society can be very frustrating to human beings with strong desires for individualism, freedom, violence and sex, our innate predisposition towards love (of a degraded sort) can be appropriated to bind the members of society together.

nature to be disposed to interact with, communicate with, cooperate with, connect with and relate with other rational people in support of common moral ends.⁸² And, as I suggest later, solidarity is similar in many ways to friendship, which we tend to find valuable for its own sake.

⁸² The value of cooperative solidarity has roots in Kant's idea of an 'ethical commonwealth' as one in which rational people freely, and without coercion, establish and maintain 'a society in accordance with, and for the sake of, the laws of virtue', one that is governed by 'public' laws in support of the shared moral end of the highest good (R 6:94; see also R 6:151). He describes this community as 'a union of such persons into a whole toward that very end, toward a system of well-disposed human beings in which, and through the unity of which alone, the highest moral good can come to pass' (R 6:97-8). He similarly describes a 'kingdom of ends' as 'the systematic union of different rational beings under common laws' and 'a whole of all ends systematically united (a whole composed of rational beings as ends in themselves and also of the personal ends which each may set for himself)' (G 4:433). Kant thinks we also have the following duties: To be 'a useful member of the world' (MM 6:445-6); to 'unite itself with all others (with which it cannot avoid interacting)' into a legally enforced 'civil condition' (MM 6:312), which can be seen as analogous to a 'family' (MM 6:343; 6:473) and work together to realize the ends of a fully just constitution (MM 6:315-6) and international order (PP 8:368); to adopt the ideal of friendship of 'each participating and sharing sympathetically in the other's well-being through the morally good will that unites them' (MM 6:470) and, as Onora O'Neill, has emphasized, to 'think in the position of everyone else' (CJ 5:297) and think 'in community with others to whom we *communicate* our thoughts' (O 8:144). There is also the spirit of solidarity in his writings on history, such as his discussions of 'unsocial sociability' and our rational disposition to 'transform an agreement to society that initially had been *pathologically* coerced into a *moral* whole' in Kant, Immanuel (2006), 'Idea for a Universal History from a Cosmopolitan Perspective', in Pauline Kleingeld and David L. Colclasure (eds.), *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* (New Haven: Yale University Press), 3-16 and his claim that we can progress towards the good 'only by a progressive organization of citizens of the earth into and toward the species as a system that is cosmopolitically united' (7:333).

See O'Neill, Onora (1989), 'The Public Use of Reason', *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press), 28-50. For related discussions see Wiggins, David (1995), 'Categorical Requirements: Kant and Hume on the Idea of Duty', in Philippa Foot, et al. (eds.), *Virtues and Reasons: Philippa Foot and Moral Theory: Essays in Honour of Philippa Foot* (Oxford: Oxford University Press), 297-330; Wood, Allen W. (2000), 'Ethical Community and the Struggle against Evil', *Faith and Philosophy*, 17 (4), 503-05.

From here on: 'MM' stands for Kant, Immanuel and Gregor, Mary J. (1996), *The Metaphysics of Morals*, trans. Mary J. Gregor (New York: Cambridge University Press); 'R' for Kant, Immanuel, Wood, Allen W., and Di Giovanni, George (1998), *Religion Within the Boundaries of Mere Reason and Other Writings* (Cambridge: Cambridge University Press); 'CJ' for Kant, Immanuel, Guyer, Paul, and Matthews, Eric (2000), *Critique of the Power of Judgment* (Cambridge: Cambridge University Press); 'O' for Kant, Immanuel (1998), 'What does it mean to orient oneself in thinking?', in Allen W. Wood and George Di Giovanni (eds.), *Religion Within the Boundaries of Mere Reason and Other Writings* (Cambridge: Cambridge University Press), 1-14; 'PP' Kant, Immanuel (2006), 'Toward Perpetual Peace', in Pauline Kleingeld (ed.), *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* (New Haven: Yale University Press), 67-109 and 'An' for Kant, Immanuel (2007), 'Anthropology from a Pragmatic Point of View', in Immanuel Kant, Günter Zöller, and Robert B. Louden (eds.), *Anthropology, history, and education* (Cambridge: Cambridge University Press), 227-429.

In this section I continue my investigation of the value of solidarity by examining its *structure* – (1) is solidarity merely an instrumental good or is it also good as an end? (2) If it is good as an end, is it always so? and (3) when solidarity is good as an end (if ever) then is it good *tout court* or just good *for* the various members of the group and perhaps other people?

(1) Merely *instrumental or good as an end*? One might think that solidarity is merely instrumental for promoting other valuable ends. There is nothing worthwhile about solidarity for its own sake, on this view, but given our social conditions and psychology, such relationships may be useful for bringing about laudable aims and purposes. The solidary relationships of those in the Polish Revolution, for example, moved them to undertake greater personal risk than they may have been willing to accept otherwise, so those relationships helped them to achieve their shared moral ends more effectively.

The instrumental value of solidarity should not be underestimated, but there are good reasons to think that this cannot explain all that is worthwhile about it. First, from a commonsense perspective, solidarity can be valuable when it involves acting in ways that do little or nothing to *promote* or *bring about* good ends. The Polish Revolution may have been more successful at achieving some of its goals if it had empowered a strong executive to make decisions for the group, but many of us respect them for mostly resisting this temptation and generally conducting themselves on the basis of their liberal and democratic ideals out of their sense of solidarity with one another. And flying flags and wearing buttons and armbands probably had very little impact on the overall success of the Polish Revolution, so part of what explains why we think these practices were

worthwhile is the value of standing in solidarity by *showing* solidarity, whether or not there is any instrumental benefit in doing so. Secondly, we can imagine cases in which solidary relationships are counter-productive but still seem valuable. There was a time in the Polish Revolution in which it seemed likely that the Soviet Army would have invaded Poland if the Solidarity trade union had not disbanded and ceased their cooperative activities. Luckily this did not happen, but there would have been something admirable, I think, if the union members had chosen to stand their ground out of a sense of solidarity with one another in the face of impending doom for themselves and their hope for a democratic Poland. Finally, the instrumentalist view fails to explain the ways that the people in solidarity see the value of their own joint-projects and mutual relationships. From their perspectives, these things are valued for their own sake and not just as means to anything else, whereas the instrumental account denies this, regarding their attitudes as mistaken but perhaps useful. When we take ourselves to be fighting for worthy social causes or supporting common ends, for example, it may *seem* that the relationships we form are secondary to the good we are doing or goals we are achieving. However, what we most value about these activities may not be apparent to us ‘in the moment’. After some deep reflection, however, we may find that what we valued most was the cooperative solidarity we enjoyed with our brothers and sisters who were working alongside us, which may be revealed in the sacrifices we were willing to make, our feelings of guilt and shame and how we choose to remember our experiences and recount them to others.

(2) *Good in all circumstances or not?* If solidarity is good as an end, a natural next question is whether those who are united by *repugnant* ends, immoral cooperative

activities, oppressive religious views, etc. can stand in solidarity and, if they can, whether their relationships are valuable in the same way as those of the Polish Revolution or the Civil Rights Movement. In other words, what about the Nazi's? There are several ways one might try to handle this concern – we might hold that the Nazi's were indeed in solidarity and so had *some* reason to be loyal to one another but any value these relationships may have had is overwhelmingly counterbalanced by the evils they involved; we might build in more moral content into the notion of solidarity by requiring, for instance, that what unites the group must be morally valuable or at least permissible, which would disqualify the Nazi's from standing in solidarity; or perhaps the Nazi's did indeed stand in solidarity, it's just that the intrinsic value of solidarity is conditional on the group being united by morally valuable or permissible ends, projects, etc. My view is that there is no easy and general answer to these questions. Rather, we should draw on some themes from traditional virtue ethics, Kant and Moore (specifically his idea of organic unities) and say that solidarity is valuable for its own sake but only conditionally so, but the conditions under which it is valuable depend on how solidarity fits together with other moral values. Ultimately what will determine the value of solidarity (if any) as exhibited, for instance, by the Nazi's or in less extreme cases such as those who are united against school bussing or by the exclusionary scientific community of the 1800's, is how widely shared and mid-level moral values of freedom, equality, respect, solidarity and the like are *collectively* interpreted, rendered determinate and applied to our social circumstances.

A loose analogy is to the way some virtue ethicists think that a generous disposition, for example, is not always good, while *true* generosity, we might say, is good

in all circumstances because the latter, unlike the former, is implicitly qualified by the other virtues.⁸³ The Panthers football team are in solidarity with one another, but these relationships can also demand excessive personal sacrifice, isolation, humiliation, and ridicule, while the value of respect (of a commonsense sort)⁸⁴ grounds protections against these things even if the team's overall cohesion and performance are diminished as a result. While virtue ethicists tend to think that there are no hard-and-fast rules for specifying precisely how the virtues fit together – practical wisdom is needed for such matters – I think that certain widely held and substantive moral values can, when interpreted and applied together, ground principles and rules about, for example, whether we should betray, dismantle, maintain or support groups of various kinds who are in solidarity and how those groups can conduct themselves in ways that are also respectful, fair and just.

There are limits to the value of solidarity, then, and this general framework can be used to assess where they are. Communitarian values like solidarity are important, but we must also be careful to protect, in addition to their self-respect, lives, etc., the *freedom* of members to think for themselves, to enjoy the free play of ideas, commitments, plans and projects, etc., to take responsibility for their own ends, and (within limits) to act as

⁸³ The thesis of the unity of the virtues, which is often understood as the idea that having one of the virtues entails having all the others because, to take another example, being courageous can be rash unless one is also just so having *genuine* courage requires being disposed to stand in the face of danger in support of *worthy* ends, is pervasive in ancient ethics. But it is not uncontroversial among contemporary virtue ethicists. For a dissenting view, see chapter 10 of Adams, Robert Merrihew (2006), *A Theory of Virtue: Excellence in Being for the Good* (Oxford: Oxford University Press).

⁸⁴ As a philosophical term of art, respecting others can be a matter of treating them how they should be treated, but there is a notion of respect that is closer to ordinary usage having to do with not humiliating, degrading or demeaning others and seeing them as persons rather than as something else.

they choose. My approach is to begin from the mid-level, which is where we find widely held and accepted values such as solidarity, freedom, respect, equality, etc. that will themselves have to be justified in a different context. We should aim to interpret and apply these values systematically to questions about what laws to adopt, what character traits to cultivate and what social moral rules to maintain and follow.

(3) *Good tout court or good for persons?* Finally, one might wonder whether solidarity is good in a way that does not depend on being good *for* anyone, on the one hand, or whether, on the other, its value depends only on the contribution it makes to the hedonistic wellbeing of individuals. Theories of value differ, but it is consistent with what has been said that solidarity is valuable as an end just in virtue of the value it has *for persons*, and in particular those who stand in relationships of solidarity.⁸⁵ But the value my solidary relationships have for me is not reducible to the contributions they make to my overall balance of pleasure over pain; instead, being in solidarity is a *component* of a life that is good for me. A life is arguably defective if it includes no meaningful relationships at all, and solidarity is one relationship of that sort along with friendships, loving relationships, etc..⁸⁶ A life goes better for the person who lives it, in other words, if she is in relationships of solidarity with others, not just because it gives her more pleasure or fulfills her desires, but also because solidarity, like friendship, can be constitutive of what counts as a good life for her.

Social moral rules as constituent parts of cooperative solidarity

⁸⁵ See Foot, Philippa (1985), 'Utilitarianism and the Virtues', *Mind*, 94 (374), 196-209.

⁸⁶ It may be, however, that friendships and loving relationships are themselves a sort of solidarity, in which case I think that solidarity would be an integral part of an objectively good life.

So far I have described the nature of social moral rules, given an account of solidarity and argued that solidarity is often valuable as an end. Now I want to return to my original question, which was about the sort of value existing social moral rules can have and the reasons they can provide, and try to answer it by examining some possible connections between solidarity and social moral rules. My view is that when our group is in a valuable sort of solidarity, and our social moral rules are a constitutive part those relationships, then our rules are valuable for their own sake and give us new (but potentially defeasible) reasons to do what the rules require.

When people stand in cooperative solidarity with one another other, they often settle on a set of social moral rules to regulate their behavior. The Permian Panthers and their fans, for example, developed informal rules of conduct against betraying or deserting the group, fighting among themselves and cheating; and those who break these rules face harsh criticism, resentment and perhaps ostracism.⁸⁷ Similarly, from its inception, the Polish Revolution was fiercely public, non-violent, democratic and egalitarian. They had well-established and socially enforced rules that said, for instance, that negotiations with the government must be broadcast widely, everyone has the right to challenge, discuss and vote on all aspects of the group's operations, violence is strictly prohibited, and everyone in the group must receive the same basic benefits from any deals with the government.⁸⁸ Some of these rules were eventually codified into union regulations and formal structures were established to enforce them and to adjudicate

⁸⁷ Permian High School, the town of Odessa, the state of Texas and the Federal government also have more formal rules about some of these matters that stand alongside the informally enforced and created social moral rules of the football team and its fans.

⁸⁸ Garton Ash, *op. cit.*, Chapter 1.

disputes, but throughout its history, Solidarity has depended on organic, informal maintenance and execution of these main rules. Those in the Civil Rights Movement had, in addition to some of the ones already mentioned, social moral rules reserving leadership roles for African Americans and forbidding white members from being complicit in racist practices. Members of solidary religious groups may establish *rituals* of various kinds that are accepted as morally binding.⁸⁹ Families like mine have social moral rules about eating brunch on Sundays. And nationalistic groups who are in solidarity can have rules about proper social punishment for betraying or deserting the group, and rules about who counts as a member and who does not.

What role (if any) might the prevailing social moral rules of a group play in relationships of cooperative solidarity? One possibility is that the role of such rules is purely instrumental. Groups that have and enforce social moral rules are generally better at achieving their common ends than those that do not because, for instance, the rules help the group coordinate its efforts more effectively and the rules protect, reinforce and promote bonds of solidarity by diminishing behaviors that would tend to break-up or undermine the group. This is probably how some social moral rules begin in a group, particularly as the size of the group increases and it becomes more difficult to maintain the unity of thought, feeling, action, etc. that is characteristic of solidarity. A group may develop social moral rules that are meant to standardize the activities of the group, minimize variation on certain group matters, provide an easy and public way for members to recognize who the other members are and how committed they are to the

⁸⁹ See Durkheim, Emile, Cosman, Carol, and Cladis, Mark Sydney (2001), *The Elementary Forms of Religious Life* (Oxford: Oxford University Press).

group, and so on. Using social moral rules in these instrumental ways can help to support and maintain the solidary bonds of the group even though the rules themselves may not be, at least initially, part of what holds the group in solidarity. An analogy is with some distant friendships, in which we and our friend may develop rules about correspondence even though we both recognize that accepting and enforcing such rules is merely a good means of staying in touch. But, over time, our rule may take on a new role – it may become a *constitutive part* of our friendship itself, a key element in the sort of friendship we have developed, so that following our rule about checking in every few months becomes a way of manifesting or living out the sort of friendly relationship we have. The same sort of phenomenon, I think, can occur in relationships of solidarity.

Social moral rules can be useful for a solidary group in many ways, but they can also become *constituent parts* of the cooperative solidarity of the group as well. Establishing, maintaining and following these rules can become an *essential component* of the cooperative activities that hold some groups in solidarity. For example, those in the Polish Revolution were strongly committed to ideals of democracy and freedom, and they demonstrated their respect for these values by organizing their joint activities around social moral rules requiring majority rule and publicity on important union matters. These rules were not just means to other good ends, they were part of the cooperative activities that united the group in solidarity. Sometimes social moral rules can be an *essential part* of the shared ideals that unite a group in solidarity. Those in the Civil Rights Movement partially saw themselves as fighting for a better social world, and one aspect of their ideal was a society in which the informal social moral rules were free from racism and prejudice. Social moral rules can be part of the programme of a group – the

specific cooperative activities they are employing in support of their shared aims – but they can also be part of its platform – the more abstract values and objectives that they are working for together. In addition, following, maintaining and supporting the rules are ways to signal and express to one another that each is recognized as part of the community and ‘one of us’. And, the rules can figure among the (perhaps implicit) demands and expectations that they place on one another and themselves so that rule-following comes to be seen as something members owe to one another and rule-breaking is viewed as a way of betraying or letting down the group.

In sum, when a group has united in solidarity by a set of social moral rules that they have instituted among themselves, the rules often come to play a distinctive social role in the group by figuring in the requirements of what it takes to stand in solidarity with one’s comrades.

Social moral rules are valuable for their own sake

Given that social moral rules can be a constitutive part of worthwhile solidary relationships, we can now ask what conclusions to draw about the value of existing social moral rules and the reasons we have to follow them.

Consider Aristotle again, who thinks that the highest good for human beings, that of ‘happiness’ or *eudaimonia*, is living a life of rational activity in accordance with the virtues.⁹⁰ Happiness is taken to be the only good that is desirable for its own sake and

⁹⁰ NE I.4.1095a17–20; 1097b22–1098a20. Aristotle and Crisp, Roger (2000), *Nicomachean Ethics* (Cambridge: Cambridge University Press), hereon abbreviated *NE*. Perhaps happiness also requires having an adequate provision of external goods (see NE I.10.1101a14–16; VII.7.1153b17–19).

nothing else; all other goods are desirable for its sake.⁹¹ However, Aristotle defines a third class of goods, the virtues, which are desirable *both* for the sake of happiness and for their own sake.⁹² Aristotle wonders how there can be goods of this latter sort if happiness is defined as the final, self-sufficient and most complete end. His elegant solution to this puzzle is instructive for how to understand the value of social moral rules. Exercising the virtue of particular justice (e.g. fulfilling promises, repaying debts, etc.) and not seizing what belongs to others (their property, office, etc.)⁹³ is a virtue that stands alongside temperance, courage, etc. For Aristotle, this virtue is often desirable as a means to happiness, but being disposed to think, feel and act justly is also desirable for its own sake in virtue of *being a component of happiness* (at least of the second best sort) in the sense that this kind of happiness *partially consists in* having the virtue of particular justice.

When it comes to the value of existing social moral rules, there are other ways for a group to be in solidarity that involve different types of rules or perhaps no rules at all. My suggestion, however, is that when a group is in a valuable sort of solidarity and its social moral rules are an essential part of that relationship then the rules of the group are valuable for their own sake *in virtue of* the role they play in unifying the group in a relationship that is valuable as an end.

⁹¹ NE I.7.1097b21–3

⁹² NE I.13.1102a5–7

⁹³ NE X.8.1178a9; VI.13.1144b14–29; X.7.1177a13–19. At NE V.1–2.1129b—1130b5 Aristotle distinguishes between these two forms of justice.

An upshot of this conclusion is that it explains the value of prevailing social moral rules in a way that is compatible with some of the themes that, as we saw earlier, moral particularists and some virtue ethicists have pressed against those who espouse the importance of moral rules and principles. Their main worry is that that morality is far too complicated to be systematized or codified in any useful way, so the best we can do is employ practical wisdom and careful reflection, without the aid of principles and rules, to decide what to do. There is much truth to this concern, I think. Particularists and virtue ethicists may be right that what we owe to each other, what we ought to do, or even morality as a whole are not codifiable by a set of *moral principles*, conceived as abstract propositions that do not depend for their existence on the attitudes and actions of persons. But, as I have emphasized, social moral rules are different from moral principles in that social moral rules are standards of social regulation, they are meant to guide the deliberations, discussions and actions of actual persons, they are publicly known, socially enforced, etc. A sophisticated moral particularist or virtue ethicist could admit, therefore, that social moral rules of my sort, when they exist, can be valuable in virtue of the role they play in uniting a group in valuable relationships of solidarity.⁹⁴

Reasons grounded in solidarity

If the prevailing social moral rules of a group are valuable in virtue of the constitutive role they play in uniting them in solidarity, what (if any) *reasons* do the rules

⁹⁴ Moral particularism is quite pluralistic about what can give rise to reasons, so in principle there can be non-instrumental moral reasons to establish, maintain and follow social moral rules of all kinds. It is also possible that a fully virtuous person would maintain and follow his society's social moral rules, and not just as a means to anything else. On this last point, see Kraut, Richard (2002), *Aristotle: Political Philosophy* (Founders of modern political and social thought; Oxford: Oxford University Press).

provide to the members of the group? Someone may recognize the intrinsic value of his group's solidarity and the rules that partially constitute it but still wonder what *he* should do with regard to the rules – must he always follow them, should he publicly support the rules, refrain from undermining them, sometimes break the rules when he can get away with it? What if he recognizes that some of his group's rules are stifling, inefficient, exclusionary or otherwise defective?

My view is that when social moral rules exist and play an essential role in the solidarity of a group, we typically have non-instrumental reasons to follow those rules because doing so is a way of *manifesting, expressing, honoring, valuing or standing up for* these valuable relationships by living up to their requirements. Breaking the rules that hold us together can be a way of *betraying or letting down* our compatriots.

To explain this, let's look again at what sort of value solidarity is and in particular ask what sorts of reasons it provides. One possibility is that solidarity is valuable for its own sake, but merely in the limited teleological sense that the only reasons it gives have to do with bringing about more and better relationships of that sort, whether we are a party to them ourselves or not. We may need to follow our group's shared rules as a means of keeping us united, expanding our membership, and setting a good example to entice other groups to form such bonds, but we can just as easily break our rules as long as we would bring about more cooperative solidarity as a result.

This teleological conception, however, fails to capture the sorts of reasons that we think, on reflection, solidarity can provide. When we are in solidarity ourselves, *part of* our concern may be to expand our group or help other groups unite in worthwhile ways, but what is much more important to those who are in solidarity is that they and others

manifest or *live out* their valuable relationship by complying with the demands it places on them – they are disposed to do such things as care about the wellbeing of their comrades, trust them and work diligently for their common cause if they have one. Solidarity is different from, say, happiness (as utilitarians conceive of it) because it gives us what are often called agent-relative reasons to abide by its requirements and to be a good compatriot, and these reasons are different from the agent-neutral reasons we may have to bring about more relationships of that type.⁹⁵ Similarly in the case of friendship, what is most essential about the value of friendship is the set of reasons we have to be a good friend (i.e. to be loyal to the other person, visit her in the hospital, do these things out of our concern for her, etc.), although we may also have some reasons to bring about more and better instances of friendship in the future.⁹⁶

When a group in solidarity has organized itself around a set of social moral rules then the rules figure into the demands of those relationships. People in the Polish Revolution, for example, believed that they owed it to one another to do their part in their joint-activities by following their shared social moral rules about, for example, majority rule and publicity in group decision-making as ways of standing in solidarity with their compatriots while they usually saw breaking the rules as ways of *betraying* or *letting down* their compatriots. Those who took part in the Polish Revolution had non-

⁹⁵ Agent-relative reasons can be roughly understood as reasons with an ineliminable back-reference to the agent to which they apply. For fuller discussions, see Nagel, Thomas (1978), *The Possibility of Altruism* (Princeton paperbacks; Princeton: Princeton University Press); Parfit, Derek (1984), *Reasons and Persons* (Oxford: Clarendon Press); and Petit, Philip (1987), 'Universality Without Utilitarianism', *Mind*, 74-82.

⁹⁶ My analysis of the structure of the value of cooperative solidarity draws on T.M. Scanlon's instructive discussion of friendship in chapter 2 of his *What we Owe to Each Other* and on Stocker, Michael (1981), 'Values and Purposes: The Limits of Teleology and the Ends of Friendship', *The Journal of Philosophy*, 78 (12), 747-65.

instrumental reasons to maintain and follow their social moral rules, not only as ways of supporting their ends, but also as ways of manifesting the valuable relationships they had with one another.⁹⁷

Does my view imply that those in the Polish Revolution should always follow their group's social moral rules? No, because sometimes solidarity gives us sufficient reasons to break the social moral rules that unite us. Consider Lech Wałęsa, the founding leader of Solidarity, who faced a crisis in March of 1981. A few days earlier, a group of Solidarity members were severely beaten by the communist security services while protesting at a local council meeting. Infuriated, Solidarity readied itself for a general strike to force the government to come clean about the events and punish those who were responsible for the violence there. Wałęsa correctly feared that if the matter of a general strike were put to a union vote, as was required by a firmly held social moral rule of their intensely democratic organization, the strike would go forward and lead to a civil war and severe reprisals from the Soviet Union that would ultimately destroy the Polish Revolution. Rather than taking those chances, he chose to negotiate directly and secretly with the deputy prime minister (violating another one of their rules about publicity) and, without consulting other members, signed a face-saving agreement to call off the strike if the government conceded to a few watered-down demands. Whether we think Wałęsa's actions were justified or not, in his emergency situation we should admit that he had non-instrumental reasons of solidarity both to remain true to his group's shared social moral rules as a way of standing with others in support of their shared ideals and also to break

⁹⁷ Conversely, breaking the rules risks betraying our compatriots, losing their trust, treating them disrespectfully, and perhaps even being ejected from the group and the worthy relationships it offers.

those rules in order to protect the group from disintegration. We should say that it is part of being united in solidarity by social moral rules that we are *presumptively required* to follow those rules. Typically this presumption will not be defeated by a presumptive requirement of solidarity to break the rules, so from the standpoint of solidarity, we will usually have most reason to follow our group's social moral rules when they are part of what unites us in that relationship. This leaves it open, however, whether other values, such as respect, freedom, etc., might ground sufficient reasons to break those rules. We see a similar phenomenon with friendship, where being a good friend presumptively requires us to follow shared rules that have become an essential part of our relationship, e.g. rules about correspondence, hospital visitation, or confidentiality, even though that same relationship can give also give us sufficient reasons to break those rules when, for example, doing so would ruin our friendship.⁹⁸

When solidarity requires us to follow our group's social moral rules, we usually have non-instrumental reasons to do so as ways of standing in solidarity with others, and this is true even when our rules are not as good as they can be. Perhaps the rules of our group are a bit too rigoristic or they are maintained long past the circumstances in which their inclusion in our moral code originally made sense, but my conception of solidarity explains a common intuition that we owe *some* allegiance to the perhaps imperfect social moral rules that already exist in our group, as long as the rules are not too repugnant.⁹⁹

⁹⁸ Peter Strawson has argued along similar lines that, when we are in a valuable relationship with someone, taking the other person seriously requires us to hold them to the demands of the relationship. See his (2008), *Freedom and Resentment and Other Essays* (London: Routledge).

⁹⁹ Moral philosophers who talk about rules have been focused on our reasons to follow the ideal moral code. Examples of this sort of view include: Brandt, Hooker, Baier and Gert, Bernard (1973), *The Moral*

While it often grounds reasons to follow somewhat defective rules, solidarity also grounds reasons to *improve* our social moral rules as well in order to bring them more in line with our group's ideals or make us more effective at promoting our shared ends. This suggests a philosophical project of specifying a *standard of improvement* for codes of social moral rules, an ideal code of social moral rules that interprets widely held values, renders them more determinate and applies them to real-world situations.

Conclusion

The Polish Revolution and the Civil Rights Movement involve particular groups of people working together for specific moral values. There is a sense in which many of us in our society as a whole are in a similar sort of solidarity with one another, united by basic values of respect, freedom and equality, living out these values together through our basic social and political institutions, and developing social bonds on the basis of these shared ends and cooperative activities. Solidarity, in the way I have described it, has the potential to reach beyond local clubs, teams, organizations and movements and partially explain the nature and value of our own society, including its institutions, practices and social moral rules.¹⁰⁰ The laws of our society are *our* laws, and the social moral rules here are *our* rules, so these things deserve some allegiance as part of our valuable kind of solidarity.

Rules: A New Rational Foundation for Morality (New York,: Harper & Row). Few have defended the view that our imperfect rules deserve some veneration.

¹⁰⁰ There is a tradition in political theory, going back to Hegel, Thomas Hill Green, and F. H. Bradley, that is concerned with the importance of community and belonging in political society.

CHAPTER 3

BASIC RESPECT FOR ONESELF AND OTHERS

When we respect someone, we typically respect her relative to some category or other – we may respect her as a friend, but not as a scientist; as an accomplished pianist but not as a boss; as a person but not as who she is in all of her individuality.¹⁰¹ From a commonsense perspective, when we think about what it takes to respect (or disrespect) a person *as a person*, we find ourselves with a series of judgments that are difficult to reconcile. On the one hand, I may think that a burglar disrespected me as a person by stealing my laptop, that a colleague did so by breaking his promise to cover one of my classes, or that a stranger shows his respect for me as a person by helping me carry a heavy piece of furniture to my car. On the other hand, we may find ourselves thinking: Even though making me the butt of your cruel joke was quite disrespectful to me as a person, I now see that that was the right thing to do for it placated others who would have otherwise killed or seriously injured me; the Starbucks thief violated my property rights, sure, but he didn't mean to demean or ridicule me, he just needed the money that my swanky computer would bring; I admit that you have always behaved towards me in more or less appropriate ways, you keep your promises, help me when I need it, and

¹⁰¹ Harry Frankfurt, in his (1999), 'Equality and Respect', in his *Necessity, volition, and love* (Cambridge, U.K. ;New York: Cambridge University Press), 146-55, emphasizes a sort of respect that is concerned with this last category.

never violate my rights, but sometimes I find myself wondering whether, in spite of all this, you really do respect me as a person.

A common philosophical view has it that to respect others as persons is to treat them in all the ways persons ought to be treated.¹⁰² This formal, and possibly even platitudinous¹⁰³, account of basic respect, however, tells us next to nothing about the *content* of more specific moral requirements, about how in particular we should be treating each other. While there may be some philosophical use for a thin concept of basic respect¹⁰⁴, when we reflect on our everyday understanding of what it is to respect a person as such, it seems a stretch to say that respecting someone as a person requires treating him in every way we should, taking in to account every morally relevant aspect of him, including his happiness, his choices, his relationships, etc, and affording him the fullest dignity and honor that are due to him. Rather, commonsense marks a distinction between the requirements of morality in general and what it takes to have *a sort* of basic respect for others, which has more to do with seeing others as persons rather than as objects or animals, not humiliating, ridiculing or debasing them, and honoring them. We

¹⁰² The following philosophers appear to subscribe to or at least presuppose a thin concept of respect: Darwall, Stephen (1977), 'Two Kinds of Respect', *Ethics*, 88 (1), 36-49. Donagan, Alan (1977), *The Theory of Morality* (Chicago: University of Chicago Press). Kerstein, Samuel (2009), 'Treating others merely as means', *Utilitas*, 21, 163-80. Raz, Joseph (2001), *Value, respect, and attachment* (John Robert Seeley lectures ; 4; Cambridge, U.K.: Cambridge University Press). Wood, Allen W. (1999), *Kant's ethical thought* (Modern European philosophy; Cambridge ;New York: Cambridge University Press); and sometimes Hill, Thomas E. (1992), 'Humanity as an end in itself', in Thomas E. Hill (ed.), *Dignity and practical reason in Kant's moral theory* (Ithaca: Cornell University Press), 38-57; but for a different view, see Hill, Thomas E. (2000), 'Donagan's Kant', in Thomas E. Hill (ed.), *Respect, pluralism, and justice : Kantian perspectives* (Oxford ;New York: Oxford University Press), 119-51.

¹⁰³ Frankena, in his (1986), 'The Ethics of Respect for Persons', *Philosophical Topics*, 14, 149-67, makes this point forcefully.

¹⁰⁴ Perhaps the notion of 'thin respect' does have some moral content in restricting, for example, certain ways of aggregating across persons.

disrespect someone in this thicker and more familiar sense when we mock him for his religious convictions, degrade him by forcing him to engage in compromising acts, embarrass him by making him prostrate himself before us, and address him with racist epithets that tell him that he is a despised animal in our eyes, etc.

The notion of respect I am highlighting cannot be the basis for a comprehensive moral theory because it leaves out many other morally appropriate ways we should treat people – we have strong presumptive reason to aim for the happiness of others, to avoid physically harming them, to treat them justly, to refrain from interfering with their freedom, to keep our promises to them and so on, and these are not obviously reducible to basic respect in this thicker sense. We can demean, debase, humiliate or otherwise disrespect someone by actions that are not otherwise immoral – using certain words or gestures, snickering at them behind their backs, calling attention to publicly accessible but embarrassing information about them (e.g. choices they have made, relationships they have), etc. Sometimes, however, we use actions that are already immoral as ways of disrespecting others as persons in a thick sense. You may express disrespect to me by continually showing up late or not at all to our scheduled meetings even though you promised to be on time; stealing my books in plain view of others and throwing food at me when I inquire after them may be your way of humiliating me; causing me excruciating pain unless I divulge some secret to you can be quite demeaning; stealing my computer may express your attitude that you regard your endeavors as so much more

important than mine that your need for my computer at the moment outweighs any claim I have on it.¹⁰⁵

The theoretical structure I am proposing, then, is similar to the one Aristotle gives in his discussion of the virtue of justice, when he distinguishes universal justice, which is virtue in its entirety, and the more familiar particular justice, which is a particular virtue that stands alongside courage, temperance, and so on as being part of universal justice and which has to do with giving others their due (e.g. fulfilling promises, repaying debts, etc.) and not seizing what is theirs (their property, office, etc.).¹⁰⁶ Similarly, we may formulate, if we like, the most comprehensive and basic moral principle in terms of a more formal notion of respecting others as persons, but thick basic respect is a substantive mid-level moral value that, together with the values of freedom, beneficence, self-perfection, and the like, determines more specific content for that overarching principle. To what extent we are morally required to respect others in these ways is a further moral question that will depend, among other things, on what justifies the value of thick basic respect and how that value should be combined with other moral values of freedom, justice, beneficence, etc. Thick basic respect may not be the only sort of mid-level respect there is – we have strong moral reasons not only to respect someone as a person but also to respect her as a wife, as an accomplished pianist, as who she is in all of her individuality; and we also have strong moral reasons to respect someone’s culture, to

¹⁰⁵ In these cases there may be moral overdetermination in the sense that there is perhaps more than one explanation for why an act is wrong.

¹⁰⁶ In *Nicomachean Ethics* V.1–2 (1129b—1130b5) Aristotle distinguishes between these two forms of justice. Aristotle and Crisp, Roger (2000), *Nicomachean Ethics* (Cambridge texts in the history of philosophy; Cambridge ; New York: Cambridge University Press) xlii, 213.

respect her views, to respect her values, and so on. There are interesting connections among these different forms of substantive respect, but my focus here is limited to thick respect for persons as persons.

One of the main aims of this chapter is to call our attention back to this thick sort of basic respect, which seems to be out of philosophical fashion nowadays even though it resonates in commonsense as being an extremely important moral value. There are many questions we can and should ask about this value, but my remarks, which are sketchy and preliminary, will concentrate on three interrelated issues. First, how, more specifically, should we characterize thick basic respect and what is involved in having substantive respect for someone as a person? Second, what is the relationship between having thick respect for others and having that sort of respect for oneself? Third, is there any argument we can give for why we have presumptive reason to respect others in this substantive way?

My main claims are these: In most general terms, respecting someone as a person involves having a set of intentions, attitudes and dispositions. My aim in the first two sections is to formulate a conception of thick basic respect that can capture the commonsense elements of respect that, on reflection, we think are most central. Paradigmatically, I claim, respecting someone as a person requires that we honor her as a person, which involves both seeing or regarding her as a person rather than as something else and honoring, and not dishonoring, the rational capacities and moral status that make her a person. In the third section I highlight an interesting class of cases in which, contrary to common philosophical understanding, honor-respecting someone else depends on a prior idea of what sort of honor-respect he should have for himself. In the

final section, I begin to develop a strategy for arguing that we have strong moral reasons to honor-respect all others as persons. The key to my approach is the set of reasons we have to honor-respect ourselves as persons, which, along with a relatively uncontroversial principle of reciprocity, can be used to establish certain presumptive requirements to honor-respect others as persons, without the need to assume that persons antecedently have an agent-neutral, intrinsic value that makes them worthy of this sort of respect.

Seeing others as persons

The basic proposal I will be arguing for is that having thick basic respect for others is paradigmatically a matter of honoring them as persons.

Beginning with our commonsensical notion of thick respect for others as persons, an initial strategy for trying to clarify this idea is by looking more closely at what it takes to respect (in the thick sense) x (Bob, Joe, Sue) as y (a teacher, a soldier, my friend, a person). We may respect, in this sense, someone as a wife, as a mother, as a boss, as a doctor, as a tennis opponent, as a Nobel Prize winner, and so on. One possibility, which we have seen fails to capture our common notion of thick basic respect, is that to respect x as y is to treat x in all the ways that y 's are to be treated (perhaps these standards are part of the concept of y , or they are given by a practice, or they are set by morality).¹⁰⁷

The alternative that I want to explore is that to thickly respect x as y requires, among other things, that one see, in the sense of regard or cognize, x as falling under the category of y . We fail to respect someone as a husband in this sense if we do not see him

¹⁰⁷ I mean to leave open whether these standards are morally appropriate or not. Perhaps we can respect a Nazi leader by treating him in the ways that are required by his status as such, even if we have no reason to do so.

as our husband, but instead just see him as a stranger, as an acquaintance, as an enemy, as an animal, as an object, etc. To respect someone as a comedian is, in part, to see her as a comedian – we may be told that a curmudgeonly colleague often performs at area comedy clubs, and we may even come to believe and know that she is a comedian on the basis of reliable testimony from others, but we do not really respect her as a comedian, it seems, unless we come to see or think of her as being funny, outgoing, clever, etc., which may be possible only after we attend one of her performances for ourselves. When immigrants to this country claim that they are not respected as members of American society, part of their complaint seems to be that they are not seen as full-fledged Americans, but instead as outsiders. A woman may feel that she is not generally respected as a judge because, despite her education, official appointment and robe, many of the people who come before her just cannot see a woman as having that kind of authority over them. An African American may rightly feel disrespected if someone sees him as a member of the wait staff rather than as a guest of the party.¹⁰⁸

The phenomenon of seeing one thing as another is general and pervasive. It can be quite devastating to hear from one's beloved, for example, that she doesn't really see you 'like that' but instead sees you as a platonic friend or brother. Other examples include: I just do not see myself as a leading man; his new step-son doesn't see him as a father yet, but hopefully he will come around soon; I see Toyotas as reliable cars and Fords as unreliable ones even though I admit that recent evidence suggests the contrary; I

¹⁰⁸ A female graduate student may rightly feel that she is not respected as a mathematician because those around her do not see her as such.

see snakes as threats; John does not see golf as a sport;¹⁰⁹ friends who have worked together for a longtime may be unable to see one another as boss or subordinate; some people see fetuses as babies while others see them as bundles of cells; when I am quite hungry, I sometimes see the family pig as food; and, finally, others usually do not see me for who I am.

Seeing one thing as another, in the sense exhibited by these paradigmatic cases, is a matter of cognizing, regarding, or understanding our concept of one thing as falling under our concept of another.¹¹⁰ We can contrast this sort of ‘seeing as’ with other, similar phenomena.

First, what is going on in these examples is related to but not the same as what many philosophers think is happening when we see x as y by perception. According to the standard view, when we look at a drawing and undergo a Gestalt switch between perceiving it as a duck and perceiving it as a rabbit, we do so without mobilizing our concepts of duck or rabbit; rather, our experience has one phenomenal character and then another phenomenal character, the first experience having the non-conceptual content of a rabbit-form and the other of a duck-form.¹¹¹ There is room for doubting this account,

¹⁰⁹ There are other ways we use ‘to see x as y’, such as: I see x as having property y; I see x as part of y; I see x as having the function of y, etc.

¹¹⁰ It is also possible to see x as x (e.g. apples as apples, snakes as snakes) in the sense that we are not now categorizing our idea of x under any other concept but rather cognizing x under its own category.

¹¹¹ This can of course be doubted. Perhaps when we Gestalt switch from seeing the picture as a duck to seeing it as a rabbit, we are bringing different perceptual experiences (one of a duck-form, the other of a rabbit-form) under our respective concepts of duck and rabbit. For further discussions of perceptual seeing-as, see: Fleming, Noel (1957), ‘Recognizing and Seeing As’, *Philosophical Review*, 66, 161-79; Lycan, William G. (1971), ‘Gombrich, Wittgenstein, and the Duck-Rabbit’, *Journal of Aesthetics and Art Criticism*, 30, 229-37; Macpherson, Fiona (2006), ‘Ambiguous Figures and the Content of Experience’, *Nous*, 40 (1), 82-117; Millar, Alan (1991), *Reasons and experience* (Oxford; New York: Clarendon Press;

but for my purposes the main point is that when we see a fetus as a baby and then as a bundle of cells, for example, we need not be perceiving a fetus before us; rather, we can be conceptualizing or categorizing the notion of a fetus differently depending on whether we place them under our idea of a baby or our idea of a bundle of cells. Or, to put the point another way, I can see you as my friend without seeing you in front of me.

Second, the sense of ‘seeing x as y’ that interests me here is not the same as ‘believing that x is y’. While there are many similarities, the main differences are these. First, it is part of believing that tomatoes are vegetables that one takes it to be true that tomatoes are vegetables, whereas I can regard tomatoes as vegetables without taking this to be a fact about the world; this is just how I now choose to categorize them. I may even be convinced by the newest scientific research that tomatoes are fruits but continue to see them as vegetables anyway (which I may indicate by, for example, finding myself storing them with my carrots, cucumbers and onions; focusing my attention more on their vegetable-like properties when I think about or consider them; refusing to eat them on their own as I do with apples, bananas and other fruits; etc.). Illusions of a non-perceptual sort, or what others have called cognitive biases, are familiar examples involving ‘seeing as’ in my sense – after watching a few rounds of roulette, I may see this square, which has been a loser four times in a row, as a good bet even though I know, ‘deep down’ we sometimes say, that it is no better than any of the others because the probabilities of each round are independent of each other. A second difference with belief is that what it is to be a belief in the first place may actually depend on there being

Oxford University Press); Moran, Richard (1989), ‘Seeing and Believing: Metaphor, Image and Force’, *Critical Inquiry*, 16, 87-112.

a prior and distinct notion of ‘seeing as’ if, as seems natural, believing some proposition requires that I regard the proposition *as true* (take it as true, see it as true) and also have other dispositions with regard to it. A further difference is that, at least paradigmatically, if I believe that x is y then I am rationally committed to abandon my belief if I learn that my belief is false or unjustified¹¹² and to give reasons for my belief if called upon in appropriate circumstances, whereas merely seeing fetuses as persons, for example, does not saddle me with these commitments, although I may be subject to some other rational standards. Additionally, I tend to have more control over what I regard things as than I do over what I believe – with some effort, I can sometimes voluntarily switch between seeing the family pig as food and seeing it as a pet, whereas I do not have the same ability with regard to my beliefs about whether it is food, a pet or both. But sometimes a conceptual switch of this sort occurs without me noticing that it has occurred, or when I am trying to prevent it from happening – I may have finally come to see the pig as a pet and only realize this after someone points out to me that I tend to sing the pig to sleep, take it on family trips, etc. Finally, ‘seeing as’ may have stronger motivational and attitudinal requirements than do certain kinds of beliefs – I may believe, in a sort of abstract way, that snakes are threats, but how I live my life may not be all that affected by this until I actually come to see them as threats, which may happen only after hearing a horrifying story or having a frightening experience that make their dangerous qualities

¹¹² It is possible, I am supposing, for someone to believe x and so believe that x is true but also believe that x is false. Such person is clearly irrational – she is rationally committed to abandoning one of her beliefs. But, it seems, someone can without irrationality see x as y and believe that, in fact, it is false that x is y.

vivid or salient to me. Later I may come to believe that snakes are actually not threats but still continue to see them as such.

Third, when some people see fetuses as babies, they are really just hedging on whether they believe fetuses are babies or not – perhaps they haven't reflected on the issue enough, or they may not wish to commit themselves to certain kinds of challenges or to regarding others who do not share their views as mistaken. Merely claiming to see fetuses as babies can also be a way of expressing that one does not want to 'go there', to engage with others about that contentious and potentially uncomfortable issue. There may be something wrong with resting satisfied with the way one sees fetuses without also reflecting on whether one believes that things are that way, and it may be disingenuous merely to claim that one sees fetuses as babies when one also believes that they are; but these possibilities allow for genuine and non-culpable cases in which someone is genuinely conflicted about what to believe, or else has firm convictions one way or the other, but nonetheless sees fetuses at one time as babies and at another time as bundles of cells.

It is notoriously difficult to say just what it is to perceive x as y , and it is just as problematic to explain what it is to regard or cognize x as y . Nonetheless, I think that 'seeing as' in the latter sense is widespread and easily recognizable, particularly when we attend to paradigmatic examples of the sort I have suggested. The conception of thick basic respect as honoring others as persons requires only this much familiarity with this notion of 'seeing as', but before moving on, I want to venture a partial account of what it is to see or regard one thing as another that makes that account of respect more substantive and possibly more plausible.

My tentative proposal is that, paradigmatically, when someone regards me as a platonic friend, for example, whenever she thinks of me, calls me to mind, or engages with me, she is disposed to direct her attention to features of me that make me a platonic friend (or even imagine that I have these features), such as my generosity, my willingness to console her through long breakups, etc. and to downplay or even ignore features of me that tell against me being ‘just a friend’, such as my rugged good looks and charm. If it dawns on her to try out regarding me as a love interest, she will try to categorize me under her concept of ‘love interest’ in part by concentrating on features of me that could make me one of her beaux, which of course include many of the same qualities as what makes me a friend to her, and mostly setting aside or ignoring properties of me that are in tension with me being so. Once she has accomplished whatever else is involved in thinking of me under the aspect of ‘love interest’, she does not yet fully see me as a love interest until she also responds to me in the practical ways that are characteristic of being a love interest for her. She must also find herself with romantic feelings towards the me that she is now conceiving in this new way, a disposition to care about the new me for my own sake, and whatever other attitudes, intentions, dispositions, etc. are involved in something’s being a love interest for her. After some reflection, perhaps she cannot find enough romantic about me even to categorize me as a love interest, or if she can manage that much, she may find that the needed feelings, intentions and dispositions just aren’t there.¹¹³ Another example: Seeing a fetus as a baby implies categorizing those things

¹¹³ There may be some limit to our ability to see one thing as another. Perhaps our concept of y does not apply at all to x or only applies weakly to it. We cannot, it seems, see ‘purple’ as a ‘book’ or ‘Abraham Lincoln’ as a ‘sticky note’.

under the concept 'baby', which involves focusing on the baby-like qualities of a fetus and downplaying the features that are not, and having done that, also structuring our deliberations, actions, attitudes and so on around its being a baby (e.g. having dispositions to protect such things). On the other hand, seeing a fetus as a ball of cells implies categorizing 'fetus' differently, by focusing on the ball of cell-like qualities of it and downplaying the baby-like properties, and also having whatever other attitudes and dispositions, if any, that are part of subsuming something under our notion 'ball of cells'. A reformed religious conservative, we can imagine, believes on good evidential grounds that fetuses are not babies, but he nonetheless continues to see them as babies, both by focusing on their baby-like features and by ordering his actions, attitudes and other aspects of his practical life around their being so. Finally, when a loving mother just cannot see her son as a gangster, this may be for two reasons: either she chooses not to focus her attention on his violent temper, etc. perhaps because this would be too painful for her, or she may be able to focus on these features of him but, because she lacks the disapproval towards him that are part of her notion of gangster, she sees him instead as a protector of her community.

Part of what it takes to have substantive respect for someone as a person is to see her as a person, and seeing someone as a person involves concentrating on the features of her that make her a person when we think about and engage with her, downplaying any features that speak against this, and, because 'person' is a thick concept, having whatever other attitudes, dispositions, intentions, etc. that are involved in our categorizing something as a person.

In order to fill in this account further, we must specify a rough conception of what it is to be a person that can tell us what features make someone a person and what else is required of us by applying that concept to someone. Commonsense judgments about basic respect presuppose, I think, a rough model of the person according to which persons are living human beings who have, to some minimal extent, rational capacities and dispositions for such things as thinking for themselves, forming relationships with others, valuing things, and being moral; and, in virtue of being minimally rational in this sense, persons enjoy a moral status or dignity that means in part that they are not commensurable values to be 'weighed and balanced' among themselves or with other things and that they must be treated in morally appropriate ways that are at least partially defined by reference to their rational abilities and dispositions.

With this rough account of what it is to be a person in hand, we respect someone as a person only if we see her as a person, and seeing her as a person requires that, when we think about or engage with her, we focus our attention on what makes her a person, i.e. we concentrate on her possessing rational capacities and dispositions that ground an inviolable moral status. And once we have categorized her in this way, we do not fully see her as a person unless we are also disposed, to some minimal extent, to respond to her in whatever morally appropriate ways are demanded by her moral status. I would also add: we are disposed to respond to her in these ways out of our recognition of her as a person. Even when we save a spouse because of our love for her, part of our motivation seems to be that we see her as a person, albeit one of a special sort.

Kant seems to suggest something like the claim that thick respect involves seeing others as persons in the way I have suggested when he says:

The respect that I have for others or that another can require from me (*observantia aliis praestanda*) is therefore recognition of a dignity (*dignitas*) in other human beings, that is, of a worth that has no price, no equivalent for which the object evaluated (*aestimii*) could be exchanged (MM 6:462).¹¹⁴

We disrespect someone, then, by downplaying and ignoring the features of him that make him a person or by lacking any disposition to acknowledge this status in attitude or action. A frazzled boss may find herself seeing her assistant as an object rather than as a person – in the heat of a deadline, she may let herself focus mostly on the features he shares with calculators, calendars and computers and briefly set aside thinking about his rationality and inviolable moral status. She may quickly catch herself regarding him as a tool, and immediately return to seeing him both as a person and as someone who happens to be useful to her.¹¹⁵ We may find ourselves failing to see someone as a person when we are impatiently awaiting our morning coffee; answering the 500th person who asks us how much longer this will take; talking with a colleague about a medical patient as if he were not there; thinking of the people on our cruise ship as cattle, etc. We must be careful always to regard others as persons, and so keep our attention at least in part on

¹¹⁴ Kant continues “But just as he cannot give himself away for any price (this would conflict with his duty of self-esteem), so neither can he act contrary to the equally necessary self-esteem of others, as human beings, that is, he is under obligation to acknowledge, in a practical way, the dignity of humanity in every other human being” (MM 6:462). And in the Groundwork he says: “In all his actions, whether they are directed to himself or to other rational beings, a human being must always be viewed *at the same time as an end*” (G 4:428). I will abbreviate Kant’s works as follows: G - Kant, Immanuel (2003), 'Groundwork for the metaphysics of morals', in Thomas E. Hill and Arnulf Zweig (eds.), (Oxford: Oxford University Press). MM - Kant, Immanuel and Gregor, Mary J. (1996), *The Metaphysics of Morals* (New York: Cambridge University Press). LE - Kant, Immanuel (2001), *Lectures on ethics*, eds Peter Lauchlan Heath and J. B. Schneewind (The Cambridge edition of the works of Immanuel Kant; Cambridge, U.K. ;New York: Cambridge University Press).

There is another connection with Kant, which is that, as Rüdiger Bittner, has pointed out, the German word ‘Achtung’ derives from the word ‘achten’, which can mean or imply ‘pay attention to’, ‘mind’, or ‘keep an eye on’.

¹¹⁵ This is part of the complaint that miners and factory workers have had over the years, that their bosses do not see them as persons.

their status, while also, if we like, focusing on other features they have, such as their beauty, usefulness, or poor manners. This helps to explain a longstanding complaint among African Americans, women and people with disabilities, who claim that even though our society may treat them with justice and charity by affording them certain political protections and rights, often they are not fully respected as persons because they are not in everyday life generally seen as persons, but instead seen as having a lesser moral status than able-bodied, white men.¹¹⁶ At times in our history, many people were not seen as full political persons with voting rights, the ability to purchase and transfer property, etc. But even when these political rights and protections came, so that from the standpoint of our legal and political system these people were full participants, those in the larger society and even the people charged with enforcing the rights and protections of political persons may not have seen them as full moral persons even while they recognized them as people who were protected by the rule of law. In each of these cases, we may well believe that the others are persons, but what is more central to respecting them is that we actively and conscientiously strive to see them as persons as well.

There are at least five ways, then, to fail to see someone as a person. First, we can fail to see him as a human being, which does not presuppose anything normative. The racism of some people has gone so deep that they thought that those of certain other races were of a less-developed species than *homo sapien*. Second, we can fail to see him as having the requisite rational capacities and dispositions of being a person. We may agree

¹¹⁶ At times in our history, many people were not seen as full political persons with voting rights, the ability to purchase and transfer property, etc. But even when these political rights and protections came, so that from the standpoint of our legal and political system these people were full participants, those they encountered on the street may not have made the needed progression

that someone is of the biologically same species as we are but think that she does not have the abilities of thought, deliberation and action to be a person – those with severe disabilities may fall into this category. Third, we can fail to see him as having an inviolable moral status. The slave before us may be of our same species and have the basic rational capacities to be a moral person, indeed slave-owners often saw some of their slaves this way as a result of ingenious escape attempts, but the slave-owner may nonetheless refuse to admit that the slave has an inviolable moral status., Fourth, we can fail to see him as having that status *in virtue* of having those capacities (we may see the popular kids as rational but think they are inviolable because they are popular, which would not, it seems, be to see them as persons). Finally, we can fail to be disposed to respond appropriately to his rational capacities and moral status. We see the person before us as a person, as having the requisite rational capacities that make her an inviolable person, but we may have no disposition to treat her in accordance with that value.

There are a few points to note about this way of respecting someone as a person. First, it is possible to see someone as a person in this sense without activating the dispositions to respond appropriately to his status as such – we may decide that, even though we see the man over there as a person, we are still going to steal his laptop when he is away. Most wrongdoing probably does not result from a deep dismissal of someone as a person but rather comes from weakness of will or choosing to act against the status on a particular occasion that we nonetheless recognize and are disposed to respect. Second, seeing someone as a friend, daughter, compatriot, concert pianist, or as falling under many of the other categories under which we typically subsume people,

presupposes that we see him or her as a person because part of what it is to be a friend or concert pianist is to be a person. So there can be hierarchies and overlaps among these categories in which, for example, by seeing someone as one's husband we thereby see him as a loved one, as a friend, and as a person, or seeing someone as a concert pianist implies that we see her as a musician, as a performer, as one with certain accomplishments, and also as a person. Third, in rare cases there may be good moral reasons not to see someone as a person in the way I have been describing but rather to see them as something else. A life-boat captain or emergency surgeon may be incapable of making the right choices if he sees those who will be affected by what he does as persons rather than as objects. As a psychological matter, if we see the person we are supposed to operate on as our daughter then we may be less capable of doing our job well. Similarly, emergency workers in disaster zones may be so overwhelmed by the devastation if they see all of the suffering people around them as person then they would be paralyzed so as a defense mechanism they may start to see them as objects instead. Even though there are cases in which, for example, a military general does not see his troops as persons and so does not respect them as such, what is more common is that captains, surgeons, scientists, coaches, and military commanders still see us as persons, for if they didn't, could we fully explain why their jobs can be so difficult and stressful for them? Fourth, I have put my account in terms of thinking about or engaging with others, which implies a sort of sensitivity to the presence of other people – we can disrespect a homeless person, for example, by choosing not to see him as a person as we stroll by, whereas it may not be disrespectful if, having seen him as a person, we still choose to stroll by.¹¹⁷

¹¹⁷ The view I am suggesting differs but is related to what Stephen Darwall has called recognition respect

My view has been that to respect someone as a person is in part to see them as a person. In conclusion, I note only briefly that this account of respecting someone as a person helps to explain some intuitions we have about how to respect ourselves as persons. We sometimes find, don't we, that we see ourselves as something less than a full person when, for example, we are servile to others, try too hard to please them, or refuse to stand up to them? This may even explain why we may sometimes fail to respect ourselves as persons when we give ourselves over in certain extreme ways to gluttony, drinking or sexual satisfaction. Engaging in these activities may express that we do not see ourselves as persons but rather as things that are meant for the amusement and enjoyment of oneself or others, whereas when we typically enjoy food, drink and sex, we continue to see ourselves and anyone else involved as persons rather than as objects, animals, etc.¹¹⁸ Indeed, isn't that an important part of why we tend to value these things

for persons:

to say that persons as such are entitled to respect is to say that they are entitled to have other persons take seriously and weigh appropriately the fact that they are persons in deliberating about what to do. Such respect is recognition respect; but what it requires as appropriate is not a matter of general agreement, for this is just the question of what our moral obligations or duties to other persons consist in (Darwall 1977, 38).

As the last sentence indicates, Darwall means that we give people due consideration in our deliberations, and so respect them as persons, by treating them in all morally appropriate ways. A thicker way of interpreting the idea of weighing people appropriately in our deliberations, and this may be part of what Darwall was hinting at, is that we see them as persons, not only by focusing attention on their rational capacities and moral status, but also by being disposed to react appropriately out of a recognition that they are persons.

In a much later essay, Darwall characterizes recognition respect as "a disposition to regulate conduct toward something by constraints deriving from its nature." (Darwall 2004 ??????) He says later in the same essay: "A natural response to this hypothesis might be to object that it gets things backward, that what must surely be basic are constraints on conduct that derive simply from the nature of persons, or from some basic value underlying these, and that we respect persons when we respect these requirements or this value. This used to be my view also, as I said before" Darwall now thinks that this account of respect because "it fails to appreciate an equally central component of our dignity

¹¹⁸ There may be a story here for lying as well.

so highly – the activities we value so highly of enjoying a dinner with friends, drinks after work, or sex with our spouse involve mutual recognition and reciprocal engagement with others that would not be possible if we did not see the others as persons.¹¹⁹

Honoring others as persons

According to the honor conception of respect, we paradigmatically respect someone as a person by honoring her as a person, which involves seeing her as a person, in the sense I just described, and, I will now claim, also by honoring the rational capacities and moral status that make her a person.

Before examining what it is to *honor* someone as a person, we can ask more generally, why even try to understand thick basic respect in terms of honor? Here are three *prima facie* reasons, which come from ordinary language, for attempting to do so. First, in some ordinary contexts, we tend to use ‘honor’ and ‘respect’ as (near) synonyms when we say, for example, ‘you should honor your parents’, ‘we honor our soldiers for their service’, or ‘I honor Wordsworth but I love Shakespeare’. It is this sort of thick respect that I am attempting to characterize, so thinking about honor may help us to clarify our intuitions about thick respect, if only by making it easier to mark the distinction I started with between thin and thick respect for persons (there is less inclination to say that honoring someone as a person in any ordinary sense is treating him in all the ways that persons ought to be treated). Second, the relevant notion of honor has roots in feudal and religious systems of rank and status – we must honor god, the King, and the nobility. This association between honor and status seems to hold today as well,

¹¹⁹ See Nagel, Thomas (1969), ‘Sexual Perversion’, *The Journal of Philosophy*, 66 (1), 5-17.

which fits well with my conception of thick basic respect because when we have honor respect for someone as a person, on my view, we are honoring her for her inviolable moral status as a person. Third, when we say that you should honor your parents, the sense of honor we intend is ambiguous between having an attitude of honor towards them, expressing honor, and treating them in honorable ways in just the way that ‘respect’ is ambiguous when we say that you should respect your parents.

What can we say more specifically about what it is to honor someone as a person? One way to begin is to differentiate this sort of attitude from other things. First, treating someone justly, protecting her, aiming for her happiness, loving her, liking her, treasuring her and admiring her are not the same as honoring her. Having honor for someone as a person can cause me to love her – I may honor a favorite author for her work and as a result of this come to have concern for her wellbeing for its own sake, however; and I may express the honor I have for her by refusing to harm her. Second, honoring someone as a person is different from esteeming her as a person, at least in the sense of ‘esteem’ that we sometimes use when we talk about the self-esteem of children. In those contexts, self-esteem is a matter of feeling good about oneself and one’s abilities, so having esteem for others is akin to having pleasant feelings towards them. Third, this sense of honor is not the same as the sort of self-respect involved in the primary good that Rawls calls the social bases of self-respect. As Rawls understands self-respect in the limited context of his theory of justice, it is basically about having a positive sense that one’s personal projects are worthwhile and that one has the ability to pursue them as far as is otherwise

possible.¹²⁰ Fourth, honoring someone in the sense I am using it is not a passive response to the ‘awesome’ value of something, as when we find ourselves, for example, exalted by a beautiful landscape, cherishing a work of art, or revering a philosophical treatise. In contrast to each of these, honoring someone as a person is more centrally concerned with taking active steps to decide for oneself to live by certain stable policies, commitments, and stances to treat people in honorable ways and not to treat them in dishonorable ones.

What then does it take to treat someone honorably and not dishonorably as a person? We obviously do not mean to honor her for her physical beauty, membership in the species *homo sapien*, values, beliefs, relationships, moral accomplishments, intelligence, wit, or moral virtue. People who have mundane, wrongheaded, vile or irrational beliefs, values and the like may nonetheless deserve to be honored (or at least not dishonored) *as persons*, although there are additional questions we could ask about when, in addition to respecting someone as a person, we should respect her for her abilities, values, beauty, etc. Honoring someone as a person, on my view, presupposes that we see him as a person, that is, as someone with an inviolable moral status in virtue of possessing certain capacities and dispositions of reason. So honoring her as someone like that, whatever else she may be, seems to require that we honor her moral status, by not degrading or ridiculing her for example, and honoring her rational capacities, by not mocking or defiling them.

Let’s consider some examples. Sometimes, the object of our mocking or ridicule is ostensibly something else about a person (her faults, beliefs, etc.) but really what we

¹²⁰ Rawls (1999), p 386.

are doing is mocking or ridiculing her rational capacities themselves. We may have a good laugh when a friend claims to believe in psychics, but it may be that our laughter also expresses dishonor for his theoretical rationality – how could any rational person believe *that?* – whereas in other cases we may honor our friend’s theoretical capacities and make clear that our laughter is not meant as an indictment of these so much as an expression of surprise and amusement that he reached that particular conclusion and a genuine interest in what errors may have led him to that belief.¹²¹ Mocking someone with a mild mental disability by imitating his unconventional behavior or speech can dishonor him as a person by demeaning his capacities for thought and action. Having utter contempt for a criminal dishonors him by dishonoring his rational potential for reform. Other examples include¹²²: pulling down someone’s pants in public, pointing out their ‘wardrobe malfunction’ to others, and laughing at the outward signs of their embarrassment; forcing an inmate to beg or dance in order to receive any food, which you then make him eat like a dog; burying a new recruit up to his shoulders in a mock grave while yelling that he is dead; forcing Jewish prisoners in concentration camps to

¹²¹ Kant says in his Lectures on Ethics (????): “A man is more demeaned by it than he is by malice; for if we are a laughing-stock to others, we have no dignity, and are exposed to contempt. We have to see, though, what makes us an object of laughter to others. Often we may concede it to them, for if it costs nothing to either of us, we lose nothing thereby.”

¹²² There other examples of dishonoring someone and many of these have been used by the Nazi’s, the military, prisons and mental institutions. Disrespectful treatment of this sort can include: stripping someone of her name and personal property and requiring him to shave his head; body cavity searches; reading their mail and share it with others; forcing a soldier to lie in bed and then run to attention over and over again; urinating on an inmate or force-feeding him; molesting or raping him; For discussions, see Goffman, Erving (1962), *Asylums : essays on the social situation of mental patients and other inmates* (Aldine library edition; Chicago: Aldine Pub. Co., 1962). Kogon, Eugen (2006), *The theory and practice of hell : the German concentration camps and the system behind them* (Kogon, Eugen, 1903- SS-Staat. English; New York: Farrar, Straus and Giroux). Lawrence, T. E. (1955), *The mint : a day-book of the R.A.F. Depot between August and December 1922, with later notes* (London: J. Cape).

sing anti-Semitic songs¹²³; making someone perform meaningless, arbitrary, and difficult work to excessively or even impossibly high standards with little or no pay; etc.

There may not be much more we can say in general about what it takes to treat people honorably and dishonorably as persons. For that, it is perhaps best to look more closely at particular examples in specific contexts, taking into account existing cultural norms, relationships, expectations, history, etc. Instead of pursuing this avenue any further here, I want to turn to take up a different set of issues that I think are closely related, namely: What is the relationship between having honor-respect for others and having that sort of respect for oneself; and why should we have honor-respect for others anyway?

Respect and Self-Respect

Philosophers have long wondered about the relationship between respect for others as persons and respect for oneself as a person. A widely held view is that the notion of basic respect for persons does not distinguish in any deep way between ourselves and others; rather, whatever it takes to respect someone else as a person applies more or less equally to respecting myself as a person, and since our intuitions and judgments about respect for others are so strong and clear, it is most promising to concentrate on them and later try to derive a notion of self-respect. However, the connection between thick basic respect for others and that sort of respect for oneself is much more complicated and fruitful than that, and my honor based account of thick basic respect can help to explain why.

¹²³ Kogon (2006), pg. 63-68

The following examples involve dishonoring others as persons in a way that depends on how they are honoring themselves as persons. First, a senior law partner may disrespect a new associate by excessively berating him for having committed a minor transgression, but it seems that her actions would be especially dismissive of the associate as a person if her intention was to undermine his self-confidence and lead him to become servile to her.

Second, Kant gives the following example of disrespect in the thick sense:

On this is based a duty to respect a human being even in the logical use of his reason, a duty not to censure his errors by calling them absurdities, poor judgment, and so forth, but rather to suppose that his judgment must yet contain some truth and to seek this out, uncovering, at the same time, the deceptive illusion (the subjective ground that determined his judgment which, by an oversight, he took for objective), and so, by explaining to him the possibility of his having erred, to preserve his respect for his own understanding. For if, by using such expressions, one denies any understanding to someone who opposes one in a certain judgment, how does one want to bring him to understand that he has erred? (MM 6:463-4)

When we engage in, say, philosophical disputes with others, our utterances can be understood as (1) mere objections to a stated view, (2) indictments of the other person's philosophical abilities, (3) denials that the person is minimally rational, or (4) demands that the other person lose confidence in her own philosophical abilities or even in her own rationality. That is, someone may criticize my philosophical abilities and, by his lights, think that mine are not very great but be ambivalent about whether I come to see the truth as he sees it. He may even hope that I do not lose faith in my philosophical prowess and that I keep working at improving it. Someone else, with the same statements, may be demanding that I lose confidence in myself – it's not just that she thinks I am a bad philosopher or even that if I came to see the truth I would agree with

her; rather, she is insisting that I cease valuing my abilities so highly. It is one thing to criticize someone and another to demand that they criticize themselves.

Third, during long periods of our history, it wasn't enough for white racists to disrespect African Americans by failing to see them as persons and by demeaning them with racist slurs, unfair treatment and the rest. Unfortunately, it was also common for whites to think that African Americans thought too highly of themselves, as being on an equal footing with whites, and so demand that these people should 'know their place' by seeing themselves as inferior to whites and dishonoring themselves by adopting servile attitudes and prostrating themselves in their words and manners.

Finally, as David Sussman has persuasively argued, part of what makes torture such an egregious wrong is that it

forces its victim into the position of colluding against himself through his own affects and emotions, so that he experiences himself as simultaneously powerless and yet actively complicit in his own violation (p. 4).¹²⁴

According to Sussman, when someone is tortured, the aggressor typically intends to use the victim's affects, emotions, and sensitivity to pain against her, by making her both identify with her non-rational reactions to the painful treatment and also see these reactions as foreign to her. And intending to cause someone to become alienated and disintegrated in this way is profoundly disrespectful in the thick sense. We could even imagine a different and less violent sort of disrespectful torture in which the torturer manipulates and coerces his victim, not by means of her affect and pain, but by playing her good nature and rationality against itself – he might construct an elaborate rouse in

¹²⁴ Sussman, David (2005), 'What's Wrong with Torture?', *Philosophy and Public Affairs*, 33 (1), 1-33.

which the victim is led to believe that she must perform some awful act to save her family and then use evidence of that act to force her to reveal some information.

Following Sussman's lead, the common element that seems to explain why we tend to find these ways of treating others to be so disrespectful (in the thick sense) is that the actions are either (a) intended to cause others to lose respect for themselves as persons or they are (b) direct imputations on the person's basic self-respect.¹²⁵

Consider (a). We can attempt to cause someone to lose thick respect for herself as a person in many ways, including insidious hints, outright gestures and dehumanizing treatment, and such treatment would be disrespectful (in the thick sense) even if our efforts did not succeed. A stoic and self-assured slave may never be led to lose thick respect for himself as a person, but those who nonetheless endeavor to 'break him' still appear to treat him with intense disrespect of the relevant sort.

Now consider (b). Sometimes, we impute the self-respect of others more directly by demanding that they lose respect for themselves, perhaps without actually intending to cause them to lose respect for themselves. This can happen because we may not believe that our actions will have the effect of undermining their self-respect (perhaps we know the relevant people will never learn about what we do or we know that their self-respect is impervious to us) and supposing that to intend to do something is to believe that one will do it. Nonetheless, our words and actions can have the illocutionary force of demands that others, for example, demean or humiliate themselves, so making these

¹²⁵ For a related discussion of humiliation see Margalit, Avishai (1996), *The decent society* (Cambridge, Mass: Harvard University Press), chapter 1.

demands is deeply disrespectful in the thick sense.¹²⁶ It is sometimes even possible for our words to carry the force of a demand even without our having an intention to make one, if we unwittingly invoke an established social convention that gives the words that meaning.

Take an analogy with insulting someone. Sometimes we insult someone with the intention of causing them to be insulted (and perhaps also to recognize that we intended them to see this), but we can also insult someone when we know they will not be insulted (we may be talking about them behind their backs or subtly condescending to their faces) and even when we have no intention to insult them (we may be describing them with words that we did not know were insulting even though they are so according to common social convention).

When we act with the intention of getting someone to lose respect for himself we dishonor him as a person by trying to tempt him to violate self-regarding moral duties, duties which I assume he has, to honor-respect himself as a person. And it is similarly dishonorable to demand that he violate these duties.

There is a potentially complimentary explanation for why these ways of treating others count as failures of honor-respect. I consider this rationale more fully in the final section, but in summary: When we make a demand that someone lose honor-respect for themselves, as opposed to, say, a request or a suggestion that they do so, what we are claiming in effect is that she does not have the right to honor herself as a person and that we instead have the right to substitute our own judgment for how she should see and

¹²⁶ The classic discussion of illocutionary force is of course Austin, J. L. (1965), *How to do things with words* (Galaxy book ; GB132; New York: Oxford University Press, 1965).

honor herself (if at all). Acting with the intention to cause someone to lose honor-respect for herself implies something similar, a failure to acknowledge the right others have to honor-respect themselves.

A partial argument for honor-respecting others as persons

Why should we honor-respect persons as persons? A common answer is that all persons have a sort of intrinsic, agent-neutral value that gives everyone reasons to respect them in the thick sense and for them to respect themselves in that sense as well.¹²⁷

Another possibility is that when we do not see others as persons or dishonor their moral status and rational capacities, we are more likely to treat them in other immoral ways. Is there any other non-instrumental argument we could give for honor-respecting others as persons that does not depend on strong assumptions about intrinsic value, and also fits more naturally with the mostly negative character that basic honor-respect seems to have? Kant may have overstated the case when he claimed that duties of respect for others are always negative¹²⁸, but it nonetheless seems to be a common feature of our moral experience that honor-respecting others most centrally involves keeping our distance, not interfering too much, or taking a hands off approach with regard to them – we must, at the very least, see them as persons and not dishonor their moral status and rational nature.

I will now sketch a circumscribed argument that, if successful, shows that we have presumptive moral reason to honor-respect others in *specific ways*, namely by not

¹²⁷ Proponents of this view include: Raz, Joseph (2001), *Value, respect, and attachment* (John Robert Seeley lectures ; 4; Cambridge, U.K.: Cambridge University Press); Wood, Allen W. (1999), *Kant's ethical thought* (Modern European philosophy; Cambridge ;New York: Cambridge University Press).

¹²⁸ MM 6:450

demanding or intending to cause them to lose honor-respect for themselves. The series of examples from the last section illustrate, I think, the commonsense judgment that impugning the self-respect of others in these ways is especially dishonorable and disrespectful, so it will be a welcome result if we can show that we should presumptively refrain from doing so. The argument as stated does not establish, however, that we have moral reasons to honor-respect others in the other ways I have discussed that do not appear to involve impugning the self-respect of another (although on reflection we may decide that many cases of disrespect actually have this feature) but I briefly suggest at the end how the basic strategy might be used to make a fuller case for honor-respecting others as persons.

The argument takes its cue from a remark Kant makes about respect. He says:

It [the respect to be shown to others] is rather to be understood as the maxim of limiting our self-esteem by the dignity of humanity in another person, and so as respect in the practical sense (*observantia aliis praestanda*). Moreover, a duty of free respect toward others is, strictly speaking, only a negative one (of not exalting oneself above others) and is thus analogous to the duty of right not to encroach upon what belongs to anyone. (MM 6:450).

My argument sets out from the suppositions that persons are disposed to honor-respect themselves, that is, they are disposed to see themselves as persons and to honor their rational capacities and moral status, and fully rational persons actually do honor-respect themselves in these ways. We are not assuming that these attitudes are justified responses to a perceived agent-neutral value within each person that, if it were there, would provide reasons for self-respect and respect from everyone else. Rather, we are beginning with the assumption that, from each person's own perspective, we are disposed to honor-respect ourselves in ways that do not depend on or commit us to a prior agent-neutral value. The other assumption is that persons are disposed to accept and comply

with some sort of principle of reciprocity that essentially says that we should treat others only in ways that are justifiable to them and anyone else if they were fully rational.

Now, persons are rationally disposed to honor-respect themselves as persons, and they also, we can assume, have a duty to do so. This self-respect, however, can become distorted in at least two ways. On the one hand, our self-respect may be minimal or non-existent – we may begin to see ourselves as something that does not have a moral status as great as do others, we may allow others to use us as they wish, we may let our rational abilities wither away, we may humiliate and embarrass ourselves, and so on. On the other hand, our self-respect may grow too large – I may see myself as an excellent specimen of a person who as such enjoys an extremely high moral status; I may show exceptionally high honor to myself and so on. These attitudes of high self-regard, if I had them, would almost inevitably lead me to compare myself to others, conclude that I am more honor-respectable than they are, and even demand or intend to cause them to honor-respect themselves less and honor-respect me more. Human nature, we might think, includes a strong tendency towards pride, self-conceit and arrogance, but also leaves room for servility as well.

When our self-respect gets out of bounds on one end, we violate duties to ourselves, but when it gets too puffed up, our arrogance and pride can interfere in certain ways with the honor-respect that others have for themselves. This can happen when our arrogance or pride leads us either to demand that others honor-respect themselves less than they should or to try lead them to do so. There is therefore real potential for people to step on each other's toes, so to speak, in the claims they make – you demand I honor-respect myself less while I claim a proper honor-respect for myself and the effects they

attempt to bring about – you try to make me lose honor-respect for myself while I try to retain it. Because of our dispositions to reciprocity, it seems plausible that if we were fully rational, we would respond to this state of nature by agreeing to certain general principles requiring each of us to keep our self-respect in check and ensure that we do not interfere in inappropriate ways with the self-respect of others. In particular, we might settle on assigning each person a presumptive moral right to respect herself within specified bounds and agree that certain demands, actions and attitudes count as putatively illegitimate interference in a moral sphere of self-respect that each of us is more or less in charge of for ourselves. We have strong moral reason, therefore, to see others as having the right to respect themselves and the rational abilities to do so; we also have strong moral reason to honor their moral status and rational capacities by allowing them the freedom to honor-respect themselves so long as others are afforded the same liberty to do so.¹²⁹

Can we go further? I'll end with a provocative, sketchy and tentative suggestion. What this argument has so far shown, if it is successful, is that we must not impugn or interfere with the honor-respect that others have a right to show themselves, but there seem to be many ways of demeaning, degrading and ridiculing others more directly, in

¹²⁹ My argument, if correct, implies that there is a grain of truth to the 'rights-recognition' conception of basic respect according to which we respect others by respecting their rights. The primary difference, however, is that my approach defines a particular sort of right and allows that we can still have thick basic respect for others even while violating other of their rights. For discussions of the 'rights-recognition' model of respect see Benn, S. I. (1980), 'Privacy and Respect for Persons: A Reply', *Australasian Journal of Philosophy*, 58, 54-61; Feinberg, Joel (1970), 'The Nature and Value of Rights', *Journal of Value Inquiry*, 4, 263-67; --- (1973), 'Some Conjectures About the Concept of Respect', *Journal of Social Philosophy*, 4, 1-3; Murphy, Jeffrie G. (1970), *Kant: the philosophy of right* (Philosophers in perspective: London, Macmillan; New York, St. Martin's P., 1970.). Hill, Thomas E. (1991), 'Servility and Self-Respect', in Thomas E. Hill (ed.), *Autonomy and self-respect* (Cambridge [England] ; New York: Cambridge University Press), 4-18.

ways that are not designed to impugn or interfere with their self-respect. What reasons do we have not to disrespect others in these more direct ways? When we employ demeaning punishments, whether or not we meant to impugn or interfere with the self-respect of the criminals, perhaps our actions nonetheless do, as a matter of fact, tend to interfere with their right to honor-respect themselves because such punishments usually *cause* people to lose honor-respect for themselves. Consider what Kant says in his *Lectures on Ethics*:

Since men are objects of well-liking love, in that we should love the humanity in them, even judges, in punishing crime, should not dishonour humanity; they must, indeed, penalize the evil-doer, but not violate his humanity by demeaning punishments; for if another dishonours a man's humanity, the man himself sets no value on it; it is as if the evil-doer had himself so demeaned his humanity, that he is no longer worthy of being a man, and must then be treated as a universal object of contempt (LE 27:419).

There are other ways of interpreting this passage, but setting Kant aside, causal considerations about what sorts of actions tend to interfere with the rights of others would certainly be relevant if we were, for example, attempting to design and justify a system of publicly-recognized, socially-enforced rules about respecting each other as persons.

Respect, expressions of respect and social moral rules

Respecting someone as a person, in the sense I have been describing and arguing for, requires us to see her as a person, honor her as such and, I now emphasize, to express these attitudes. Someone who saw others as persons and honored them as such, but who never gave any sign of these things, would not, it seems, be respecting them as fully as possible. Seeing others as persons seems to require being disposed to acknowledge that we take them to be persons rather than something else. The same goes for honoring someone, which we do not do merely by having certain emotions; we must also take certain stances towards persons about how we are to behave towards them, so sometimes

this stance must be operative in order to respect others and when it is then we are expressing respect for them. Also, our self-respect is not only vulnerable to attack from others, but we often depend on communicated social affirmation to sustain it, which we need to do to some extent in order to have full respect for others. Finally, disrespecting others often involves expressing disrespect when we, for example, ridicule them to their face, humiliate them in the eyes of others, refuse to acknowledge their presence and so on.

Following established social moral rules can be ways of expressing respect to others and not expressing disrespect to them. For one thing, social moral rules can give conventional meaning to actions, making them (perhaps unintended) ways of showing disrespect to others even of a sort that the actions themselves would not have were there no such rules. For example, telling a white lie may not in itself be a way of disrespecting someone – in some cases lies of that sort are even ways of showing respect – but if our rules explicitly forbid white lies and you go ahead and tell me one then your action, because it is against the rules we have established among ourselves for regulating interpersonal behavior, may be a way of showing me deep dishonor. Part of the reason for this may be that social moral rules are sometimes a way for us to *operationalize* and *institute* our shared conception of what a person is – a person for us may be, in part, one who is bound by the rules and who is protected by them. The rules set out clear expectations and requirements we place on each other and they specify things we are responsible for along with potential excuses. This forensic notion of a person is much like the way the rules of a game define what counts as a player in it, where a baseball player, for example, is defined as one who plays a certain role as specified by the rules of

the game. In our society, then, part of what it is to see someone as a person is to see her as a co-participant in our moral code, and if we see her in that way and are disposed to express that we do, then we will be inclined to treat her in accordance with that code as well. When others break the rules with regard to us, then, even when they do so in minor ways, can be taken as a deep dismissal of our status as a player in the moral game of our society, as a failure to see us as someone to whom the rules apply, and this can be quite devastating and perhaps more so when the infractions are more grave. This is not to say, of course, that every time we break the rules towards someone, we fail to see them as persons – perhaps we see them as a person but also as an enemy who deserves our poor treatment – but when, for example, the Nazi’s developed separate social moral rules about how to treat Jewish people, it soon became clear that in the society of that time these people were no longer seen as people at all.¹³⁰

One way of illustrating the point is to think about boxing, where it can be a sign of deep disrespect that one fighter refuses to throw a devastating left hook. The informal rules of the sport require boxers of relatively similar abilities who are in a high-profile bout to fight as hard as they can without the confines of the other rules, so a boxer can disrespectfully taunt his opponent by breaking that rule and not throwing that powerful punch when an opening for doing so is clear to both boxers, even if no one else sees it. In doing so, the one boxer is expressing that he does not see the other as a fellow fighter in the fullest sense.

¹³⁰ There are also intermediate cases in which someone as a person, breaks the rules with regard to her, and this as a matter of convention expresses the message that she is not seen as a person.

It is a familiar idea from legal contexts that being a legal person is defined by the laws, rulings and so on of our society, but I think that our idea of being a moral person involves being one who can play certain roles as defined by our moral code, so if you violate my legal rights, you may express that you do not see me as a legal person, and if you violate my moral rights as defined by the rules then you may express that you do not see me as a moral person.

A further point is that the notions of humiliation, ridicule, degradation, and the other ways in which we can dishonor someone are difficult to define with any great precision even though there are many core examples in which we recognize these things. Often moral judgment works well enough to determine when someone is being disrespected in these ways, but there is significant room for disagreement in many cases. One function that social moral rules can serve, then, is our need for publicity and determinacy when it comes to figuring out how to avoid disrespecting one another – the rules can institutionalize and structure our relations with one another so that, when we follow them, we are better able to respect one another even though it may be that no set of rules can codify respect fully.

CHAPTER 4

EVALUATING SOCIAL MORAL RULES

Codes of social moral rules are not all created equal. They can be inefficient, convoluted, simplistic, stifling, exclusionary, sexist, racist, and in many other ways despicable; sometimes they are more the result of oppression, historical accident and superstition than calm and reasoned moral reflection; and parts of them can be maintained long past the circumstances in which their inclusion in the code originally made sense. What is perhaps more common, however, is that the *core* of a society's moral code, which is the part of it that its members are most sure about and most firmly committed to, consists of prohibitions on those acts of killing, rape, torture, disrespect, intentional harm, lying, promise-breaking, theft, failing to give mutual-aid, etc. that are most obviously immoral, not just immoral from the perspective of the group but actually immoral.¹³¹ Anthropological evidence¹³² suggests that the core of most existing moral codes, which is partially the result of common experience and wisdom over millennia, has this morally laudable character – it is generally against the prevailing rules of any society, for example, to kill another member of the group intentionally for personal gain

¹³¹ The analogy here is to Quine's conformational holism in his famous (1951), 'Two Dogmas of Empiricism', *The Philosophical Review*, 60, 20-43. It may even be that having a core of a certain sort is part of what it takes for a code to be a 'moral' code.

¹³² See Peterson, Christopher and Seligman, Martin E. P. (2004), *Character Strengths and Virtues: A Handbook and Classification* (Oxford: Oxford University Press) and Walzer, Michael (1994), *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press).

without provocation when reasonably favorable conditions obtain, and this part of most any code is not likely to be given up easily. While there seems to be a common core among many current and past moral codes, one that reflects some of the most widely-shared and firmly-held moral convictions we have, prevailing moral codes still vary greatly with regard to what (if any) *exceptions* they allow to their general prohibitions on killing, lying, etc., how their most general and widely-applicable social moral rules are to be interpreted and implemented in concrete situations and what non-basic social moral rules they allow for particular groups or restricted areas of life (e.g. the classroom behavior of North Carolina Pre-K teachers). This, the *periphery* of a moral code, which is the part of it that does not enjoy deep acceptance among the members of society even though they generally accept it to some extent¹³³, is the key to explaining some of the most important ways in which moral codes can be defective and imperfect.

The moral code of our own society, I assume, shares the morally justified core prohibiting the more egregious acts of killing, torture, lying, etc. but questions arise about whether our rules are, all told, the best ones for our social circumstances. We might wonder whether our rules adequately handle ‘harder’ cases in which we can, for example, lie to save the life of another, deceive someone in order to relieve her of great suffering, keep a promise that will profoundly embarrass someone else, save the life of one person or five people, coerce someone for their own good, and torture someone in order to prevent a disaster. Even though the core of our code rightly includes general prohibitions on such things as disrespecting or torturing others, we might also wonder whether these

¹³³ These parts of the code must be generally accepted to some extent to count as a rule, but they may be more easily given up than other parts of the code that are more deeply held.

concepts are interpreted correctly in the code by lower-level rules that say more precisely what it takes, for example, to respect specific groups of people, such as women, minorities, the elderly, the disabled or the undeserving, in specific circumstances, such as in a hospital or prison setting. And even though we are confident that the core of our moral code is more or less correct, we might also wonder in our more philosophical moods what justifies those deeply held prohibitions and requirements. What we need to address these questions is a *standard* to which we can compare our own moral code, an ideal code of social moral rules worked out for our social world that includes the right sorts of exceptions and qualifiers, correctly interprets key moral concepts and helps to justify the core that is common between our actual code and the ideal one for us.

The ideal code that is worked out for a society like ours may not be the ideal code for societies of even slightly different sorts, let alone ones that are far removed in time and social circumstance. Our society has a functioning, liberal and reasonably just legal system that sets the background for so many of the moral issues we face, we have opinions, values and ideals that are commonly held along with a diversity of these things as well, we are free from extreme scarcity and strife, we have a sordid history with the ways we have treated various groups, along with much else, and all of this will be relevant to what set of social moral rules is best for us. The most we may be able to say about what social moral rules apply universally, in all times and places, is to mention the relatively abstract, widely affirmed and morally justified core of social moral rules and its constitutive requirements, in certain circumstances, to respect others, be beneficent, and refrain from torture while admitting that the appropriate character for fully formed rules about these things may vary from context to context.

Our goal, in the long run, should be to develop an ideal code of social moral rules that is worked out for a society like ours that can be used as a standard of improvement for our own imperfect code. Once we have a standard of this sort in hand, however, it is another question what we should do with it, and in particular whether those of us who discover it should begin following it immediately knowing full well that others will not initially follow suit. This is the problem of utopianism, which is a perennial problem for ideal theory, that it can be disastrous, otherwise repugnant or personally devastating to follow the ideal in an imperfect world where others are not doing so and some are prone to take advantage of people who are.¹³⁴ The right response, I think, is to distinguish as I have between the legitimacy or justifiability of a moral code and our obligation to follow it and admit, with the objection, that solidarity and respect sometimes give us moral reasons to comply with our actually existing moral code even when we know that it is not the best one available. Fortunately there is substantial overlap between the actual and ideal codes, due to their common core; the ideal code is worked out for our specific circumstances and so is not likely to have an ‘other-worldly’ character; and it is likely to require us to avoid disasters, so following the ideal code of the sort I envision may not be as problematic as other attempts at defining an ideal set of moral principles or rules. An ideal code provides us with a goal, something to hope and aim for in the possibly distant future, but right now there are other values, ideals and duties at stake that complicate how

¹³⁴ This is a deep problem for rule-utilitarians, who claim that we should always follow the ideal moral code even when no one else is doing so and our actions could spell disaster for ourselves or our society. Rule-utilitarians try to respond by fiddling with the content of the ideal moral code so as to ensure that such cases will not arise but beyond an all-encompassing disaster clause it is difficult to see how they can handle less awful cases in which we are called on to stand for the ideal moral code when we know that this will ruin us or our family.

we should respond to that goal – perhaps we should sometimes follow the ideal code and break the actual one to set an example to others or appeal to their common moral conscience, but other times we might criticize the prevailing rules in personal conversations, public discussions, editorials or books, teach our children the better rules while still making them aware of our actual ones, stage protests, and otherwise look to models of the past who have managed to change common public opinion about such disparate things as homosexual relationships, segregation, the roles of women in the family and at work, recycling, and smoking in public places. We may even need to settle on transition rules about how we should move towards the ideal, which may not be a static thing in any case because of the complicated interactions between an ideal model of social moral rules and an ideal set of basic political, social and economic institutions, so the ideal moral code against the background of our imperfect legal system may not be the best one if that system were to be improved as well. These things work in tandem, then, but even making ourselves aware of the concrete possibility of a better moral code can be beneficial, by fortifying our faith in ourselves and our potential for creating and maintaining a better social world than some of the disheartening ones we have endured throughout history.¹³⁵

The task of constructing an ideal moral code for a society like ours promises to be extremely complicated, not only because it must be sensitive to various facts about us and our society but also because it involves so many facets of our moral lives. Rather than

¹³⁵ See Rawls' discussion of the proper roles of political philosophy in the introduction to his Rawls, John and Freeman, Samuel Richard (2007), *Lectures on the History of Political Philosophy* (Cambridge, Mass.: Belknap Press of Harvard University Press), 10-11.

attempting to work out a fully comprehensive standard in one go, a better strategy may be to approach the problem piecemeal, taking our own code bit by bit and asking whether our rules about, for example, lying, torture or respect have the right exceptions, qualifiers, etc. We will then have to fit together the provisional rules we settle on into a system of social moral rules, which will require rethinking some of those rules and making adjustments, and even more so when we try to fit this in with an ideal conception of justice. We ultimately seek reflective equilibrium among ideals of justice, social morality, individual virtue, praise and blame, etc. but because so much depends on the details and the unity of moral and political philosophy is so enormously complicated, a piecemeal approach may be the best we can hope for.

Anti-theory, absolutism and feasibility

A deep suspicion one might have about the task I have described, of working out piece by piece an ideal system of social moral rules for a society like ours that can be used as a standard for improving the one we actually have, is that there is no underlying unity or structure to ethical thought so it will be impossible to define an ideal code of social moral rules of the sort I am describing. Virtue ethicists and anti-theorists press the concern that morality is far too complicated to be systematized or codified in any useful way by principles and rules – imagine all of the values that must be included in the mid-level that I am starting out with along with the enormous complexity of interpreting those values for particular conditions in isolation from each other, let alone rendering them determinate when they conflict with each other. While the alternative they propose to imposing a structure on morality is not always clear, the gist I take it is that we should employ practical wisdom, careful reflection and judgment to decide what to do.

While I do not share this skepticism about the importance of normative ethical theory, there is much we can learn from this sort of view. When we begin listing out the various aspects of morality, we find, in addition to ideas about what we ought to do, firmly held convictions about ideals, aspirations, virtues, supererogatory acts, praise and blame, values, the goodness of states of affairs, political justice, social moral rules, etc. With the anti-theorists, we should not assume from the outset that morality as a whole or even any one of its categories is codifiable by a set of simple principles, and some may not be codifiable by any principles at all. My suggestion has been, however, that social moral rules are only one part of morality. While they can be important in their own right as part of relationships of solidarity, they are not the whole of morality or even of what we ought to do, because, as I have argued, there is room for breaking even good rules. I also agree that there may not be just one ideal moral code, or it may be a vague ideal. Nonetheless, there is certainly room for improvement in our own system of social moral rules, so there is good reason to examine and evaluate it one piece at a time, keeping in mind that its various parts must fit together into a coherent system of principles, and we should also work to institute the improvements we identify even if we never completely specify the final product.

We must be particularly sensitive, however, to the underlying concern that any attempt to specify an ideal code of social moral rules will inevitably settle on rigoristic and inflexible rules. From the perspective of commonsense morality, matters are much more complicated than can be captured with simple rules such as ‘*never lie*’ or ‘*never kill the innocent*’ in part because these rules can conflict with each other in real-world cases. Our own moral code makes some provisions for situations of this sort, although these

may not be the right ones. If we start making all of the needed exceptions to social moral rules in our effort to construct an ideal code, however, the worry is that the rules will become convoluted, difficult to state and learn, and so no longer suitable for the valuable public role they play in solidary or respectful relationships; they may lose their status as rules altogether because rules are by their nature publicly known; and it just may be impossible for us to list out all of the exceptions. The basic suspicion is that our ideal moral code will either rely on absolute prohibitions, which cannot be supported by commonsense morality, or it will need to include built-in exceptions to those prohibitions that could make them into algorithms that could be applied without moral judgment, which will result in unwieldy ‘rules’ of the form ‘never x (lie, kill the innocent, break your promises) except in circumstances C1, C2..., C66,... , and (perhaps) Cn’.

It would certainly be extremely difficult, if not impossible, to list out, for example, all of the circumstances in which we are permitted to lie, particularly because there are so many types of lying and because our intuitions about lying may abandon us in the far-off philosopher’s examples we would need to consult in order to specify a comprehensive principle of lying, if even there is any such thing. Fortunately, the task of constructing an ideal code of social moral rules does not require us to try describing fully-specified principles of that sort because the public role that social moral rules play in a society sets limits on how complicated they can be and on what sorts of situations the rules must make provisions for. Such rules, when they exist, are generally known and understood, because generally accepted, and it is close to public knowledge that the rules are generally accepted. Being public in these two senses often affords social moral rules great instrumental value because people can mostly rely on each other to keep their

promises, tell the truth, refrain from killing innocent people, etc. When social moral rules are a way of showing respect to one another, it is important that they be widely seen as such, which also requires them to be public in these two ways. And, when social moral rules exist and are constitutive parts of relationships of cooperative solidarity, they serve as common grounds on which citizens stand in solidarity with each other, justify their actions to each other in discussions, and express mutual commitment to one another and to the ends they share. This suggests that in addition to the two senses of publicity just mentioned, the justification of the rules would ideally be somewhat understood by most members and at any rate widely available to anyone who chooses to inquire about the connection between the rules and the shared ends of the group. In light of the public role they are supposed to play in coordinating our activities, maintaining solidarity and expressing respect *in a society like ours*, we do not need them, nor do we want them, to render determinate answers on situations that we are unlikely to face in our social world. If our circumstances were to change drastically, a moral code worked out for the old context may become obsolete and we would have to try making a new one, but there are persistent problems we will most likely continue to face that are difficult enough, and it won't matter much to maintaining cooperation, solidarity or respect if the best code we can come up with for our society does not face up to possible but extremely unlikely cases. Social moral rules that are to serve their public role must also be stable in being generally accepted as part of solidary or respectful relationships that members regard as important, worthy of their continued allegiance, and not easily overridable by other of their concerns.¹³⁶ Moreover, in order to serve their public role and so guide moral

¹³⁶ The classic discussion of publicity is that of Rawls in Rawls, John (1999), *A Theory of Justice* (Rev.

deliberation and public discussion, social moral rules must be sensitive to what information is available to those who must use them and how liable the rules are to being abused or ‘gamed’. The basic suggestion, then, is that for social moral rules to serve the valuable function of providing a public basis of justification and deliberation for people in solidary and respectful relationships, they must be sensitive to our limitations and capacities, which means among other things that they cannot be too complicated, overbearing, or oppressive and so will have to ignore certain fine-grained distinctions and concentrate on more pressing, practical concerns – sometimes there will be some small moral reason to make an exception to a rule that, if included, would make the rule too difficult to learn and apply.

These practical concerns about publicity, stability, epistemic limitations and liability to abuse may seem to add further complexity to an already difficult task of specifying an ideal code of social moral rules, but actually I think they make that task somewhat easier because our moral intuitions have developed in response to and seem clearest in real-world cases in which these considerations are at stake. We are quite familiar with confronting common moral questions *from our own perspective*, in which our information is limited and time is short. We are also used to taking up the perspective of a *legislator* of sorts when we think more broadly about what the *rules* should be for our family, club, academic department, and even society, where we want rules that can serve the aims of the group, be useful to its members, secure something close to general agreement (at least in the long-run) so we are accustomed to considering

edn.; Cambridge, Mass.: Belknap Press of Harvard University Press) and Rawls, John (1993), *Political Liberalism* (New York: Columbia University Press).

how our rules might be misunderstood, abused or unworkable and mostly limiting our focus to commonly recurring problems of our group. It may even be a mark of careful moral deliberation about interpersonal morality that we combine these perspectives by thinking through our own moral problems as best we can given our epistemic situation, but also taking into account what the social moral rules would be like if they allowed everyone in our circumstances to act in one way or the other – if there were a publicly known permission to act in this way then the rules may lose the allegiance of some in the group or be abused by others then, I think, that would be some reason against doing so. In any case, our moral intuitions have been formed and shaped from within these two perspectives, where practical concerns are quite relevant, so it may actually be harder for us to get a firm grip on what is ‘objectively right’ in philosophical examples that abstract from such real-world concerns.

To illustrate: The ideal rule about torture will not just list out every single one of the possible circumstances in which torture is forbidden and required because many of these abstract situations, which philosophers are prone to emphasize, are ones we are very unlikely to face and including them would make the rule less able to fulfill its public role. If one of those cases were actually to arise, however, we would still have some reasons of solidarity and respect to follow the actual and ideal rules, which do not allow for torture in such cases *even though the rules were not explicitly meant to apply to such far-off situations* – this is part of what is so interesting about solidarity and respect – but torturing is not necessarily out of the question either because things may be so awful as to override those reasons and warrant nonetheless breaking those rules. The ideal rule about torture for our society must also take account of the information we are likely to have,

our cognitive limitations in processing it and the time and pressures we have in attempting to do so – it will often be difficult for us to decipher the true intentions of a terrorist, for example, whether he knows the location of the bomb, whether there is even a bomb, how many people are likely to be hurt or killed by it, the probability that torturing him will be effective, etc., and we must take account of potential psychological propensities to rush to judgment or seek vengeance. So if the rules are supposed to provide some guidance for how we should act, our rule must be relative to our epistemic situations and so include phrases such as ‘when you reasonably believe...’, ‘when all available evidence...’ or ‘after gathering as much information as possible, any reasonable person would suspect...’. And, if the rules are to be public knowledge and the focus of solidary relationships then they must not be too easily abused by people with our psychological makeup – a rule that allowed torture in rare cases may well lead overzealous police officers, for example, to torture suspects in cases that they mistakenly think are covered by the exemption. Arguably these practical considerations taken together militate towards a rule that says never torture because the pure sort of ‘ticking time bomb’ cases in which we might be tempted to torture are very unlikely to arise, even when they do we are unlikely to have much confidence about the relevant information, history has tended to show that there is a sort of ‘slippery slope’ both for legislators and practitioners to allowing exceptions to rules about torture, and, as I have suggested, opposition to torture is a significant part of the society-wide solidary relationships we currently enjoy. This is not to say, however, that torture is always wrong, even in a society that absolutely prohibits it.

Morality may not be wholly legalistic, but social moral rules by their nature are so, and they serve a valuable role as such, so we should endeavor to make our social moral rules the best they can be, not only as means of coordination, but also as constitutive parts of solidary and respectful relationships.

Mid-level moral values

How are we to go about specifying an ideal code of social moral rules if we are to avoid absolutism, on the one hand, and unfeasible and perhaps unspecifiable ‘rules’ on the other? Rule-utilitarians have an answer – we construct the ideal code by searching for the one that, if it were generally accepted and followed, would maximize overall utility. The resulting set of rules would likely include exceptions of a normal sort, its rules would not be too complicated because if they were then they would lose their effectiveness, and all of these decisions are made within the same utilitarian moral framework that requires more calculation than moral wisdom. The deepest problem with utilitarian theories of all sorts, however, is not the particular motives, actions, or rules they purport to justify – the math may well come out in their favor as far as these are concerned – but rather the underlying adherence to aggregate wellbeing as the sole moral value in terms of which everything else is justified. We have deeply held, moral theoretical, intuitions about what basic values stand behind our lower-level moral judgments and convictions, and these intuitions conflict sharply with the utilitarian claim that all of morality is basically a matter of maximizing wellbeing, so we should examine these higher-level intuitions to see what values best explain our lower-level judgments evaluating particular motives, actions or rules.

If, however, we were to replace wellbeing with a plurality of commonly-held moral values of this sort in a similarly structured moral perspective to justify the common core of our actual and ideal moral code along with the periphery of an ideal one, what would those values be? Here's a partial list: freedom, equality, autonomy, self-respect, self-perfection, integrity, solidarity, knowledge, happiness, life, personal security, pleasure and the absence of pain, respect, beneficence, reciprocity and fairness.

Included here are values that are widely affirmed, at least abstractly, though there is room for disagreement about how to interpret them more specifically. Some of the values are more commonly discussed than others, but all are ones that would be widely endorsed on reflection. A significant part of the problem with beginning with a set of values of this sort is getting more specific content out of them that can capture what it is we value when we value, for example, freedom or respect. Earlier chapters on solidarity and respect tried to fill in some of the details about the nature of those values, and a similar treatment will be needed for the others as well in order to use them to specify a standard for improving our code of social moral rules.

An outline of a framework for evaluating social moral rules

In this section I begin to construct a framework for interpreting the mid-level moral values and applying them to the task of specifying a standard of improvement for our code of social moral rules.

A conception of the person

There are various ways we might proceed in trying to understand and interpret these values and apply them to questions about how to evaluate social moral rules. For example, we might consult our intuitions about a host of real and imaginary cases, trying

to generalize our findings into a deeper understanding of the values and how they might be applied to questions about what social moral rules we should establish in our society. One of Rawls' great insights, however, was to note the overwhelming complexity and indeterminacy of interpreting values of this sort in any direct way that could be applicable to our world, particularly because going case by case may lead us to miss crucial systematic features of justice and, by extension, codes of social moral rules. We can follow Rawls and instead try to interpret and apply these values in stages, beginning with a set of moral ideas that help to organize and structure them and then using the values to specify a more precise set of questions to be addressed in light of them. According to this constructivist line of thinking, we draw from mid-level moral values and commonsense moral ideas about what it is to be a moral person, about the nature of an informal society of such persons (what makes one different from a mere collection of people or one with only a functioning legal system), and what role social moral rules should play in a society of persons of this sort. We then model these conceptions in a procedure of construction that consist of a point of view, with certain constraints on information and motivation, for answering specific questions about how our code of social moral rules should be improved in light of the valuable role they can play in our society. The basic idea, then, is that we can gain a fuller understanding of the values of freedom, equality and respect, for example, if we consider what it is to be a person who has the potential to be free, equal and respected and should be so.

We have a moral notion of what it is to be a person, an idea that is not drawn from science or empirical research but comes from careful reflection about how we see ourselves. When we ask what aspects of ourselves qualify us as persons, we find that it is

not our gender, race or genetic make-up. But to determine what it is to be a person, we may appeal to an idea, which has deep roots in the ancients, that we better understand who we are as persons by thinking about what we aspire to be.¹³⁷ Circumstance, genetic endowment and other factors beyond our control are most of what make us excellent athletes, good-looking, and famous, so on reflection while we may prize lives of that sort, they are not necessary parts of our idea of the best that each of us can be. What comes closer to capturing this ideal, I think, is the idea of a person who is *fully governed by reason*. This idea, or, better, ideal, is one possible source for our idea of the person. If we explore our commonsense idea of what a fully reason-governed person is, then, we find that it is not just about someone thinking consistently and taking the necessary means to her ends. But when we praise someone for being reasonable, we often mean to show approval for her moral character as well her commitments to certain ideals, projects, relationships, etc. An ideally rational, reasonable person is one who is strongly disposed to act only in ways that are justifiable to others, to show herself proper respect, and otherwise abide by the requirements of morality; and is predisposed to judge her conduct according to those standards. She also has the capacity and disposition to understand moral requirements, to judge when they apply, and to act accordingly even when her narrow desires pull her to do otherwise. An ideally reason governed person does more than just take the necessary means to her ends and efficiently schedule them. She also has the capacity and disposition to weigh her options, decide for herself on plans, projects, commitments, values, ideals, standards, loyalties and relationships that

¹³⁷ This is apparently close to the view of the British Idealists, including F.H. Bradley (1962), *Ethical Studies* (2nd edn.; Oxford: Oxford University Press).

are not fully determined by her animal inclinations or mandated by morality, and pursue them effectively. When it comes to her thinking, not only is she consistent and coherent, but she also has the capacity and disposition to seek more and better knowledge, think for herself free from external authority and prejudice, be open-minded, and exercise the other intellectual virtues. More than this, a fully reason-governed person is by nature social – she not only wants to live with others on mutually agreeable terms but she actively seeks to engage and relate with other rational people by uniting with them, forming relationships and bonds, pursuing cooperative activities, establishing social unions and associations, and communicating with others. Oddly enough, then, reciprocity is in part a self-regarding concern of an ideally reason-governed person – she wants for herself to be in certain kinds of valuable relationships with others that are possible only if the terms are justifiable to others. Ideally rational persons are also pictured as finite and embodied *human beings* with our particular cognitive and physical structure, living in the natural order. When they are fully governed by reason, and so free of prejudice, bias and other distorting influences, they will have natural dispositions to protect their own lives, seek pleasure, avoid pain, and pursue happiness. Although there will be variations about, for example, the content of their desires and what makes them happy, these dispositions are general ones that all ideally reasonable people would have in virtue of their nature as such. Most of us are not fully reasonable in this way, but when this ideal is brought to our attention, we see in our capacities to approach the ideal and our aspiration to do so.

My suggestion, which can be found in commonsense and has roots in the Ancients and Kant, is that we are full persons in virtue of being finite and embodied human beings, with our particular cognitive and physical structure, living in the natural

order, and having to a requisite minimum degree basic rational capacities of thought, prudence and morality along with predispositions to exercise these various abilities. Our moral capacities include the ability to engage in moral deliberation, exercise our conscience, form moral judgments, and act accordingly. Prudential abilities include forming and pursuing personal values, which we do when we commit ourselves, in ways that do not depend on our concern for morality, to plans, projects, goals, ideals, standards, loyalties, relationships, and other such ends along with the ability to deliberate about our personal ends in light of our circumstances, talents and inclinations, and organize them rationally. Our theoretical capacities include the ability to think for oneself, learn about the world, express ourselves, be open-minded, and see the world for what it is. Also part of our commonsense idea of the person is that persons have a special in virtue of possessing to the requisite minimum degree basic rational capacities and dispositions of thought, prudence and morality.

In light of this conception of the person, I make a few suggestions about how we might understand some of the mid-level values, while others I leave vague for now. I emphasize, however, that these are not the only possible ways of filling out the values, but here they are as I understand them:

Freedom – Two important senses of ‘freedom’, though not the only ones, are: (1) the liberty to act without being constrained by the choices of another under rules or laws that apply to everyone; (2) being such that our claims on each other can be *prima facie*

valid in themselves, without needing to be backed up by God, slave-masters or anything else.¹³⁸

Autonomy – Having autonomy in one sense, a sense that is different from but related to Kant’s main idea of autonomy, is basically having the ability (along with actually deploying it) to think for oneself, form and pursue one’s own values, plans, ideals, standards, relationships, etc., and engage in moral deliberation and reflection. These capacities can be affected by distorting influences such as unjustified threats, psychological oppression, manipulation, coercion, bribery, the use of drugs or alcohol, psychological vulnerabilities, along with unquestioned assumptions, ideology, prejudice, illusions, unquestioned tradition, superstition, psychological compulsion, prejudice, bias, weakness of will, intellectual weakness, immediate impulse and excessive emotion. We are most fully autonomous in this sense when our moral and non-moral values, ends, commitments, projects and the like, along with our theoretical beliefs, are not the result of these things but instead are based on choices we make for ourselves.

Equality – One important senses of equality is that people have a equal moral status in virtue of having equal basic rational capacities of thought, prudence and morality rather than needing to belong to some caste or race.

Respect – properly honoring others as persons, which involves seeing them as persons, not degrading, debasing or humiliating them, and allowing them to exercise their prerogative to respect themselves.

¹³⁸ This account draws from the conception of freedom Rawls develops for his theory of justice. See *Political Liberalism*, 30-34.

Self-respect – seeing oneself as a moral person and honoring (and not dishonoring) oneself as such.

Self-perfection – perfecting and improving our various capacities of reason, developing strength of will to do what she has most reason to do, improving her mind and body and not only just as means for the use of her rational capacities, and making herself a useful, thriving members of a community of other rational people.

Integrity – this is basically a matter of developing, exercising, and integrating in to a single, unified agent the ‘higher parts’ of her rational nature, including her capacities and dispositions of theoretical, moral, and prudential reason along with the strength of will to do and think in ways that she judges to be most appropriate.

Solidarity – One sort of solidarity, which I call cooperative solidarity, is a matter of cooperating with others in support of shared ends and valuing for its own sake the relationships that form on that basis. More generally, solidarity is being united or at one with a group of people with regard to something, such as a worthy struggle, a decent past, shared engagement in activities directed to common values, etc.

Happiness – success in one’s non-moral commitments, plans, projects and other personal values.

Beneficence – a firm commitment to help others in pursuing their happiness.

Reciprocity and fairness – a willingness to treat others only in ways that are acceptable to them, to listen to others, consider their ideas and proposals, and explain

ourselves to them (at least on basic moral matters) on terms that they can reasonably accept.¹³⁹

A conception of society

When we reflect on what a *society* is and what makes one different from a mere collection of people, we find that a society is not just a group of self-interested people who have managed to coordinate their behavior in mutually advantageous ways. We can borrow a suggestion from Rawls, who thinks that a society exists when a group of people, who are citizens and see each other as such, are engaged together in cooperative activities over long periods of time on the basis of fair and publicly shared rules.¹⁴⁰ The citizens of a society cooperate in ways that further their own plans of life, so circumstances must be such that cooperation among them is possible and necessary¹⁴¹, but they do so within the constraints of fair rules that they generally accept and comply with as long as others do so as well.¹⁴² This means that societies cannot just be governed by complicated, abstract principles or propositions that no one knows, accepts, or affirms; instead, when societies exist, they are institutional structures governed by *rules* that are generally known, shared, complied with and so on. We can further add that, for purposes of this framework, a society has a more or less functioning legal system; it is a democracy; and it exists in reasonably favorable conditions.

¹³⁹ This list of values and my understanding of them draws from Hill, Thomas E. (2003), 'Treating Criminals as Ends in Themselves', *Annual Review of Law and Ethics*, 11, 17-36.

¹⁴⁰ Rawls, John (2001), *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, Mass.: Harvard University Press), 4

¹⁴¹ Rawls, *A Theory of Justice*, 109

¹⁴² Rawls, *Restatement*, 20-1

A procedure of construction

The main social contract theorists were concerned with issues of justice and the structure of political institutions, but there is a leftover, unfinished, project of developing a contractualist account of social moral rules. This is not as simple as applying one or other of the social contract theories directly to ethics. For one thing, those views are structured around resolving certain problems of justice, which, perhaps unlike interpersonal morality, may be about impartially adjudicating conflicting claims that people press against each other or the state. Our fundamental interests in this domain may therefore be more limited than when taking up certain moral matters, and the standpoint from which we assess these issues may be different as well. Still, there is the potential to build a theory that takes up some of the general insights from this tradition but applies them in different ways to a separate set of questions.

What would a defensible moral contractualism need? At the very least, it would need more specific accounts of the problems that it aims to address, the standpoint that the parties are assumed to take up when assessing various proposals regarding those problems (a description of the 'state of nature'), and what is supposed to motivate them in accepting or rejecting those proposals.

The most important component for the success of any contractualist theory is arguably an account of what is to motivate the parties who take up the relevant point of view since this is crucial for generating enough outcomes that are sufficiently determinate. When we look back at how the main contractualist theories have approached this problem, the general tendency over time has been to make our fundamental interests more and more robust and morally loaded. Hobbes is near one

extreme - he thought that our fundamental interests are in maximizing the satisfaction of our desires, which are predominantly for our own self-preservation and wellbeing. Locke argues that because people are created by God and depend on him for our continued existence, we are all bound by natural law to obey him and preserve ourselves as the sort of thing that he created. God endowed all of us with reason, he also made us free in our liberty to act and to acquire property within the bounds of natural law and equal in the jurisdiction we have over ourselves under these same laws. We each therefore have strong *moral* reasons within the bounds of natural law to protect and preserve the fundamental interests we have in protecting our lives, liberties and properties. Rousseau argues for a very robust and moralized set of fundamental interests. On Rousseau's view, each of us has fundamental interests in protecting, developing and exercising our basic human capacities, which include faculties of free will, self-improvement, rational thought, sympathy, and the moral emotions. He also thinks we have fundamental interests in preserving and sustaining our life, protecting our property, having the freedom to decide on and pursue our own good, not being dependent on the arbitrary will of another, and maybe also securing equal standing in society. According to Kant, when it comes to the proper functioning of a state, our fundamental interests are in freedom, which is the liberty not to be bound by laws other than those that one gives consent, equality, in having an equal moral ability to bind others and to be bound by them, and independence, in having the requisite capacities to be a fully participating member of society.¹⁴³ For Rawls, our fundamental interests are in developing and exercising in a full

¹⁴³ MM 6:314

and informed way our two moral powers, the capacity to honor principles of justice and a willingness to reciprocate with others who affirm them, and the capacity to form, revise and pursue a conception of the good. The primary goods of rights, liberties, opportunities, income, wealth and the social bases of self-respect are meant as all purpose means for securing these fundamental interests.

The main contemporary attempts at a moral contractualism have seen a similar progression. David Gauthier assumes that our fundamental interests are for maximizing the satisfaction of our coherent and considered preferences that do not range over the preferences of others. He attempts to purify the motivations of the contractors of anything moral because his aim is to derive all moral requirements from ones of prudential rationality. An advantage of his view, however, is that it allows for the use of rational decision theory to make the bargaining simpler and the outcome more determinate, but at the expense of implausible accounts of our fundamental interests, as being egoistic, and of justifiability, as just a matter of what would further these selfish aims. For T. M. Scanlon, our fundamental interests are given by generic personal reasons, which are roughly *any* moral reasons that have to do with our own claims and status in our general situation, and include reasons to preserve our lives, avoid pain, and be treated fairly. Scanlon makes moral considerations essential to what moves us to choose (interpersonal) moral principles because he thinks that people have moral self-regarding reasons of this sort and that these are relevant to what they could *reasonably* reject, which, unlike on Gauthier's view, is an idea that depends on the willingness to find principles that others similarly motivated could not reasonably reject. The problem, however, is that the theory leaves largely unspecified just what these reasons are that

motivate the parties in reasonably rejecting principles and how the reasons are to be weighed against each other.

This general trend has perhaps come out of a recognition that part of what makes the idea of reciprocity so appealing is that it depends on basic self-regarding concerns for things other than our wellbeing. At least intuitively, a proposed principle of justice that would make me somewhat happy at the expense of severely constraining my freedom would probably not be justifiable to me from an appropriately impartial perspective, and this seems to be a plausible explanation for why such a principle would probably be illegitimate.

What is still needed, however, is a more precise and compelling account of what should move us if we were deliberating with others in a certain standpoint about standards of right and wrong.

We may again appeal to the ideal of the person that we used to specify the nature of personhood for purposes of specifying a theory of social moral rules. Fully reason-governed people are our better selves, they are what we aspire to be, so one suggestion is that the social moral rules we should strive to bring about are the ones that would be chosen in an appropriate fashion by our better-selves. Combining this with the basic contractualist theme, the idea is that for purposes of settling on mutually agreeable rules of social morality, parties who take up the moral point of view are assumed to be fully-governed by reason but also mostly self-regarding, setting aside for these limited purposes whatever concern they have for others beyond their willingness to reciprocate with others. When choosing principles of interpersonal morality, the parties would be imagined as ideally reason-governed people who are reciprocating but otherwise

motivated to find social moral rules for a society like ours that allow them to live as fully-reasonable people. Such a person, then, would insist on her freedom to act, basic respect and beneficence from others, the opportunity to continue to respect herself, along with seeking to develop, protect, exercise, and perfect these various capacities and dispositions that are part of her nature as a reason-governed person. A moral contract theory of this sort tries to capture the idea that (other-regarding) morality is essentially about providing the conditions in which we can live as fully reason governed people living alongside others under terms in which others can do the same.

Although we are imperfectly rational, we share the same *rational* capacities and dispositions as people who are fully governed by reason – we are disposed to think for ourselves, follow requirements of morality, pursue our ends efficiently and so on. A fully rational person is one who is living up to the requirements of reason because her rational capacities and dispositions are playing their proper roles, whereas we sometimes fail to live up to those dictates due to non-rational desires, inclinations, prejudices, bodily weaknesses, vulnerabilities, oppression from others, and the like. If ideally rational people are moved, in virtue of their rational nature, to develop, exercise, protect and perfect their rational capacities and dispositions then that gives imperfectly rational people strong reason to do the same – we are unreasonable if we do not protect these fundamental interests in ourselves.

There is a sort of tradeoff that contractualist theories face between how substantive the motivating values are and how strict the constraints on the parties need to be in order to achieve outcomes that are sufficiently impartial and determinate. Rawls favored the relatively thin primary goods, so he thought he needed to impose the veil of

ignorance on the parties in the original position to ensure that they would reach a worthwhile agreement. A set of thick values of the sort I have described, however, may allow for a different way of achieving impartiality in the legislative point of view, one that does not place such strict limitations on what information is available to the parties. The idea is that a proper specification of these substantive values may include criteria for the sorts of information that are relevant when applying them, allowing the parties to have access to any and all information as long as their deliberations respected these constraints that are inherent in the values themselves. The success of this approach to what information is available to the parties ultimately depends on the strength of the arguments from the mid-level values to particular moral conclusions, and in particular whether these arguments allow in only what on reflection strikes us as morally relevant information.

In any case, so much for my rough and partial characterization of a moral framework for assessing social moral rules.

Exceptions

Whether or not this is the correct framework for assessing social moral rules, we can make some progress on connecting the mid-level values with standards for evaluating such rules by compiling a catalogue of devices that can be incorporated into them as we work piece by piece to construct a coherent and integrated code. Except in rare cases, we must avoid absolutism in the rules we think should be adopted, and some may think that our only other option to deal with putative conflicts among rules, interpreting the values through rules, etc. is to use exceptions that explicitly specify conditions in which an otherwise forbidden act is permitted. As we have said, however, building explicit

exceptions into a rule can have a cost in how well the rule can serve its public role, so if this were all we had to work with, our task might be doomed from the start. However, exceptions are but one device available to us for building an ideal code of rules. My aim in this section is to describe some of the other techniques we can use to take the raw material of the mid-level values and build it into an ideal code of social moral rules.

In explaining these devices, along with some of the reasons we might have on certain occasions to use some over others, I will also try to illustrate how we might go about constructing an ideal code by focusing on how just two values, cooperative solidarity and basic respect for persons as persons, might be used to specify improvements to a very small part of our moral code, which has to do with the social moral rules that should govern sports teams and their fans. I chose this example in part because it shows how cooperative solidarity and basic respect for persons as persons, or as I will mostly say, solidarity and respect, are two values that have a tendency to pull against each other when it comes to laying down social moral rules. Solidarity tends to favor group cohesion and sacrifice whereas respect tends to favor allowing one another a prerogative to respect ourselves properly and generally protects us from being ridiculed and humiliated; but these values can also come together because, for example, standing in solidarity with others often requires that we see them as *persons* who are members of our group and honor them as such. Sports teams, along with their coaches and fans, can exemplify a sort of cooperative solidarity, in which all may have shared ends of triumph, tradition, connection to a location, style of play, sportsmanship, etc. that they are supporting through cooperative endeavors in which players train and play the game, coaches prepare them to play, advise and strategize during the game and fans provide

money, emotional backing, advice, motivation, and expressions of support. Everyone involved also values for its own sake the relationships that form on the basis of pursuing together these endeavors in support of shared ends. Sports teams can also exhibit disrespect, when coaches, players and fans require and expect extraordinary sacrifice to the team, when players are seen more as pawns than as people, when they are ridiculed and humiliated when they make a mistake in practice or in a game, and so on. Matters can be worse when it comes to attitudes towards players, coaches and fans from other teams – they can also be the focus of ridicule, humiliation and violence.

Levels - Sports teams vary in all sorts of ways – there are professional, amateur and intramural levels, youth teams and adult teams, teams in basketball, football and baseball, teams for men, women and both, and so on – and there are other kinds of associations other than sports teams, such as charity organizations, book clubs, academic departments, with their own more particular types that fall within each of them. This suggests the first device for constructing an ideal code of social moral rules, which is to make use of *levels* of rules. We need not begin with a specific sports team, think about what rules it should establish, and then move on to the next team – that would be extremely complicated because the rules we make for one will influence which we should make for the other. What we can do instead is ask what rules should govern all sports teams, recognizing that some of them will be vague and subject to further interpretation, and then regard these rules as placing constraints on the more particular rules for baseball teams, which in turn place constraints on the more particular ones for professional baseball teams, and so on. As we work to construct this hierarchical structure, however, we may need to make changes at higher levels in light of circumstances at the lower ones,

so all of the levels of rules must fit together in reflective equilibrium. For example, at the level of specifying rules for sports teams, perhaps one says that players must not engage in unsportsmanlike conduct, while a more specific rule falling under this one for football might say ‘no excessive dancing in the end-zone’. There are higher levels of rules as well – one may say something like ‘do not intentionally kill an innocent person’, and this rule certainly should limit the more specific rules about how fans should behave in the stands – this and other basic rules are taken as (often implicit) constraints on rules at lower levels. Levels of rules, then, are defined by the groups of people they apply to, the areas of life they cover, and the way they constrain lower-level rules.

Presumptions – When sports teams write down their codes of social moral rules, they sometimes include a preamble that lays out certain core values such as trustworthiness, respect, fairness and responsibility. One way of interpreting this is that they are laying out certain *presumptions*, such as be trustworthy, be respectful, be fair, that need to be combined and interpreted in various ways before they can make be full-blown rules in the code. Presumptions are like *prima facie* duties in that if there are no competing presumptions that defeat it, then the presumption can be included in the code as a rule. They do not have a weight, however, in the sense that consequentialists and reason-theorists sometimes say that reasons and *prima facie* duties have a weight, like vectors in physics, where combining presumptions is a matter of weighing and balancing the various ones at stake. Instead, presumptions as I am thinking of them are want-to-be rules that do not retain their ‘weight’ or ‘force’ in the circumstances in which they are not appropriate or are defeated. Presumptions are combined, then, not by summation but by judgment about what the values that justify them imply about the rules.

Limitations – the rules may be limited, as we have seen, to specific groups and particular areas of life and so may not apply, or may not apply in the same way, to other groups or circumstances. For example, fans must not go onto the field of play during a game, but players are certainly allowed to do so, and fans may be as well at other times.

Normal exceptions – These are exceptions of a clear sort in which, for example, we say that players must not engage in physical violence that is not part of the game except in cases of self-defense.

Thick evaluative concepts – We might employ *thick evaluative concepts*, which are ones with some descriptive content and some evaluative content as well, which makes it impossible for us to tell just by the facts whether a rule that includes them is satisfied or not. While we can leave the rules at that and rely on moral judgment to apply them, lower level rules may also be able to give more content to these concepts and allow them to be expressed to a significant extent by rules that only include descriptive concepts. So, for example, at one level we may have a rule that says something like players, coaches and fans should not be obscene, and have a lower-level rule that lists out what, for purposes of that sport, count as obscene. Another possibility is that the lower-level rules will be open-ended, already banning other, yet to be envisioned, obscenities. Other possible rules include ones about being ‘modest’ in success and ‘gracious’ in defeat, not ‘hogging the ball’, and ‘sportsmanship’.

Reasonable – A related idea is that the rules could allow clauses about what is ‘reasonable’, ‘too costly’, ‘too soon’, etc. Fans, for example, should not consume ‘too much’ alcohol, players should have a ‘reasonable’ amount of personal time, the sacrifices they are required to make should not be ‘too costly’ to them. As before, we may just rely

on moral judgment to determine when these conditions are satisfied or we may institute lower-level rules about what counts as an ‘unreasonable’ time commitment in one sport or another.¹⁴⁴

Group decision-making – the rules may also allow include mechanisms allowing the group on particular occasions to decide for itself what it will do or what it will require of its members. Players may be allowed to take a vote on what sanctions should befall someone who ‘takes a dive’ or makes an ‘honest mistake’ in the course of a game.

Individual decision-making – the rules may also allow individuals to decide how to act so long as they do so within certain specified constraints. For example, the rules may allow coaches discretion about strategic matters in the game as long as they are ready to explain their decisions to the near satisfaction of the players and fans after the game. Coaches, then, cannot do whatever they like when it comes to strategy, but the rules may not dictate specific decisions, just that coaches have certain aims, that they conscientiously work towards them, and that they can justify their choices afterwards.

Supreme emergencies – we may build in exception clauses for *supreme emergencies* in which, for example, we are required to follow the rules of the game unless doing so risks severe harm to other players, coaches and fans. Cases in which an exception of this sort might apply are mostly science fiction, but there is another way in which we can make allowances for supreme emergencies.

Never in the real world – The code may include a rider or appendix that says that it is suited to reasonably favorable conditions that are likely to arise in our world but it

¹⁴⁴ Hart, H. L. A. (1994), *The Concept of Law* (2nd edn.; Oxford: Oxford University Press), 132.

allows for the possibility of cases that may nonetheless justify breaking the code. It may be that a player is allowed to ridicule a teammate if this is needed, for example, to keep the person from going to a stadium that is rigged with a bomb.

Unthinkable – The code may also regard some cases as unthinkable and so explicitly allow gaps in which the code does not come down one way or the other, which is not to say that we are morally permitted to do whatever we like in such cases.

Presumptive rules – Earlier we said that part of the task of constructing an ideal moral code is to combine various presumptions, which issue from the values we are attempting to institute, into rules, but in doing so we may just decide to include presumptions *as rules* in the code. These will be more difficult to enforce, but we might say that player wellbeing or team spirit are important, though not overriding, consideration that players, coaches and fans must take into account when deciding what to do. In other words, the rules may provide me with reasons that should factor into my decision-making but do not dictate what I should do.¹⁴⁵

Defeasibility clauses – we may also include rules that are defeasible in the sense that they apply except other things equal, except when they are defeated by other rules or considerations, but perhaps without specifying what those rules or considerations are, or only listing a few of them. Coaches should be concerned with winning, but defeasibly so

¹⁴⁵ Dworkin, R. M. (1977), 'The Model of Rules I', in R. M. Dworkin (ed.), *Taking Rights Seriously* (London: Duckworth), 14-45 and 'The Model of Rules II', in R. M. Dworkin (ed.), *Taking Rights Seriously* (London: Duckworth), 46-80.

when, for example, satisfying that requires disrespecting others, cheating, etc. Judgment or lower-level rules will then be required to determine when this rule is followed.¹⁴⁶

End-based rules – these rules require a firm commitment to some goal, value or end, but leave extensive latitude for how, when and to what extent that commitment is expressed in action. Players may be required by the rules to have deep loyalty to the team, but this may come out in various ways such as coming to practice on-time, sacrificing personal projects and relationships when they interfere with the team, and perhaps even reporting various abuses to higher authorities.

Priority rules – we can make rules at the same level lexically prior to others using second-order priority rules. We may have, for example, a rule that says avoid supreme emergencies, and this rule is of a sort that it must be satisfied before other rules, such as ones about following the rules of the game, are consulted. This way it is an often implicit background rule that, of course, players should avoid death and destruction and they should do this before even considering whether doing so will break the rules of the sport they happen to be playing at the time. There can be priorities of other kinds, perhaps instituted as second-order rules about which of some first-order rules are to take precedence in cases of conflict. Perhaps we have rules that forbid lying among teammates and others that forbid harming each other, so we may institute a third that says ‘when these rules conflict, the one about lying takes precedence except when the potential harm is great’.

¹⁴⁶ See Lance, Mark (2006), 'Defending Moral Particularism', in James Lawrence Dreier (ed.), (Malden, MA: Blackwell Pub.), 304-321 and Lange, Marc (2000), *Natural Laws in Scientific Practice* (Oxford: Oxford University Press).

Rules of punishment – there are other second-order rules we might institute having to do with what social sanctions or non-legal punishments people should receive for breaking the rules. We may have a first-order rule about giving it one's all on the field and a second-order one that says what penalties those who are caught violating that rule should receive. These rules can be specific in various ways – they may say that a player who is caught helping the other team for personal gain should be ostracized while one who is somewhat lazy during a game should be teased and made to run laps the following day.

Mitigating circumstances – rules of punishment may also make allowances for circumstances in which a rule strictly applies but someone who nonetheless violated it then should receive less or no reprisal as a result. For example, perhaps a player is disrespectful to a fan, but mainly because the person used racial epithets in the first place.

Some of these devices are reducible to others with regard to what they require us to do, but there are interesting differences among all of them that will figure in to our decisions about which ones to use for particular issues. Some devices require us to learn and remember more about the rules themselves, such as building in many normal exceptions, then others, such as using phrases such as 'reasonable'. Some require more cognition and moral reflection when deciding on particular occasions what the rule requires, such as using defeasibility conditions and thick ethical concepts, while others are closer to algorithms, such as priority rules. Some are more difficult to enforce, such as those requiring commitments to various ends, while others are easier to enforce.

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