THE PRINCIPLES OF MORAL JUDGEMENT

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BY

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PREFACE

THE central aim of this book is to examine the common moral consciousness with a view to discovering the principles or standards in accordance with which moral judgements are made.

The fruitfulness of any such inquiry must depend upon the method of investigation followed, and upon a very clear grasp of the main question at issue. As to this main question: it is to be noted that I am inquiring not about standards which 'ought' to be used in our judgements of right and wrong but about those standards which 'are in fact' used by us in our moral judgements. That the former question is unanswerable because irrational, and that the latter represents the proper approach in ethical inquiry, I try to show in my first chapter. It would be out of place to discuss the point here; but I emphasize the distinction between the two questions because the method of inquiry which I regard as appropriate to ethics depends upon what I take to be the nature of the problem which moralists can reasonably put to themselves. When we are concerned to discover principles which do in fact operate in a given realm of experience, our procedure must be scientific; and since the central problem of ethics is to discover the principles which actually operate in moral judgement, ethics must be pursued as a scientific study.

The idea of a science of ethics will, no doubt, be dismissed as chimerical by many who are familiar with the history of ethics and aware of past efforts to construct 'scientific systems'. But the indifferent success of earlier attempts does not invalidate the general idea which inspired them; for it is surely the case that, if we are to understand the nature of our operative moral standards, we must begin with the empirical investigation of actual moral judgements and proceed to inquire what they imply in the way of standards and principles. That is to say, we must start with these judgements as the facts or data to be explained; and the only procedure for correlating facts through the discovery of explanatory principles is scientific procedure.

It may be asked whether there is any reason to suppose that a new attempt at scientific ethics is likely to succeed when others have failed. The short answer is that, during the past half-century or so, scientific method has itself been investigated with some care; and its fundamental character has been disentangled from the special conceptions with which it was so closely associated in the mathematical and physical sciences. It is now accepted that there are genuine biological and social, as well as mathematical and physical, 'sciences'; and what I am claiming for ethics is a place amongst the social sciences. The prejudice in Britain against the notion of a science of ethics is largely due to the wide acceptance—by champions as well as by opponents of this notion—of one or both of two erroneous assumptions: that a science of ethics must be dominated by mathematical, physical, chemical, or biological conceptions; and that the function of ethics is to 'vindicate' some standard as one which ought to be used, rather than to 'exhibit' the standard or standards actually used in moral judgement.

While the present volume attempts to explain the general method appropriate to ethical inquiry and to deal with the central problem of ethics in accordance with this method, it does not pretend to offer a complete system of ethics. The construction of a rounded system is a matter of minor importance to anyone who thinks, as I do, that ethics offers a vast field for collaborative study. I shall be happy if the limited results here offered prove useful to other moralists, as I myself have profited from the studies of those whose approach has been similar to my own.

The scope of the work may best be indicated by explaining that I attach most importance to Chapters III, IV, and V, on The Morality of Social Justice, where I attempt to exhibit the principles which I believe to be fundamental in the idea of moral obligation. Chapter II, on Customary Morality, gives a brief account of the unreflective moral consciousness which lies below the morality of justice; while Chapter VI, on Ideal Morality, sketches briefly a moral attitude which transcends that of justice. It seemed important that I should deal, however slightly, with the subject-matter of these two chapters, in order to place my main subject in

proper perspective and to avoid any suggestion that I regard justice as the whole of morality. What I do hold is that the principles brought to light in the conception of justice are central for the moral consciousness as a whole, being implicit at the lower level of unreflective morality and not superseded at the higher level of ideal morality.

With respect to the rest of the book, Chapter I explains my view of the nature of ethics; and Chapters VII and VIII may best be regarded as essays in the metaphysics of morals, dealing briefly with broad philosophical questions which any theory of moral standards is liable to provoke.

It will be obvious that I am indebted to many writers both for the material and also for many of the ideas here incorporated; but special acknowledgements are due to the works of Piaget, Salmond, and Gloag and Henderson, and one of the volumes of the *All England Law Reports* which proved to be a valuable aid in circumstances when other material of the kind was not available.

While most of the book is now published for the first time, I have included (Chapter I, paragraphs 15–25 and Chapter II), with minor alterations, two articles on 'Duty and Interest' originally published in *Philosophy* (October 1941 and January 1942); and I have to thank the Editor of that journal for permission to make use of them here. I also welcome this opportunity of acknowledging the assistance received, during the preparation of the original articles, from Mr. Harold M'Intosh, Lecturer in Jurisprudence, and Mr. John Boyd, Professor of Mercantile Law, both of the University of Glasgow.

To Lord Lindsay of Birker, Master of Balliol, and Sir David Ross, Provost of Oriel, I am not only indebted for the stimulus which their teaching and writings have given to the development of my own opinions, but am also particularly grateful for their good offices in securing the publication of a book which they cannot but regard as, in many respects, very wrong-headed.

When writing the final chapter during my last year in Egypt—of whose hospitable people I cherish many happy memories—I could not anticipate that, before its publication, I should be established at the other end of the Nile;

and I am deeply grateful to Mr. C. A. Campbell, Professor of Logic and Rhetoric in the University of Glasgow, who has undertaken the task of proof correction and other responsibilities incidental to the work of publication. This is but typical of many kindnesses received from one of the best of good colleagues. With him I cannot but associate members of the staff of the Clarendon Press. Those who have come under their friendly and efficient guidance will appreciate something (though not, I trust, all) of what I owe to them in piloting my work through the various stages of production.

W. D. L.

March 1946.

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160. Thirdly, these two postulates imply that of 'Reciprocity'—the interaction of substances in a 'closed system' 198

161. Thus 'intelligibility' implies a world or system of members responding to each other, each in accordance with its own nature; and 'explanation' is the correlation of an occurrence in one member with an occurrence in another 198

162. This does not involve the conception of determination by 'necessary laws' external to things themselves; for laws of nature are but formulas expressing regularities of behaviour manifesting the inherent natures of things 199

163. Nor does intelligibility imply that all causal connexion is mechanical. It may be teleological. Mechanical causation concerns the response of a mass to a mere event in something else; while teleological causation concerns an integrated system responding to another system; and this latter implies some degree of consciousness, since anticipation of future events is involved 199

164. Summary of the doctrine of intelligibility 201

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165. Whether this doctrine is compatible with responsibility may be seen by examining the assumptions of penal liability. Punishment is a form of corrective justice, and is best studied as systematically applied in criminal procedure 202

166. Corrective justice—designed to protect an existing order of distributive justice against attack—takes three main forms: Reparation, repairing breaches actually made; Punishment and Reformation, designed to deter from such breaches 203

167. All three forms assume: firstly, the physical responsibility of the agent; and, secondly, his teleological responsibility in the sense that the wrong must have been the result of his aiming at something (not necessarily the actual effect produced) 204

168. From this point conditions of liability diverge; and an account of the divergence requires a preliminary distinction between: (*a*) Intentional transgression, (*b*) Recklessness or gross negligence, (*c*) Thoughtlessness or simple negligence, and (*d*) Innocent mistake of fact . . . 205

169. Generally speaking, while (*c*) entails liability for reparation, (*a*) or (*b*) is necessary for liability to either punishment or reformation. The dividing line is drawn here because (*a*) and (*b*) show deliberate indifference to public order, while (*c*) and (*d*) do not. Punishment, then, strikes at weakness in the 'order' (rational) motive as distinguished from the 'good' (desiring) motive. 207

170. Liability to punishment assumes the person to be normally capable of determination by both motives, and also normal circumstances in the sense that the law could have been obeyed consistently with satisfaction of fundamental conative tendencies. 208

171. This conception of responsibility is quite compatible with intelligibility and implies no 'indeterminism' 208

172. Consideration of aims and methods of punishment supports this conclusion. The aim is to deter; the method is to induce anticipation of painful consequences, and this assumes the agent's 'responsible' action to be teleologically caused, for it is in the adjustment of conditions that the 'good' motive will operate 209

173. No actual system of punishment corresponds completely to the foregoing description, for incompatible beliefs are embedded in all systems. But certain main tendencies are discernible, and these are the ones here stressed 211

174. Clarification of the aims and methods of punishment brings to light its limited value. Since it strikes at those who are weak in 'order' motives, its application to those who break rules on 'conscientious principles' is of questionable utility 211

175. And, at the other extreme, it is ineffective for persons having abnormally weak 'order' motives or an abnormal system of personal good; the effective deterrent here being reformation. Punishment is chiefly of value for those who are neither great saints nor great sinners . . 212

176. To conclude: It is assumed that human conduct is throughout intelligible and teleologically caused; and that the two main types of motive are the 'order' and the 'good' motive, varying in relative

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strength from person to person. Punishment is specially concerned with influencing men through their 'good' motives. Hence the responsibility implied in punishment is quite compatible with intelligibility . . 214

177. To the suggestion that indeterminism is implied in the assumption that a person can choose to follow either an 'order' motive or a 'good' motive, the answer is that no such assumption is apparent in the conception of responsibility associated with penal liability; but, of course, there may or may not be other grounds—psychological or metaphysical—for maintaining an indeterminist theory 216

APPENDIX

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SHORT TITLES

Piaget = Prof. Jean Piaget, *The Moral Judgement of the Child* (trans. in *International Library of Psychology, Philosophy and Scientific Method*—Kegan Paul).

Salmond = Sir John Salmond, *Jurisprudence*, ed. 8 (Sweet & Maxwell).

Gloag and Henderson = Professors W. M. Gloag and R. C. Henderson, *Introduction to the Law of Scotland*, ed. 1 (W. Green & Son).

Kenny, *Outlines* = Professor C. S. Kenny, *Outlines of Criminal Law*, ed. 14 (Cambridge Univ. Press).

Kenny, *Cases* = Professor C. S. Kenny, *Cases Illustrative of English Criminal Law*, ed. 8 (Cambridge Univ. Press).

All E.L.R. = *All England Law Reports*, 1942, vol. i.

Ross = Sir W. David Ross, *The Right and The Good* (Clarendon Press).

I

ETHICS AS THE SCIENCE OF MORAL IDEAS

The Nature of Ethics

1. The best short description of ethics is to say that it is one of the mental and social sciences, and that its specific field is the study of moral ideas.

No brief description can ever convey an adequate impression of the scope and contents of a particular branch of study, and I shall presently enlarge on the definition which I have just given; but I think that the foregoing account is a reasonably fair, short statement of the subject with which writers on ethics—or moral philosophy as it is often called—have been concerned.

It will be noted that I commend this account of the nature of ethics on the ground that it describes briefly the group of related problems with which the name 'ethics' is traditionally associated. There is, I think, no way in which we can profitably look for a general description of a subject other than the direction indicated by its historical development. We may well feel that many of its problems require restatement, that its history is a record of major failures because it has not succeeded in focusing clearly the questions with which it was concerned, and so on; but any definition which does not try to retain and clarify the main traditional conception of a subject, so far as this is possible consistently with fruitful research, is likely to be arbitrary and to lead in the end to serious confusion of thought.

2. Let us now develop rather more fully the account of the study with which we shall be occupied. Looking to the history of the problems of ethics, we find that they are concerned broadly with human conduct, although this central theme often necessitates the discussion of questions which belong more directly to other fields of inquiry. In Plato's *Republic*, for instance, we touch on the origin and nature of the State, the principles of education, the theory of knowledge, the concept of mathematical science, metaphysics, the

theory of art, and various other topics; but these matters are only dealt with because Plato thinks that they have some close, or more remote but important, relation to the central problem of the book, namely the nature of justice and of the good life for man. They are relevant to the study of the great principles which ought to guide human conduct. It is not necessary to multiply illustrations. Any volume on moral philosophy will show that the questions discussed centre on ideas as to what is really good for man to aim at and what is right and proper for him to do.

It is not, however, sufficient to say that ethics is concerned with human conduct. This only marks out the broad field in which ethics operates; and it is necessary to indicate more precisely the specific interest which this study has in conduct; for there are other studies to which the same general description might apply. Psychology, economics, jurisprudence, political theory, and one might even add physiology, are all concerned in some sense with human conduct or behaviour. We may, therefore, give greater definiteness to the conception of ethics by saying that its principal concern is with human conduct in respect of its relation to the conceptions of what is good and what is right.

3. But even this is not quite satisfactory as a description because, while it may perhaps distinguish ethics from psychology and physiology, it does not mark the subject off from economics, jurisprudence, and political theory. Economics certainly is concerned with the theory of value or 'goodness'; and all three are concerned in some sense with the rightness and wrongness of human action. I think that we are keeping faithfully to the historical conception of ethics if we say that it is distinguished from other inquiries in that it is primarily the study of the supreme, or ultimate principles of right and wrong in human conduct. This conception of ultimate right and wrong requires some elaboration.

Rightness and wrongness may be assessed in different ways. An action may be said to be right or wrong with respect to some 'aim' which the agent was trying to achieve. Wishing to call A on the telephone, he may have dialled a 6 instead of a 7, and so called B. He made a mistake and 'did

the wrong thing': but, as a general rule, no one would attribute any moral significance to this 'wrong action' (unless perhaps a thoroughgoing Freudian might plausibly trace some resemblance between 6 and the agent's plump maternal parent, and 7 and his hook-nosed father); for, in so far as it was a genuine mistake about the appropriate means to a given end, it has no necessary moral implications; and there are, indeed, those who assert that morality has no reference whatsoever to the 'ends' which persons seek.

What, then, is the specific 'rightness' and 'wrongness' which we call 'moral'? Without at the moment trying to give a complete answer to this question, we are, I think, still following the assumption traditionally made by all moral philosophers when we say that, whatever else it may or may not be, it is at least the 'supreme' or 'ultimate' rightness and wrongness. Most, if not all, assume that the moral judgement on conduct is the final judgement in the sense that, when all other judgements on rightness or wrongness from this or from that point of view have had their say, it is the moral judgement which assesses the weight to be given to any or all of them, and pronounces the decision from which there is no appeal. An action may be right in the sense that it is technically the proper means to achieve the agent's object, wrong in the sense that it is forbidden by his trade or professional union, right in the sense that it is perfectly legal, wrong in the sense that it is prohibited by his church; but the final judgement on what the person ought to do, what weight he is to attach to all these 'technical', 'corporative', 'legal', and 'religious' judgements, is the 'moral' judgement. This seems to be explicitly or implicitly accepted by writers on ethics, judging by the way in which they develop their theses. It does not mean that the judgement is final in the sense that the agent has here reached a state of infallibility, and that he may never come to believe that his judgement in a given case was wrong. All it means is that, if he ever does reverse the judgement, the reversal takes the form of a new moral judgement, and not of a judgement from some more ultimate point of view. Nor does it mean that the final moral judgement is necessarily based upon some standard distinct from the various ones which we have mentioned. The moral judgement may,

on analysis, turn out to be a technical judgement—an action being morally or supremely right because it is the appropriate means to some absolute 'good' or 'end'. If so, then it is this particular form of technical judgement from which there is no appeal to a higher standard. Or if a person holds that the final standard of right and wrong is the Divine will as interpreted by the church, then the 'moral' and the 'religious' judgements will for him be identical.

From what has just been said, it will be clear that I am not now trying to assess the truth or falsity of the various theories which have been put forward as to the nature of the moral standard or standards. I am simply pointing out that, whatever theories have been held, the general assumption throughout the history of ethics has been that 'morally right' and 'supremely right' are identical terms. When we make a moral judgement we are saying that, so far as we can see at the moment, the supreme standard indicates that such and such a line of action is the one which ought to be taken.

4. So far, then, we may take it as agreed that ethics is the study of human conduct with respect to its rightness or wrongness in the light of a supreme standard or standards. One further point is to be added, namely that at the very core of any system of ethics there must be a theory of the standard itself. This seems to be obvious. We cannot hope to get any distance in the interpretation of moral ideas without an understanding of the standard of judgement which guides our notions of moral right and wrong. This problem of the nature of the standards or principles on which moral judgements are based is, indeed, the one in terms of which we group the different forms of ethical theory—intuitionism, authoritarianism, utilitarianism, hedonism, rationalism, and so on: for ethics has not yet reached the stage of having solved this central problem. Ethics does include other questions, of course, and these naturally come to the fore once the central issue has been settled. But what these other questions are cannot easily be decided until we know what are the fundamental principles of moral judgement. Hence, in describing the nature and scope of ethics, it is possible for us to say, generally, that in this study we are dealing with moral ideas, with the group of problems

centring on human conduct with respect to its rightness or wrongness in the light of a supreme standard; and that the primary problem for investigation is the nature of the standard. We can, that is to say, indicate the broad limits of the field of study and the point at which we must begin our explorations. But what issues will crop up, and where the argument will lead us, cannot be envisaged at the outset. Such things will only be revealed in the process of the inquiry itself.

In this book I am confining myself simply to the central problem of ethics, the nature of the standards or principles upon which moral judgements are based.

The Study of Ethics

5. We turn now to a consideration of the reasons for which we study ethics. There are, I think, the two main reasons operating here which normally act as incentives in any branch of study. In the first place, we think that ethical theory has a practical value. Generally, knowledge increases our power and efficiency in action. Scientific knowledge of the laws of nature enables us to organize the operations of the natural order to minister to our purposes, and even assists us in the organization of those purposes themselves. In like manner, a clearer understanding of the principles underlying our moral ideas will enable us to judge with greater clarity in concrete situations, distinguishing the important from the unimportant, the relevant from the irrelevant factors. Knowledge of these principles is not, of course, all that we require. We must also have our 'judgement sharpened by experience' in moral matters. But in this the practical value of ethical theory is no different from that of any other kind of theoretical knowledge. Book knowledge will not make an expert technician; but, other things being equal, the man with book knowledge has a practical advantage over the man who has not, in the sense that he is more able to anticipate the kind of technical procedure appropriate to a particular practical problem. Similarly, a theoretical understanding of the principles of morals (again, other things being equal) will save a person from much confusion of issues and practical inconsistency in his moral outlook.

In the second place, the study of ethics is undertaken partly for the intellectual satisfaction which one gets from the solution of theoretical problems. After so many centuries of scientific and philosophical study, it is probably true that many of those who write upon ethical topics are actuated not so much by its ultimate practical bearing as by a purely theoretical interest. The classical disputes of the different schools raise fascinating issues; and to enter the lists, and break a lance in favour of this or that particular tenet, has a strong appeal to most people who have been introduced to the subject in the course of their philosophical studies, and who possess an aptitude for analytical thinking. Ethics, indeed, seems to draw not a few of its students from the ranks of those who might well derive an equal satisfaction from the solution of problems in pure mathematics or in textual criticism.

6. Now each of these interests in the approach to the study of ethics has its own dangers. If the practical aim of moral betterment absorbs too much of our attention, we are apt to forget that there is a difference between demonstrating and preaching, between explanation and advocacy. How much a moral theory can suffer in this way is clear from the development of the argument in, say, Butler's *Three Sermons*. Butler had a remarkable gift for concentrated thought, in which he combined the qualities of the preacher and the philosophical analyst; but his primary purpose in the sermons was not to develop an ethical theory so much as to convince a congregation that certain general rules of behaviour and ways of life were not only right but also prudent; and for this reason his argument is not a very satisfactory illustration of the way in which an ethical theory should be built up or expounded. At crucial stages of the argument the practical aim appears to influence not only the questions dealt with but also the line along which the solution is reached. The person who is less interested in the role of prophet and reformer is likely (though not by any means certain) to have a clearer sense of at least the more minute logical connexions between ideas. When we are dealing with any question in which our interests are deeply concerned, we find it extraordinarily difficult to avoid mixing the two motives of

explanation and advocacy. In both of these aims we are trying to convince someone of the truth of our contentions; but in the former the primary aim is to enlighten him as to the truth, while in the latter it is to induce him to accept our conclusion, in order that he may take the practical steps we desire. To enlighten him is necessarily to lead him to a conclusion, but to lead him to a conclusion is not necessarily to enlighten; but since, for immediate practical purposes, the second is just as good as the first, and may be more easily achieved, we often follow it while professing to follow the first. In no subject, perhaps, is the operation of these mixed motives so strong as in the discussion of the ultimate principles of morals, morals being so important in social life and so bound up with the aspirations of mankind. Nevertheless it is of the first importance that we should avoid the mixture of explanation and advocacy in any inquiry into the nature of moral standards. Any inquiry into the 'nature' of a thing is a theoretical inquiry, and has for its immediate purpose the understanding and explanation of what that thing is, not the advocacy of what ought to be done about it or of what it itself ought to be. The essential thing is not that some belief held by us should be vindicated, but that true beliefs, no matter what they may be, should be brought to light.

7. It may, therefore, be thought that safety lies in leaving out of account the practical ends which ethics may serve, and devoting ourselves exclusively to knowledge for its own sake. But this is to escape one danger by falling into another. The ideal of knowledge for its own sake, like that of art for art's sake, is apt to produce something rather fantastic both in the product and in the mentality of the producer. So far as intellectual satisfaction in the solving of theoretical problems is concerned, while the devotion to knowledge for its own sake may make us extremely careful in the precise formulation of the questions we are asking, it may also result in such loss of perspective that we spend our whole mental energy on the minutiæ of questions which are not worth asking because their solution will contribute nothing to the central problem with which we are supposed to be concerned. While no one but the philosopher or scientist

himself can tell what questions are likely to repay investigation, even he cannot do so unless he uses his common sense and retains a proper perspective in the selection of his detailed lines of inquiry. In a subject such as ethics, economics, or psychology, perspective cannot be maintained if a person is indifferent to the practical value of his research, and is concerned only with the pursuit of intellectual satisfaction. We cannot properly distinguish the relative importance of the questions which occur to our minds in the process of ethical inquiry unless we are constantly pausing, looking around, and asking ourselves: Is there any reasonable likelihood that to follow out *this* particular line of speculation will, in the end, help us to explain to ordinary people the sort of principles which underlie their moral experience? We cannot, of course, be expected to prove beforehand that a particular inquiry will lead to useful practical results, but unless we are interested in practical results we are in great danger of becoming little more than trifling sophists.

8. The problem then for ethics is the same as for any other branch of study; namely to keep practical ends in view sufficiently to give consistency and significance to the direction of our thinking, while at the same time preventing the interest in those ends from insinuating special pleading into our theorizing itself. It certainly ought to be possible to maintain this proper balance; for it is maintained in other branches of inquiry. There can be no doubt about the practical interest implied in the search for protection against magnetic and acoustic mines, or for an effective television apparatus, or for methods of combating malaria. Yet in all these cases the solution could only be found by calling in the assistance of the theoretical research worker. The scientific workers knew the practical ends to be served; and the problems they set themselves were determined and focused by these ends. But the manner in which they went about their tasks was determined by the strictest principles of scientific research. The practical end could not, indeed, be achieved on any other conditions. Any theoretical errors due to careless observation of facts, or any acceptance of conclusions based on faulty deduction, would result in

failure to reach the end desired. This is true in whatever sphere theoretical inquiries are undertaken with a view to some practical end. If knowledge is necessary, it can serve its purpose only if it is genuine knowledge reached by proper methods of theoretical inquiry; and it is perfectly possible for the disciplined mind to retain an intense interest in practical ends, and at the same time preserve to the intellect the requisite autonomy within its own sphere for the establishing of bona fide theoretical conclusions. What one has to do is to concentrate directly on the immediate end of understanding and solving problems, keeping at the back of one's mind the more remote practical ends for which these solutions may be made available. So far as the study of ethics is concerned, what this means is that ethics itself is a purely theoretical inquiry into the nature of moral ideas and the principles implied in them; this inquiry, however, being undertaken at least partly for the practical ends which may be served by the conclusions reached. If we wish, we can distinguish ethics into 'pure' and 'applied' ethics, corresponding to the immediate and the remote ends respectively.

Ethics as a Science

9. So far, in our account of the nature and subject-matter of ethics, we have been able to proceed along traditional lines. Ethics is the study of human conduct in respect of its rightness or wrongness in the light of some supreme standard and it is a purely theoretical inquiry, although it may be undertaken with a view to the practical application of the conclusions which it establishes. But we come now to an important problem for which traditional modes of thought offer no clear solution. The problem is this: when we say that the central problem of ethics is to explain the nature of the standards or principles upon which our moral judgements are based, do we mean standards which we 'ought' to use, or standards which we 'do in fact' use? It appears that most writers on the subject have not devoted much attention to this distinction; and their arguments suggest that they approach the problem of moral standards now from the one point of view and again from the other. They sometimes speak of the task of ethics as that of

'explaining and defending' the principles upon which the 'plain man' bases his moral ideas. In other words, they conceive of their task as that of showing both that these are the principles which we actually use, and also that they are the ones which we ought to use. But I cannot see how any 'ought' can enter into the question at all. The only question in moral theory which we can legitimately ask about moral standards is, 'What are the standards actually employed?' We involve ourselves in self-contradiction if we try to argue that they, or some other set of standards, ought to be employed.

I do not base this contention upon any general view of the place of value judgements in a process of theoretical reasoning. It is sometimes said that value judgements cannot form either premisses or conclusions in strictly logical thinking. This view seems to me to be very doubtful. It is perfectly logical to argue: All good children go to heaven; Mary is a good child; Therefore Mary goes to Heaven. Or: All German optical instruments are good; This is a German optical instrument; Therefore this instrument is good. My difficulty about the view that ethics is concerned to establish moral standards which we ought to follow is not founded upon any theory about value judgements in general and their place in theoretical reasoning, but arises from the particular case of moral standards.

The difficulty is this: any statement of an 'ought' implies some standard of judgement from which the 'ought' follows. Therefore if we assert that there is some supreme standard in accordance with which we ought to pass judgements on actions, we are asserting, on the one hand, that the standard is supreme (and that there can, therefore, be no higher standard), and, on the other hand, implying by the 'ought' a further higher standard of judgement in accordance with which we judge our 'supreme' standard (and which cannot then be supreme). Now the standard or standards of moral judgement is or are supreme (we are at present leaving it an open question whether we have a number of separate standards or only one); that is presupposed in the conception of 'moral' rightness.[1] Hence we cannot intelligibly ask

[1] See par. 3.

whether the moral standard ought to be followed as a standard of judgement. We can only ask what is the nature of the standard or standards which we do in fact use in making moral judgements.

10. It may be said that, if a person is anxious to attain to a consistent moral perspective, it is not sufficient to explain to him the principles which he does, in fact, use. He will want to know more than this. Are these principles good, the best ones which it is possible to use, the ones, in short, which he 'ought' to use? How can we satisfy him on such points if it is 'unintelligible' to ask whether the standard which he uses as supreme is really the one which he ought to use?

In replying to this point, it is necessary to consider two possible alternatives. (*a*) Our analysis of moral ideas may show that there are several different standards in use by men, and that there is nothing to suggest that these are all merely subordinate forms of a single more general principle. That is to say, we may have a number of different ultimate criteria. (*b*) Our investigation may show that all the standards which men consciously use are but different expressions of one ultimate principle.

(*a*) If there are different standards, and if we can find no single supreme principle in accordance with which we can show that one rather than the others ought to be used, that is to say, if there are several independent 'supremes', it is still possible to institute the further inquiry as to whether the use of the different standards is correlated with differences in level of civilization, mental development in the individual, &c., and whether there is any order in which they tend to displace each other. If no such correlations are seen to exist, this will suggest an irrational factor in the very heart of the moral consciousness, and that the individual's question as to whether his standard is a 'good' one is equally irrational. All sorts of possibilities are opened up if we suppose that there may be various supreme principles of judgement; and it is profitless to speculate as to what we shall do if we find this to be the case, until we have gone into the matter and tried to discover whether it really is so.

(*b*) If, on the other hand, our investigation shows that all the standards actually in use imply some single ultimate principle, the further question will naturally arise as to why this one and not another lies at the basis of moral judgement. It may be found that the principle follows from certain fundamental characteristics in human nature itself. Should this turn out to be so, the question as to whether a person ought to use this standard will still be meaningless; for, following as it does from something in his own essential nature, he cannot avoid using it in making moral judgements. It will be analogous to the 'principles of understanding' in Kant's theory of knowledge. There are certain 'categories of thought', he holds, such as 'substance and quality' and 'cause and effect', the operation of which is assumed in every judgement we make about what 'is'. These categories are grounded in the nature of the human mind. In like manner, it may be that the principles we actually use in our moral judgements are so fundamental to our nature that their operation is assumed in every judgement we make about what 'ought to be'. Here again I am not attempting to pre-judge the issue of our investigation into moral ideas. I am simply suggesting a possibility which has to be kept in mind as an ultimate result of this investigation.

11. The central question of ethics, then, with which we shall be concerned in the following chapters, is: What are the principles on which we base our moral judgements of right and wrong? We shall be concerned here with the analysis of moral ideas, and particularly with the analysis of moral judgements on conduct, in order to discover the standards implied in those judgements; and I have described this as the central problem in the 'science' of ethics.

The next question to be discussed is whether we are entitled to call an inquiry of this sort a 'science'. Is ethics a science in the proper sense of the word, or is it rather more appropriately described as a particular branch of philosophy? In my view, the problems of ethics are susceptible to scientific treatment in precisely the same sense as problems in psychology or economics. If we can appropriately speak of mental and social sciences at all, as I think we can, then ethics can be classified as one of these.

Whether a particular study is capable of being a scientific study depends upon whether it can employ scientific method.

12. A common view is that scientific method receives its most perfect application in the quantitative physical sciences; but an account of the general principles of scientific procedure reveals that quantitative analysis and comparison, in any ordinary sense of the term 'quantity', are not essential. The following brief account,[1] which I take to be sufficiently accurate for our present purposes, is concerned only with procedure in the empirical and experimental sciences. It will not be appropriate to mathematics if—as is often held—mathematics is a science but is not concerned with observable fact. It does not matter for my argument, however, whether this view about mathematics is or is not adopted; for I regard ethics as an empirical science, and am concerned only to show that, in the investigation of moral ideas, we can employ the method characteristic of those studies known as empirical 'sciences'.

In inquiries of this sort we operate upon a selection of facts of a certain kind; and these facts must be observable. Our aim is to make the facts intelligible; and the operations in question, while none of them may belong exclusively to one particular stage of scientific research, may be best understood when they are stated in the following order:

(*a*) Attention becomes directed upon some fact, or apparently connected group of facts, because of some peculiarity; it may be a noticeable regularity, such as the regular sequence of the phases of the moon, or a striking irregularity, such as an eclipse. But whatever the cause for which we attend to these facts, any effort to 'explain' them assumes that they can be correlated with other observable events, in the sense that the presence of the one set will always be accompanied by the presence of the other set. Our first step then is concentrated, careful observation of the facts which initially attracted our attention, and an attitude of alertness to grasp any others accompanying or immediately preceding them.

(*b*) The next stage is the formation of an explanatory hypothesis; that is to say, the tentative acceptance of a

[1] Based on Stebbing, *A Modern Introduction to Logic*, pp. 230 ff.

principle correlating with another set of facts the set of facts to be explained. In the initial stages of our search for an hypothesis we find it difficult to say what we are looking for. We entertain, inspect, and reject all sorts of possibilities, maintaining an essentially receptive attitude, familiarizing ourselves with the events which are occurring, until some particular association suddenly strikes us as peculiar; and the suggestion then comes that this is the particular correlation for which we have been looking. We then formulate our hypothesis. Thus, suppose that we are trying to explain an observed regularity, such as the sequence of the phases of the moon. We notice a crescent light in the sky, gradually increasing on each successive night until it becomes a disk, and then gradually decreasing once more until it disappears; this waxing and waning repeating itself endlessly. Let us suppose that after much speculation it occurs to us that the facts as observed fit in with the theory that the moon's light is reflected from the sun; then we are in a position to formulate the hypothesis: The sun and the moon are two large balls, the former hot and fiery, the latter dark and cold, travelling round the earth at different speeds; and the different phases of the moon are due to its reflecting the light of the sun from different angles. Here, then, is an hypothesis to explain the set of observed facts (the waxing and waning of the moon), by correlating them with another set of facts (the continually altering position of the moon relatively to the sun in the sky and under the earth).

(*c*) The next stage is the deductive development of the hypothesis. If it is true, then certain other facts besides those on which the hypothesis was based ought to be observable. For instance, the horns of the crescent ought always to point away from the sun, and the moon ought to be 'full' when it reaches its highest point in the sky at the same time as the sun is calculated to be at its lowest point under the earth.

(*d*) Having predicted these events which are bound to follow if our hypothesis is true, we then proceed to test it by a further series of observations in order to see whether the events turn out as predicted. In some investigations we can 'experiment'; that is to say, we can ourselves arrange a

particular set of conditions, having predicted that in such conditions a certain event will occur, and then observe whether the event does, in fact, take place. The great advantage of experimentation is that it enables us to speed up the testing of an hypothesis; for if we have to wait for nature to repeat the conditions in which we are interested, we may only have this repetition at very long intervals, and perhaps even then the conditions may occur when we are not prepared to make use of them.

(*e*) Should our predictions be verified in all cases, then we can consider our hypothesis as the 'true explanation of the facts'. In the illustration we have selected, if all our predictions are verified, we can take it as 'established' that the phases of the moon are due to the sun and the moon moving round the earth at different speeds. It is, however, apparent from this hypothesis which I have selected that we make very many assumptions in the formulation of our hypothesis, and include many in its statement which are not necessary to the explanation of the events to be explained. Here, for instance, the facts do not absolutely demand that the sun and the moon should both move round the earth. Other astronomical observations later suggest that the earth moves round the sun; and our theory has to be modified accordingly. But this liability to correction of even our most clearly 'proved' theories only goes to show the care which is necessary in making initial assumptions, and in not claiming an absolute certainty for theories which have only substantiated their claim to a provisional validity with respect to a certain restricted range of events. In testing our hypothesis we have stood over nature as a judge and forced her to answer our questions with a simple 'Yes' or 'No'. But before putting our question we have made many assumptions about the significance of her reply, and we have drawn many inferences from her answer to a particular question, some of which will be false. Still, there is no way in which scientific inquiry can proceed other than by the method of observation, hypothesis, deduction from hypothesis, verification with or without the aid of experiment, and statement of 'established' theory.

13. It will be noted that, in the use of scientific method.

all the reasoning comes in, so to speak, between two sets of observations, the initial observations on which we found our hypothesis, and the final observations by means of which we test it. So that the crucial question to be decided in determining whether ethics can be a science is whether it deals with observable facts. Limiting our attention to what I have called the central problem of ethics, namely that of discovering the standards or principles upon which our moral judgements are based, can we say that we are here concerned with the correlation of 'observed facts'?

In trying to understand the nature of the standards actually employed in moral judgement, the facts or data from which we start are moral judgements themselves; for it is these which we are attempting to render intelligible in terms of their underlying principles. In what sense we are to regard moral judgements when we speak of them as 'data' will be explained later; but for the moment it is sufficient to say that, if there are any data at all for such an inquiry, they can be nothing other than the judgements which people actually make. And the question is whether judgements, which are attitudes or states of mind, can be 'observable facts' in the sense required for the application of scientific method. It may be said that they cannot. To be observable, a fact or event must be objective in the sense of being a material event open to inspection by sense; and, for this reason, even psychology is unscientific to the extent to which it has to rely upon the method of introspection. Science can deal only with material facts capable of being stated in quantitative terms; and its methods cannot be applied to spiritual or mental 'facts'.

14. Now it is true that facts observed by the external senses are, as a general rule, the ones most easily brought within the sphere of scientific treatment. But this is not invariably the case; and when we examine the reasons why, in science, stress is laid upon 'observation', we shall see that it is not 'sensible' observation which is the really important thing, but 'objectivity' in the sense of verifiability independently of any particular person's testimony. All that we require is that our facts should permit of the construction of hypotheses concerning them and of deductive prediction

and verification. These conditions will normally be satisfied by happenings in the outer world. What happens when billiard-balls collide is a set of facts susceptible to scientific treatment; so that the events referred to in the judgement, 'When a ball, moving in a direction *d*, strikes another, stationary, ball at a point *p*, the latter will move in a direction *d*2', are capable of scientific verification. But when we are met by a statement such as, 'I have a feeling that that man is a murderer', we should hesitate to say that either the statement or the fact alleged in it—namely the existence of a certain 'feeling'—is capable of scientific treatment. Everything seems so subjective and arbitrary, with nothing to catch hold of and pin down for dispassionate inquiry. We are, therefore, apt to conclude that the significant difference for science is between facts which are physical and facts which are psychical.

But that this is not the really important distinction will, I think, be clear if we consider the sort of question which may be dealt with in psycho-physics. We may, for instance, blindfold a person; and, touching his finger with a pair of dividers with the points a certain distance apart, ask him what he feels. He may say that he feels two sensations of touch. Then, keeping the dividers to the same adjustment, we may place them somewhere on his back and again ask him what he feels; and this time he may say that he feels one rather blurred touch sensation. Now here he is alleging two different psychical facts; and yet his statements are susceptible to scientific study. We can apply the same tests to other persons and get their reactions; and we can correlate the feelings alleged to exist with certain other sets of facts such as the difference between the distribution of nerve-endings in the fingers and in the back respectively. What makes a fact observable in the sense required for the application of scientific method is not its 'materiality' (although facts observed through one or other of the bodily senses are most easily brought within the scope of scientific method) but its 'objectivity' in the sense that evidence for its existence is not dependent upon the testimony of any single person, and that it is capable of being correlated with other facts in a cause-effect or ground-consequent relation. Thus, in the

foregoing illustration, the different feelings which a person alleges to arise when first his finger and then his back are touched with the dividers, can be reproduced in other persons under the same conditions, and they can be correlated with the distribution of nerve-endings in the body as an explanation of why the difference should exist. And yet the facts which we are here explaining scientifically are psychical facts.

Possibly there would be less cause for confusion in the discussion of scientific method if we used the term 'objective' rather than the term 'observable' in referring to the facts to which the method can be applied; but 'objective' might be unsuitable for various reasons, and 'observable' does have the merit of stressing the empirical factor in scientific investigation; and it need cause no confusion if we remember that the events which are observable in the sense required may be psychical as well as physical.

15. We come now to the specific application of scientific method to the study of moral ideas. Ethics is not a study of a mathematical type which, according to certain trends in current opinion, is a rigidly deductive system constructed on the basis of a number of postulates, the main condition governing the selection of postulates being that they shall be consistent with each other. Such a study of purely formal implications may be of very great value when we are dealing with a qualitatively homogeneous 'material' such as space, time, number, or motion. The essential nature of the material can be apprehended and indicated in a few carefully defined concepts without extensive empirical inquiry; and the mathematician can be confident that anything which he discovers in the manipulation of these concepts will illuminate the province of experience to which they refer. Ethics, however, is like the physical and biological sciences in that its field of inquiry is much more complex. To elicit concepts which are both precise and also adequate to the subject-matter is much more difficult. Certainly, if our concepts are not clear our reasoning will be confused. But, on the other hand, no matter how clearly we may define the concepts which we are to relate to each other, any conclusions to which we come with regard to them will be incapable of

illuminating moral experience if those concepts are not properly tied to the facts of moral experience itself. Consequently purely formal methods of reasoning must be based upon a preliminary empirical investigation of the facts to be interpreted; and this empirical part of ethics should occupy at least as much attention as it does in biology or in one of the other social sciences.

What are these facts with which we shall be concerned? As has already been indicated, the facts on which we base any theory of the principles implied in moral judgement must be those judgements themselves. We shall be concerned not so much with the right and wrong behaviour of men as with judgements passed upon that behaviour with respect to its rightness and wrongness. We shall take these value judgements as our facts or data to be explained, assuming that they will have some kind of relation to each other, and looking for the standards which will make those relations plain.

16. It is necessary to explain at this point what is meant by saying that moral judgements are the 'data' of ethics, and to distinguish this from the very different conception of such judgements as 'first premisses' of ethical theory. If a value judgement is accepted as a premiss or assumption in a chain of reasoning, then it is being taken as a truth for the purpose of the reasoning in question. But if it is accepted as a datum, it is not taken as a truth but only as an existent for the purpose of the reasoning in question. As a premiss, we reason from its supposed truth. As a datum, we reason about its character and origin, without assuming either its truth or falsity. It is the object about which we theorize, and not a link in the chain of our theorizing.

The importance of this distinction between 'premiss' and 'datum' becomes clear when we recollect how puzzled philosophers have sometimes been in the effort to decide whose moral judgements ought to be taken as evidence for the nature of fundamental moral convictions. Do we accept the views of all men, or of plain men of common decency, or of educated and reflective men only? Such questions would be very relevant if moral judgements occupied the status of premisses for ethical theory; but once we recognize that such judgements are to be used only as data, it becomes

clear that all moral judgements are relevant to our inquiry—those of plain, foolish, and even vicious men, equally with those of the educated, wise, and virtuous—for all alike have to be interpreted and understood. It is not our business to assume from the outset that certain judgements are, in fact, true—e.g. that truth-telling, kindliness, promise-keeping, &c., are really right. As practical men the validity of these judgements does concern us; but as students of ethics we are concerned only with the fact that they are pronounced, and with the attempt to understand the principles on which they are based.

It is not only value judgements which may be regarded from these two different points of view. We may have the same two attitudes with regard to judgements of fact. Let us suppose, for instance, that you are visiting a friend. On a large desk in his room there are two telephones, one at either end of the desk. He goes out, and while he is away there is a familiar ringing sound. He comes back and asks, 'Was that my telephone?' *Yes.* 'Which one?' *The one on the left.* At this point he may lift the receiver to take the call; and here your judgement is treated as a premiss from which he infers that someone wishes to speak to him. But, instead of lifting the receiver, he may ask you why you thought it was the instrument on the left, and then show you a little bell concealed in a particular part of the room. He may be a psychologist conducting experiments in the localization of sound: and here your judgement is treated as a fact or datum about which inferences are drawn.

17. It is difficult to know how far, in starting with moral judgements as 'data' in this sense, one is departing from the traditional approach to the problems of ethics. It is certainly not the main traditional academic approach in Britain; and although one should perhaps have learned more from Westermarck, I did not myself become aware of its possibilities until I had become acquainted with the work of Sharp[1] and Piaget.[2] The latter of these two writers I have found particularly helpful, as the contents of the subsequent chapters will show. Still, once we have understood the

[1] Professor F. C. Sharp, of Wisconsin, especially his *Ethics*.

[2] Professor Piaget, *The Moral Judgement of the Child*, translated in *The International Library of Psychology, Philosophy and Scientific Method*.

essential characteristics of this method, it appears that it represents a clarification of, rather than a clean break with, traditional methods of dealing with the problems of ethics. There are more or less important examples of its use from at least the time of Aristotle; but perhaps the most striking one is found in the First Section of Kant's *Fundamental Principles of the Metaphysics of Morals*, which opens with a series of propositions about the good will, its absolute value, the merely relative value of other things such as natural talents, gifts of fortune, &c. If I interpret his intention correctly, Kant is not professing to prove the various propositions with which the Section opens, nor is he offering them as his own personal convictions merely. He takes them to be the most important moral convictions of 'the plain man'; and his subsequent analysis is an attempt to show what principles are implied in these moral ideas. There is a very close similarity between this method of theorizing about morals and the one which it is proposed to follow in this book; and I think that the main differences are due to the fact that Kant did not quite grasp two important implications of the method. The first is the necessity of a clear separation between arguments which are designed to 'explain' ordinary moral ideas, and arguments which are designed to 'defend and vindicate' those ideas. Unless we make this distinction clear we confuse the two lines of argument; and in my view the second of these aims does not belong to ethics in the proper sense as a theoretical inquiry. The second point which he failed to appreciate properly—and here the cause is largely his fear of conceding too much to 'empirical' considerations—is that, if one professes to begin with a statement of ordinary men's moral convictions, one must be prepared to offer the appropriate evidence that these are, in fact, ideas entertained by men in general. It is highly questionable whether the statements with which Kant opens the Section do really represent what ordinary men think; and if one entertains any doubts upon this point, Kant has nothing to put forward other than his own bald assertions.[1] What is lacking above all is a technique for the

[1] The criticism here offered does not profess to estimate the merits of Kant's ethical work as a whole but only his handling of the subject in the *Fundamental*

collection and analysis of actual moral judgements; and in this respect the work of the two authors whom I have mentioned constitutes an important advance on that of Kant. Progress in ethics is analogous to that in other sciences, being largely conditioned by developments in the technique of collecting, observing, and sifting data.

The Data of Ethics

18. I turn now to the question of the methods of collecting and sifting moral judgements to be used as data for ethical theory. What evidence can we get to show what are the moral convictions of men in general?

It seems to me that Introspection is at least one source upon which we can draw. Of course the alleged evidence of introspection must be treated with care. If a person makes the assertion 'Lying is wrong', it is possible that this is not a bona fide judgement: it may be a deliberate misstatement of what he really believes and a mere concession to accepted

Principles of the Metaphysics of Morals. Even in the case of that small treatise, I do not myself accept the extreme 'rationalist' interpretation sometimes placed upon it; for there is clear evidence there that, with one side of his mind at least, Kant had seen with rare penetration the principles upon which men do base their everyday moral judgements. Lord Lindsay of Birker has also drawn my attention to the fact that Kant made his students attend his Anthropology lectures before those on Ethics. But it is undoubtedly true that anyone reading only the *F.P.M.M.*—and particularly the Preface and the first few pages of Section Two—would be impressed by the 'abstract rationalism' which has evoked so much criticism. The principal point of my criticism here is this: Kant is clear that, although experience is necessary for the practical application of moral principles, the principles themselves—the very conception of obligation itself—come from reason. Now one may admit this contention —as I do—and yet hold that, for the moral philosopher to know what those principles are, a prior empirical investigation is necessary, an empirical inquiry into the sort of judgements which men actually make, as a preliminary to the analysis which will reveal the principles on which those judgements are based. In the First Section this is indeed the procedure which Kant seems to be adopting; but he simply asserts such and such judgements or convictions to be generally held, without adducing any evidence whatsoever to show that these judgements are, in fact, commonly made by men. It does not even appear that he thought such evidence important—as it most certainly is if we are to take his subsequent analysis as a true analysis of the common notion of duty and the good will. This criticism may not be valid as against his total position in ethics, but it is surely valid as against the actual argument in the *F.P.M.M.*

opinion. In such a case the statement is of little interest to us. At any rate it will be of interest only when we come to investigate some of the complications of moral experience, our initial concern being with direct convictions. Again, it is possible that the statement is not a bona fide judgement in the sense that it is not made in a situation where the individual is preoccupied with a genuinely practical situation. One will rightly suspect the 'convictions' to which moral philosophers are prepared to commit themselves when they are illustrating or supporting arguments in ethical theory. Such assertions are suspect on the ground that they are made under very artificial conditions, and probably not duly weighed in their practical bearing. What 'ought to be done' may seem very different when you are writing a text-book from what it seems when you have got to engage in practical action, just as His Majesty's Opposition have always a much more neat and tidy grasp of public policy than is ever possessed by His Majesty's Government. What a person will really do, and how he will really evaluate acts and situations, can only be determined when he is faced by a concrete situation in which he has got to act.

Still, this method has its uses. What we are looking for primarily is evidence about the real moral convictions which individuals entertain; and introspection will afford a certain amount of evidence of this kind. What the individual will find on 'looking into his mind' is not dependent on what he has asserted to be there, although if he is truthful and trained in inner reflection his assertions will largely report what is there. Of course his introspection cannot afford to other people any direct evidence as to what is in his mind, independently of what he asserts to be there; but if a number of persons independently of each other profess to find the same conviction in their minds, this multiplicity of testimonies will favour the presumption that they are all reporting accurately; and, in the absence of any strong reason for holding the contrary, such a strong probability in favour of the truth of any individual's statement will tend to make us accept it as reliable. Still, while introspection is one method of collecting data, and even an indispensable one, there are others which do not suffer from its peculiar disadvantages.

19. One of these methods has been elaborated in recent times by various investigators, and the easiest way of explaining its nature is to describe the procedure followed. Professor Sharp and his colleagues at Wisconsin, for instance, set themselves such problems as: 'What are the moral reactions of different groups to the question of truth-telling?'; 'To what extent is there a genuine repugnance to the maxim "An eye for an eye and a tooth for a tooth" in the modern educated mind?'; or 'To what extent is "Authority" a genuine standard of moral judgement for the adult mind?' To find the answers to these questions the typical procedure was to select a number of striking incidents, or to construct suitable imaginary situations, each one presenting a fairly clear problem for moral decision; to put these incidents to various groups selected on account of age, occupation, educational and social background, &c., in order to elicit a moral reaction; the subjects questioned being invited to look at the matter from various angles, details being elaborated as might be necessary to bring out special points of interest. By this process of drawing a person out through cross-examination, making the subject realize the implications of his statements, and seeing how far he was prepared to follow them, the interlocutor was able to get some light on his processes of moral evaluation. At times the method had to be very much elaborated, and the same subject might be dealt with over a considerable period.

Working on the same general principles, Professor Piaget —again with a number of assistants—has conducted a systematic inquiry into the moral ideas of children, one of the particularly interesting parts of his inquiry being concerned with their attitude to the rules of the games which they play. This may seem to have nothing to offer in the way of information about moral ideas, but Piaget's view is that there is a significant analogy between the development of the rules of games in juvenile society and the development of moral rules in adult society; and that, consequently, the working of the child-mind in play may supply, in addition to an insight into the attitude of the child to rules in general, some clues for the interpretation of the adult mind in the serious business of living. Whether this view is substantially correct

or not—and it cannot be ruled out without exploration—it does draw attention to a very important point in the investigation of moral phenomena; namely that the interpretation of moral judgements may derive valuable help from the study of provinces of experience which, superficially quite distinct from the moral, show on closer inspection some considerable analogies in general principles. I shall have something more to say on this point in connexion with the study of law and custom.

What is the value of this method for securing data about moral ideas? There are certain dangers connected with its use. Firstly, there is the possibility that the subjects will treat the investigation as a golden opportunity for a little harmless amusement at our expense. Secondly, very many of the situations to which we invite their response will be artificial in the sense already explained; that is to say, situations which they are invited to evaluate without having to do anything about them in practice. And again, even if the subjects mean to collaborate to the best of their ability, they will usually be aware that what we are really interested in is not their actual judgement on a given situation but the mental processes which go to fashion the judgement; and this awareness may have a distracting effect.

These dangers are real; but the best exponents of the method are alive to them and try to counteract them. It is well to remember that methods analogous to this are employed for analogous purposes. It is not different in principle from the procedure employed by counsel in law courts in trying to elicit truths of fact, or from that which is used in psycho-analysis. As to the particular dangers indicated, they are not insurmountable, account being taken of the fact that the method will probably not be used as the main source for the initial data on which our first hypotheses are constructed. It is, one may suppose, the analogue in ethics of experiment in natural science. The investigator will already have a rough idea of what he is looking for; and while trying to avoid leading questions and hints which would impair the evidential value of the responses he receives, he will nevertheless have reached a stage in his inquiry at which he has formed his hypothesis and is actually expecting certain reactions to

the situations he presents. As for the apparent dependence, in using this method, on the simple assertions of individuals as the sole evidence for the facts (convictions) which they allege to exist, this is rather less than it appears. The dependence upon mere assertions would be almost complete if we had nothing to go upon other than simple isolated statements; but that is not the case. The initial statement is followed up and expanded under cross-examination, and in such circumstances it is difficult if not impossible for a person to be intelligible and consistent unless he is really reporting what actually exists. So at least I read the lesson of Socrates' success in the use of dialectic. The reason why he could force people to reveal their confusions, or to accept conclusions which they did not want to accept, is that once they went beyond isolated statements, they were placing themselves at the mercy of the nature of the thing they were professing to describe, and at the mercy of the logical principles of thought in drawing inferences. The nature of these objects and principles is not altered by what we want to say or by the conclusions we should like to establish; and the only way of talking coherently is to keep the mind focused directly on the nature and characteristics of that which we are trying to describe. If, through inattention or in order to deceive, we mistake its nature, then sooner or later this will become apparent.

One further point should be noted. An additional check on the accuracy of our reporting may be found in the consistency of our asserted valuations with our general practical attitudes and behaviour. The test of practical behaviour can only be applied to a limited extent, for there is something in the view that we may 'know the better and follow the worse'; but there is also some truth in the notion that a man's beliefs and valuations are shown by what he does, rather than by what he professes.

The general conclusions which we draw from the discussion of this method of collecting data for ethical theory are that, in the hands of unskilled practitioners, it can be unfruitful and misleading; but that, exercised with care, and due advantage being taken of the checks and counterchecks available, it can be very profitable.

20. I have suggested that the method just discussed may not, perhaps, be used as the main one for the initial collection of data upon which we base our hypotheses about the principles of moral judgement; and the question may now be asked what other method is available for this purpose. The one which appears to me the most reliable is the examination of systems of social institutions, laws, and customs which have had a more or less continuous development over a considerable period of time. Investigations in this field are particularly profitable because, while they will not supply information about the intricate, detailed working of the individual moral consciousness, they will furnish us with a broad general sketch of commonly accepted moral ideas. This is a field which has, for various purposes and in different ways, been worked over by sociologists, and to some extent also by moral philosophers. There is, however, a tendency on the part of the few writers on ethics who have given much attention to this line of inquiry to concentrate on primitive peoples. I fully agree that a great deal can be learned from such inquiries, but I think that, for ethics, there is at least as much to be gained from the investigation of systems actually operative at the present day in the most advanced civilizations. If one is looking for general principles or standards of moral judgement, they are likely to appear more clearly in a developed, reflectively articulated system than in a primitive one. The unreflective moral consciousness is apt to confuse various notions which only become properly distinguished under the influence of the analytic spirit. I shall, therefore, devote the next few paragraphs to a discussion of this source of moral data, since it is one upon which I shall rely to a considerable extent in the following chapters.

21. Systems of law are slowly built up through men's reactions to and judgements upon concrete situations in life; and, in so far as they can be said to offer a clue to moral ideas at all, it is obvious that they will be of special value as affording insight into the common moral consciousness.

There are, however, two suspicions likely to be entertained with regard to the method of using law and custom as a source for the discovery of moral ideas. The first is that,

because of the generality of legal and customary standards, even the most careful study of them will fail to elicit the richness and variety of individual ideas. This is a sound point; but if we are prepared to recognize the limitations of our results, we can infer certain general characteristics of the common moral consciousness. Having thus secured our perspective, we can more safely turn to the investigation of detail by the discriminating use of the two methods previously described. So much for the first objection.

The second suspicion with regard to this method touches a more fundamental point. I have said that the study of law and custom, 'in so far as it can be said to offer a clue to moral ideas at all', will afford insight into the common moral consciousness. But, it may be asked, what grounds have we for supposing that it does offer any such clue?

We preface our answer to this objection by making it quite clear that we do not suppose that legal and moral right and wrong entirely coincide. There are many moral issues of which the law courts take no cognizance; and legal and moral duties frequently conflict. A man may, on occasion, be punished for doing what he thinks morally right if it also happens to be legally wrong. We cannot, therefore, suppose that the contents of the law are, in every particular case, a guide to the contents of the common moral consciousness; and we must recognize that, even when the legal and the moral coincide, we are in touch with only a part of morality, which extends over ground that law does not traverse.

But while these warnings are salutary, there is another side to the picture. Law and morality, while not entirely coincident, are, as it were, intersecting circles. While their 'forms' are distinguished from each other, their 'contents' are to a considerable extent the same. This great community of content is inevitable just because moral ideas and legal codes exert a strong influence upon each other.

22. Let us notice, first, the influence of moral ideas upon law. Rules of law are always in process of change, old ones being abandoned, and new ones created. How is this change in the contents of the law to be explained? The impact of moral ideas is one of the most important causes, as will be

evident if we glance at the sources of law. Jurists usually distinguish four of these.

(*a*) There is, firstly, the body of decisions made by judges on particular cases coming before them. Where there is no existing rule of law relative to a particular case, the judge will often decide on what seem to him to be the principles of 'reason' and 'equity'. 'Courts', says Salmond,[1] 'are primarily and essentially courts of justice—justice according to law, so far as there is law applicable, and, so far as there is no rule applicable, justice "according to nature".' Salmond uses 'natural justice' and 'moral justice' as equivalent terms. Thus into the law of the realm there are always being introduced decisions of moral right and wrong according to the conscience and insight of the judges.[2]

We must not, of course, exaggerate the influence of the judicial conscience on the creation of law in the modern state. Where there is a permanent legislative body, such as parliament, judicial legislation is kept down to the minimum, and courts work on the assumption that their function is essentially declaratory. Opposing counsel do not normally suggest that they are anxious to receive a new rule from the court. Rather, they analyse and discuss various cases which they claim to be analogous to the particular issue being tried, suggest that the relevant rule is such and such a one, and then ask for an authoritative pronouncement as to which of the proposed rules is really the appropriate one.

The judge, on his side, is reluctant to appeal to the bare principle of equity. If no clear rule exists, he will try to give a decision which harmonizes generally with the existing system, even if his private opinion is that a different decision might be more 'ideally just'.

But, when all this is admitted, modern jurists agree that the conception of the judge's function as purely declaratory is a polite fiction; and that, when the history of the law is considered over a period, it becomes quite clear that judicial declarations have perceptibly created law under the influence

[1] *Jurisprudence*, ed. 8, pp. 39–41.

[2] See Salmond, chs. ii, iii, and iv; and C. K. Allen, *Law in the Making*, chs. iii, iv, and v.

of an ideal variously described as the 'reasonable' or 'equitable' or 'naturally just'.

(*b*) A second source of law is the State legislature. In early society, no doubt, there was very little legislation in our sense of the term; but, as civilization develops, law derived from this source steadily increases in volume.

What are the influences determining the character of the laws parliament is continually placing upon the statute-book?

These influences are of different kinds; but of major importance is the body of convictions, held by society and by groups within society, as to what is right and wrong. Acts for the suppression of religious sects, and subsequent toleration acts, reforms in the electoral system, the granting of civic rights to women, the abolition of slavery, laws governing marriage and divorce, the control of working hours and conditions, measures for the protection of children and the lower animals, poor law, education acts, the statutes governing the relation of Great Britain to other members of the Commonwealth—these and other measures are largely dictated by (however far they may fall short of satisfying) the ideas of various sections of the community as to what is reasonable and just.

(*c*) A third source of law is ancient custom. Custom naturally decreases in importance as legal systems develop; but this is because custom becomes largely incorporated in judge-made or in enacted law—unless it is expressly rejected. That is to say, the content of what was originally custom is preserved under a different form. Now custom is not indifferent to social opinion on questions of right and wrong. 'Custom is to society', says Salmond, 'what law is to the State.' Further, 'the national conscience may well be accepted by the courts as an authoritative guide; and of this conscience national custom is the external and visible sign'.[1]

(*d*) The fourth main source of law is the great mass of conventions and agreements which individuals voluntarily make with each other. These rules of behaviour, of give and take, are made by the wills of the parties concerned, mostly in accordance with what they feel to be expedient, reasonable, and just in the circumstances. But, although such agree-

[1] Op. cit., p. 209.

ments are freely made by private individuals, the courts will range the power of the state behind them. Where tangible interests are at stake, performance will be legally obligatory wherever this is possible without excessive hardship.

In this paragraph I have been trying to show that the contents of morality and legality must coincide to a considerable extent, because our ideas of what is morally right and wrong are continually entering into the contents of the law. Salmond, indeed, takes the view that 'the law is a public declaration by the state of its intention to maintain by force those principles of right and wrong which have already a secure place in the moral consciousness of men'.[1] It may be true that 'law will always lag behind public opinion, and public opinion behind the truth', and that on many important points the law will therefore embody the conscience of the past rather than that of the present; but even when this is the case (and it is not always so), it will surely be possible to discover, by reflection upon the general principles and history of the law, the main ideas which have been slowly embodying themselves within it.

23. So far we have been concerned with the effect of morals on law. Equally important is the fact that law, as it exists at any given time, will tend to form a considerable part of the content of the individual moral consciousness. It is a commonplace amongst ethical writers that the individual derives his main stock of ideas—the moral capital, so to speak, with which he begins the business of living—from the habits and institutions of the community into which he is born. Any original contribution which he may make in later life comes from his critical reflection upon this original content. One could quote many writers from various schools of thought in support of this contention; but we do not need to rely upon what the moral philosophers tell us, for anyone who looks attentively at the facts can satisfy himself upon the point.

24. Taking all the foregoing considerations into account, we may, I think, accept the following conclusions:

Since, on the one hand, the laws and customs of the society into which a person is born greatly influence his

[1] Op. cit., p. 427.

moral ideas of right and wrong; and since, on the other hand, these laws and customs are themselves profoundly influenced by ideals of natural or moral justice; then the contents of our moral consciousness must coincide to a considerable extent with those of the legal system under which we live. Hence, if we wish to know the contents of the 'common moral consciousness', we shall find a most important clue by the study of the rules of law holding for a given community.

Not only must we expect common character in the content, but we shall expect also to find the formative principles of legal rights and duties substantially identical with those of the moral consciousness. I say 'substantially identical' because, although they are not absolutely the same, law and morals are both concerned with the same categories of thought, namely those of 'right', 'duty', 'obligation', and the law is professedly an instrument of justice, which is a moral principle.

There is, therefore, every reason to suppose that an examination of the operation of legal institutions and the analysis of the principles underlying them will be very fruitful in explaining the general principles implied in morals; and—as has already been suggested—once we know what these principles are we can check our theories by more individual study.

25. In this chapter I have tried to show that ethics can be a science in the proper sense of the term. The main difficulty in such a view was to explain how there can be facts or data of that observable or objective sort required for the employment of the characteristic methods of scientific investigation—observation, induction, hypothesis, and experimental verification. The data can be objective in the sense required only if the evidence for their existence and nature does not depend solely upon the assertion of this or that individual, and if they can be correlated with other observable facts. I have tried to show that moral valuations can be ascertained in an objective way; and, if this be granted, there should be no difficulty whatsoever in granting the further point that scientific method can be employed to discover the general principles or standards implied in such valuations; that is to say, the principles implied in

judgements of ultimate right and wrong. And when we have discovered those principles, it will be possible to anticipate or predict the general characteristics which all moral judgements will exhibit.

Of course we cannot attain to any exactness of prediction in detail. The situations of human life are too complex and the conditions determining our mental reactions are too numerous to permit of anything approaching the degree of accuracy which is possible in predicting, say, the positions of the heavenly bodies at any given time; but it should be possible to anticipate the general development of moral attitudes under different conditions of age, general knowledge, &c. I shall not make any attempt here to forecast the sort of conclusions to which such an inquiry will lead, or even try to formulate the principal problems which it will meet on the way. We cannot tell what the line of development in ethical theory will be, for that is something which will emerge only as the investigation proceeds.

II

CUSTOMARY MORALITY AND THE PRINCIPLE OF AUTHORITY

Primitive Moral Ideas

26. In his account of the development of moral ideas, Green[1] makes an interesting comparison between the attitude of the 'saint' and that of the 'reformer'. By the saint he means the person who is scrupulously conscientious in performing those actions which he recognizes to be obligatory; and by the reformer the person who rejects a number of currently accepted obligations, and at the same time insists upon some which are not currently recognized. Green's theory is that the saint who possesses any capacity for reflection will inevitably become to some extent a reformer; for if he is really conscientious in the performance of the recognized duties, he will find on occasion that the circumstances in which he has to act are so unusual that the proper response to them is not at once obvious. Before he can see what he ought to do, it will be necessary for him to think out the principle on which his customary duties are based, in order to apply this principle to the new situation. Once this process of reflection upon principles begins, there is no predicting where it will end; but it is certain that it will sooner or later bring him into conflict at certain points with the morality of mere tradition. He will be led not only to the discovery of new duties but also to the discovery that traditional conceptions of duty are sometimes inconsistent with the principles which they profess to respect.

I have begun this chapter with this reference to Green's theory because it brings out in a very clear way a point which none of us, I imagine, will be disposed to deny, namely the influence which reflection has in the determination of our more mature moral ideas. But while it is true that reflection plays its part, it is also evident that reflection must have some material on which it operates. On Green's theory, for instance, the idealism of the reformer springs from reflection

[1] *Prolegomena to Ethics*, pars. 301 ff.

upon the actually accepted code of duties which he is anxious to fulfil. His initial acceptance of these as duties cannot have been due to reflection. They must have come from some other source. How, then, do our ideas of moral right and wrong originate?

27. The view here adopted is that our original ideas of right and wrong come from our natural tendency to imitate types of behaviour which we find already established when we waken to consciousness of the world about us, and to accept as a rudimentary guide to right and wrong the rulings of anyone whom we find to be a 'recognized authority'.

I am aware that other views on the origin of our earliest moral convictions have been advanced, but I shall not attempt any critical discussion of these; for, in the end, a theory of morals can commend itself only because it offers a positive contribution to the explanation of moral ideas, and not because its advocates are able to point to the weaknesses in others.

Turning, then, to the positive account of our most primitive or original moral judgements, I think a survey of the evidence will show that these express a natural tendency in us to conform to whatever order we find established around us, and to accept as a guide to behaviour the 'directives' of persons who seem to be the recognized custodians of this order. That is to say, the most primitive kind of morality is customary morality which thinks of the standard in terms of authority.

28. The evidence for this view comes from at least three sources, namely the moral ideas of young children, the moral ideas of primitive peoples, and the initial approach which courts of justice adopt in the determination of legal rights and duties.

We shall deal first with the moral ideas of young children. If there were any evidence for the view that our moral convictions come to us by means of some sort of moral sense, that evidence ought to be most clear in the case of young children. 'Moral sense' is conceived on the analogy of perceptual sense in which our minds are receptive; and it is generally admitted that childhood is the period in our mental history when we are most receptive, as distinguished from ratiocinative, in the building up of our experience. We naturally expect, therefore, that the child's moral experience

will reveal this marked susceptibility to outer influence, and we should be able to determine what precisely it is to which he is receptive. Now what the evidence emphatically shows is that any clear ideas upon right and wrong which he possesses come from his observation of the way in which his seniors customarily behave or indicate by word or action how they think people ought to behave. The truth of this will, I imagine, be confirmed by anyone with any clear recollection of his childhood beliefs and attitudes.

Attending adult church services, for instance, is usually an exhausting business for youngsters, and it is very difficult to refrain from fidgeting, playing with the books, getting off and on the seat, or amusing oneself pulling the woolly hairs out of one's coat. But one knows that all these things are naughty and frowned upon; and if one wants (as one does by fits and starts) to be really 'good', one follows the example of the adults, shutting the eyes and kneeling when they do, standing when they do, keeping still on the seat when they do. The ideas of right and wrong which I myself recollect having before the age of seven are of particular acts—usually wicked ones. I knew that there was something slightly shameful about eating pork. I knew it was wrong to play the violin and to read 'novels' (I had only a vague idea of what a novel was, picturing it as a sort of long writing-pad covered with writing in pencil). I did not think it was wrong to kill in general; I had on several occasions seen animals killed; but I did know that it was wrong to kill a man (I remember hearing a song about a murder). I have a distinct recollection of the first time it was brought home to me that, beyond a certain age, one does not appear in public in one's birthday-suit. And the most obvious explanation of all these ideas is that they came to me as pieces of information from adult authority.

The same general explanation will, I think, account for the belief in the wickedness of billiards referred to in the following passage:[1]

'Uncle Morris was referred to with bated breath. He died in Australia and is impressed on my childish memory by the ominous

[1] From an article by Eleanor Farjeon in *Blackwood's Magazine*, Sept. 1935, p. 307.

phrases "wild oats" and "black sheep". It seemed my Uncle Morris shed no glory on the name of Farjeon; though all I knew for certain of him was that he frequented billiard saloons. For a long time I thought billiards and damnation were synonymous.'

29. We need not, however, rely wholly upon these personal memories which are admittedly open to the suspicion that they have been influenced to some extent by later reflection. There is much more reliable evidence in the results of investigations undertaken by Professor Piaget[1] of Geneva into the moral judgements of children. Ideas of right and wrong, he finds, have different grounds according to the age and experience of the child. He does not profess to prove that all children of the same age have exactly the same moral outlook, but only that the majority in a given age-group have the same general attitude to moral questions; and that the development from one attitude to another follows a fairly definite principle. The 5–7-year-olds exhibit a morality of 'heteronomy' when the most potent standard of judgement is that of authoritative rule or command. The 12–13-year-olds have passed to a morality of 'autonomy' when the standard of judgement is a principle of social co-operation. There is a transition period, moving about the age of 9 as its centre, when the moral attitude exhibits marked confusion and contradiction owing to the conflict between these two standards.

Here we shall be concerned only with the earliest age-group, reserving for later discussion the moral ideas of the more senior children. According to Piaget, moral judgement in these early years can be explained for the most part in terms of instinctive tendencies coming under adult restraint; and the exceptional cases are explicable in terms of a vague apprehension of principles which come more clearly into consciousness in subsequent years. It should be emphasized that Piaget's theory is not that there are instinctive ideas of right and wrong modified by adult restraint, but that particular ideas of right and wrong arise first through instinctive tendencies coming under adult or social restraint. That is to say, for very young children, right and wrong seem to be

[1] *The Moral Judgement of the Child.*

identified almost entirely with what is commanded by authority.

30. This theory is illustrated from various fields of the child's experience, and perhaps one of the most interesting features of Piaget's treatment is his investigation of children's attitudes to the rules of the games they play. At first sight we should hardly expect such an inquiry to throw any important light upon moral ideas, but the more one reflects on games and the issues which are raised in connexion with them in juvenile society—and on the place which educationists assign to games in the training of character—the more do we appreciate the merits of this particular approach to the study of the problem. In fact, the rules of the games played in juvenile society have a curious analogy to the rules and customs of adult society, particularly at the lower levels of civilization. These rules have been elaborated and handed on by one generation of children to another, certain broad features of the rules persisting throughout, along with considerable variation in the details. Little boys are trained in the games by older boys, and in their turn they become the experts who train other little boys; and the rules are preserved because of the respect which is felt, first of all for the experts who give instruction in them, and later for the rules themselves.

Now, paying special attention for the moment to the 5–7 age-group, what is the attitude of the children to these rules, and how do they explain their origin if one can get them to think about origins? We find a general hostility to the idea of innovation (however much in practice the children may confuse and invent rules), and a tendency to attribute their origin to the will of some person or other (to daddy, or to the Town Council, or to God) of whom they stand in awe. Thus, with reference to the game of marbles and the special question whether one is permitted to throw from any place other than the line called the 'coche', one boy of $5\frac{1}{2}$ was asked if, e.g., small boys should be permitted to go closer up; and his answer was, '*No, it wouldn't be fair.*' Why not? '*God would make the shot not reach.*'[1]

After questioning a great many boys and girls about the rules of their games, Piaget concludes that, in this youngest

[1] Piaget, p. 50.

age-group, when the 'proper rules' are actually being learned by the younger from the older, to the younger children they are clothed with sanctity and explained in terms of authoritative imposition.

'It is a significant fact that it is the younger and not the older children who believe in the adult origin of rules (of games), although they are incapable of really putting them into practice. The belief here is analogous to that prevalent in conformist [primitive] communities, whose laws and customs are always attributed to some transcendental will. And the explanation is always the same. So long as a practice is not submitted to conscious, autonomous elaboration and remains, as it were, external to the individual, this externality is symbolized as transcendence.'[1]

31. When we turn to ideas of right and wrong which are admittedly moral, we find the same characteristic reactions. One new feature, indeed, emerges. We come across the conception of 'the fair' appearing at least confusedly in the child's mind at a very early age. The significance of this fact will be discussed later. At present the chief point to notice is that, while in the judgements of older children it plays a marked role, its influence in forming the judgements of the younger ones is either very weak or non-existent. Some of them know the word 'fair', but tend to identify it with what the adult orders. Others draw the distinction between what is fair and what is commanded, but think that obedience to orders must take precedence over any personal notion of 'fairness'.

Considerable attention was devoted to the attitude towards lying. Psychologists have shown that lies present a pressing problem to the child-mind because—Piaget accepts this view—the tendency in them to lie is natural. Here we find an excellent example of the clash between natural tendencies and adult constraint. The main points of interest in the investigation were the manner in which children evaluate lying, what they think lies are, and why they are supposed to be wrong. As to the first point, these children never seem to challenge the view that, however addicted they may be to lying, it is wrong. With regard to the second point—the nature of a lie—the child does not at first, apparently, regard

[1] Ibid., p. 88.

it as having any essential connexion with deceit. A lie is any form of 'naughty' speaking.

'The most primitive and, at the same time, from our present point of view, the most characteristic definition we were able to find was a purely realistic one: a lie is a "naughty word". Thus the child, while perfectly well acquainted with a lie when he meets one, identifies it completely with the oaths or indecent expressions which one is forbidden to use.'[1]

With regard to the third question: Why are lies wrong? Piaget prefaces his analysis of the children's views on this matter by some general remarks on their attitude to truth in general. Primitive child-thought, as he sees it, is directed towards its own satisfaction rather than to objective truth. As the child's mind comes into contact with others, truth acquires an increasing value for him. But so long as he remains egocentric, truth as such will fail to interest him, and he will not feel that any precise standards of truth are imperative upon him.[2] But in opposition to this natural tendency there comes the imperious demand from those in authority; and so we can say that 'up till the age of 7–8 the child tends spontaneously to alter the truth, that this seems to him perfectly natural and completely harmless; but that he considers it a duty towards the adult not to lie, and recognizes that a lie is a "naughty action" '.[3] Hence, for the age in question, lies tend to be thought of as naughty words which are wrong because forbidden and penalized.

In this account of the investigations of Piaget I have not, of course, been attempting to vindicate his conclusions but simply to record them and indicate the empirical evidence on which they are based. They do, however, carry great weight with me, and I am prepared to accept them as substantially accurate.

32. Now this customary type of morality, with its emphasis on authority, is generally believed to be characteristic not only of the primitive child-mind but also of the normal attitude in primitive societies. No doubt many writers on primitive institutions exaggerate the extent to which this is the case; but the exaggeration would not have taken place had there not been some striking features of primitive social

[1] Piaget, p. 136. [2] Ibid., p. 162. [3] Ibid., pp. 162–3.

morality to give it countenance. The emphasis on traditional observance varies from society to society, and cannot be properly assessed in any given case without a detailed study of the life of the peoples concerned. But it may be useful if I refer to one example, and then quote one author's summary of the general position in tribal Africa.

The example is furnished by Dr. Peristiany's study[1] of the institutions of the Kipsigis. He gives a detailed account of the ceremony of Initiation which lasts over a period of some months; and throughout the whole period the youth is having forcibly impressed on his mind the traditional customs and rites of his tribe. It is further remarked that though this initiation period is the outstanding phase of a man's social training, it must not be too sharply separated in our minds from 'the many other ceremonies which a Kipsigis will have to undergo during the course of his life. At every stage of his existence the Kipsigis must perform a certain ceremony or be initiated into some special duties related to his age.'[2]

Of the African tribes as a whole we are told, by the editors of a volume in which eight different systems have been surveyed, that

'Myths, dogmas, ritual beliefs and activities make his social system intellectually tangible and coherent to an African and enable him to think and feel about it. Furthermore, these sacred symbols, which reflect the social system, endow it with mystical values which evoke acceptance of the social order that goes far beyond the obedience exacted by the secular sanction of force. The social system is, as it were, removed to a mystical plane, where it figures as a system of sacred values beyond criticism or revision. Hence people will overthrow a bad king, but the kingship is never questioned; hence the wars or feuds between segments of a society . . . are kept within bounds by mystical sanctions. These values are common to the whole society, to rulers and ruled alike and to all the segments and sections of a society.'[3]

33. There are thus two senses in which our primitive moral ideas may be said to take the form of an acceptance of an established or customary order authoritatively declared.

[1] *The Social Institutions of the Kipsigis*, ch. ii. [2] Ibid., p. 7.

[3] *African Political Systems*, edited by Fortes and Evans-Pritchard, pp. 17–18.

It is true of our primitive moral outlook as individuals, and it is true of our primitive moral outlook in the early forms of human society. But there is also a third sense in which our primitive moral attitude takes this form, namely in the initial direction in which a normal civilized person looks when he wishes to discover how he ought to act in given circumstances. His first impulse is to cast around for an accepted rule to which he may conform. This is the point which Mill so clearly recognizes when answering the criticism against his utilitarian theory that men have no time, when there is a demand for immediate action, to begin to calculate all the possible pleasurable and painful effects which may result from alternative lines of action. This criticism, he replies,[1] is equivalent to the assertion that since a navigator has neither the time nor the data to make all the calculations necessary for the purpose of fixing the position of his ship on the surface of the ocean, therefore the science of astronomy plays no significant part in navigation. The fact is that the navigator goes to sea with his *Nautical Almanack* in which the main calculations have already been made; and all he requires to do is to apply these in relation to the particular data immediately concerning him. Similarly, adds Mill, the main calculations with regard to the promotion of happiness have been worked out in the history of our race, and all the individual requires to do on most occasions is to apply these rules in the particular situation confronting him.

Now, whether Mill is right in supposing that social rules have been developed with a view to promoting happiness is a matter which does not concern us at the moment. The point of immediate interest is his recognition of the fact that our normal procedure in determining what our duty is, in a given situation, is to look first for some customarily accepted rule. This is especially clear in the case of the determination of legal duty. For the most part we do not require experts to tell us what our particular legal duties are, for we can apply the general rules ourselves. But if there is any serious conflict of opinion as to the rights and duties of a particular individual on a particular occasion, there is an

[1] *Utilitarianism*, ch. ii, par. 24.

appeal to an expert. The expert will go first to the accepted body of law to see what is the recognized rule for the case; and if there is any difficulty in interpretation he will study a number of 'cases' in which analogous issues have been raised; and if he finds that the present issue is essentially identical with one which has been authoritatively decided in the past, he will use this as the guide for his present decision. In short, the initial appeal is always to an established order of behaviour; and, if there is any doubt as to what that order requires in the particular circumstances of the moment, to an authoritative ruling.

34. Let us now try to state in a summary form the position which we have so far reached. Whether by 'primitive moral judgements' we mean those judgements which we make at the dawn of our individual consciousness of obligation, or those which express the attitude of the individual in primitive society, or the initial effort which the normal civilized person makes to determine his duty in a particular situation—in whichever of these three senses we understand the term 'primitive', it appears that our primitive moral attitude is that of conformity to an order which we find established around us. This is what I call customary morality, implying the two notions of an order of established rules and of an authority to direct the application of those rules if their meaning in a given situation is ever seriously in doubt. It does not seem to me to be open to serious question that the primary stage in the development of the moral consciousness is expressed in the conviction that if a certain kind of action is generally done, and generally expected of us, and ordered by authority, this constitutes a reason why it 'ought' to be done by us.

It is only because customary morality is a genuine stage in moral experience that the 'Authoritarian' conception of the moral standard is able to commend itself to the popular mind in its more or less vague attempts to formulate a theory of the ultimate standard of right and wrong. The Authoritarian theory is that right and wrong are determined by the will of some authority. There are all sorts of subordinate authorities which decree what ought to be done within limited provinces of life; but their claim on our allegiance

is grounded upon the fact that they are exercising powers delegated to them by some supreme authority. This supreme authority may be conceived as the will of 'Society' or more usually, in popular thought, as the 'Will of God'; but whichever form the theory takes, its fundamental conception is of the supreme standard as the legislative will of a supreme authority.

The Principle of Authority

35. Let us now examine the 'Authoritarian' theory in order to see whether it provides a satisfactory account of the supreme standard of right and wrong; and in our scrutiny of it we shall apply two tests. There is, firstly, the question of its logical consistency; and, secondly, the question whether it will cover all the main facts of our moral experience which it is meant to cover. It will, I think, be sufficient if we consider the Authoritarian theory in its most common form: 'The ultimate standard of right and wrong is the Will or Command of God. Actions are right or wrong in so far as they are commanded or prohibited by God.'

Now, stated in this simple form, the theory is not open to any criticism on the ground of logical consistency. It is a quite intelligible view to hold. It is not, however, as so stated, compatible with certain fundamental features in our moral outlook. That is to say, it is not adequate as a theory to explain the facts it is meant to explain. If we try to see what it involves, it is obvious that one of its most important implications is that predicates such as 'right' and 'wrong' cannot be applied to the commands of God Himself; His commands cannot be subject to any kind of moral assessment; it will be mere confusion of thought to assert that God's commands should be obeyed because they are 'holy, just, and good', if these terms are supposed to carry any suggestion of 'righteousness'; for, by hypothesis, it is the commands themselves which create the distinction between righteousness and unrighteousness. Now such a view of authority as the creator of (as distinguished from being a guide to) right and wrong is so contrary to a large number of our moral ideas that it cannot be accepted as a true account of the ultimate standard of moral judgement. To show that

this is so, I shall return to the examination of actual judgements, dealing in the first place with those of children.

36. In our earlier account of the ideas of children we confined our attention to those of very tender years. But the same investigation by Piaget which suggested the hypothesis of an authoritarian standard for the earliest age-group also brought to light a very different attitude on the part of the older children. While for the former the attitude is that of 'unilateral respect' towards adults and persons in authority, for the latter this is increasingly displaced by the attitude of 'mutual respect' amongst members of a group as the ground of the evaluation of actions. The idea of authority becomes subordinate to the idea of the 'fair' and 'reasonable'. Thus

'older children of 10–12 generally invoke against lying reasons which amount to this: that truthfulness is necessary to reciprocity and mutual agreement. Among the alleged motives there will be found, it is true, a whole set of phrases inspired by adult talk: "We musn't tell lies because it's of no use"; "We must speak the truth—our conscience tells us to." But along with these commendable but too often meaningless formulae we can observe a reaction which seems to be, if not altogether spontaneous, at any rate founded on experience. The reaction in question implies that truthfulness is necessary because deceiving others destroys mutual trust. One is struck by the fact, in this connection, that while the younger children regard a lie as all the worse for being unbelievable, the older ones, on the contrary, condemn a lie in so far as it succeeds; ... It would seem, then, that the evolution of the answers with age marks a definite progress in the direction of reciprocity. Unilateral respect, the source of the absolute command, taken literally, yields the place to mutual respect, the source of moral understanding.'[1]

But even the very young children show at times the capacity to transcend the notion of mere authority and to base their judgements (somewhat tentatively, it is true) on some principle of 'fairness', even in a question between themselves and adults. Thus, one of Piaget's collaborators in the inquiry asked whether it is fair to keep children waiting in shops and to serve the grown-ups first; and apparently the majority of the six-year-olds thought that everyone should be served in order of arrival;[2] and, in the instances quoted in which children give the preference to

[1] Piaget, pp. 166–8. [2] Ibid., p. 285.

adults, it is clear that they do so on some principle—such as that grown-ups are more busy and in more of a hurry than children. Piaget thinks that the question which elicited these rather unusual answers from the youngest children is particularly significant, inasmuch as it presents the children with a situation where there is an opposition between children's and adults' interests, but where there is no analogy to an ordinary situation where an adult rule immediately suggests itself as relevant. And this leads on to the suggestion that children do not regard all adults as authoritative, or as having a claim to first consideration in regard to their interests. They know that there are some 'bad men'; and possibly they may look upon the strange casual adult as the early Israelites regarded the gods of the other nations. One may show them respect—as the old Irish lady always bowed at the name of Satan, explaining that there is no harm in being civil to the 'ould gintleman'—but one does not regard them in the same way as one does those who are constituted authorities in home, school, &c. What immediately strikes the imagination in the shopping situation proposed to the children is that here we have an accidental collection of persons, old and young, all equally engaged in the same pursuit; and the question posed requires a certain exercise of original judgement. While respect for the adult as such shows its influence, the sense of adult authority falls into the background; and so far as the adult is, in fact, given a preference, the preference is based on a principle of fairness—grown-ups have less time to spare.

37. The suggestion which emerges from this is that, even when very young children use an authoritarian standard of judgement, they are not necessarily accepting the view that authority 'makes' acts right and wrong. The distinction they seem to draw (not of course in any precise and explicit way, but implicitly, so far as we can infer from their attitude) between adults who stand *in loco parentis* to them, and adults who do not, suggests that respect for authority is based on the obscure idea of the authoritative person as occupying a certain status, and of his claim to obedience as following from a certain function he has to perform. If this suggestion is correct—and I think that we shall find it borne out by our

investigations in other fields of moral ideas to be dealt with later—then it means that there is a vague, hazy reference, even in our most primitive moral attitude, to something beyond the mere command which validates it and makes obedience to it proper.

In this connexion it is worth noting the theory, commonly held by psychologists, that the child attributes a kind of divine perfection and infallibility to its parents, especially to the father, and that this postulate (allowance being made for affection and fear) lies behind the submissiveness of children in a home. I do not myself have any distinct recollection of attributing this perfection to my parents; but that may very well be because the postulate was so deep-rooted and unquestioned that what I first became aware of was the weakening of the conviction. But it may be relevant to the general point at issue to remark that I have the most clear recollection of looking on policemen in this sanctified light. I knew that the function of the policeman was to keep a look-out for bad men and take them off to prison. I thought that to hold such a position a man must be extraordinarily virtuous; and the idea that any ordinary boy should aspire to hold such an office when he grew up seemed to me presumption even to the point of sacrilege. My mental reactions, when it first dawned on me that all policemen are not sinless, were rather like those which are said to characterize the child's growing doubts about the perfection of its parents. I do not think this idea was put into my head by anyone else. It seemed to be a direct spontaneous association of the authoritative office with the appropriate character.

38. Again, when we examine in its proper context the 'customary morality' of early societies, it becomes clear that this gives no countenance to the view that authority and convention are regarded as sacrosanct, apart from any function which they may perform or principle which they may express. Modern field-workers in anthropology and sociology are critical of the generalizations so fashionable in the early literature on this subject, for they find that these sweeping statements rarely fit the facts. A considerable amount of work has recently been done in investigating the life of African peoples; and it appears that, allowance being

made for the differences in the material and educational conditions which stimulate change, the institutions of these peoples exhibit the same principle of flexibility and development as characterizes our modern systems. Respect for authority derives from the office which the authority is expected to fulfil; and that office takes its character from the needs which the social organization as a whole has to meet. With regard to the potentialities of development and relative flexibility of the customary law, Dr. Peristiany, whose work on the Kipsigis has already been mentioned, says:

'Kipsigis law is based on precedent, and this makes for the very slow adaptation of the tribe, and of the dicta of its councils, to modern conditions. The judges are old and their judgements sometimes antiquated; but we see from the organisation of the court that they have their own way of testing public opinion during the trial, so that their verdict may be a popular one. . . . To be hailed as a great judge is the ambition of all the Kipsigis Poysiek, and this they achieve by putting tentative questions, noticing the reactions of the crowd, then using their powers of rhetoric to sway those elders who remain refractory to the point of view of the majority.'[1]

It may well be felt, with regard to this manner of procedure, that the chief danger will be not an excessive rigidity in the application of the law, but rather a certain subservience to changing popular feeling. At any rate there is here considerable scope for the 'interpretation' and development of customary rules in whatever direction the aspirations of the people may move; and this brings us to the statement of the foundation upon which social structure is built in such societies.

'If we study the mystical values bound up with kingship . . . we find that they refer to fertility, health, prosperity, peace, justice—to everything, in short, which gives life and happiness to a people. The African sees these ritual observances as the supreme safeguard of the basic needs of his existence and of the basic relations that make up his social order—land, cattle, rain, bodily health, the family, the clan, the state. These are the common interests of the whole society as the native sees them. . . .

'These matters also have another side to them, as the private interests of individuals and segments of a society. The productivity of his own

[1] Op. cit., p. 185.

land, the welfare and security of his own family or his own clan, such matters are of daily practical concern to every member of an African society; and over such matters arise the conflicts between sections and factions of the society. . . . The common interests spring from those very private interests to which they stand in opposition.'[1]

The general instrument for softening or reconciling the conflict is the system of customary rules of behaviour and the various authorities charged with their administration. Authority and responsibility go together.

'In the lineage round which a joint family is built up, the head has complete moral and ritual authority; he has the right to dispose of his dependents' labour, property, and persons; and he can use force or ritual measures to assert his authority. . . . [But] Rights imply responsibilities. Every grade of right and authority is matched by an equivalent grade of responsibility. Those who can exact economic services from their dependents are economically and ritually responsible for their welfare and publicly liable for their actions. . . . Ultimately . . . authority rests on a moral basis—the bonds of mutual dependence and common interest which unite co-members of a lineage.'[2]

39. Our contention in the last few pages has been that, at the basis of respect for particular rules and authorities, there lies some implicit or explicit reference to certain principles which the rules and authorities are supposed to express and apply. We turn now to the question whether this reference also exists in the determination of rights and duties in the third field to which we have previously drawn attention, namely the determination of legal rights and duties in a modern state. We have seen that here also our first reaction is to look for some established rule to which we may conform. But is the authority which applies the rule regarded as the ultimate determinant? Or does our method of determining rights and duties imply some reference beyond the rule and the authority imposing it? In dealing with this question I think we may divide our problem into two parts: (*a*) Do courts in actual fact sometimes take into account extra-legal principles? and (*b*) If they do, is this regarded as a legitimate part of their function?

With regard to the first question, the answer is a simple affirmative. Examples can be given from the procedure in

[1] *African Political Systems*, pp. 18–19. [2] Ibid., pp. 251–3.

all grades of courts; but the one I shall select for illustration is drawn from a magistrates' court where lay magistrates, who possess no elaborate legal training, are strongly represented. I choose this particular example because it not only supplies an answer to question (*a*) but also raises points which are very relevant to question (*b*).

Here is the case.[1] A man liable for military service registered as a conscientious objector. His case came before the local National Service Tribunal, and his claim was that he should not be put into any military organization but be sent to work of a civil character under civilian control. The claim was rejected, and he was directed to military service of a non-combatant nature. On his appealing against this decision, the Appellate Tribunal reaffirmed the decision of the local Tribunal. When called for medical examination, however, he did not appear, and was consequently summoned before the local magistrates. He pleaded guilty. The court, without imposing any penalty, ordered him to present himself for medical examination; but again he refused to submit. A further charge was then made against him for disobeying the order of the court. He again pleaded guilty, and the court then decided (by a majority) to deal with him under the Probation of Offenders Act. They appear to have been influenced by his character and past record, and to have felt that if he were sent to the army he would refuse to do any kind of work, while there was some work under civilian auspices which he was perfectly willing to do. They felt they ought not to convict, but to release him on probation for twelve months, directing him to seek ambulance or similar work in a civilian capacity.

Now it is obvious that here the magistrates were faced by a difficult human problem. On the one hand, there was the need to preserve respect for law and the performance of duties deliberately laid down; and, on the other hand, there was the need to respect genuine moral convictions, to say nothing of taking a sensible line in making use of people for the national war effort. These two demands could not be properly reconciled as the position stood; but the magistrates appear to have felt that the fundamental purpose of

[1] *Eversfield* v. *Story*, in *All England Law Reports*, 1942, vol. i, pp.269 ff.

the National Service Acts could, in this case, be best fulfilled, and the man's moral convictions at the same time respected, by the decision they took. Probably ambulance work (which he was quite prepared to do under civilian auspices) is what the military authorities would have sent him to had he been forced into the army. Here, then, is a clear case where a court has taken into account the broad principles of what is thought 'reasonable' and 'fair' in assigning legal rights and duties.

40. We turn now to the second part of our problem. Is this 'looking beyond the rules' regarded as an unwarranted departure from the function of the court, or is it a necessary part of that function? The immediate sequel to the magistrates' decision seems to suggest that such 'looking beyond' is quite illegitimate. Actually, when we have gone properly into the matter, we shall see that this is not the proper interpretation of what followed; but it is the obvious interpretation which first occurs to us. The Ministry of Labour and National Service appealed against the magistrates' decision; and the judges who heard the case in the King's Bench Division were unanimous in condemning the proceedings in the lower court, and remitted the case with an order to convict and punish the accused. The following summarizes the attitude of the bench: 'In my opinion the magistrates completely misinterpreted their powers and duties . . . they acted in excess of jurisdiction and contrary to law. . . .'[1]

It would appear, therefore, that 'looking beyond the rules' is unwarranted; but before committing ourselves to this conclusion, it is necessary to look at the reasons which the judges give for their verdict. What we shall see is that the fundamental objection is not to looking beyond rules to principles, but to not observing rules—a very different thing.

The specific function of a court is to apply existing rules, so far as clear rules are ascertainable, in preference to the individual members' views of what principles ideally demand. The point is not that principles should be left out of account, but that clearly established rules should not be left out of account. In the first place, it was no part of the

[1] Ibid., p. 270.

magistrates' function to determine whether, and to what extent, the man was a bona fide conscientious objector, and to what work he should be directed. These were matters to be decided by the National Service Tribunal, and by statute no determination of a Tribunal on these matters is to be called in question in any court of law. By interfering with this determination the magistrates had interfered in business from which they had been explicitly excluded. In the second place, they completely misapplied the Probation of Offenders Act by bringing the present case under it. This Act is an instrument to 'give comfort and encouragement' to those who, though proved guilty of some offence, show signs of wishing to conform to their duties in the future.[1] Now the accused, with respect to the particular class of duties in question, had not 'a good character or good antecedents', no matter how blameless he might be with regard to other classes of duties such as his family, professional, commercial, or other obligations. He had not only refused to conform to his duty on two occasions in the past, but he had made it clear that he was going to refuse to conform in the future also. When the aim of the Act is to encourage offenders to assume the duties which they have on some specific occasion transgressed, it is a misapplication to make use of it for the case in question, and its general utility can only be defeated if it is used to encourage the evasion of duty. This, in substance, is the attitude of the judges of the King's Bench Division.

41. Now this is not to say that particular rules over-ride general principles; but that, when a person's specific function is to apply established rules, then he must do this rather than apply his own private interpretation of what the general principles ideally require. The reasoning here appears to be founded on the assumption that, however much a particular rule may at a given time appear to conflict with ideal justice, still principles can only be effectively embodied in practice through the use of particular, published rules. Good intentions behind the evasion of such rules will, more often than not, be self-defeating in the long run. One of the first great rules of procedure which evolving society has found useful

[1] *All E. L. R.* 1942, vol. i, p. 272.

is that which distinguishes between the functions of legislative, judicial, and executive officers. It is not possible to make a clear-cut separation between these three functions, but the separation is made as far as possible. It has been the experience of our ancestors that a confusion of them is detrimental to the liberties of the subject; and in fact the independence of the judiciary is conditional upon its limiting itself primarily to the declaration and application of existing law, and refraining from any kind of 'legislative judgements' except when a particular case cannot be decided without filling some gap in the existing system. In the ordinary course, the judiciary must assume that the legislature is performing its own social function with reasonable efficiency, and it must observe the principle of justice in Plato's sense of 'minding its own business'. Working within this fundamental rule of social procedure, the immediate business of courts of justice is to administer justice in accordance with existing law; and it has been found by experience that even this limited task requires the careful following of a particular technical procedure, the neglect of which is likely to infringe not only law but justice itself.

That these are the fundamental reasons for insisting upon the administration of justice through, rather than by the neglect of, established law is, I think, clearly shown by another case,[1] in which a conviction of a magistrates' court was quashed by the King's Bench Division. Here, again, the magistrates had departed from the regular procedure, and in consequence had convicted a person without giving him any proper opportunity of answering the charge brought against him. When he appealed against the sentence, counsel for the magistrates argued that for technical reasons the appeal was invalid. The judges, however, denied that the technical points raised could possibly be meant to apply to the extent of debarring them from dealing with a case in which the rules of evidence had been so badly handled as to amount to a denial of 'natural justice'.

42. So far we have tried to show that courts do, in fact, in the determination of legal rights and duties, look beyond existing rules to general principles; and that, provided

[1] *All E.L.R.*, *R.* v. *Wandsworth JJ., ex parte* Read, pp. 56 ff.

existing rules are not disregarded in the application of principles, there is no objection to this 'looking beyond'. This would, however, only show a certain negative tolerance of such taking account of principles of the 'fair' and 'reasonable'; and, to establish my main point with regard to the status of existing law and authority, I shall have to show something more, namely that the attitude to principles is more positive. I think this can be shown. It can be shown that the interpretation and application of existing law assumes that existing rules and principles are complementary, in the sense that the interpretation of rules always or generally requires looking beyond the rules to the principles which they are supposed to express. The importance of this point is that, if it is true, then legal authority will have been shown to be regarded, not as a final standard of rightness, but as subordinate to some standard not identical with the will of the authority.

It seems that, in all but the most simple cases, the particular direction which is given to the application of a rule depends upon one's retaining a grasp of the principle to be embodied, using it as a kind of mental compass. In only slightly complicated cases this use of principles is so implicit that it will ordinarily pass unnoticed; but when the complications increase it becomes explicit. An interesting illustration of the point is found in the case[1] of a Dutchman resident in England called up by the Netherlands government (then located in England) for military service, and arrested by the British police as a deserter. He contended that the whole proceeding was contrary to both English and Dutch law; and in the trial of the case a great number of points had to be dealt with, including points in both legal systems as well as in international law. For the most part, these points, though intricate, could be dealt with by a painstaking examination of statutes, accepted rules, and leading cases; but there are critical stages where 'authority' for the next step in the argument is ambiguous or lacking; and the whole of the subsequent direction of the reasoning from these stages is determined by the extra-legal principles which, it is assumed or stated, ought to be used as guides.

[1] *All E.L.R., re* Amand, pp. 236 ff., and pp. 480 ff.

43. Now it may be suggested that while the whole of the foregoing argument may be true, it does not quite touch the vital point of the Authoritarian theory of the moral standard. Parental authority for the child, the authority of tribal leaders in primitive society, and the authority which makes or declares the law in civilized states—all these hold a derivative title to exercise their power. But they, and also the principles on which their legitimate powers rest, are subordinate, in the end, to a supreme Authority. The ultimate moral standard is truly apprehended by the religious consciousness as the Will of God; and it was in these terms, in fact, that we ourselves stated the authoritarian theory: Actions are right or wrong in so far as they are commanded or prohibited by God. It was agreed that, so stated, the theory is open to no logical objection; and in professing to show that this theory will not square with our ordinary assumptions about right and wrong, all we have, in fact, done is to show that no merely subordinate authority is regarded as ultimate. We have not shown that the conception of authority itself is a subordinate one.

44. This comment is, on the whole, reasonable so far as it puts fairly precisely the stage at which we have arrived in the argument. What I now propose to show is that the authoritarian theory cannot find safe refuge even in the religious mind. However much people may speak as if they accepted the will of God as the source of right and wrong, a closer analysis of their mental attitude will show that they do not really do so. What lends colour to the misinterpretation is a confusion between the conception of the commands of God as a perfect 'guide' to right and wrong, and the conception of those commands as an ultimate 'standard' of right and wrong. In the most unreflective stage of the religious consciousness, men are able to conceive quite clearly of a guide without, however, raising in any systematic way the question as to the ultimate standard. Take, for instance, the story of the Fall in the Book of Genesis. God had said: 'You may eat of the fruit of every tree in the garden except this one—the Tree of Knowledge.' But Adam and Eve ate the forbidden fruit and were punished; and the consensus of opinion, I presume, amongst Jews and Chris-

tians in general is that they did wrong and were justly punished. If so, on what ground is the action regarded as wrong? Apparently the sole and entire ground is that it was disobedience of an authoritative command. The tradition gives no explanation beyond this prohibition. But a significant point to bear in mind is that, whatever may have been the original form of this story, by the time it came to be recorded in the Book of Genesis the Israelites had themselves passed away beyond any moral point of view which could possibly conform to an authoritarian theory. They had come to attribute a 'moral' or 'righteous' character to God himself; and this, as we have seen, is not compatible with the purely authoritarian theory. Even before their settlement in Palestine they had come to conceive of their relations with Jehovah in terms of a Covenant or contract. They had entered, they said, into a solemn agreement with Him to do Him service, to give Him the honour, sacrifices and other services in which He delights—for a consideration. The consideration is that He shall be their God of Hosts, their leader and champion in war, and settle them in the land 'which He sware unto their fathers'. This is quite different from the authoritarian idea of right and wrong; for it means that both God and man are bound in their relations with each other by certain principles of honour and justice which do not depend upon the mere will of either. It was a matter of arbitrary will with God (as it normally is with any man) whether the contract would be entered into at all. But, the promise having been made, then at once an obligation, not subject to unilateral repudiation, bound Him. The Israelitish conception of the Covenant is approximately that of the feudal conception of the relation between lord and vassal, in which rights to service were balanced by obligations to protect, these obligations being binding on the king as on anyone else. The burden of the complaint of so many of the prophets is that, while Jehovah has always been prepared to fulfil his share of the bargain, and has indeed been most generous in doing so, the Israelites have constantly betrayed Him. And when the theme of the religious teachers of Israel and Judah, and of their Christian successors, spoke less about a Covenant, and more of devotion to the one God

of the universe, it was not by way of a more authoritarian conception of morality, but by way of emphasizing 'love', 'righteousness', and 'goodness' as essential attributes of His nature, that they hoped to inculcate this spirit of devotion. Now what is an essential attribute of a person's nature cannot be a mere creation of his will or command. It must have a certain 'meaning' capable of being expressed independently of the person or thing possessing it. Thus, in later centuries God is defined as a spirit, infinite, eternal, and unchangeable in His being, wisdom, power, holiness, justice, goodness, and truth; and, if God is 'just' and 'good', then 'just' or 'good' actions cannot *mean* 'those actions commanded by God'.

45. It appears, then, that if we wish to put the authoritarian theory in a form which will correspond even to the moral ideas associated with the religious consciousness, the original simple statement will not do, and must be modified thus: Acts are right or wrong in so far as they are commanded or forbidden by a perfectly just or righteous Being. But when we thus expand the theory to satisfy our moral ideas, it comes under the very proper suspicion of the logician, for we have incorporated the very term to be defined into the defining concept. 'Righteous' presumably means right-acting, or having the characteristic of doing right acts. So that if we say a right act is one which conforms to the command of a righteous God, this is logically on the same level as describing a triangle as what conforms to the pattern of a triangular figure.

46. Why is it, then, that while the moral ideas of the religious consciousness conform, like other ideas of right and wrong, to an essentially non-authoritarian type, the authoritarian theory is so commonly held, especially by religious people? This is due primarily, I think, to the essentially practical interest in moral matters of most religious writers—the desire to live and to recommend a certain way of life, rather than to reach an understanding of the basis of moral judgement. This essentially practical interest is apt to obscure the distinction between the conception of an 'authority' as an expert 'guide' to right action, and the conception of authority as a 'standard' or 'creator of a standard' of right

action. The distinction is of little importance in one sense for practical life, if one grants the conception of God with which the Authoritarian theory is usually associated. It does not much matter for practical purposes whether God is the expert, infallible guide to right, or the creator of right, if one can be perfectly satisfied that whatever He commands is really and necessarily right. The usual conception of God is that He is indeed such an infallible guide. He is perfect in every respect; and amongst His attributes are omniscience and righteousness. Being omniscient He cannot be subject to any error, and, therefore, cannot unintentionally misinform you about your duty. And, being righteous, He cannot intentionally misinform you. So that whatever He commands must necessarily be right.

On this conception of God, then, we can safely commit ourselves to the proposition: (*a*) 'What God commands is always right.'

But this proposition is compatible with either of two other propositions, although the two latter are not compatible with each other: (*b*) 'An act is right because God commands it'; and (*c*) 'God commands an act because it is right.' Proposition (*b*) makes the command logically prior to the rightness, and (*c*) makes the rightness logically prior to the command. Very often, if people are asked which of these they believe, they will say that they believe (*b*), because they have not thought very much about the subject; nor, for practical life, does the problem often arise. An infallible expert's guidance is much more important for practical life than a moderately accurate knowledge of the principles on which he bases his rulings plus an equally imperfect grasp of the complex circumstances in which the principles are to be applied. But it is a very different matter when our interest is primarily in the theoretical understanding of the moral life. Here it is of the utmost importance that we should distinguish between a guide to, and a standard of, right action; and having made that distinction, we see that proposition (*b*) cannot be true; for, though it is compatible with (*a*)—the original proposition: 'What God commands is always right'—it is not compatible with the premisses on which that original proposition was founded. These premisses

were: God is omniscient, and God is righteous; and both of them were necessary to entitle us to the conclusion, 'What God commands is always right.' The proposition 'Acts are right because God commands them', is not compatible with the premiss, 'God is righteous.'

In short, if the Authoritarian theory is kept in its original simple form, it satisfies the demands of the logician but is not compatible with the moral judgements which it is meant to explain. If we try to expand it so as to make it cover those judgements, we can only do so at the expense of logical thinking.

47. We shall now try to state the general conclusions to which we are led by this examination of customary morality and the principle of authority. It appears that customary morality, which is most conspicuous in early forms of society, is not, as has so often been suggested, a rigid conformity to rules quite uninfluenced by any sense of some good to be realized by this conformity, or any sense of principles in the light of which these rules and the authorities prescribing them are evaluated. Customary morality, though laying great stress on precedent and traditional observance, is relatively flexible; and its rules tend, over a period, to adjust themselves to the ends and principles which they subserve. But customary morality is an unreflective morality; and individuals at this stage of development, though in fact moved by ends and principles, have seldom a distinctly formulated conception of these. When they do make their first essays in reflection upon morals, they are naturally struck by the most patent features of their moral customs, namely the general sense of their bindingness, overriding the individual's own inclinations, and of the declaring, sanctioning authority. The first ethical theorizing, therefore, tends to take the form of Authoritarianism. This tendency is strengthened by the fact that the first concrete ideas of right and wrong for the individual come to him as pieces of information from an authoritative source. The youth in early society receives instruction in the sacred rites and customs of his tribe at an impressive initiation ceremony. The awakening intelligence of the child is confronted by a multitude of 'do's' and 'don'ts', for most of which he can see

no reason, and some of which are so far outside his limited experience that he may even have the most fantastic idea of the thing which he is told is wrong. But he accepts all this information in good faith, coming as it does on the 'expert' authority of those who stand to him *in loco parentis*. Again, the normal citizen of a civilized country naturally looks first to established rules, authoritatively upheld, in trying to discover his detailed duties. All these are prima facie the most striking and important facts about moral and legal duties; and when we begin to theorize, the Authoritarian theory is the usual result.

But a proper analysis of the moral consciousness functioning in practice—even in customary morality—shows that the principle of authority is but one of the principles which determine the form our moral judgements take; and that our respect for authority depends upon the sense (however obscure) of some good to be realized and of certain principles to be embodied in human behaviour by the instrumentality of this authority; and that, hence, we cannot treat the principle of authority as itself the ultimate standard of right and wrong.

III

THE MORALITY OF SOCIAL JUSTICE: RIGHTS, DUTIES, AND OBLIGATIONS

48. WHAT distinguishes customary morality from other levels of morality is not that they are based on quite separate principles, but that customary morality is mainly unreflective. There are general ends and principles implicit in customary morality which influence its development; but these are not clearly focused in the consciousness of those who are moved by them. A new stage in moral experience is reached when reflective criticism, being turned on the system of individual and social observances, brings these underlying principles to light. There is not, of course, a clear-cut line of demarcation between unreflective and reflective morality, for there is no point at which one can say: 'On this side there is complete unawareness of the guiding principles, and on that side they have emerged into full consciousness.' But if we take two periods in the life of the individual or society, separated by a considerable interval, we can see that, in the earlier, explicit recognition does not play a great part in developing the system of rights and duties, while in the later the principles are being more explicitly and systematically applied. For want of a better name I shall call this reflective level the 'morality of social justice'.

In trying to show what are the fundamental principles in question, we shall have to deal with a variety of problems. Our previous chapter, for instance, has shown that the idea of personal and common good is one of the principles involved; but that is not to say that it is the only one, as indeed I think that it is not. There is at least a problem to be discussed in this respect, as is sufficiently shown by the welcome which has been accorded by many philosophers to Ross's distinction[1] between obligations to 'produce good states of affairs' and obligations to 'fulfil promises'. The point is that for the second type of obligation we require, on this view,

[1] See *The Right and the Good.*

to postulate some principle of obligation other than the idea of the good. If I may at this early stage indicate the line of argument I shall myself follow, I may say that, while I think Ross correct in holding that more than the idea of the good is implied in moral obligation, his incomplete analysis of the conceptions of right and duty has been responsible for setting up in his mind a false opposition between different classes of obligation—some of them directed to the production of good, and others based on the promise-keeping principle—as though any obligation at all could be understood without taking both principles into account. I shall hold, on the contrary, that both the idea of the good, and also the principle (to be explained in our chapter on Justice) involved in promissory obligations, are required to explain any duty whatsoever. Ross's distinction does not establish two kinds of obligation, but is a valuable clue to two principles which are involved in all obligations. The idea of good refers to the content of obligation, and the other principle to its essential form. The material content of an obligation is the production (or the giving of opportunity for the production) of good, while the formal principle is respect for persons as 'subjects-of-ends', or seekers after good. We do not owe obligations *to* the 'production of certain good states of affairs' but *to* 'persons'; though *what* we owe to them (i.e., the content of any obligation) is *to-produce* (or *to-give-opportunity-to-produce*) certain good states of affairs.

49. These statements are, I admit, all very dogmatic. They are offered here, however, not for immediate acceptance, but only to indicate the conclusions which will, I trust, be accepted as a result of the argument of this and the two following chapters. The next chapter will be concerned with the analysis of the idea of the good and the marking of the limits of its function in the moral consciousness; but at present, using the terms 'interest', 'end', 'good' in a broad, general sense as roughly equivalent, I propose to show, by an analysis of the notions of right, duty, and obligation, that the idea of good is involved in the notion of duty or obligation as such. My analysis will be concerned with legal rights and duties; but in view of what has already been said about the relation of legal and moral concepts in connexion with

the idea of justice (and it is the morality of social justice which here concerns us), this procedure is perfectly legitimate and proper.

The main course of the argument will be as follows: I shall begin by taking the law of contract as setting out an actual system of rights and duties with regard to promise-keeping. We shall find that contractual or promissory obligations are ways of safeguarding interests of persons. This naturally opens up the question as to the relation between rights in general and interests, and we shall see that the particular conclusion with regard to promises holds generally. The next problem to be dealt with is that of the relation of duties and obligations to rights; and the principal conclusions which emerge from the inquiry are that duties are correlative to, and logically consequent upon, rights; and that they cannot, therefore, be understood out of relation to the conception of good.

Promissory and Contractual Obligations

50. One of the topics much discussed by moral philosophers is the duty (or, more strictly, the obligation) of promise-keeping; and I shall try to elucidate the common view on this subject so far as this view can be inferred from our law. We shall be concerned here with the law of contract, a department of law which deals to some extent with unilateral promises and more fully with mutual promises.

To what extent is a promise a source of legal obligation? Some systems presume an obligation to have been created whenever a promise has been made. This is merely an initial presumption, and it may, as we shall see, be successfully challenged. Still, the onus of proof rests upon the person who asserts that his promise has not placed him under obligation. 'The law recognizes as a general principle that an obligation may arise from mere consent—that if a man undertakes to do or pay something, or to abstain from some course of action, he has incurred an obligation which may be enforced against him by some form of legal process.'[1]

Of course the courts will not occupy the time of public institutions with trivial disputes; but whenever the matter

[1] Gloag and Henderson, *Introduction to the Law of Scotland*, ed. 1, p. 23.

is of sufficient importance to occupy their attention, they work on the principle that a promise, as such, is presumably binding.

Now why should a promise which I have made place me under a legal obligation? The answer which generally commends itself is that the obligatoriness derives from the relation of a 'promise' to the interests of persons, and this suggestion seems to accord sufficiently well with legal practice. The law will take cognizance of matters where the assessing of profit and loss seems reasonably possible. If I promise my friend to accompany him to a concert, and then decide not to go, no legal remedy will normally be available to him. But if, in a fit of generosity, I promise him £100—and if he can supply the appropriate proof of the promise—then the courts will entertain an action by him. In the first case there is not, while in the second case there is, some chance of assessing gain and loss with respect to the interests of the 'promisee'. There is also the fact, of course, that the former promise is so trivial that the taxpayer can hardly be expected to take any profound interest in the dispute. All this suggests, then, that promissory obligations derive their significance from the interests of persons concerned.

51. That this is, in fact, the true explanation, we shall find if we consider what is meant by a promise. To constitute a promise three things are necessary.

(*a*) It must be a statement (or an action with the significance of a statement) indicative of a volitional or conative attitude of mind in the person making it. But (*b*) not every such statement is a promise. The expression of a hope, or even the expression of an intention, is not necessarily a promise. This is evident from the fact that, while a promise gives rise to an obligation, when 'a party has only indicated an intention, he has incurred no liability. The announcement that I intend to do something does not bind me not to change my mind, and anyone who acts or incurs expense on the assumption that I will carry out my intention does so at his own risk.'[1] To be a promise, therefore, a statement must be capable of reasonable interpretation according to the categorical form; 'I shall give you (or *A*) £100.' That is to say,

[1] Gloag and Henderson, p. 36.

a 'promise' must assert a settled disposition of my will in virtue of which a future event may be counted upon to happen. But this is not all; for (*c*) to speak or act in someone's presence in such a manner as to assert a settled disposition of my will, lays me under no obligation to him unless I am aware that his interests are affected and I intend him to count on my action. The important fact is not whether the statement is made in his presence or directly to him, but whether I am aware that his interests are directly affected and whether I intend him personally to count on my behaviour in planning his own conduct with respect to those interests. Thus, although a witness to the signature of a contract is a mere third party without any title to demand performance, yet 'a promise to give a subscription to a charitable society may be enforced by the society, though not made to the society itself nor to anyone acting as agent for it'.[1] The general principle has been stated as follows: If *A*, on the ground of his words or conduct, incurs liability to *B* through *B*'s acting in view of *A*'s statement, then '*B* must be either a person with whom *A* has actual relations, or a person whom *A*, as a reasonable man, is bound to regard as interested, and not merely a member of the general public'.[2]

It seems clear, then, that a promise means a categorical assertion about the future behaviour of the person making it, the assertion being made in the knowledge that a particular person or group is likely to act in anticipation of this behaviour, the promisor binding himself to secure in this respect the interests of the promisee.

52. So far we have paid attention only to the general presumption that promises are to be honoured. But this is merely a presumption; and there are circumstances, which we shall now consider, in which the breaking of a promise may be permitted or even commanded. In what follows I shall speak of 'promises', 'agreements' and 'contracts' indifferently, for the same principles apply to all.

Some agreements are treated as utterly null and void; they are regarded as though they had never been made, and give rise to no rights or obligations. Others are 'voidable',

[1] Gloag and Henderson, p. 78. [2] Ibid., p. 27.

i.e., they may be declared void under certain conditions. There are four causes, any one of which will render an agreement void or voidable: (*a*) Lack of legal capacity to contract. For example, in some systems, a boy under fourteen or a girl under twelve years of age cannot incur legal obligations by mere consent, while a minor (aged fourteen to twenty-one) may contract; but any contract made during his minority is voidable by him up to the age of twenty-five. (*b*) Defect in form of agreement. Agreements for the sale of heritable property, and testamentary bequests, must follow certain prescribed forms before they will be regarded as valid. (*c*) Consent may have been obtained in an irregular or mischievous manner. Under this heading comes fraud; and even innocent misrepresentation may render a contract voidable. Agreements induced by violence or threats are generally void; and others may be reduced on the ground that they are harsh and 'unconscionable'. (*d*) The agreement may be in itself illegal or have an illegal purpose in view.

Since agreements are presumed to be legally binding, there must be some explanation of the fact that they are sometimes cancelled. One view which has been held on this point is as follows: To keep a promise (it has been said) is a prima facie obligation which may, however, be superseded by the person's being confronted by a greater obligation; but so long as no greater obligation arises, the prima facie obligation to keep the promise remains. On this view, when it is asked, 'May I break my promise?' the test to be applied is, 'Does any greater obligation stand in my way?' Now this is certainly not a true account of the attitude adopted in law. There are some situations in which the test of 'more and less stringent obligations' will be applied; but I think we are safe in saying that these form a minority. For instance, when there is lack of legal capacity to contract, the nullity of a child's agreement is not inferred from some other 'obligation' incumbent upon the child. The assumption is surely that he is incapable of wise judgement, and that he is to be protected from consenting to his own serious disadvantage and to the frustration of the interests of those closely related to him. It is, apparently, with these same dangers

in view that a minor, while able to make valid contracts, can ask for these to be reduced, and is absolutely prohibited from disposing of his heritable property gratuitously.

The suggestion that agreements can be legitimately broken only in face of more pressing obligations is seen to be even less plausible when we turn to cases where avoidance of the contract is founded on the agreement's having been improperly obtained. Suppose *A* agrees to buy an article from *B*, believing it (on *B*'s representations) to be a valuable antique. Later he discovers that it is a fake, and that *B* was aware of this. *A* may legally break his agreement. He is not obliged to do so, but he may if he wishes. Now surely, if his avoidance of the contract were founded on there being a more stringent obligation, there would be an obligation to break the agreement. Actually there is not. *A* may break the promise or fulfil it, in accordance with his conception of his own interest.

The point here is not met by suggesting that, since *A* was misled by *B*, there was no real promise. The law draws a distinction[1] between fraud so great as to prevent any real agreement, and fraud which, while inducing agreement, renders that agreement voidable. In the case which we are supposing, *A* has agreed to buy the specific article offered. He has made a real agreement—which, nevertheless, he may break—though he would not, perhaps, have made it but for fraudulent representations.

It is where agreements are illegal, or have an illegal purpose in view, that the notion of 'prior' or 'more stringent' obligation comes into operation. But even here it seems obvious that the prior obligations are directed to the securing of personal interests. Two examples are the rule against illegal restraint of trade, and the rule that a man cannot, by testamentary deed, defeat the claims of his wife and children upon his estate. The aim of these seems so clear as to require no comment.

Hence we may conclude that, when the breaking of a promise is permitted or commanded by the law, the governing principle seems to be the care for personal interests.

53. We may now take a further step in our survey of the

[1] Gloag and Henderson, p. 57.

law of contract. Beginning with the simplest question, 'What is the attitude to agreements in general?', we saw that a promise is presumed to be binding. On analysis, it transpired that a promise is to be defined in relation to the interests of persons. We then turned our attention to a more complicated issue arising from the fact that promises may be legally broken, and we found the notion of personal interests again exerting the controlling influence. Turning now to a further complication, we find that some agreements are enforced even when they belong to the class of 'voidables'. For instance, a person who claims that an agreement is not binding upon him, for one or other of the reasons which make it voidable, may be unable to restore the *status quo ante*; or third party interests may have become too deeply involved; or, having become aware of his right to reduce it, he may have behaved as though he accepted the agreement as nevertheless valid; or he may have been guilty of unreasonable delay in taking the necessary steps for reduction. In all these cases the idea underlying the enforcement of admittedly tainted agreements is too obvious to require any argument. Personal interests to which importance is attached will be served by the enforcement.

54. The same idea underlies the kind of remedy which a court will give for breach of contract. It may order specific performance or else compensation for the injured party. And which of these remedies is prescribed will depend, not only upon the actual situation arising from the breach, but also upon the effect of the remedy upon the major interests of all the persons concerned. The general rule is to insist upon specific performance if this is possible and is desired by the injured party; but even if it is possible and desired it will not necessarily be ordered, e.g. where it would involve the parties in close personal relationships and where it is felt that forced compliance would be worse than none. As an alternative to specific performance, the complainant may secure 'damages', withhold performance of any correlative promise made by him, or simply break off relations. The general point is that in a contract, where mutual promises have been made, each promise is prima facie binding; but when one of the promisors has broken

faith, the other may also go back on his word. This right of withholding clearly does not follow from some higher or prior obligation—there is no obligation to withhold—but from the fact that the person's interests are in jeopardy.

55. As obligations are created in various ways, so from various causes they cease to exist or are 'extinguished'. Of the various ways of extinguishing obligations, two are of special interest from our point of view. (*a*) *A*'s obligation to *B* may be extinguished by *B*'s renunciation of his claim. The importance of this is that if *A*'s obligation to *B* had no essential relation to *B*'s interests, *B* could not possibly destroy *A*'s obligation by the mere fact of renouncing, of his own free choice, certain of his interests. (*b*) Obligations may be extinguished by 'compensation', i.e. by the setting off of debts or obligations against each other. It is very difficult to see how obligations can be met by this method of compensation if they have any sanctity or even any significance apart from their relation to rights and interests. Thus, if *A* promises *B* £100 and *B* promises *A* £80, then on the method of compensation both obligations will be met by neither doing what he has promised but by *A* doing something quite different, namely paying B £20. The use of this method makes possible the complex economic structure of the modern world. It is utterly immoral if promises have some binding force apart from their relations to rights and interests; but it is eminently sensible and efficient on the theory which I have been putting forward.

So far I have tried to establish one broad, general thesis, namely that, in the building up of the main provisions of the law of contract, at least one of the regulative ideas is concern for the interests of persons. So far as one is able to judge, this is the only important principle involved. At any rate there seems to be no other principle of any consequence for moral theory. As we shall see later, this concern for personal interests may itself be analysed into two factors; but this problem will be reserved for the next two chapters. At present it is sufficient for our purposes to have established the connexion between promissory obligations and the conception of personal interests.

Interests and Rights

56. I propose now to broaden the scope of the inquiry and to ask whether our conclusion respecting promissory and contractual obligations applies to all legal duties or obligations. The proper approach to this problem is indicated by the fact that, while we have traced a connexion between promissory obligations and 'interests', lawyers are accustomed to speak of such obligations as related to 'rights'. Some writers define rights as legally recognized and protected interests, and they regard duties and obligations as correlative to rights. It seems, therefore, that the most fruitful line of inquiry will be to begin with an examination of the nature of rights.

In different systems of legal nomenclature the term 'right' has different meanings, some writers applying it in a restricted and others in a wider sense. I shall use it in its wider sense as including 'personal rights', 'proprietary rights', 'powers', 'liberties', 'licences', and so on. The precise meaning of these various kinds of right need not be discussed here, because all legal rights can be broadly divided[1] into two main classes—'personal rights' and 'real rights'. As reference will occasionally be made to this broad distinction, a brief explanation of its character is necessary. The difference between 'real rights' and 'personal rights' is correlative to the distinction between 'duties' and 'obligations'. Thus, if I have the full proprietary right in a certain article, including possession and use, this is called a 'real right'; and I can make the demand against men in general, or 'the world at large', that my possession and use shall not be interfered with. The world at large owes me the 'duty' of non-interference. I may, however, lend my property to someone for a stated period; and at the end of this period I have the right that he in particular should perform the specific act of returning my property to me. Here it is said that I have a 'personal right' against him, and that he has an 'obligation' to perform this specific act. A 'real right' is thus a right in something (e.g. a proprietary right), a correlative 'duty' being imposed upon the world at

[1] Gloag and Henderson, ch. iii.

large. A 'personal right' is a right to some specific performance or forbearance on the part of someone in particular, a correlative 'obligation' to perform or forbear being imposed upon him in particular. Most (if not all) duties demand non-interference; and most (but not all) obligations demand active performance.

57. We turn now to discuss the nature of rights and their relation to interests. No one will deny that a legal right owes something of its character to the existence of law. This is clearly implied in the very notion of 'legal right'. But it is essential to recognize that there is something in a legal right which is prior to law. Every legal right has a 'nucleus' of an extra-legal character, and it is the addition of something, by the law, to this nucleus which erects it into a legal right.

It will help us to see what this nucleus is if we attend, first, to the incidence of the legal demands involved in a right. The existence of a right belonging to *A* involves no legal demands upon *A*. The demands all fall upon *B*, *C*, *D*, *E*, &c. If *A* wishes to do something falling within the bounds of his right, then he may do so; and *B*, *C*, *D*, and *E*, &c., are commanded to refrain from interference, or perhaps positively to render assistance. A right is, therefore, something in the nature of a 'field for free choice' plus legal demands upon the conduct of others. We shall have more to say about this 'field for choice' presently. At the moment we are content to note that it is pre-legal in the sense that it is not created by law, but is simply fenced in and protected by law.

58. The idea of a field for free choice easily directs us to the essential, positive nucleus in a right; it is something which the owner of the right may choose to do or be or possess—some object of 'will', or 'desire', or 'interest'. My right to occupy my house means that I am permitted either to do so or to refrain, as I wish; but, should I choose to do so, everyone is legally prohibited from interference. It may be said, then, that the creation of a right consists in the law clothing with its protection a 'field for free choice' with respect to some presumed or actual 'interest'. The logical procedure would seem to be to discuss first the notion of an 'interest'.

The word 'interest' has various meanings, but the following

examples will indicate the sense in which I use the term. Thus, one interest of mine is the pursuit of philosophical study. Another is the receiving of my salary. To find a job is an interest for most unemployed men. To defeat his enemy is, normally, an interest of a commander in battle. It may be said, therefore, that an interest is an end, an object of desire or will, or something aimed at. But as 'desire' and 'will' may be very narrowly defined by some philosophers and psychologists, a wider term is probably safer. Possibly the psychical activity referred to should be called simply 'conation'. I shall therefore define an interest thus: An interest = An object of conation.

59. Not every possible or actual interest is favourably regarded by the law, but there are many interests which it does not discourage. While it does not command them, or even protect them, neither does it prohibit them. With respect to them it leaves to individuals a field for free choice. Now, so far as a man has this free field, he might appropriately be said to have a 'liberty'. The term 'liberty' has, however, been customarily used to mark a certain kind of right; and what we are now speaking of is something anterior to the full notion of a right. Let us—to coin a term—call this 'a sphere of autonomy'.

A pure sphere of autonomy (i.e. the pursuit-of-an-interest's being neither commanded nor prohibited) which is not also a right (i.e. which is not protected by law) is probably difficult to discover in civilized countries. It is more easily found in communities where law and government are rudimentary, and where the principle of self-help holds extensive sway; for a mere sphere of autonomy is a province of behaviour respecting which there is simply no law. It is something respecting which there is neither command nor prohibition, nor is there any protection against interference from others.

But while the relation between a pure 'sphere of autonomy' and law is a completely negative one, there is a positive relation between spheres of autonomy and interests; for the notion of a sphere of autonomy only becomes intelligible when considered in connexion with the notion of an interest. It has reference to some state or condition in which you may

wish to be, or to some activity in which you may wish to engage. It refers to some possible object of conation which you may pursue—at your peril. The law neither frowns upon nor encourages your purpose. The following may, therefore, be taken as a fair definition: A sphere of autonomy = The pursuit-of-an-interest's being neither commanded nor prohibited by law.

60. The last two paragraphs have dealt with the pre-legal elements in a right. But we pass within the ambit of law when we speak of a complete right; for it is some kind of legal 'protection' which erects a 'sphere of autonomy' into a 'right'. The distinction may be better appreciated if we take a particular example—a right of way. There would be a 'public sphere of autonomy regarding way' if there were no prohibition upon the public's passing over a certain tract of ground by a definite path, and also no prohibition upon interference with passage. There would be a 'public right of way', on the other hand, if interference with passage were prohibited. The legal protection of the sphere of autonomy is thus of the essence of the notion of a right.

Unfortunately, jurists as well as moralists have failed to reach an agreed definition of 'right'. Salmond[1] says that a right is an interest recognized and protected by a rule. It is any interest respect for which is a duty and the disregard of which is a wrong.

This general conception of 'right' is criticized by Vinogradoff,[2] who would substitute 'volition' or 'power' for 'interest'. A rule of law, he holds, is the limitation of one person's freedom of action for the sake of avoiding collision with others; and 'what is a limitation for one will is power for another'. 'We can hardly define a right better than by saying that it is "the range of action assigned to a particular will within the social order established by law".'[3] Gray[4] agrees, on the whole, with Vinogradoff. 'The right is not the interest itself; it is the means by which enjoyment of the interest is secured. It is the power to get the money from Balbus . . . which is the legal right, not the payment of the money. . . .'

[1] *Jurisprudence*, ed. 8, p. 237. [2] *Commonsense in Law*, pp. 45–60.
[3] Ibid., p. 62. [4] *The Nature and Sources of Law*, p. 18.

According to Holland[1] a right is 'a capacity, residing in one man, of controlling, with the assent and assistance of the state, the actions of others'.

When the layman attempts to decide a question over which the learned dispute, it is highly probable that his 'solution' will have missed some of the very points at issue; and so I must run the risk of my discussion of these definitions being regarded as ill-informed. But—speaking at my peril—I should say this: If we are looking for a definition of 'right' which will have some roughly intelligible meaning for the ordinary person, then the one given by Salmond seems to be fairly satisfactory. If, however, one is aiming at a nice accuracy of definition, Salmond's account is not wholly suitable, and Vinogradoff's and Gray's emphasis on 'power' is no improvement. Indeed, this emphasis seems to mislead Gray entirely when he proceeds to discuss the relation of 'right' to 'duty'.

With respect to Vinogradoff—it is not true that 'a limitation on one will is power for another'. For, in the first place, the law does not, strictly speaking, 'limit' one will. It lays it under interdict. It issues a prohibition. It demands that a limit should be preserved; but the demand, and the notification of penalty in the event of transgression, do not secure that the limit will be observed. In the second place, even if the law actually limited the operation of one will, this would not necessarily mean power for another will. What it does mean is a free field for exercise of power for that other, if he has power to exercise. The law, of course, adopts the common-sense principle that there is no point in giving a person a free field, and forbidding the intrusion of others, if that person has not (or is unlikely to acquire) power to occupy it. But the 'granting of a right to . . .' (i.e. the leaving of a free field and the prohibition of interference) is something quite different from the 'bestowal of power to. . . .' To create a public right of way, for example, does not give the public power to pass along it (except in the sense in which 'power' is used as synonymous with 'permission' or 'authority'). The public may be blind or bedridden.

Nor do I think Gray very happy in the suggestion that

[1] *Jurisprudence*, ed. 8, p. 77.

'the right is not the interest, but the means by which enjoyment of the interest is secured'. If 'to give a right' means 'to give the power or means to get or secure', then it would be a contradiction in terms to speak of a defeated or infringed, and still existing, right. If the 'means given' did not 'secure', then no 'right' would have been given! If your power to secure were taken from you by an unauthorized person, then your right would not merely be infringed, but would also cease to exist. In fact, however, civil litigation proceeds on the assumption that *A*'s right may be infringed and still exist as *A*'s right.

61. If we are to form a sound notion of the essence of right, we should begin with a consideration of concrete examples. Let us take, first, our old friend—a public right of way. This right involves for the public a 'sphere of autonomy' respecting passage, plus a prohibition upon the erection of barriers. I say 'prohibition', and wish this term to be understood with strictness. The prohibition is not a guarantee that barriers will not be erected. It is not a guarantee that they will be removed if raised.

Further, the scope of the prohibition is limited. (*a*) It is addressed to conative agents, and not to inanimate matter. (*b*) It is addressed to conative agents other than the owner of the right. Your resolve not to exercise your right, or your erection of barriers to its exercise, is not an infringement of the right. An infringement is something which can be the basis of an action before the courts. But if you do something to interfere with the exercise of your own right, no court would accept that as a basis of an action by you. You may refuse to exercise your right. You may renounce it. You cannot infringe it. It is a conceivable situation that you as one 'legal person' (say as President of the Rights of Way Association) should sue yourself as another 'legal person' (say as the proprietor of Ashfield); but here there are two 'persons' united in you, and it is for one of them that the right is claimed.

Now, paying attention only to the type of right discussed above, a fairly accurate—though somewhat clumsy —definition would be: A right is a sphere of autonomy assigned to a particular conative being or group, interference

with which, on the part of other such beings, is prohibited by law.

There are many rights to which this definition is appropriate. E.g. there is the right to the use of the foreshore for various purposes, and there are various rights connected with ownership of land.

If, however, we take other instances, the above definition does not appear to be adequate: e.g. if newspapers are laid out at a bookstall in a public place, any person has the right to receive one from the stall-keeper in return for the price. Again, when a person's goods (excepting goods ranking as currency) have been stolen, he has a right to their surrender even from a person who has purchased them in good faith from the thief. A child is entitled to support from his father, if the latter possesses the means. A workman accidentally injured in the course of his employment is entitled to compensation from his employer. A person who has sold a business along with the 'goodwill' is prohibited from setting up as a competitor of the buyer—a prohibition which does not apply to other persons.

In all these cases the owner of the right is entitled to some positive delivery, service, aid, or forbearance from some particular person or group. While our first class of rights involved only a prohibition of interference (addressed to mankind in general), in this second class there is involved the demand (addressed to a specific person or persons) for some special form of assistance. A definition of right appropriate to this second class will require to cover the following points: Firstly, the owner of the right is not obliged to accept the relevant service, nor is he prohibited from accepting. He is free to accept. That is, he has a sphere of autonomy. Secondly, his effective pursuit of his interest involves the assistance of some other person or specified group of persons, and the rendering of this assistance is demanded by law. We may say, then—as regards this group—that: A right is a sphere of autonomy, acting within which the owner may command the co-operation of some other person or group of persons.

62. We have now before us two classes of rights, with a provisional definition for each class; and I believe that all

legal rights fall into one or other of these two classes. But clearly we cannot rest content with this position. Two questions are bound to be raised: Why do we use the common name 'rights' for both classes? If we are justified in retaining the common name, must we not add a qualifying adjective to each class?

It will be most convenient to deal with these two questions in reverse order. Rights in the first-mentioned group correspond to 'real rights' (correlative to duties), and those in the second group correspond to 'personal rights' (correlative to obligations). The only point which need be considered here is the question as to the principle upon which the two classes are distinguished from each other. When we consider our two classes we find two possible principles of division. The rights in the first group are (*a*) rights against the world at large, and (*b*) rights involving non-interference. The rights in the second group are (*a*) rights against specific individuals or groups, and (*b*) rights mainly involving positive assistance. As a general rule, it matters little whether we use characteristic (*a*) or (*b*) as the principle of classification, because most personal rights involve active assistance, and apparently all real rights involve only non-interference. But there are some personal rights involving only a kind of negative assistance (as when the 'goodwill' of a business is sold), and therefore we must base our classification upon either (*a*) or (*b*). Lawyers have chosen (*a*) as the distinguishing principle, and this seems to me to be most reasonable. Indeed, even if characteristics (*a*) and (*b*) were always associated, I should still regard (*a*) as more fundamental, because every personal right depends (as no real right ever depends) upon some special pre-existing relationship or dealings between the owner of the right and the owner of the obligation.

The other question which confronted us was: 'Why do we use the common name 'rights' for both real and personal rights, when they have such different characteristics?' The answer is this: when we reflect upon these two kinds of right, we find that they have the fundamental point in common that they are both 'spheres of autonomy' protected by law. And a 'sphere of autonomy', it will be remembered, relates to the 'pursuit-of-an-interest'. We may, therefore, conclude

that the reason why we call both of them 'rights' is that we think of a right as, in Salmond's rough description, 'an interest recognized and protected by a rule of law'.

63. Let us now seek a formula to embrace both kinds of right. In our definition must be included some term which is neutral as between the notion of 'prohibition of interference' and the notion of 'ordering positive assistance'. I offer the following: A right = A sphere of autonomy to which are annexed legal demands upon the behaviour of other conative beings.

It may be useful to gather up now the results of all that has been said, revising, as we do so, our earlier provisional definitions of real and personal rights.

An interest = An object of conation.

A sphere of autonomy = The pursuit-of-an-interest's being neither commanded nor prohibited by law.

A right = A sphere of autonomy to which are annexed legal demands upon the behaviour of other conative beings.

A real right = A sphere of autonomy to which are annexed legal demands upon the world at large.

A personal right = A sphere of autonomy to which are annexed legal demands addressed to a specific person or persons.

Duties and Obligations and their Relation to Rights

64. We turn now to the consideration of duties and obligations.[1] How are these to be defined, and how are they related to rights? One answer comes readily to hand. The essence of a legal wrong, Salmond holds,[2] is its recognition as wrong by law. A duty is an act the opposite of which is a wrong. Duties and wrongs are correlative. A right is an interest respect for which is a duty and the disregard of

[1] In popular usage 'duty' and 'obligation' mean the same thing, although in jurisprudence there is the important distinction already explained. Unfortunately there is not, so far as I am aware, any term to include both; and so I shall sometimes use the words indifferently, in the popular sense, when the distinction is not important for the argument. The reader will have to judge whether the popular or the technical sense is to be understood. This ambiguity is regrettable, and perhaps some such word as 'directive' to denote both duties and obligations might be used.

[2] Op. cit., pp. 236 ff.

which is a wrong. Every duty involves some interest to which it relates and for whose protection it exists.

From this summary of the leading ideas in Salmond's account of the nature of duty, it will be obvious that he regards rights and duties as correlative. The same theory seems to be accepted by Gloag and Henderson[1] when they define 'duties' in relation to 'real rights' and 'obligations' in relation to 'personal rights'.

That this theory is correct, in respect of the overwhelming majority of duties and obligations, is clear in view of the following facts: The infringement of a legal duty is a ground for the institution of proceedings against the transgressor. Now proceedings before a court are concerned either with civil actions or with criminal charges. That is to say, what is sought is either reparation for an alleged breach of right, or punishment for an alleged breach of duty or obligation. In civil procedure, the aim is to enforce a right or to secure compensation for its violation, and not to inflict a penalty. In criminal procedure, the aim is to inflict a penalty and not to repair the injury done. Hence it follows that all civil wrongs must be violations of duties or obligations which have their correlative rights. I do not see how this conclusion can be avoided. If a civil action is for the purpose of securing the declaration and enforcement of (or compensation for) a right which has been violated, then the wrong perpetrated must have been the infraction of a duty or obligation correlative to that right. It is true that the relation of criminal wrongs to rights cannot be so rigorously deduced, because the aim of criminal procedure is defined, not in relation to reparation for rights infringed, but only in relation to punishment for duties infringed. Nevertheless, the vast majority of criminal wrongs are, in fact, acts which infringe or endanger rights. Anyone who doubts this statement may satisfy himself by consulting the literature upon the subject.[2]

One further point of importance is that duties appear to be related to rights as consequent to ground. Your duty to

[1] See above, par. 56.

[2] See, e.g. Kenny, *Outlines of Criminal Law*, ed. 14, and his *Cases Illustrative of English Criminal Law*, ed. 8, and also Gloag and Henderson, ch. xlviii.

me can often be extinguished by my making it clear that I do not wish to exercise my right. But my right against you can never be extinguished by your making it clear that you do not wish to perform your duty.

In view of the above-noted facts, there is a strong case for the doctrine that rights and duties are correlative, duties following from rights. Hence we may adopt the following provisional definitions: A duty = What is demanded in a Real Right; and an Obligation = What is particularly demanded in a Personal Right.

These definitions are, of course, only provisional, since we may come across exceptional duties which the definitions do not cover. Whether there are any real—and not merely apparent—exceptions is the main question with which we shall be occupied in the rest of this chapter; and before dealing with this question I shall make only one observation which, I think, will be generally accepted as eminently reasonable. It is this: The evidence for the theory that duties are correlative to and consequent upon rights is so ample and forceful that only the most conclusive proof that there are duties independent of rights can justify doubts as to the validity of this theory.

65. Are there, then, any serious objections? I cannot deal with, or even anticipate, all possible criticisms; but I shall consider the ones which I take to be of greatest importance. Of these there are four: (*a*) The criticism that duties to the public have no correlative rights; (*b*) The criticism that duties regarding animals have no correlative rights; (*c*) The criticism that our theory of rights and duties will not square with the possession of rights and duties by 'artificial persons'; (*d*) The objection that there are certain peculiar criminal wrongs which it is our duty not to commit, although they have no obvious relation to any right or interest whatsoever.

Duties to the Public.—Perhaps our best introduction to this topic will be to begin with an argument advanced by Gray in support of his contention that there are duties without rights. 'There may be a duty to do an act to a person where we cannot say that he has a right to have the act done. Thus it may be the duty of Jack Ketch to hang

Jonathan Wild, but we do not say that Wild has a right to be hanged.'[1] I am not certain whether Gray means us to infer that here is a duty without any correlative right; but if he does mean this, I am unable to follow him. What he says is perfectly true. We do not say that Wild has a right to be hanged. But, surely, while the duty of Jack Ketch is a duty regarding or relating to Wild, the correlative right (if there be one) need not be a right possessed by Wild. Is Gray's argument any more significant than the following one?—'It may be an obligation on the buyer of stolen goods to return them to the true owner; but we do not say that the goods have a right to be returned.' No; we say that the true owner has the right to their return. In like manner, may it not be the case that someone has a right that Jonathan Wild should be hanged by Ketch? The fact is that Ketch is a public servant employed to do a certain kind of work. Is it not reasonable to say that Ketch's obligation is correlative to the public's right that he should do the work for which he is employed?

It may be replied that 'the public' cannot be the owner of rights, a right being always vested in some determinate individual. Now it is true that rights are always vested in determinate persons, but there are certain rights which an individual possesses in virtue of his membership of a group and which he would not possess were he not a member. Some rights and duties, indeed, are owned or owed by him only when he is professedly acting as a member. It is to these that the terms 'public right' and 'group right' are applied, and I fail to see any reasonable ground of objection to such terms. Further, the law books speak explicitly of public rights—rights of way, rights of navigation and fishing, of protection against nuisances. Of course it is possible to argue that the law books are mistaken in speaking of these as 'rights', and that they ought to be given some other name. But I am not aware that any strong reasons have been offered in support of this argument. The definition of right[2] advanced in an earlier part of this chapter will cover 'rights' owned by persons in their corporate capacity—groups such as the populace of a city, joint stock companies,

[1] *Nature and Sources of the Law*, p. 9. [2] par. 63.

and the public of a country—and the legal system explicitly accords rights to such groups. Further, distinguished jurists such as Salmond see nothing strange in the notion of 'public right'. Surely, then, the onus of proof rests upon those who deny the validity of this notion.

66. Duties to Animals.—This subject is more difficult and will require more lengthy treatment. My excuse for devoting so much attention to what may appear to be a relatively unimportant matter is that it is not really unimportant; for it raises crucial issues.

The first point to be noted is that there is a difference between having duties to animals, and having duties regarding animals. That I should muzzle my ferocious dog is a duty regarding the dog, but it is a duty to my neighbours. Now it is just a plain inescapable fact that there are duties regarding animals. Not everyone admits, however, that there are duties to animals. There is a view that all duties regarding animals are duties to human beings or to society. It has been said that the law prohibiting cruelty to animals is laid down in the interest of men. To permit cruelty to animals would probably result in the formation of cruel habits which would be exercised against one's fellow-men; and therefore cruelty to animals is forbidden.

This view need not detain us. It is an interpretation of the intention of the law; and if it be a true interpretation, then it lends no support to the contention that there are duties apart from rights. All duties regarding animals are correlative to rights owned by human beings.

Many people, however, reject the above interpretation as far-fetched and artificial. 'The true reason of the statutes is to preserve the dumb creatures from suffering.'[1] Gray holds that we really have duties to animals. Ross adopts a similar view.[2] I am myself inclined to accept the Gray–Ross theory, for it seems best to accord with the attitude of public officers who are concerned in prosecutions for breach of the law.

67. But to accept the position that we have duties to animals does raise the problem of the relation of rights to duties. Gray and Ross combine this recognition of duties to animals with a denial that animals possess rights. Ross's

[1] Gray, p. 43. [2] *The Right and the Good*, p. 49.

denial of rights is admittedly hesitant. Animals have no duties, he thinks, since they are not moral agents; and he thinks it reasonable to say that they have no rights for the same reason. What, in his view, seems to be important about a moral agent, in this context, is the capacity to claim a right. 'Since we mean by a right something that can be justly claimed, we should probably say that animals have not rights, not because the claim to humane treatment would not be just if it were made, but because they cannot make it.'[1] Though Ross regards ability to claim a right as essential to the possession of it, he suggests no reason why this should be necessary.

Gray's argument is somewhat fuller. 'Interests of brute animals may have legal protection. . . . Yet beasts have no legal rights, because it is not on their motion that this protection is called forth.'[2] What is meant by 'on their motion' will be more clear, perhaps, from the following:

> 'To accomplish its purposes (in the protection and advancement of human interests) the chief means employed by an organized society is to compel individuals to do or to forbear from doing particular things. Sometimes the society puts this compulsion in force of its own motion; and sometimes it puts it in force only on the motion of the individuals who are interested in having it exercised.
>
> 'The rights correlative to those duties which the society will enforce on its own motion are the legal rights of that society. The rights correlative to those duties which the society will enforce on the motion of an individual are the individual's legal rights. The acts and forbearances which an organized society will enforce are the legal duties of the persons whose acts and forbearances are enforced.'[3]

The inference is clear. Since no rights are enforced 'on the motion' of animals, animals have no rights.

68. Now the question to which we must seek an answer is, obviously, this: Is it true that the 'owning of a right' and the 'moving for its enforcement' must be united in the one person? The 'moving' must refer, I suppose, to the formal setting in motion of legal machinery. An animal, by barking, biting, or running away when it receives or is threatened with cruelty, is certainly 'moving' against the breach of duty.

[1] Ibid., p. 50.
[2] Gray, p. 20. [3] Ibid., p. 12.

I suppose that what Gray has in mind is its inability to plead in a court of justice.

But if 'moving' means the formal setting in motion of legal machinery, then it is simply not true that the rights of the individual are exactly co-extensive with those which are enforced on his own motion; and the like observation applies to public rights. It is quite true that many of my rights will not be enforced unless I take the necessary steps; and it is true that in many cases a private individual cannot move to enforce some forms of public right. But there are many important exceptions. A private individual or the officers of a voluntary association can move to vindicate a public right of way. Again, while the rights of possession and use of his property are rights of the individual, the police will frequently move for the enforcement of these rights without prior consultation with the owner. I am referring, not merely to the punishment of theft once it has occurred, but also to the fact that the police can legally interfere to prevent the infringement of private right. Again, under rules of law which have now been amended, a wife's title to sue in the courts had little relation to the number of rights she might possess, and Gray himself recognizes that idiots and babies possess rights without any capacity to enforce those rights 'on their own motion'. This capacity is fictitiously 'attributed' to them, he says, by giving their guardians power to move.

All these important examples, in which the possession of rights and the ability to move for their enforcement do not coincide, make it clear that the two things—possession of right and ability to move—have no necessary connexion. Yet it is on the supposed necessity of this connexion that Gray bases the denial of rights to animals. If his theory of right demands the 'attribution' of the guardian's will to a child, where is the difficulty in 'attributing' to animals the will of an officer of the crown or an official of the Society for the Prevention of Cruelty to Animals?

Actually this fictitious 'attribution' of will is called for only if we incorporate into the notion of right an element which has nothing to do with a right as such. Gray and Ross are misled when they suppose that you cannot have a right apart from the 'power' to 'claim' or 'move for' its

enforcement. In dealing with the notion of right in an earlier[1] part of this chapter, I said that Gray's definition of right in terms of a 'power' rather than in terms of a 'sphere of autonomy' tended to confuse his discussion of the relation of right to duty. That observation is amply borne out by the results of our present discussion. I contend that, when they deny the possession of rights to animals, Gray and Ross are confusing two entirely different things: (*a*) the possession of a right; and (*b*) the ability to initiate proceedings for the defence of a right. I do not see how this confusion can be avoided if one makes the initial mistake of considering a 'power' instead of a 'sphere of autonomy' as the nucleus of a right.

69. On my view of what a right is, animals possess legal rights. They can have 'objects of conation' or 'interests', such as the securing of food, the well-being of their young, the accompanying their masters for walks, and so on. The pursuit of these interests can be free from prohibition; i.e. animals can have 'spheres of autonomy'. To some of their 'spheres of autonomy' there are, in fact, annexed legal demands upon the behaviour of other conative beings; i.e. animals have rights.

It may be objected, however, that the real question is not whether the attribution of rights to animals squares with my theory. The real question is whether it squares with the facts. If, as I claim, my theory of right has been arrived at by reflection upon those particular rights which are embodied in a working system of law, and if I assert that animals have (not should have) rights, is it not a valid challenge to request that I should point to those rights? This, I agree, is a challenge to which I have laid myself open; and I reply that the rights are clearly there. They are all those which are embraced in the general right to be treated without cruelty. There may be others as well.

'But (it may be said) lawyers do not agree that what you call rights are really rights. You cannot point to any explicit recognition of animal rights.' That may be true. I am willing to assume that Gray is correct in saying that no modern civilized system attributes to animals either rights

[1] Above, par. 60.

or duties. But it will be admitted by any candid reflective person that, for one reason or another, we often use terminology which tends to obscure the true facts. We may call substantially different things by the same name, and substantially the same things by different names. Probably, with regard to rights, many lawyers are guilty of the second of these two forms of obscurantism. But when we look frankly at the provisions of the law, we shall see that, amongst all the interests it tries to protect, some are interests of men and others are interests of animals. This protection, when it is possessed by men, we call 'having rights'. We are reluctant to use the same language when the protection belongs to animals. But here, surely, it is our terminology which is at fault. When we look at those things which men possess and which are called rights; when we penetrate to their essence; and when we attend to certain things possessed by animals; then we see that those animal possessions are substantially the same as what we call rights when they belong to human beings. Animals, that is to say, possess legal rights in fact if not in name; and the refusal to call a spade a spade, when it is owned by John Smith instead of by James Brown, does not help either legal theory or legal practice.

Now in what I have just said, I was working on the assumption that lawyers do not, in fact, attribute rights to animals. But this assumption, if meant to refer to all jurists, is over-bold. Professional opinion is not by any means unanimous on the subject, and seems at the moment to be in a transitional stage. Kenny[1] places cruelty to animals amongst crimes against property, but the latest case referred to by him shows that the classification is utterly out of date. Gloag and Henderson[2] refer briefly to this crime in a paragraph on cruelty in general under the heading of 'offences against the person'.

70. Artificial Persons.—The third criticism of which we have to take account relates to the conception of 'artificial persons'. It is a curious fact that, while some writers on legal theory find difficulty in admitting that animals are or can be subjects of rights and duties, they appear to find no

[1] Kenny, *Outlines*, pp. 171–2. [2] Op. cit., p. 583.

difficulty in conceiving 'artificial persons' such as a mass of property, to be the subjects of rights and duties.

'An artificial person may exist without being supported by any natural person. It may consist merely of a mass of property, of rights and of duties, to which the law chooses to give a fictitious unity by treating it as a "universitas bonorum." The most familiar example is an "hereditas" before it has been accepted by the heir, which in Roman law is treated as capable of increase and diminution, and even of contracting by means of a slave comprised in it, as if it were a person.'[1]

The existence of 'artificial persons' of this kind points to a possible criticism of our theory of rights and duties. It will be recalled that in the last five paragraphs we have been answering objections to our hypothesis that duties and obligations are all correlative to rights. But the possible criticism which I have now in mind is of a different nature. It is this: on our theory the owner of a right or the ower of a duty must be capable of having 'interests', i.e. he must be a conative being. A mass of property—say the estate of a bankrupt—is not a conative being or collection of conative beings (unless it happens to be a menagerie). But this mass of property owns rights and owes obligations. Therefore the subject of rights and duties is not necessarily a conative being.

In reply, two points may be made. (*a*) While it is true that the kind of 'artificial person' referred to is discussed in books on legal theory, I have not come across any reference to it in short expositions of legal systems such as the book of Gloag and Henderson or Jenks's *Book of English Law*. But apparently it occupied a place of some importance in the Roman system, and is used in Germany at the present day. What practical importance is attached to it in the English-speaking world I am not competent to say. Holland mentions, as an example, the estate of a bankrupt; but the Scots bankruptcy law is expounded in Gloag and Henderson entirely without reference to the notion of the estate as itself a 'person'. It is, however, quite likely that I should have to change my view on this point if I knew more about the subject.

(*b*) Even if this notion of an 'artificial person' were

[1] Holland, *Jurisprudence*. ed. 9, p. 330.

extensively used in modern systems, there would still be the question whether it is anything more than an expedient for economy of speech. As such, its use would be intelligible. As a banker might say, '*A*'s No. 1 account owes the bank £20', when he really means '*A*, confining our attention merely to the transactions recorded in No. 1 account, owes the proprietors of the bank £20'; so we may speak of an 'estate' as owing debts and being entitled to payments. The rights and duties referred to really vest in and fall upon conative agents. Before the conception of 'artificial person' could have any real importance for the theory of rights and duties, it would have to be shown that the 'rights' and 'duties' of artificial persons have no essential relation to the interests of conative beings.

71. Crimes alleged to have no Correlative Rights. (i) *Crimes relating to Property.*—The fourth objection to be considered is that there are certain peculiar criminal wrongs which have no obvious relation to any right or interest whatsoever. Now, of these supposed exceptions to our general rule, there is only one which I find to be really perplexing, and I shall reserve consideration of it to the end.

Let us begin with a group referred to by Kenny.

'. . . One remarkable difference between criminal and civil (i.e. non-criminal) law lies, as we shall subsequently see, in the fact that, while breaches of the latter always involve an infringement of some person's right, the criminal law makes it our duty to abstain from various objectionable acts although no particular person's rights would be invaded by our doing them. Instances of crimes which do not violate anyone's right may be found in the offences of engraving upon any metal plate (even when it is your own) the words of a banknote, without lawful excuse for so doing; or of being found in possession of housebreaking tools by night; or of keeping a live Colorado beetle.'[1]

Now, confining ourselves for the moment to the first example—engraving upon a metal plate—it is, I think, quite true that, in the violation of this duty, no particular person's right (meaning a particular person's private right) is violated. But I do not suppose that Kenny would hold that the duty is not correlative to and consequent upon any right. Such a position would be quite untenable. When a 'sphere of

[1] Kenny, *Outlines*, pp. 4 ff.

autonomy' is erected into a right, the demands involved often go no farther than providing against actual violation of the sphere of autonomy. Frequently, however, they provide also against conduct which merely threatens or conduces to such violation. The example under consideration is a case in point. It is, I suppose, clear to everyone that the condemnation of this act is related to the condemnation of passing forged notes. Control of currency issue by some authority is felt to be a necessary part of the machinery of commercial life; and a forged note, when discovered to be such, is devoid of exchange value. Any member of the public parting with goods at a stated price has a personal right against the buyer for that amount in legal tender. And while this right is not actually infringed by the mere act of engraving on a metal plate, the right is endangered by such an act, for it is very likely that the act is preparatory to the passing of forged money. This danger is greatly counteracted, and no serious hardship is inflicted on anyone, by the prohibition of the act. Hence, the duty of refraining is correlative to the right of anyone engaging in commercial transactions. Strictly speaking, the position is more complicated than the last sentence suggests. The personal right of a seller to receive good money is correlative to the obligation of a buyer to supply it. A seller has also a real right subsidiary to the personal one, namely, that the violation of his personal right should not be encouraged or assisted, and this is a right against the world at large. It is to this right that the duty of not engraving the words of a banknote upon a metal plate is immediately related. There is, however, no good reason for supposing that there must always be this one-one correspondence between rights and duties. *A* may have a main right with which are associated subsidiary rights, the whole being correlative to one comprehensive duty owed by *B*. Or *A* may have a right which involves a main duty and a number of subsidiary duties for *B*. But to discover an absence of one-one correspondence is not at all incompatible with the existence of complete correlativity.

The principal arguments and conclusions which have been advanced in the foregoing discussion can readily be applied to Kenny's other examples.

72. (ii) *Suicide.*—With regard to the crimes just discussed, there was, I think, no doubt about their having some relation to obvious material interests; the only difficulty being that we had to show their relation to definite rights of a public or private character. The problem is rather different, however, when we turn to the crime of suicide. In this case it is, at first sight, hard to see any relation to either right or interest. It is true that to take one's own life usually involves that many obligations are left undischarged—payments due to creditors, support due to dependants, &c. But I do not think that considerations of this kind have been mainly responsible for the condemnation of suicide. When one considers the history of the matter, however, it becomes clear that a reference to an interest, or rather to a presumed interest, is involved. The condemnation appears to be grounded mainly on the belief that the suicide, in disposing of his own life, is assuming proprietorial rights over his body which really belong to God; his life being something held by him in trust for the fulfilment of functions which he is sent into the world to perform. This explanation is supported by the fact that the attitude to suicide varies in different ages in accordance with types of philosophical and religious belief. In the pre-Christian era amongst various European peoples, suicide was so far from being condemned as a crime that it was regarded as being as honourable departure from life for, say, a defeated general. As Christianity spread and developed, disapproval became more and more marked. To-day the attitude is one of pity rather than of horrified condemnation, unless the circumstances indicate exceptional cowardice. Suicide is still a crime according to English law, although the law here seems to be at variance with a large section of public opinion.[1] In Scotland it is not now a crime, although it was so regarded in the seventeenth century; and it is interesting to note the sort of reason then given:

'God Almighty has placed every man at his post here, and he who violently tears himself from it, deserves much worse, and is more guilty than a soldier who deserts his station; and since princes punish as criminals, such as kill their subjects; much more may the Almighty

[1] Kenny, *Outlines*, pp. 113 ff., and *Cases*, pp. 89 ff.

punish him who kills himself; for he who kills himself, kills God's subject, and therefore, *Nemo est dominus suorum membrorum.* The law likewise considers him who would kill himself, as one who would spare none else, and condemns an humour which is so dangerous.

'Upon these reasons, but especially because God hath forbid man to kill, without making a distinction of killing ourselves, or others; all Christian nations punish severely self-murder, as murder.'[1]

The primary conception here is that of God as having proprietary rights in the persons of His creatures; and the presumed interest which forms the nucleus of the right is given legal protection partly because even Divine rights are committed in some degree to the keeping of men; and partly also, no doubt, because of the fear that the Divine wrath will be visited upon a society which countenances their infringement.

73. This discussion of suicide, and the explanation of its being, at times, regarded as a crime, brings out certain points to which special attention should be given. It is evident that the existence of a legal duty may sometimes have to be explained by reference to the beliefs of past ages. Interests or presumed interests of man or God have been surrounded by legal protection, thus giving rise to duties or obligations; and, once they have been constituted, such duties may continue to be enforced long after the interest or presumed interest which they were designed to protect has vanished or been forgotten. The duty remains as the husk within which the kernel has withered away. Such antiquated duties are very unlikely to persist when their infraction subjects the delinquent merely to 'civil' and not also to 'criminal' prosecution. When an interest has withered away or ceased to be believed in, it is most unlikely that any one will take the trouble to demand performance of the duties which were designed to protect it. Nothing is to be gained either by way of damages or specific performance. But where, as in criminal prosecution, the immediate aim is not to redress a wrong but only to punish the wrong-doing, and where the prosecutor is not obliged to show that the act has actually succeeded in infringing a right, but only

[1] Sir George Mackenzie, *Laws and Customs of Scotland in Matters Criminal*, ed. 2, p. 75.

that it is the kind of act which has actually been prohibited by the law; in such circumstances criminal prosecution and punishment may persist for a time even after the whole *raison d'être* of the punishment has vanished. It is also clear, however, that once men begin to doubt the existence of any important interest which is protected by imposing the duty in question, the tendency is for the breach of this duty to be punished with diminishing severity, and for the act to be deleted finally from the category of crimes. Sometimes this same process of development results in the name of the offence being retained and applied to an act which is very different in character from the act to which the name was earlier attached. A very good example of this is found in the crime of 'blasphemy'. In the early part of the eighteenth century blasphemy meant the denial (by writing, printing, preaching, or teaching) of the doctrine of the Trinity, or of the truth of the Christian religion, or of the divine authority of scripture; and this crime was severely punished. Nowadays the position is very different. Blasphemy is penalized as causing or tending to cause a breach of the peace; and it involves the use of scurrilous or abusive language such as will disgust an ordinary jury. A 'temperate and scholarly attack on the Deity'—to quote the delightful phrase of Gloag and Henderson—is not blasphemous.[1]

74. (iii). *Incest.*—Of all the legal duties of which I am aware, the only one which I find really difficult to explain in accordance with the theory that duties are correlative to and consequent upon rights is that duty the breach of which is punished as 'incest'—the duty, binding upon persons within certain degrees of relationship, to refrain from marrying or having sexual intimacy with each other. The immediate source of this duty in British law is, of course, clear. It is a modified form of the rule of Leviticus xviii transmitted through Christianity. But this is certainly not the ultimate source. As to what constitutes incest, rules have varied extensively from place to place and time to time; but, apart from very exceptional circumstances, wherever social organization exists at all, there is at least the prohibition of marriage between children of the same parent, and between a person

[1] Op. cit., p. 577.

and the child of his or her grandfather or grandmother, great-grandfather or great-grandmother, &c. At any rate, I believe this to be the general rule in primitive and ancient, as in modern, societies. Why this prohibition should be so emphatic and widespread, and how it can be said to protect any individual or social interest, I confess that I am not confident. There is great difficulty in showing that this is not a case of an act which is now, and always has been, felt to be wrong simply in itself and without regard to any possible consequences.

Explanations have, of course, been offered—ranging from the simple savage's assertion that incest calls down the wrath of supernatural beings, or blights the growing crops, to the modern suggestion that close inbreeding has been found detrimental to the race. I am not sure whether biologists are agreed as to the truth of this latter view; but in any case it may be doubted whether primitive peoples with their tendency to attribute good and ill fortune to supernatural causes, would be likely to work out this theory. They may have done so. They were not quite so blind to the interrelation of natural events as some writers would have us suppose. But when we think of some of the extraordinary practices of primitive medicine we must, in the absence of good evidence, hesitate to assume that the widespread aversion to incest is founded upon biological theory.

Of the various explanations, the one which seems to me most reasonable is that which traces the condemnation of incest to two mutually supporting interests—the first social and the second individual. As to the first, it is well known that, amongst primitive peoples, economic and social life was carried on, as a general rule, through the medium of a class structure. The unity of the whole society and the nurture of each individual member were dependent upon the proper functioning of this class system, one of the rules of which was that a wife or husband must be selected from a certain class—a man invariably (I think) taking a wife from a class other than his own. Breach of this rule was severely punished; and around this system there would naturally grow up strong feelings as to its sanctity, and apprehensions as to the dire consequences should its rules be broken. Secondly,

it is likely that the social sanctions and supernatural apprehensions would be strengthened by a natural reticence with respect to sexual intimacy on the part of very close kin. I say 'reticence' rather than 'sense of wrong-doing' because there is, I think, an attitude of reserve and withdrawal, on certain matters, amongst persons brought up in the same household, or where one stands *in loco parentis* to the other. We may, for instance, lay bare our inmost thoughts to the friends of our choice, or even to accidental acquaintances, when we shrink from doing so to our parents, brothers, or sisters. Again, I think that most people would view with the same kind of censure a case of sexual irregularity between teacher and pupil, as they would feel with regard to such irregularity between parent and child; although the censure would be stronger in the latter case than in the former. It is, indeed, highly probable that the repugnance to incest is derived partly at least from an attitude of mind which has various other expressions—an attitude of mind inspired by some vague idea of guarding our individuality and withdrawing ourselves from those who, because of their authority or constant contact with us, naturally exercise a certain control over us. Attributing the same desire for privacy to others, we react against the idea of its infringement. If I am correct in supposing the widespread existence of this psychological state, one can easily understand how it would support and be supported by the socially useful prohibitions of primitive society. One can also understand how it would act as an incentive to preserve these prohibitions, in some modified form, in more highly developed civilizations, where greater stress is laid by law and sentiment upon the sanctity of the individual personality.

But while this explanation seems to me to have a good deal in its favour, I shall not here make any claim that it gives definite support to the general argument of this chapter. I am prepared to say that here we have a case which cannot with certainty be ranged under our theory of the relation of interests, rights, and duties to each other. On the other hand, I most emphatically reject the suggestion that it constitutes a proved exception, calling for a modification of the theory. It is simply a case which cannot be said either

to contradict or confirm the theory until we know more about it.

75. I shall now summarize our main conclusions, stating them in the reverse order to that in which they were reached. They are:

Firstly, that duties are correlative to and consequent upon rights. This is obviously true of the vast majority of rights and duties, and the apparent exceptions can practically all be brought under the general rule when they are more carefully considered. The one difficult case which has been discussed in the last paragraph is of a very doubtful nature, and I think that it is probably not a real exception. There can, therefore, be scant justification for rejecting the view that duties are correlative to and consequent upon rights.

Secondly, that rights must be defined in relation to interests. To have scope to pursue one's real or presumed interest protected by law—that is what a 'right' means. Hence, since duties draw their significance from rights, and rights from actual or presumed interests, then duties must draw their significance ultimately from interests; and if we try to conceive of duty apart from this its fundamental ground, the concept of duty becomes utterly unintelligible.

Thirdly, that the above conclusions have importance for moral as well as for legal theory. While this chapter has been concerned with the relation of interest to legal right and duty, our conclusions have more than a legal bearing. They have, almost certainly, brought to light fundamental principles of moral right and duty, since (as was shown in our first section) the principles of morals exert such a profound influence upon the general principles of legislation.

IV

THE MORALITY OF SOCIAL JUSTICE: THE IDEA OF THE GOOD

The Meaning of 'Good'

76. From the preceding chapter it is clear that duty has some essential relation to the conception of interest or end. Duties follow from rights, and rights are protected interests. But it does not in the least follow from this that every interest gives rise to duties, for only some of our interests receive legal protection. Our particular interests often conflict, and they cannot all, as they stand, be fitted into a scheme of rights. Some of them, indeed, are decisively outlawed. On what principle, then, do we select the kind of interest which we think ought to be protected?

The theory known as utilitarianism offers an answer to this question in the following terms: The interests which are selected for protection are those whose objects are judged to be truly or really good. That is to say, we first make up our minds what things are good, and then permit, prescribe or prohibit such acts as promote or prevent the realization of these good things. If we must choose between various good things, we do so by placing them in some order of value, giving preference to those which are best amongst all the good things.

77. Now this theory of the standard raises a number of problems, the first of which is the problem as to the meaning of 'good' and our manner of deciding what things possess this quality. This is the problem which will occupy us during the first part of the present chapter. Here we enter a very controversial field, but so far as the moral philosopher is concerned, the important thing is to find a theory of value which will explain the conception of good as it is used or implied in moral judgements. He may have to go beyond the range of moral judgements in order to explain his theory, and the conclusions to which he comes may have significance beyond the realm of ethics; but primarily his concern is with value judgements so far as they have a moral implication.

One point, therefore, is clear, namely that he is primarily concerned with 'good' so far as it is relative to persons. There may or may not be some 'good' in the universe which has no such relation. But if there is, the moral philosopher will be concerned with it only so far as its existence is implied in the good which is relative to persons; and it may be that one of his conclusions will be that the moral judgement does not in any sense postulate such non-personal good. Should he come to this conclusion on the basis of a valid argument, it will mean that the theory of 'intrinsic goodness' has nothing to do with ethics, whatever validity it may seem to possess in other departments of experience.

The method which we have tried to follow, up to the present, has been that of reflection upon and analysis of moral judgements; and I propose to adopt the same general approach here with regard to value judgements. The first question with which we shall deal is the question whether the idea of good necessarily carries some kind of subjective reference. I shall start with the hypothesis that it does, and then try to show that this hypothesis is consistent with all the essential facts about our valuations. It must be distinctly understood that I am not professing to show that 'good' is to be subjectively defined as 'that which is willed or desired', for that is not the theory which I hold. I work only on the hypothesis that good has some essential reference to will or desire, and that any definition of it must be compatible with this reference. In favour of this as an initial working hypothesis there are three considerations. In the first place, economics, which, with ethics, is the study most interested in the theory of value, seems to get along very well with a sort of subjective theory.[1] In the second place, as Professor Campbell has so justly remarked,[2] the rival theory gives rise to so many difficulties that the ones to be surmounted in a subjective theory appear mild in comparison.[3] In the third place, the most notable champions of the objective or intrinsic theory make many admissions favourable to the subjective

[1] See, e.g., Cannan, *Wealth*, ed. 3, pp. 107–8, reading 'value' for his term 'utility', and 'exchange value' for his term 'value'.

[2] In an article in *Mind*, vol. xliv, N.S., no. 175.

[3] See Appendix on 'The Conception of Intrinsic Value'.

interpretation;[1] and if the main objections which they have urged can be got over, it is possible that they may be induced to abandon a doctrine which is both hard to state and also rather unilluminating when one attempts to use it for the interpretation of our concrete valuations.

78. Value judgements are always made in some particular context. They are not shot out of the blue apropos of nothing. Let us, then, select a number of typical judgements in order to see what general conceptions they imply, giving enough of the context to make the judgements significant. The ones which I shall give (with the exception of the first) come from two or three volumes chosen at random from amongst books dealing with social affairs.

I. (During a conversation, mainly about the satisfactoriness of work done and vacations spent in past years.) 'Do you notice that each year has its own vintage, so to speak? I think of 193*x* as a good year, and 193*y* as not so good. I don't mean only the weather. 193*x* was good generally. My plans worked out well. I seemed to get ahead with things, and so on.—But, of course, years that were good for me wouldn't be good for everyone.'

II. 'The captains of industry who have driven the railway systems across this continent, who have built up our commerce, who have developed our manufactures, have on the whole done great good to our people. . . . Very great good has been and will be accomplished by associations or unions of wage-workers when managed with forethought, and when they combine insistence upon their own rights with law-abiding respect for the rights of others.' (President Theodore Roosevelt.)[2]

III. 'The right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may require.' (Mr. Justice Harlan.)[3]

IV. 'We have built up a great system of government which has stood through a long age as in many respects a model for those who seek to set liberty upon foundations that will endure against fortuitous

[1] e.g. Ross, *Foundations of Ethics*, p. 254, in discussing whether there is any formula which will cover all senses of 'good', says: 'Probably the only universal precondition of our using the word is the existence of a favourable attitude in ourselves towards the object.'

[2] In *Speeches and Documents in American History, 1865–1913* (World's Classics, O.U.P.), pp. 247 and 251.

[3] Ibid., p. 294.

change, against storm and accident. Our life contains every great thing, and contains it in rich abundance. . . . But the evil has come with the good. With riches has come inexcusable waste. . . .' (President Wilson.)[1]

V. 'In doing good we are the exact opposite of the rest of mankind. We secure our friends not by accepting favours but by doing them.' (Pericles, Funeral Oration.)[2]

VI. 'Such an end as we have here seems indeed to show us what a good life is, from its first signs of power to its final consummation. For even where life's previous record shows faults and failures, it is just to weigh the last brave hour of devotion against them all. There they wiped out evil with good, and did the city more service as soldiers than they did her harm in private life.'[3]

VII. 'Where there is a predominantly native population, or a population mixed and recruited from different and discrepant elements, the best possible government in the interests of the population as a whole may well be, and generally is, an executive type of government, in which the governor acts with his council as a government responsible for the welfare of the population.'[4]

VIII. 'The conduct of a colonial empire involves not a single but a double trust. In one aspect . . . the colonial trust involves a duty to promote the well-being . . . of the native population of a colony. . . . But in another and second aspect (it involves the duty) of promoting the well-being of the world at large . . . by developing the resources of dependencies with a view to their full and free enjoyment by the general comity of mankind.'[5]

IX. 'The responsibility of any guiding people or State should never tend to diminish—but should always be exercised with a view to increasing—the inherent and indefeasible responsibility of the native and guided people for making the best of itself.'[6]

X. (When discussing the relative merits of the British and French imperial methods) 'the question may be asked, "Why seek to preserve the native institutions of a tribe when European civilization with its economic developments and its social ideas is impinging on native society, customs, and institutions? . . ." The question whether the African native . . . had better be left an African, but aided to become a better African, or whether it is better that he should become Europeanized . . . is a question which raises profound issues . . . (In the

[1] Ibid., p. 304.

[2] In Thucydides, *History of the Peloponnesian War* (World's Classics, O.U.P.), p. 113.

[3] Pericles, in Thucydides, pp. 114–15.

[4] Barker, *Ideas and Ideals of the British Empire*, p. 141.

[5] Ibid., pp. 145–6.

[6] Ibid., p. 152.

British view) the sustaining force of genuine native society is necessary for the best development of a native people . . . (Deprived of this, and) plunged into European individualism, they might cease to be a society and become what has been called a "rabble", which might in time become the material for a black dictator.'[1]

XI. 'It is (the duty of a representative) to sacrifice his repose, his pleasures, his satisfactions to (his constituents); and above all ever, in all cases, to prefer their interest to his own. But his unbiassed opinion, his mature judgement, his enlightened conscience he ought not to sacrifice to you, to any man, or to any set of men living. . . . Your representative owes you not his industry only but his judgement; and he betrays instead of serving you if he sacrifices it to your opinion.' (Burke.)[2]

XII. 'I say to the government that they may to-morrow withdraw every one of their troops from Ireland. Ireland will be defended by her armed sons from foreign invasion, and for that purpose the armed Catholics in the south will be only too glad to join arms with the armed Protestant Ulstermen. Is it too much to hope that out of this situation a result may spring which will be good not only for the empire but for the future welfare and integrity of the Irish nation?' (John Redmond.)[3]

XIII. 'Now, Sir, if I were convinced that the great body of the middle class in England look with aversion on monarchy and aristocracy, I should be forced, much against my will, to come to this conclusion, that monarchical and aristocratical institutions are unsuited to my country. Monarchy and aristocracy, valuable and useful as I think them, are still valuable and useful as means and not as ends. The end of government is the happiness of the people.' (Lord Macaulay.)[4]

It will be generally agreed, I imagine, that these are all genuinely evaluational judgements. Most of them actually contain the term 'good' or 'better' or 'best'. That is not, of course, a complete guarantee of their evaluational character, for there are special uses of the word 'good' which are not evaluational. 'He gave me a good (= severe or painful) hiding', and 'I have a good mind (= I am strongly inclined) to tell him what I think of him', are examples; but none of the passages which I have quoted is employing the term in this special non-evaluational sense. It is true, on the other hand, that two of the passages, VIII and XI, do not contain

[1] Barker, p. 150.

[2] In *British Historical and Political Orations* (Everyman's Library), pp. 71–2.

[3] Ibid., p. 351.

[4] Ibid., p. 227.

the terms 'good', 'better', or 'best'. But VIII presupposes VII, in which the term is used, and in XI one could very naturally substitute 'their good' for 'their interest' without any violation of normal linguistic usage or alteration of the sense of the passage.

79. Now the question to be discussed is whether these value judgements imply any necessary reference to the actual or presumed interests of conscious or conative beings. It seems evident that many of them do imply this. A year is good because in it 'my plans worked out well', &c. (I). Captains of industry have 'done good to our people' because they have built up communications and commerce (II). The common good and the general welfare are explicitly equated (III). A life is good so far as it is rich with great things and founded in liberty (IV). We do good by conferring favours (V). We do good by doing service to the city (VI). The best government is the one which promotes the welfare of the population (VII). Co-operation is good if it promotes the welfare and integrity of the empire and the Irish nation (XII). Monarchy and aristocracy are valuable only if they promote the happiness of the people (XIII). All these value judgements manifestly presuppose certain conative tendencies or aspirations in certain directions, and things are judged to have the quality of goodness or badness in so far as they tend to satisfy or to frustrate these aspirations. The other valuations in our list, while they do not explicitly make any assumption of a necessary relation to ends and interests of a subject, are all completely compatible with this assumption. None of them assumes that goodness is an intrinsic quality in things taken in isolation from everything else such as the Objectivist theory claims goodness to be.

There is a second and very significant point about some of these value judgements which tells strongly against the Objectivist theory, namely that they make or imply a distinction between 'good for you' and 'good for me'. A year which is good for me is not necessarily good for everyone (I). The welfare of the native population is not necessarily the same as the welfare of humanity at large (VIII). European institutions may promote the best development for us, but not for Africans (X). We can distinguish between what is good for

the empire and what is good for the Irish nation, though the same thing may promote both (XII). Monarchy may be good for one people, but not for another (XIII). It will, of course, be observed that there is no assumption of a necessary opposition between the good of one and the good of another. Indeed, in several of our examples the contention is that a certain line of action will be for the good of all the people in question. What is assumed is that the distinction between the good of one and the good of another is a very intelligible one and sometimes arises in practice. Example I is specially interesting in this connexion, because it seems to imply that the possibility of such an opposition is the natural complement of the subjective reference of the idea of good. The year 193*x* is good because my plans went well, &c., and *therefore* what is a good year for me is not necessarily a good year for other people.

80. In view of this implication of so many of our value judgements, it may seem curious that Objectivists have so strenuously opposed the notion that something can be good for me but not for you. But I think their opposition is quite understandable. A value judgement, like any other judgement, is either true or false; and *if* goodness is an intrinsic quality of a thing, if the predicate 'good' does not carry any reference to the interests or ends of a conative subject, then it is not possible to say truly that such a thing is good for me but not for you. It is good or it is bad, and that is the end of the matter. If one can truly judge that it is good for me but not for you, then goodness cannot possibly be an intrinsic quality, but must carry some reference in its meaning to you and to me.

Why, then, have writers such as Moore denied the plain facts about so many of our value judgements, and preferred to say that this common distinction between good for me and good for you is 'illogical' or 'meaningless', rather than abandon the intrinsic theory of value for which it is, admittedly, meaningless? It is because, like the Neo-Intuitionist who holds that the 'rightness' of actions is intuited, Moore envisages ethical problems so much in terms of epistemology. He seems to be specially impressed by the fact that a value judgement, being a kind of judgement, must be either true

or false; and if it is true, then it is true for everyone. There are, of course, Relativist epistemologists according to whose doctrines a statement may be true for you though not for me; but this doctrine leads to so many difficulties that it is generally rejected. I, at any rate, am prepared to accept the view that if a judgement is true it is true for everyone. But there is not the least difficulty in accepting this view of truth and refusing to accept the supposed parallel universality in the case of goodness. Certainly, if the value judgement 'This is good' be true (and it must be either true or false), then the judgement is true for everyone; but the thing is not necessarily therefore good for everyone. In the same way, if the judgement 'This is a perfect fit' (a judgement which may on occasion be passed on a new suit) be true, it is true for everyone, but the thing to which it is applied may be a perfect fit for me though not for you. Again, 'This pool of water is the colour of gold', if true, is true for everyone. But the pool will only have that colour under certain conditions, e.g. to a person standing facing the moon across the water. It will be equally true for everyone that 'This (same) pool is the colour of dark velvet' to a person standing in a different position. The two propositions could not both be true if the colour were an intrinsic quality of the water in the sense that no relation to anything else is involved, because two contrary or contradictory propositions cannot both be true of the same thing in the same sense in the same circumstances at the same time. If they can both be true (as, in example I of our value judgements, the speaker saw nothing strange in a particular year being good (for him) and not good (for other people)), then there is an implicit reference to a particular relation or set of relations in which the thing stands, the set of relations differing for each of the two judgements. This reference is simply made explicit when we say 'for you' or 'for me'. Hence the judgement 'This is good for me' is perfectly intelligible, and if true it will be true for everyone that the thing is good for me, though this does not involve the truth of the further proposition that the thing is good for everyone. But, as I have already said, this distinction which we do in fact draw in making our value judgements is irreconcilable with the intrinsic theory of goodness which denies

that the predication of goodness presupposes any relation in which the good thing stands to something else, namely the ends and interests of a conative subject.

81. There is one further point about two of the value judgements in our list which tells, on the whole, in favour of the Subjectivist theory. Number XIII takes the view that if a set of people look with aversion upon something, then that thing is presumably 'unsuited' to them. In number VIII the suggestion is not so clear, but the use of the words 'enjoyment by the general comity of mankind' implies in the context that the good or well-being of the world at large has something to do with the use of resources for the promotion of their enjoyment. At any rate, the reference to actual desire and aversion is clear in the case of example XIII. The inference seems to be that what is good for any given person or group is presumably identical with the object of his express desire. The presumption may be open to question; but it is the initial presumption. In trying to promote the good of anyone, that is to say, one would begin with the question, 'Well, now, what do you really want to do? What, fundamentally, are you aiming at?' It seems to me inevitable that if good is relative to conative tendencies, and if consequently what is good may differ from group to group and individual to individual, the point of departure in estimating what is good for any one must be an acquaintance with the particular tendencies of each subject, and that what these tendencies are is presumably expressed in their explicit desires and volitional orientation. This is not to say that what they desire is necessarily equivalent to what is good for them. It only furnishes the presumption as to what is good for them. And that this is the proper initial presumption to make seems to be the idea behind the declared policy of the British government in dealing with backward peoples under its control, and by some of the chief provisions of the Mandate System introduced under the auspices of the League of Nations. It also seems to have a strong influence on the theory and practice of modern education. I suspect also that some such notion lay behind Mill's much criticized doctrine that the only proof, in the end, that anything is desirable is that someone actually desires it.

The view we are suggesting, then, is that the Subjectivist theory of valuation is the one which is most in accordance with the assumptions underlying our normal value judgements—in accordance to this extent at least that they appear to carry an essential reference to the ends and interests of conative subjects.

82. Does this mean that 'good' is equivalent to 'that which is desired'? Such a consequence does not by any means follow. The reference to the desiring subject is not necessarily the only reference implied in the value judgement. We shall try to see what else, if anything, is implied; and the most convenient starting-point will be to consider the kind of criticism which is usually advanced against the theory that good means desired. To admit, as we must, that something may be good for me without being good for other people, is one thing. To say that what is good for me means what is desired by me is quite another thing. It would not be logically impossible to maintain such a doctrine; but 'desired by me' is not in fact what we mean when we say 'good for me'. People are often told that, however much they may want something, it would not be really good for them, or in their real interests, that they should be allowed to have it.

This criticism of the identification of 'desired' and 'good' is, I think, well founded; and it is substantiated by at least one of our examples of value judgement. Number VII speaks of an executive type of government as the best type for a predominantly native or mixed population; but it is not necessarily implied that the population will themselves desire this. In fact we know very well they sometimes do not seem to want it. And, in number X, the difference between the British and the French views as to what is good for non-European peoples under their control does not seem to be a difference of mere interpretation as to what these peoples actually desire. But, quite apart from the meaning one will take out of these two examples, number XI seems to be quite conclusive upon the difference between what is good for a person and what he desires or thinks is good for himself. While, says Burke, it is the duty of a representative to put the good or the interest of his constituents before his own,

he will betray their interest if he does not exercise his own judgement (even against their opinion) as to how their good is to be realized.

The point which is clear from these examples is that, however valid may be the initial presumption that what is good for a person is what he strongly and persistently desires, this presumption is by no means conclusive; and anyone responsible for the promotion of another's good cannot simply hand over to the client the function of judging in what direction his good lies and how it is to be promoted. What these examples—and in particular the quotation from Burke—stress is the principle of guardianship or trusteeship which is such a common feature of organized social life. A trustee is responsible for making wise or proper decisions with regard to the thing entrusted to him, but his administration is in the interests of, or for the good of, some other person or group.

83. But a trustee, in carrying out his office, does not usually make up his mind in a detached, purely 'objective' manner without consulting the actual wishes of the beneficiary. Where such consultation is not likely to be resorted to (as in the case of very young children or of lunatics) the trustee's judgement is based on what he can discover or presume to be the main, persistent conative tendencies of the beneficiary over a long period. Taking the long view with regard to his client's interests, he will try to anticipate what will be his main, dominant wishes at future dates, and refuse to accede to present hasty and temporary wishes or opinions if the satisfaction of these would injure the prospects of what (in the trustee's view) the client will later come to consider very important interests. In short, when we challenge the presumption that what *A* desires is the same as what is good for him, we do so not on the basis of some value judgements out of all relation to his express desires, but by a regress from express desire towards the more permanent conative tendencies which will mould the character of his probable future desires. This is what we do if we dispute with a person and try to argue him out of his immediate opinion and fancy. We go behind what he says he desires, trying to make him see how the satisfaction of this want would affect interests

which he admittedly possesses and are for him more general and long-term. And if we have to make up our own minds for him without being able to lead him through this regressive movement from the less to the greater, we try ourselves to interpret his inner tendencies and to judge as we think he would judge if his passions or inexperience did not prevent him from taking the long view.

That this is the method we use comes out even more clearly when the issues to be decided are complicated and concern the reconciliation of different persons or groups who begin with clashing valuations. To persuade them that such and such a line of action is for their common good will often involve a process of delicate negotiation, trimming and modification of initial demands, hammering out a solution mutually acceptable, by the process of moving from the actual conflicting demands down to the interests which each of the contending parties accepts as more fundamental, until we reach one which is both fundamental and common. Sometimes we have to travel very far from the original starting-point before we reach this basis of agreement; and the success of a proposed solution depends upon our ability to make the contestants properly aware of fundamental common objects, and the implications for those common objects if the people concerned persist in the pursuit of their immediate demands.

84. Let us now see if we can describe the value judgement in such a manner as to take into account all the main points noted. We have already seen that it implies a reference to the interests, desires, or conative tendencies of a subject. We now see that it implies also a reference to the objective relations between things themselves. The following description therefore seems to be reasonably adequate: The value judgement on anything refers to its objective relations with some other thing, the latter being an end or object of desire to a person as a subject-of-ends.

85. There is no great difficulty in seeing that this is true in the case of any value judgement asserting something to be 'good-as-means'. Indeed most philosophers who have held that 'ultimate ends' or 'intrinsically good things' cannot be proved to be good base their view largely on the accep-

tance of this interpretation of the good-as-means judgement. It is possible, they hold, to prove that a thing is good-as-means. We do it by proving that the thing stands in an objective causal relation to something already accepted as an end, or accepted as good. We have here two sets of relations implied; firstly, the objective relation of the thing judged 'good-as-means' to the thing which is the end or 'good-for-itself', and secondly, the relation of this end to the subject which is involved in his adoption of it as an end or as good.

The only real difficulty is to see how this account of the value judgement can be squared with the conception of a thing being good-as-an-end or good-for-itself. Here is the apparently insuperable difficulty. A good-as-means judgement that '*A* is good' is capable of proof only because it is based on the causal relation of *A* as cause and *B* as effect, plus the prior acceptance of *B* as good. If one wishes to prove that *B* is good, one can only do so by proving that it is the cause of *C* which, in turn, has been previously accepted as good, i.e. *B* can only be proved to be good-as-means. But, by hypothesis, every good-as-means judgement assumes the acceptance of something which is good not merely as a means but as an end or in itself. Therefore good in this fundamental, vital sense cannot be proved; and it cannot be proved precisely because it does not involve a reference to the objective relations in which the thing judged good stands to other things. For the conception of good-in-itself, therefore, we are reduced to the relation to the subject. But as we have already admitted that 'good' does not equal 'desired', the whole description of the value judgement as just given breaks down. The description was: The value judgement on anything refers to its objective relations with some other thing, the latter being an end or object of interest to a person as a subject of ends. While this might cover the good-as-means judgement, it breaks down when applied to the good-as-end judgement. We can only fall back, therefore, on the objectivist theory that goodness, in the fundamental sense, is an intrinsic quality of things, a quality which we just see, or do not see, according to the degree of our insight, but which we can never prove or disprove.

86. It would, I confess, be hard to resist this statement of the case against the view I have adopted if one could be satisfied about the accuracy of the account of the good-as-means judgement from which it starts. But this account falls into one cardinal error. It says that the good-as-means judgement implies that, when *A* is judged to be good-as-means, it is taken to be a means to *B* which has already been accepted as 'good'. This is not true. While it is true that *B* may have been accepted as 'good', all that is necessarily implied in the good-as-means judgement is that *B* has already been accepted as an 'end'—a very different matter. If I say that training is good for the production of an efficient army, all this necessarily implies is that I desire as an end the production of an efficient army. It does not necessarily imply that I have already passed a value judgement on this desired end.

This is evident from some of the value judgements on our list. Number IX is an example of a good-as-means judgement where the end is also judged to be good. The guidance of a superior state in the affairs of a backward people is good only so far as it assists the guided people to make the best of itself. Number XII is of the same essential form. It expresses the hope that the co-operation of the North and South will be good (as means) for promoting the good of Ireland and the empire.

But others amongst the value judgements do not assume any value judgement on the end to which the good-as-means thing is related. Number VIII, in its latter part, speaks of the desirability of an imperial power administering its colonial territory for the enjoyment of mankind in general; but there is no suggestion—at least no explicit suggestion—that this enjoyment must be 'good', although it is, of course, assumed to be an 'end' to mankind. Number XIII, while making the explicit distinction between what is valuable as means and what is valuable as an end, asserts that monarchy is valuable only as means to an end, which is the happiness of the people. It is neither said nor necessarily implied that this end is itself good.

87. Now it may be argued that, in those cases where the reference is merely to an end and not to an end already

judged good, reference to the goodness of the end is omitted simply because the value judgement upon it can be taken for granted; in other words, that the goodness of the end is either stated or necessarily assumed. This, however, is not the case, as I shall proceed to show.

It is an established rule of our law that, although an act be otherwise lawful, if a number of persons combine to perform it, and through it intentionally injure the interests of another party, then the act becomes unlawful if the purpose of the combination in so acting stops short at the infliction of the injury, but remains lawful if the purpose goes beyond the injury in the sense that the injury is regarded merely as a necessary stage in the promotion of their own lawful interests. That is to say, if the injury is adopted as an end, the act is unlawful; if it is adopted on a bona fide good-as-means judgement, with one's own lawful interests as the end, it is lawful.

Whether such a bona fide judgement did in fact lie at the basis of a certain line of action was the main point at issue in a recent case.[1] Veitch was Secretary of a Trades Union which included amongst its members workers in the tweed industry (particularly in the local mills) in the island of Harris and Lewis. Other members of the same Union were the dockers at the port of Stornoway. Yarn used in making some of the tweed was manufactured in the local mills, but the C.H.T.C. made their tweed from yarn imported from the mainland. The imported yarn was cheaper than the local. In the course of an attempt to secure a rise in wages for the tweed-makers who were members of his Union, and also to raise the minimum selling price of the cloth, Veitch was informed by the mill-owners that this could not be done because of the competition from the C.H.T.C., who made their cloth from imported yarn. Veitch, after further negotiations with the mill-owners, instructed the Stornoway dockers not to handle any yarn from the mainland or any cloth addressed to the mainland made from imported yarn. The clear intention of this act was to injure the trade of those who manufactured from imported yarn; and the C.H.T.C.

[1] *Crofters' Harris Tweed Company* v. *Veitch, All England Law Reports*, 1942, vol. i, pp. 142 ff.

brought an action (which was finally decided in the House of Lords) alleging a conspiracy of the Trade Unionists (and possibly of the mill-owners) to injure them in their business and trading interests.

At the various hearings many points were discussed; but, it having been decided that the legal rule is as stated above, the crucial question was: Did Veitch and his associates adopt this policy of injuring the trade of the C.H.T.C. as an end, or as a means to the promotion of their own business interests? At the final hearing there was much discussion about motives, intentions, dominant and subsidiary purposes, &c.; but on two points there was, so far as I understand the argument, complete agreement. The first point is that the question was not whether Veitch took what was an effective means, or the only effective means, to secure his Union's interest (assuming that to be his end), but whether he thought he was doing so. That is to say, the question was whether there was a bona fide good-as-means judgement behind the step the conspirators took, even if that judgement may have been stupid and mistaken.[1] The second point on which there was agreement was the question as to what constitutes the essence of a genuine good-as-means judgement. If a person does an act *A*, believing that it will promote an interest '*b*', and does the act with a view to realizing '*b*', and would not have done it unless he desired '*b*', then there has been a genuine good-as-means judgement (whether mistaken or not) about *A* with '*b*' as the end implied. This is, I think, a general statement of the particular view laid down in the following words: 'Unless the real and predominant purpose is to advance the defendants' lawful interests in a matter where the defendants honestly believe that those interests would directly suffer if the action taken against the plaintiffs was not taken, a combination wilfully to damage a man in his trade is unlawful.'[2] A genuine good-as-means judgement upon an act must regard that act (whether mistakenly or not) as necessary for the promotion of an ulterior interest; otherwise the injury is not being judged by the agent to be good-as-means but is being accepted as an end.[3]

[1] Ibid., p. 156. [2] Ibid., p. 156.

[3] I say that the whole point at issue in this case is the nature of a 'good-as-

Now it will be observed that in all this discussion about the state of mind which must exist in the agent, not one word is said about the judgement of the end itself as 'good'. That question does not enter into the problem as to whether he has acted to injure another as an end or merely as a means to a further end. It is said that before the law will regard the act of a combination as lawful, the end in view (the interest being promoted) must itself be lawful; but lawful is not the same as good; and in any case it is not at all suggested that the agent must himself think that his interest is a lawful one, but only that it must *be* lawful, and this is a matter which is decided not by him but by the court. All that is required is to show that he has made a bona fide good-as-means judgement; and to show that he has done so he need only satisfy us that he believed the step he took to be a necessary means to an end. There is nothing whatsoever in the whole argument which suggests or implies that he must also have judged his end to be good.

88. This analysis of the good-as-means judgement radically alters the supposed difficulty about bringing the good-as-end judgement under our description of value judgements in general. The supposed difficulty was that, to prove anything good-as-means, we must assume something to which it is causally related and which is accepted as good without proof; and therefore what we regard as good-as-end can never be proved to be so. We have now seen that this supposed unprovability of good-as-end is a notion which is based on a false view of the good-as-means judgement.

Turning now to the good-as-end judgement itself, let us see if we can bring it under our description of value judgements in general. The value judgement on anything, we have said, refers to its objective relations with some other thing or things, the latter being an object or objects of interest to a person as a subject-of-ends. It will follow from this that, if the good-as-end judgement is to be brought under the formula, then an end must be judged to be good or bad by reference to its objective relations to some other end or ends

means' judgement and whether Veitch and his associates acted on such a bona fide judgement. But, of course, that is not how the issue was described in the conduct of the case.

of the subject. And it is on this principle, I think, that we actually do base our good-as-end judgements. The evidence telling for or against this view is not easy to collect; and so I shall not pretend to demonstrate the truth of the view, but shall simply put forward a theory which I believe careful attention to our value judgements will prove to be substantially correct.

So far as I can see, the judgement that a thing is good as an end ('good-in-itself' in the sense of not being merely a means to something else) is made on whatever end is thought to fit into a pattern of ends of the same subject; although the question as to whether it is good is never asked unless some doubt has been raised about its so fitting in. That is why the question of the goodness of an end is less and less likely to be raised the more and more general the end is; and the more particular the end is, the greater is the probability that we shall have to raise the question as to whether it is good. If I have as actual ends *A*, *B*, *C*, and *D*, and if some other person has as actual ends *E*, *F*, *G*, and *H*, neither of us is likely to raise the question whether *A* is good or *H* is good, unless some doubt has been raised as to the ability of *A* or *H* to fit in objectively to a system of mutually compatible ends for me, or for him, or for us both. Similarly, if I have ends *B*, *C*, and *D*, the question whether *A* is not also a good thing which should be adopted by me is not likely to be raised, unless there is some ground for supposing that *A* is in some set of objective reciprocal relations with *B*, *C*, and *D*.

89. There are some particular points which may be added in order to supplement this rather bare outline of the theory of valuation. In the first place, one reason why it is so difficult to find examples of unambiguous 'good-as-end' value judgements is because the two types—'means' and 'end' valuations—are so interwoven in practical life. In dealing with any but the most simple issues, means and end valuations are so mixed that unless a rare occasion (such as the Harris Tweed case) requires the distinction to be made very clear, we do not ordinarily ask ourselves which we are making. Indeed, in very many cases our motives for doing a thing are mixed, involving both types of judgement.

But this mixture of the two types in most of our concrete

processes of valuation is not the only reason why it is hard to find clear examples of each. Another reason is—and this is my second point—that it is on the same kind of objective ground that we make the judgement in both cases. In the good-as-means judgement we evaluate a thing in accordance with its objective relations to another thing; and in the good-as-end judgement we evaluate a thing in accordance with its objective relations to other things. The difference is not that we are dealing with two different kinds of objective relation, but only that in the former case we are considering a simple one-way relationship, while in the latter case we are considering two-way or multiple-way relations. In the former case we are interested only in the one-way relation because only one of the related things is an end to us. In the latter case we are interested in the recriprocal relations because all the things are ends to us. An end being actually desired, its goodness is measured in terms of its effects in helping or hindering the prosecution of other ends, and of its ability to play a part in a coherent system of ends.

90. In the third place, there is nothing about our valuations which, in my view, supports the theory that there is some 'supreme' end from which all others derive their value. There is, of course, a subjective unity—the unity of consciousness of the subject-of-ends—but we are led into erroneous doctrines if we think of this unity of the valuing subject as somehow itself a supreme end. Moral philosophers—especially Idealists—have been prone to this mistake in arguing that 'self-realization' is the ultimate moral end; and the fact that they call it 'the moral end' indicates, I think, that they have included in their approach to the theory of valuation an assumption which has distracted their attention from the nature of valuation in the strict sense. They seem to have assumed that the idea of 'the good' provides the standard of moral duty; and since rules of duty are 'imperatives', they have very naturally felt that any end from which these imperatives are to follow must be 'ultimate'. But if we are prepared for the moment to leave open the question as to whether the standard of obligation does derive from the idea of the good, and simply look at the process of valuation itself, there is not much to be said in support of the doctrine

of an ultimate end. The conflicts and vacillations in our conative life are not easily explicable on such a theory, even allowing for the fact that some of our mental hesitations and conflicts are due to bewilderment or sheer error in trying to assess the real objective relations between things. What we find in practical valuation is that any end, no matter how prominent it may be at a given time and in given circumstances in influencing our valuation of other ends, is never itself wholly immune from the same critical review and revaluation. Things which at one time were regarded merely as means may gradually assume a place in our affections as ends (as for example in Mill's illustration of the growth of the miserly spirit); and the attachment to such ends can hardly be explained as deriving from the pursuit of an ultimate end.

Quite apart from its apparent inability to account for such facts about our valuing, it is strange that the conception of an 'ultimate end' should find such warm support amongst the Idealists who reject an analogous view with regard to the process of knowledge. It is they who have advocated the 'coherence' theory of truth. A judgement, they hold, is true, not through being inferred by a 'linear' process from a number of first premisses intuitively known and somehow guaranteed as certain, but because it 'coheres' with other judgements in a self-consistent logical pattern. Now whether this is a valid theory of truth I am not prepared to say. But it seems to me that a coherence theory of goodness is at least as plausible as a coherence theory of truth; and I suspect that the reason why the Idealists did not attempt to apply the coherence principle so resolutely in the theory of value is—as I have already suggested—that they assumed that the standard of obligation must come from the idea of the good.

91. But, fourthly, while there is no unitary ultimate end implied in our valuation, the subjective unity of a valuing subject is implied. That is to say, value judgements can be significantly passed on means or ends only so far as they are related to ends entertained by the same subject. The coherent pattern of ends which we commonly designate by the term 'the total good', is a pattern of the ends of the same subject. We cannot properly think of the pattern of ends

which we call 'the good' as made up of the correlation of the ends of two or more persons, if there are no ends sought by both in common. The proof of this is that in any dispute about what is good, the arguments of one person cannot possibly influence another unless they carry a reference to some important end actually accepted by the latter. That is to say, the idea of the good is essentially a personal conception in the sense that it is individuated in personal consciousness. There is my personal conception of the good, and there is yours, each of them made up of an integrated system of ends, the ends being judged good in virtue of their ability to fit into the system. But the system of these personal goods is not a good, any more than the system of persons is a person, because there is not any social self or unitary consciousness in a society or system of persons. Consequently a common good is not an all-embracing system of the systems of personal goods, but is, so to speak, the collection of bridges which join the various personal goods, these bridges being the multitude of ends and means which are included in the system of each person concerned. Without such bridges there is no 'good for us', but only 'good for you' and 'good for me'.

In connexion with the term 'personal good' as here used, two points fall to be explained. (*a*) In describing the system of ends and means which have been judged good in relation to each other as a personal 'good', it is not suggested that the system as a whole is evaluated in relation to something else. When we speak of the total good or the system of personal good, we are not making a value judgement on the system as a whole, any more than we are making a theoretical judgement when we talk about the 'truth as a whole' as distinguished from the truth of a particular proposition judged to be true in virtue of its relations to other elements in cognitive experience. (*b*) The word 'personal' is not to be equated with 'selfish' or 'self-regarding' as distinguished from 'unselfish' or 'other-regarding'. We do, of course, often use the terms 'personal', 'private', and 'selfish' as equivalent. We speak of a person as being actuated by personal or private ambitions, and here 'selfish' could very naturally be substituted. But there is another use of the term

'private' or 'personal' which does not carry this sense; otherwise we should not find any humour in the experience of a Palestine government official who sometimes found amongst his correspondence letters with the word 'selfish' written and underlined on the left-hand top corner of the envelope. They generally were so, he remarked, but this was not what the correspondents in question wished to indicate. In stressing the personal nature of the idea of 'the good', my point is simply that the correlation of means and ends into a system implies a unitary consciousness, and this is found only in the individual person and not in a society of persons. All ends are desired by a subject. This does not, however, make those ends selfish. It only makes them 'ends'. Nor are they selfish in virtue of the fact that they are correlated into a system of ends of the same subject, for this correlation is what is signified when they are evaluated as 'good'. Selfishness refers to the nature of the object or motive of action itself; that is to say, to the specific character of a given end aimed at. And in our systems of personal good there are included some ends which are selfish and some others which are not.

92. And this leads to my fifth and last point. The distinction between selfish or self-regarding and benevolent or other-regarding ends is very important for moral theory, and I want to make clear what, in essence, this distinction is. Ends may be classified in all sorts of different ways; but for ethics the distinction to which I have referred is sufficiently important to determine our mode of classification, because in morals—as our analysis of the conceptions of right and duty has shown—we are primarily concerned with the relations of persons and the manner in which they become involved in each other's actions and pursuits.

In a normal person's conception of 'the good' there are four main classes of ends; namely neutral, self-regarding, other-regarding, and mixed; and to which of these classes a particular end belongs depends upon whether it does or does not include within itself a reference either to the person whose end it is or to some other person.

A *neutral* end is one which includes in its content no reference to any person whatsoever. Of course its form, as

an end, necessarily involves a relation to the person whose end it is. To be an end at all it must be the object of a person's conation. But when we try to state what are the contents of this form—what is the particular end at which we are aiming—if no reference to any person is included in the content, then it is neutral. For example, if there are two small adjoining hillocks, one a few inches taller than the other, I might desire that the latter should be bigger than the former, and, with this end in view, add material to its top until I attained the desired result. No doubt a trivial end to aim at, but still a possible one. Now this end can be completely stated without any reference to me or to any other person. My own activity (or someone else's, or an earthquake) will of course, be required as a means to the end. But an end does not include the means, and once the end is realized, the things which were the means may cease to exist while the object desired remains. The end is simply 'that hillock *B* should be larger than hillock *A*'. Again, other persons may be affected by the realization or process of realization of the end. The two hillocks may, e.g., be the property of someone who wants them to remain as they are. But no essential reference is made to him in the statement or nature of the end. It is one which I could have (and could probably realize with less trouble) if he did not exist at all.

A *self-regarding* end is one the content of which includes a reference to the person whose end it is, but to no one else. Thus, if my end is to satisfy my hunger, or to increase my knowledge, or to hear a symphony, all of these include a state or activity of myself as part of the content of the end; but none of them implies in itself the existence of any other person. Even a symphony could be heard by an up-to-date Robinson Crusoe if he had managed to secure a good gramophone and records from his wreck. Of course other persons were necessary as means to this end, but they are not involved in the conception of the end itself.

Other-regarding ends are those which include no reference to myself but do include a reference to some other person or persons. I may desire harm or good to John Smith. I may desire that his property should be destroyed, or that he

should stop smoking for the sake of his health. A patriot may desire that his fellow-countrymen should be able to live their lives free from foreign domination. In all these cases one might regard oneself as a necessary means to the end, but one's own existence is not implied in the conception of the end itself.

Mixed ends are those which are both self- and other-regarding, including reference to oneself and to another or others in the nature of the end itself. The 'common good', e.g., is an array of mixed ends with their accompanying means. But simpler examples will make the conception of a mixed end clearer. If I desire not merely to injure John Smith but to take vengeance upon him, this is a mixed end because the idea of myself as gaining satisfaction in his injury is part of the content of the end. It is not vengeance I desire but simply injury if the injury carries no association with an earlier injury to my interests for which I hold him responsible. Similarly, to confer a benefit on someone or some institution as a memorial to oneself, or to desire to win a place on the roll of national liberators are mixed ends, as also is the desire to express one's gratitude in some tangible form; for all three of these ends involve that others, in enjoying the fruits of one's actions, should associate that enjoyment with one's existence or state of mind.

93. Let us now summarize the main points in this theory of value. There is a vast variety of ends which a person may pursue; and an end means some object or state of affairs desired by a conative subject. These ends could be classified on various principles, but the principle of classification most significant for moral theory is that which separates them into neutral, self-regarding, other-regarding, and mixed ends. The normal person cherishes some ends from all these classes, and in virtue of the subjective unity of his nature he tries to adjust and select his ends in such a manner as will make them capable of forming a harmonious and mutually supporting system, along with the means which will be necessary for their realization. This more or less coherent system of ends is generally called his conception of happiness or total good; and the conception of total good is a personal conception in the sense that it is formed by the arrangement

of the ends and means of the individual subject. Value judgements—'This is good', or 'better' or 'best' or 'bad' or 'worse' or 'worst'—all refer to some part of the content of this 'total good'; and the formal nature of a value judgement is such as to carry a reference to two sets of relations, the objective relations of the things judged and the relation of at least one of them to the conative tendencies of the subject. These two sets of relations are involved whether the judgement is on an end or on a means. The difference between the good-as-means value judgement and the good-as-end value judgement is that, in the former case, the thing judged good is not desired except on account of the objective relation in which it is taken to stand to something else which is independently desired (an end); while, in the latter, the thing judged good is desired both independently (as an end) and also on account of the objective relations in which it is taken to stand to other ends.

This, I think, is an account of the nature of valuation which will satisfy both the contention of Subjectivists that the value judgement carries a reference to a desiring subject, and also the legitimate contention of the Objectivists that a value judgement is a judgement, and therefore either true or false, and that to judge a thing good is not the same as to convey information about the state of mind of the person making the judgement. Since objective relations are implied in the judgement, a judgement on the goodness or badness of a means or an end may be true or false (a supposed means may not in fact promote a certain end, or a certain end may not in fact fit harmoniously into a certain system, however much the person judging may think or desire so). The only doctrines to which this theory gives no countenance are the two extremes of Subjectivism and Objectivism—the 'emotive' theory of valuation, which regards the judgement as equivalent to a gasp of pleasure or a yelp of pain, and the theory of 'intrinsic value' which takes the judgement to imply no relations at all either subjective or objective. But both of these extremes are, in my view, the result of a doctrinaire approach to the problem and show little evidence of a close study of the process of valuation in practical life.

Relation of the Conception of 'Good' to the Conception of 'Obligations'

94. So far we have been discussing the nature of valuation in general; but our main interest in the problem is on account of its implications for morals. What we want to know is the part which the idea of the good plays in the moral judgement, and in particular whether the conception of moral obligation is based on the idea of good to be realized. It is, I think, quite clear that the contents of all duties and obligations, whether legal or moral, imply the operation of the idea of the good. All duties and obligations follow from rights, and rights are protected spheres of autonomy within which individuals are at liberty to pursue their interests or ends, and to organize these ends under the form of 'the good'. The question is whether the idea of the good is the principle not only of the content of duty but also of the form of the conception of duty; and to this problem we now turn.

95. The source of obligation cannot be the conception of the 'total good', because this is a personal ideal of a unitary consciousness, and obligations are due from person to person and not from a person to his own ideal construction of a desirable state of affairs. The control which the idea of the good exercises over our conduct manifests itself in the regulation of our selection and arrangement of ends and means in accordance with the objective relations of those ends and means to each other. That is to say, it is a principle regulating the choice of our personal preferences so as to make them mutually compatible and mutually supporting. The choice of an end here, while the end may well include a reference to some other person, does not necessarily carry any reference to that other person's own choice of ends. Now the conception of obligation does carry a necessary reference to other persons' choice of ends. So long as our activities involve only ourselves and the inanimate world about us, no obligations arise, and the operation of our idea of personal good can proceed without let or hindrance. But immediately we come into relation with other subjects-of-ends, rights and duties arise, and personal ideals of the good then become subject to adjustment for external as well as

internal reasons. Our systems of ends and means have to adjust themselves to other such systems. And the conception of obligation seems to involve that this adjustment should take place not on the lines which a city sometimes follows in gradually absorbing bits of surrounding areas and boroughs in accordance with what it takes to be its own administrative requirements, but rather on the L.C.C. method of finding a working arrangement between the boroughs within an area. The adjustment of systems of personal good to each other is not, if the conception of obligations to persons means anything, a process whereby each person absorbs into his own ideal of the good those ends of another person which happen to suit the administrative convenience of his own system of preferences. It is an adjustment in the way of limiting the operation of the principle of personal good, the acceptance of certain detailed ends as ones which *ought* or *ought not* to be pursued, however valueless or valuable they may be judged from the point of view of one's own system, and of adjusting the total system to them rather than them to it. What particular ends ought or ought not to be pursued, with this consequent adjustment of our system of good in order to conform to the obligation, is determined by the particular contents of the system of personal good which confronts our own, and the principle of order which will secure compatibility of the two systems by 'fair', 'reasonable', 'just', 'equitable' modifications of both.

96. The principle of obligation then is not derived from the idea of total personal good. But there is another possible conception which, it may be suggested, will solve the problem of obligation while still remaining within the limits of the idea of the good. Admittedly, an arrangement of rights and duties involves a selection amongst our competing interests; but, it may be asserted, this selection is not based on some principle outside the idea of the good, but on the notion of the primacy of the 'common good'; that is to say, upon the primacy of those ends which form the bridges between all personal systems in the sense of being ends common to all the systems. Developing this theory, one might suggest that we range all possible interests in an order of

priority according to their value in promoting the common good, and that an interest of high priority will always receive protection in preference to one of low priority.

Now if this were the principle on which interests were selected for preference, two consequences would, I think, follow. The first is that we should require to reconsider our conclusions as to the relation of 'rights' to 'duties'. Our analysis seemed to show that duties and obligations are logically consequent upon rights; but if promotion of the common good is the principle on which interests are selected for protection as rights, then rights must be logically consequent upon duties. The principle of obligation being the promotion of the common good, an interest will be selected for protection only because of its contribution to this end. We shall have the protection of the law in the pursuit of this interest because there is an obligation upon us to pursue it. But if we accept this reversed view of the logical connexion between rights and duties, do we not at the same time destroy the whole basis of the argument that even the content of obligation is determined by the idea of the good, and therefore the whole basis of the assumption that obligations derive from the ideal of a common good? Of course, our analysis of the notions of rights and duties may be wrong. No infallibility is claimed for the reasoning by which it is established; and there may very well be grounds, other than the ones which I have given, on which one could show that the idea of the good is involved in the conception of obligation. But it is worth noting that if the common good is the formal principle of obligation, then the arguments advanced in this book to show that the idea of good is implied in the content of all obligations can carry no weight. Those arguments all depend on the analysis of rights and duties which makes duties correlative to and logically dependent upon rights; but if we hold that the common good is the formal principle of obligation, we are forced to hold that rights are logically consequent upon duties. Still, in spite of these inroads which would be made upon our argument, we ought to give very serious consideration to the theory that the common good is the principle of obligation if we can find any significant evidence pointing in that direction.

97. And this brings me to what I take to be the second important consequence which we should expect to follow if the idea of common good occupied this status. We should expect to find that, for the various classes of ends described earlier[1] in this chapter, the order of priority would be as follows:

(*a*) Other-regarding ends and mixed ends concerned with the benefit of the persons to whom they refer (it will be recalled that the desire to injure a person is an other-regarding end quite as much as is the desire to benefit him; and that the desire for vengeance is a mixed end quite as much as is the desire to express gratitude);

(*b*) Self-regarding ends;

(*c*) Neutral ends;

(*d*) Other-regarding and mixed ends concerned with the injury of the persons to whom they refer.

This I think is the order in which ends would most contribute to and least detract from the realization of the common good, assuming that the idea of the common good is the formal principle of obligation. And it may perhaps come as something of a shock when we realize that this is not in fact the order which is followed when interests are selected for legal protection. So far as I can understand the rule adopted, the order is:

(*a*) Self-regarding ends; with, I think, neutral ends;

(*b*) Mixed ends in general;

(*c*) Other-regarding ends in general.

This is a point which is brought out in a case[2] already referred to and which I shall now discuss at greater length. Veitch had acted with his associates in a way such as to affect the appellants in a manner contrary to their own wishes; and the question was what motive or end on the part of the defendants would render this action lawful; what end or interest amongst all possible ones would be entitled to legal protection even although its realization involved taking the means objected to; and the answer was: only an end which was predominantly of direct benefit to the agent. There might be other ends entitled to protection, but the case for

[1] par. 92.

[2] *Crofters' Harris Tweed Co.* v. *Veitch*, see above, par. 87.

such a one as this was clear. 'If the real purpose of the combination is not to injure another but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another ensues.'[1] From the point of view of ethics, the importance of the case lies in the elaborate discussion of principles which was undertaken in order to get the particular issue properly focused; and in the process of this discussion it became evident that other-regarding ends, even when the intention is to confer a benefit, are not entitled to the same protection as is a self-regarding end. In expounding the various aspects of this doctrine I shall not follow the argument exactly as it has been reported, but shall take the points in the order which is most significant for our own particular problem.

98. It was generally accepted that, in the pursuit of their interests, individuals and groups often come into conflict where satisfaction for one will mean disappointment for another. In the attempt to reduce the area of open conflict, a vast array of interests receive protection, and to violate these is unlawful. But the area of conflict is never completely covered by rules. There is a debatable 'no man's land' in which people have 'spheres of autonomy' but no rights. They are not forbidden to pursue their interests there, but they are not protected in the pursuit. The advantage will be to him who can take and hold. It is a field for free competition; that is what I take to be the meaning of the passage:

'[The claim that they have been "wronged" cannot mean merely] that the appellants' right to freedom in conducting their trade has been interfered with. That right is not absolute or unconditional. It is only a particular aspect of the citizen's right to personal freedom; and like other aspects of that right is qualified by various legal limitations either by statute or by common law. Such limitations are inevitable in organized societies where the rights [?meaning "interests"] of individuals may clash. In commercial affairs each trader's rights are qualified by the right of others to compete.'[2]

That is to say, it is recognized that, in the exercise of his rights (pursuit of his protected interests), *A* may injure some of the interests of *B* without thereby infringing *B*'s rights.

[1] Ibid., p. 147. [2] Ibid., p. 158.

'If they . . . do not resort to unlawful acts they are entitled to further their interests in the manner which seems to them best.'[1]

99. Up to this point we have been thinking primarily of the overt acts which a person may do. But acts are motivated; and the same act may be inspired by one or more of a variety of motives. For the most part, if a man's acts are not unlawful his motives will not be inquired into. If he is doing something which he is legally entitled to do, it would be vexatious if others were permitted constantly to raise the question of his motives. But motives are sometimes important. If a person acting as an individual exercises his right in such a way as to injure the interests of his neighbour (e.g. in draining water from his land and letting it flood an adjacent property), he might conceivably do so out of spite rather than for any real advantage he hopes to gain; but since he has the right to do this his motive will not be considered, and it will be presumed that he has acted from the proper motive of his advantage rather than from the improper one of injuring his neighbour, even if his attitude is scarcely intelligible save on the supposition that his motive is spite. But it will be a different matter if he acts not as an individual but as a member of a combination. Then his motives will be taken into account. The reason for this difference of attitude to an individual on the one hand, and to a combination on the other, is interesting; but it does not immediately concern us. The point of importance for us is that motives are taken into account in the case of action by a combination of individuals, and Veitch was acting as a member of a combination. It was, therefore, necessary to raise the question what motive or motives are proper ones in the sense of justifying his affecting the interests of the C.H.T.C. in a way to which they objected.

100. So far as our problem is concerned, the main motives discussed were the following:

Firstly, there is the motive of gaining some direct benefit for oneself—say an increase in one's wealth or possessions. What is meant is the kind of object which, although its realization may affect others, does not, in its conception,

[1] *Crofters' Harris Tweed Co.* v. *Veitch*, p. 159.

include such effects upon them. It is what I have called a self-regarding end. This is what I take to be the meaning of the contrast between an 'interest to injure' and an 'interest to further one's own prosperity if it be constructive, or destructive only as a means to being constructive'.[1] Motives of this kind are accepted as having a presumptive right to legal protection.

Secondly, there is the motive of promoting what one considers to be good for other people. And the interesting point is that while the initial presumption is in favour of legal protection[2] for the self-regarding motive, the presumption is against protection for motives of this second kind. It is apparently accepted as a general principle of English and Scottish law that an action from benevolent motives may be called upon to justify itself when the same action from a selfish motive would have the presumption in its favour. This seems to be the general drift of the argument. But in order to form a clear view of its meaning it will be necessary to take account of the distinction which I have already drawn between other-regarding and mixed motives. When your object is to promote what you consider to be the good of a person or group with whom you think your own good is bound up, or when you are in the special position of trust which imposes obligations upon you to act for the good of that person or group (and this comes under our heading of mixed ends), your end has a claim to legal protection. But when your object is to promote what you consider to be the good of a person or group with whom your own good is not bound up (and this comes under the heading of other-regarding ends), then the presumption is against the claim of your end to legal protection.

101. The law thus appears to prefer selfishness, or a mixture of selfishness and unselfishness, rather than pure unselfishness, in our motives. While one is entitled to make

[1] Ibid., p. 173.

[2] To be strictly accurate with reference to the case under discussion, we should say that the self-regarding motive has a presumptive claim not to be prohibited even when it injures the interests of others (so long as those interests have not been protected as rights), while the other-regarding motive, in the same circumstances, has no such presumption in its favour.

public comment on the conduct or character of public persons if this is done with a view to the interests of the public of which one forms part, one is not permitted the same freedom of public comment on the fitness of a person for office in a group with which one has no connexion. One must have either a direct self-regarding interest in the matter, or an antecedent obligation to the group or person which puts one in a position of trust, if one's interference is to be justified. Hence, though it is a wrong to induce *A* to break a contract with *B*, a parent would be justified in persuading his daughter to break an engagement with a scoundrel.[1] But if one is motivated in affecting the interests of others by 'dislike of the religious views or the politics or the race or the colour' of the persons in question, or if the act is a mere demonstration of power by busybodies, there is no justification.[2] Again,

'In substance what the appellants say is that the issue between the mill-owners and the yarn importers was one between two sets of employers in which the men were not directly concerned, that the Union's action was an unjustifiable and meddlesome interference with the appellants' right to conduct their own business as they pleased; and that the Union was pushing into matters which did not concern them',[3]

and it is agreed that, if this were a true statement of the facts, there would be no justification, and various deprecative references are made to the activities of 'well-meaning busybodies'.

But perhaps the clearest indication that benevolent as well as malevolent other-regarding ends are presumed not to be entitled to protection is found in a comment in the case referred to earlier,[4] of the Dutchman who argued that his conscription into the forces of the Netherlands government while resident in England was contrary to the law of England. One of his pleas was that the Order in Council conferring powers on the Dutch government was an infringement of the rights of Parliament *vis-à-vis* the Crown; and the observation was made that 'there may seem to be some unreality in the claims of a Dutchman resident here . . . to draw attention to an alleged infringement of the privileges

[1] *All E. L. R.*, p. 148.
[2] Ibid., p. 152.
[3] Ibid., p. 158.
[4] Above, par. 42.

of Parliament . . .', especially when neither the Attorney-General nor Parliament itself had raised any complaint; and this plea was considered only because the individual making it had a direct interest in the question. As a purely other-regarding end his interest in the maintenance of Parliamentary privilege would have received no consideration; but the fact that it was a mixed end gave it a presumptive title to protection.[1]

102. There seems to be no doubt, then, that the order of preference adopted for the legal protection of interests is very different from what we should expect if the formal principle of obligation were the idea of the common good; but a little reflection will show that it is entirely consistent with our analysis of the fundamental relations between rights and duties which, it will be remembered, is not compatible with the view that the common good is the source of obligation. There is, at first sight, something strange about this preference of self-regarding over other-regarding ends. It may suggest an attitude of cynicism and a low view of the capacities of human nature. Indeed, although there was no doubt that it expressed the settled principle of the law, it appears to have given rise to some qualms of conscience on the part of Lord Wright at least.

'I have attempted to state principles so generally accepted as to pass into the realm of what has been called jurisprudence, at least in English law, which has for better or worse adopted the test of self-interest or selfishness as being capable of justifying the deliberate doing of lawful acts which inflict harm, so long as the means employed are not wrongful. The common law in England might have adopted a different criterion, and one more consistent with the standpoint of a man who refuses to benefit himself at the cost of harming another. However, we live in a competitive or acquisitive society, and the English common law may have felt that it was beyond its power to fix by any but the crudest distinctions the metes and bounds which divide the rightful from the wrongful use of the actor's own freedom. . . . If further principles of regulation or control are to be introduced, that is matter for the legislature.'[2]

If I understand this comment rightly, what it is suggesting is that in our competitive and acquisitive society, the law is willing to acquiesce in a crude level of egoism as that above

[1] *All E. L. R.*, p. 240. [2] Ibid., p. 163.

which the average person cannot safely be counted upon to rise, and that a higher level of behaviour might conceivably have been demanded. But such a suggestion seems to me to misinterpret entirely the principle which is being applied. Supposing that, in regard to this particular rule, the law were in fact acquiescing in a crude level of egoism (and this I think is a misinterpretation), it is nevertheless true that English, like other systems of law, demands, in vast provinces of life, a fairly high standard of public spirit, and would be unworkable if this expectation were defeated. It conscripts men and women for forms of national service, expecting the majority of them to come voluntarily although knowing that their businesses or lives may suffer or perish as a consequence. Even in ordinary day-to-day life the demands made as a matter of course could hardly be met if one could not have a majority of the citizens living their average lives somewhat above a crudely egoistic level.

103. But even leaving such 'balancing' considerations as this out of account, in adopting 'the test of self-interest' the law is not 'acquiescing' in this motive *faute de mieux*. On the contrary it is refusing to consider any other as having a valid claim to protection, and demanding a restriction to this motive as a qualification for the protection of an interest. To speak of a standard of behaviour in accordance with which one refuses to benefit oneself at the cost of harming another is to forget that the resources of the world are not unlimited, thus making for inevitable conflict of interests; and that, apart from such conflicts in the material realm, the winner in any contest of prowess or merit must disappoint his competitors in putting forth his efforts to win the prize. So that, conflict of interests being inevitable, some of the interests of every person are bound to be harmed if there is to be any reasonably fair distribution of opportunity for all to satisfy their major interests, whether these are neutral, self-regarding, other-regarding, or mixed. The question therefore is: if some of your interests are to be satisfied at the cost of frustrating interests of other people, which of them ought to qualify for protection in this respect? And the answer given by the law is: certainly not those interests which are concerned with affecting the lives of other people

(either for what you consider their harm or their good) in opposition to what they themselves want, and where you anticipate no direct or very near benefit to yourself. The law may well call on you to perform obligations in the way of benefiting them in such ways as conform to their own idea of what is good for them, and even in defiance of their wishes if you are in a special position of trust; but if you have no obligations to contribute to a common good or the good of others, but have simply a desire to do so, then if the persons to be affected object to being managed by you, your interest in managing them will not be protected unless you can show that your interest is not purely other-regarding but is mixed, with a clear implication for your own rights or liberties.

In applying the test of self-interest, then, the law is not saying that self-interest is the only motive which you can be counted upon to entertain. It is not making a concession to your presumably low moral outlook. Rather it is protecting others against your being either a malevolent or a benevolent nuisance, a busybody regimenting them 'for their own good'. If you really believe that something is of benefit to you directly, then you are entitled to take the appropriate measures to get it, irrespective of what others think or want, either with regard to their own good or yours, provided that you do not infringe their rights in the process. But you must be prepared to accord the same respect to other people. What is sauce for the goose is sauce for the gander; and there is no reason why they should submit to your claims to know best what is good for them. You may argue with them and attempt to convince them of their stupidity; but if they are so crassly stupid as to suffer from the delusion that it is you who are stupid, then they must be permitted to go to the devil in their own way. The insistence on 'justification by self-interest' is not an encouragement to selfishness but to self-restraint in interfering in other people's business.

104. The conclusions to be drawn from the foregoing discussion are the following: The test of self-interest, which is applied to determine what a person may or may not do in influencing the lives of other persons, means that the fundamental principle of social justice is that of personal

liberty and equality of opportunity in the pursuit of personal good. This principle—as the employment of the test of self-interest shows—is conceived of as holding whether or not individuals are associated in the pursuit of a common good. If they are not, then the application of the principle gives rise only to 'real rights' and 'duties' in the technical sense. If they are associated in some co-operative enterprise, then the application of the principle will give rise to reciprocal 'personal rights' and 'obligations', these obligations involving the pursuit of other-regarding ends. It is perfectly true —since all duties and obligations are logically consequent upon their correlative real and personal rights—that the idea of the good is that which gives significance to the content of all duties and obligations. But the conception of the good does not supply us with the formal principle of obligation. This formal principle has something to do with respect for persons as such, involving the notion of their liberty and equality as subjects-of-ends. In our next chapter we shall be concerned with the more detailed analysis of this formal principle of obligation.

V

THE MORALITY OF SOCIAL JUSTICE: THE PRINCIPLE OF JUSTICE

105. In the last two chapters we have seen, firstly, that the administration of justice is concerned with the protection of selected interests; and, secondly, that the principle on which interests are selected for protection has something to do with the observance of liberty and equality as between persons. Liberty and equality will therefore be two of the essential notions in the conception of justice. In the course of the present chapter we shall see that there is a third notion which I shall describe as the notion of Merit. Liberty and Equality may be regarded as fundamental in a way in which Merit is not; for even if individuals, though in sufficient contact to interfere with each other's actions, lived without any degree of interdependence, it could still be said that they ought to respect each other's liberty in an equitable fashion. But in most cases where men are liable to affect each other, they are not completely independent of each other. They probably form a society organized on the basis of interdependence and division of labour; and this requires a third element in the conception of justice. What this should be called I have some difficulty in deciding; but it seems that, in an organized group, what men tend to claim, over and above equitable liberty, can be put under one or other of two headings: Firstly, that if they have the capacity or talent for performing a certain function towards the common good, they ought to have reasonable opportunity for employing it; and, secondly, that if they do actually perform a function which has a value for other members, they ought to have some reward in the way of equivalent service. That is to say, they tend to claim that capacity 'merits' the rights necessary for its exercise, and service 'merits' reward. For this reason I think that the third element in the conception of justice may most appropriately be called the notion of Merit.

In trying to bring out how these three conceptions determine our concrete ideas of justice, it will be convenient to

follow the same general method as we have adopted in earlier chapters, taking a number of instances of the claims, judgements, and so on, in which justice is supposed to be demanded or dispensed, and analysing these to bring out their general implications. We must not expect that everyone who demands or professes to dispense justice will have a perfectly clear and well thought out notion of what he is after. He may express himself in a form which cannot withstand theoretical analysis. But if we find that, in the various levels of experience, there is an appeal to principles of a certain sort—an appeal which is undeniable even if it is sometimes put in a confused or exaggerated form—then we can take it that these principles are fundamental.

Equality

106. We shall deal first with the idea of equality, since it is the conception most commonly insisted upon. The stress on this idea is clear in the case of the demand for 'equality before the law'. What this means is that, whatever the law may be, it ought to be applied 'universally' or 'equally'. It does not mean that every person ought to have identical or equal rights. Rules of law give very different rights to different sets of persons; but, assuming that a code of rules exists setting out a complex system of rights, then a particular rule is the rule for a particular type of case; and that is the rule to be applied to such a case whenever it occurs, no matter who may be the person affected, John Jones or the Duke of Plazatoro. And in fact in the administration of justice according to law, we see that the procedure is directed mainly to the discovery of two things, the facts of the case and the law of the case. The available evidence is assessed to discover what a person has done, and the authorities are consulted to discover the rule applicable to such a deed. This is the universal or equal application of rules to cases, irrespective of the persons involved.

But the idea of justice is concerned not only with equality before the law but also with equality of treatment by the law. That is to say, we may bring up for critical review not only the way in which rules are applied but also the way in which they are conceived and constructed; and here again we use

the notion of equality as a standard of judgement. In our most primitive, spontaneous or unreflective judgements we tend to demand equality in a crude form, being struck by the superficial identities in the cases before us, although on examination these identities may turn out to be much less vital than the differences. Later, forced to recognize the complexity of most situations in life, our conception of equality of treatment undergoes some measure of refinement and emerges as that of 'proportionate equality' or 'equity'.

107. Even when we have recognized that the practical application of the principle of equality must follow the rule of equity, the important distinctions between 'distributive' justice and various kinds of 'corrective' justice are not at first clear to us; and the confusion of these is apt to give an apparently irrational turn to our attempts to apply the principle of equality. In early civilizations, e.g., while the most acute discrimination may be made in the details of outward behaviour, there is a noticeable tendency to neglect differences of inward disposition. The main effect of this is to obscure the distinction, which is so clearly recognized in modern society, between the two types of corrective justice known as reparation and punishment. For instance, it is reported of a tribe of American Indians that some of their customs seemed to ignore this distinction completely. If a boy, out practising with his bow and arrow, accidentally shoots one of his comrades, there will be no inquiry as to his intentions. Justice demands that he shall himself be made a target for the dead boy's brother. The 'purging' of the 'wrong' must be equal to the wrong itself. The 'punishment' or 'reparation' must fit the 'crime'. The family of the deceased must have 'equivalent satisfaction' for its loss. There is also the famous provision in the Code of Hammurabi to the effect that, if a house, through some fault in construction, collapses and kills a member of the occupant's family, then the builder shall suffer an equal penalty. His own house shall be demolished on top of a member of his own family.

To the modern mind there is something crude and unreasonable about such penalties; but it is significant that

our objection is not to the use of the basic conception of equality but to its being applied in a crude way. We should want to draw a distinction, in the first place, between striking at a man through his property, and striking at him through persons of his household who are not mere property. To strike at him by making his son suffer for his crime (if he has indeed committed a crime) is to be guilty of the 'inequality' of making the innocent suffer for the guilty—setting the children's teeth on edge because their fathers have eaten sour grapes. In the second place, we draw a distinction between making a man liable in reparation to the person he has wronged, and punishing him for the wrong. Reparation is the positive restoration to the injured party of what he has lost, or its equivalent. Reparation is thus clearly a field in which the idea of equality very naturally operates. But punishment is a pain inflicted on the wrong-doer, designed to act as a deterrent influence for the future. It is a means to an end, and there does not seem to be anything here to which the idea of equality can be applied at all. If, however, one does not distinguish between the two ideas, one will think of punishment as a kind of 'balancing' of the injury or 'cancellation' of the wrong, which of course it cannot be. In short, one will become involved in all the mystifications of the 'retributive' theory of punishment.

In any account of the principle of justice, therefore, it is important to keep in mind the distinction between distributive and corrective justice; for the notion of equality applies directly only to distributive and to one part of corrective justice. The other part—punishment—is ruled by the conception of means and end. We shall have to deal more fully with the nature of punishment in a later chapter in connexion with the problem of moral responsibility. For the moment we are concerned only with distributive justice; and reference has been made to punishment only to show that our objection to some early forms of 'redressing injuries' is not that they make use of the idea of 'equality' but that they confuse the field of its application with one where it has no direct place.

108. Dealing specifically with the idea of distributive justice, then, we have noted that one of the three fundamental notions contained in this idea is that of equality, conceived

initially as crude or simple equality of treatment, and later refined by experience into the notion of proportionate equality or equity. That the development is from crude equality to equity is substantiated by the results of Piaget's study of the child mind. In the process of a very full inquiry into children's ideas about justice, he asked them to give examples of what they themselves considered to be 'unfair'. He found that in the 6–8 age-group the general tendency was to think mainly in terms of acts which are authoritatively forbidden. The difference between authoritative rules and principles which ought to govern those rules, had not emerged very clearly into their consciousness. The examples of 'unfairness' which they usually gave were such acts as 'breaking a plate', 'making a noise with your feet during prayers', 'telling lies', and 'stealing'. A relatively small number of answers gave examples of inequality such as 'giving a big cake to one and a little cake to another', 'beating a friend who has done nothing to you', 'two twin sisters not given the same number of cherries', and 'a worse punishment for one than for another'; and in these it will be noticed, it is the notion of simple equality which is prominent.

But when we come to the 9–12 age-group the proportion of examples drawn from command or rule is very small. The vast majority emphasize the idea of simple equality as the 'fair'; but the oldest children of this group are more able to find their way through problems in equity.[1] The general results of the inquiry are summarized by Piaget in the following passage, which I quote because it seems to describe so well the same kind of 'movement' as we shall find in the attitude of the adult. Having referred to the mental attitudes in the earlier age-group, Piaget goes on to say:

'Towards 11–12 we see a new attitude emerge, which may be said to be characterized by the feeling of equity, and which is nothing but a development of equalitarianism in the direction of relativity. Instead of looking for equality in identity, the child no longer thinks of the equal rights of individuals except in relation to the particular situation of each. In the domain of retributive justice this comes to the same thing as not applying the same punishment to all, but taking into account the attenuating circumstances of some. In the domain of

[1] See, e.g., Piaget, pp. 271 and 313.

distributive justice it means no longer thinking of a law as identical for all but taking account of the personal circumstances of each (favouring the younger ones, &c.). Far from leading to privileges, such an attitude tends to make equality more effectual than it was before.'[1]

Perhaps such expressions as 'no longer thinking of a law as identical for all' might be put differently, but there is no doubt about what the paragraph as a whole is meant to convey.

109. When we turn to the idea of justice in the adult mind, we find that the initial or unreflective attitude, or the enthusiastic advocacy of a cause, tends to lay the emphasis on unrelieved equality in the manner of the younger children, while the reflective mind, especially when engaged in the business of working out a system of rights and duties which will have to endure the practical test, thinks more in terms of equity. Here are some examples where, for one reason or another, the principle of equality is put in its more abstract character.

'When Adam delved and Eve span, who was then the gentleman?'

'All men are created equal, . . . they are endowed . . . with certain unalienable rights, [and] among these are life, liberty and the pursuit of happiness.'[2]

'From the beginning all men by nature were created alike, and our bondage or servitude came in by the unjust oppression of naughty men. . . . And therefore I exhort you to consider that now the time is come, appointed to us by God, in which ye may (if ye will) cast off the yoke of bondage and recover liberty. . . . I counsel you therefore . . . that you may destroy first the great lords of the realm, and after the judges and lawyers and questmongers, and all others who have undertaken to be against the commons. For so . . . there shall be an equality in liberty, and no difference in degrees of nobility; but a like dignity and equal authority in all things brought in among you.' (John Ball.)[3]

'Even our enemies must concede to us that we act from principle and from principle only. We prove our sincerity when we refuse to make our emancipation a subject of traffic and barter; and ask for relief only upon those grounds which, if once established, would give to every other sect the right to the same political immunity.' (O'Connell, on Catholic Rights in Ireland.)[4]

[1] Ibid., p. 316. [2] American Declaration of Independence.
[3] See *British Historical and Political Orations*, pp. 3–4.
[4] See ibid., p. 120.

110. In each of the above examples, with the possible exception of the last, the stress is laid upon the general abstract idea of equality; and it is such uncompromising demands which produce a certain reaction against the notion of equality as a fundamental conception in the idea of justice. When we try to apply the principle of pure equality in practice we find that it will not work. Reforms undertaken in this spirit create almost as many evils as they are designed to cure. In fact we never can apply the principle in this unqualified way. For John Ball's rebels to make themselves efficient in destroying the great lords and 'all others who have undertaken to be against the commons', they must be organized under some form of leadership. Leadership in its very nature involves distinct degrees of authority; and such degrees of authority involve different sets of rights and duties in order that different functions in the whole may be effectively performed. Similarly, the American colonists' assertion of specific 'natural and unalienable rights' cannot stand the test of practical application. If there is such a natural right to life and liberty, King George's soldiers cannot justly be shot or taken prisoner, no matter what they do to the colonists. But the actual behaviour of the colonists implied that even so-called natural rights can only be admitted on condition—the condition of mutual respect.

But while these objections to the crude formulation of the principle of equality are very sound, the defect to which they point is not the acceptance of the principle but its abstract application. The criticisms themselves are, in fact, based on the assumption that the principle is valid; and they simply show that the crude application of it is self-defeating. If men are to organize, leadership and consequently different sets of rights and duties are involved. Why are different sets of rights and duties involved? Because a man's rights and duties must be proportionately equal to the function he is to perform. Natural rights are not unconditional; they are conditional upon mutual (equal or reciprocal) respect. In other words, the principle of simple equality will apply in practice in so far as cases, circumstances, functions, &c., are themselves equal; but the principle is transformed into equity in its practical application to complex and varying cases.

111. Perhaps the best illustration of the principle of equality being assumed and then applied in practice as equity is found in a parliamentary debate on some measure by which rights and duties are to be redistributed over a considerable section of society. What we find, as the argument moves to and fro, point being met by counter-point, is that the process of legislation is, in one fundamental respect, the same as the process of interpreting and applying existing law. The main difference between judicial and legislative procedure is that, in the former, we are concerned with the application of known rules which are taken for granted (although, as we have already seen, the consideration of principles is not left entirely out of account); while, in the latter, we are concerned with the application of principles to the making of rules (although, again, legislation does not ignore the guidance of established rules and precedents; for advocates of a particular measure will often use as an argument that what they propose is actually adopted in some other branch of the law or in some other society). In both forms of procedure, however, we begin with the assumption that the rule or principle, as the case may be, is already fixed for us (though what it is may take some finding out), and our main job is to make sure that it is equitably applied.

112. I propose to illustrate this by reference to the 1918 Representation of the People Bill.[1] In connexion with this bill a Boundary Commission had been appointed to deal with the redistribution of Constituencies; and among the Instructions which it was proposed to give the Commission was one to the effect that 70,000 of a population should be taken as the standard unit for a constituency, although the figure might in special circumstances rise to 90,000 or fall to 50,000. In the debate on the motion to approve this Instruction, the following points were made:

(635) Col. S:—Area should be taken into account as well as population. What we must provide for is a fair representation of agricultural interests, which everyone now (i.e. in 1917) acknowledges to be important. A city member can easily keep in touch with his constituents, but in a sparsely populated rural area the problems of time, travel, and expense are very great.

[1] *Official Parliamentary Reports*, 94 H.C. Deb. 5 s.

(641) Mr. L. (supporting previous speaker):—70,000 is bound to produce an unwieldy rural constituency—a very different matter from the same population in, say, Whitechapel. The circumstances are so different. Besides, the attraction of the town to agricultural workers provides an additional reason for strong agricultural representation in the House in order to look after agricultural interests and to keep the people on the land.

(644) Sir G. Y. (also supporting):—Besides population and area we should also take into account the historical and other interests which make a constituency into a whole. There is provision of this sort in South Africa. A mechanical regrouping on a population basis would often result in forcing together people of antagonistic interests or sentimental antipathies. Besides this, the swamping of the House by urban representatives has already resulted in the framing of a local government system which, however good it may be for towns, is unsuitable to rural areas.

(647) Mr. H. (himself a rural representative but disagreeing with the previous speakers):—Sir G. Y. is mistaken in wanting homogeneous constituencies with identical interests. Members of Parliament are not representatives of 'interests' or even primarily of local areas but of the nation. As for 'historical interests', this is quite irrelevant to the question of representation. What we want is, as far as possible, one man one vote, and one vote one value; and the urban constituencies will be very badly treated in this respect if the population figure for rural areas is considerably reduced and at the same time proportional representation is applied (as was then proposed) to certain city constituencies.

(654) Mr. G.:—While the rural areas are entitled to our sympathy, there is a great deal to be said for a fair degree of rigidity in the population figure. If it is made as variable as some of the rural champions demand, with an upper limit of 90,000 for urban areas and a lower limit of 40,000 for rural areas, it will cause great dissatisfaction.

(656) The Home Secy.:—The problem of redistribution of seats (necessarily involved in any comprehensive franchise reform) does contain difficulties. But agriculture has no right to special representation on the ground of its national importance. The mining, cotton, steel, and shipbuilding industries could all put forward the same plea. The real case for the agricultural area—as for any other area—is that it should have fair representation and that the 'local community feeling' should be maintained. This latter requirement is specially difficult to meet in sparsely populated districts. But how are these legitimate interests to be met without injustice to other interests? It is accepted

by all that the House of Commons should not be increased; and if we depart from the standard figure of 70,000 for all, making the urban 80,000 and the rural 60,000, we shall greatly interfere with the standard of one vote one value. The 70,000 standard must be maintained as the general rule; but the Commissioners will be instructed to exercise discretionary judgement in special circumstances.

(660) Sir G. Y.:—Will they be instructed to take into account rising tendencies in the local population (e.g. at Rosyth)?

The Home Secy.:—It is difficult to legislate for such future contingencies, but the point will be considered.

(680) Mr. S.:—Will special consideration be given to the districts in which the permanent military camps are situated? The assumption underlying the population rule is that in equal populations there will be roughly equal numbers of voters. 70,000 will yield roughly 14,000 voters. But in the permanent camp areas, 70,000 may yield 43,000 voters; so that to maintain the general standard here would greatly infringe the rule of one vote one value.

(682) The Home Secy.:—The disparity may not be so great as is suggested; but the point is important and will be kept in mind.

(684) Mr. H.:—Constituencies specially affected in the reverse way should also be considered, e.g. where there is a large resident alien (and therefore non-voting) population.

The Home Secy.:—Yes; such cases will also be considered.

113. The foregoing arguments are typical of the whole attitude in the debate. We are dealing throughout with the conception of equality to be realized as equity. It is generally accepted that, in some fundamental sense, 'each is to count as one, and none as more than one'; and I cannot find any essential difference between this and Kant's first formulation of the Categorical Imperative to the effect that we should act only on such maxims as can be willed as universal laws. Kant's principle is, of course, put in an extremely rationalist form; but even this is not altogether alien to the tone of many of the contributions in the franchise debate, where a particular proposal is constantly recommended as the one which ought to be adopted on the ground that it is the only 'logical' course to follow. That a rule should be applied 'equally' or 'logically' or 'universally' is the common theme. Yet no one suggests that this ought to involve absolutely identical

treatment for everyone irrespective of circumstances. The strict application of the rule 'each to count as one'—as Mr. S. and others insist—requires that the treatment of different classes of persons should 'follow the design' of their circumstances. That is why so much time is spent on trying to discover what this 'design' is—what are the relevant identities and differences in circumstances; for only when these are clearly apprehended can we devise a scheme in which each vote will have roughly equal strength.

114. To say that all speakers assume that the final scheme must be logical and consistent with the principle of equality does not, of course, mean that this principle is explicitly accepted by all. In fact it is not. Some of the members actually profess to reject it; but when we look at the arguments they use, we see that they also follow the general rule, and that what they are really opposing is the crude or doctrinaire application of the principle.

For instance, Mr. D. supports the proposal that, although six months' residence in a constituency is to be a standard qualification for a vote, still a person may move from one constituency to a contiguous one and be entitled to vote if he has resided in the latter for thirty days (not six months). He confesses: 'I agree that this proposal is not logical . . . but we are trying to come to an agreement. I believe it is a workable system.'[1] Admittedly, to say that a man must wait six months for a vote in his new home if he moves sixty miles away from his previous home, although he need only wait thirty days if he moves only a couple of miles, does not sound very logical when put in that summary form. But consider what led up to the proposal. Mr. D. himself originally wanted a man to be able to carry his vote automatically all over the country, because Parliament is a national and not a local institution. That would apparently be logical. There was, however, the fear that if this rule were adopted there would be great danger of party agents engineering 'swallow voting'—bringing men into a constituency as 'residents' for a day or two in order to convert a doubtful seat into a safe one for their party. To guard against this practice, the six months' residence qualification

[1] 94 H.C. Deb. 5 s, 261.

was proposed. This again would be, apparently, quite 'logical'. The next proposal was that while the six months' qualification should hold generally, there would be a modification in favour of a person who moves only to an immediately adjoining constituency. Why this curious exception? It is apparently illogical. But Mr. D. accepts it; and the reasons are these. There are some classes of industrial workers who have to move about a great deal. To insist on the six months' qualification in their case would practically disfranchise them—which would be unfair. Actually, however, they move about their own industrial area; and if they have to move from their own constituency it is generally into an adjoining one. This kind of movement is not likely to be of much use to the organizers of swallow votes, since the area into which a person moves is, on account of its industrial character, likely to be of a similar political texture to the one he has left. No great danger will be incurred by the proposal and it will remove a great inequality which such workers would otherwise suffer in comparison with business and professional men. Whether or not the proposal is in the end as sound as it appears, certainly, once we have understood its grounds, it does not appear to be at all illogical or inequitable. An exact adjustment to every individual's circumstances is not possible. Such adjustment would be made if it could; but failing this perfect exactness, we find the nearest approximation by adjusting our rules to the varying needs of typical groups.

115. The most frequent disclaimers with regard to logic and equality, however, came when the debate reached the proposals for extending the franchise to women. I shall not deal with all of those which I noted, because most of them can easily be dealt with along the lines of my comments on Mr. D.'s contribution. There were, however, two speeches in which the notion of equality was explicitly repudiated, and they raise points of such interest as to merit particular attention.

(1658) Ld. H. C. (generally a staunch advocate of logic and rationality in legislation, but not apparently so sympathetic to the principle of equality):—In support of the proposal for women's suffrage there is the forcible argument that women strongly desire it. Indeed they desire it

so much that they become increasingly unsettled and disorderly as it continues to be denied. This is not a decisive argument in favour of granting it, but it is a serious consideration that any body of opinion should be so discontented as to feel justified in resorting to disorder. One objection raised to the proposal is that it is not appropriate to admit women to Parliament. But admission to Parliament does not logically follow from the conferring of the vote. It may be undesirable to admit them to Parliament; but we are not at present concerned with women's capacity to take part in legislation. Then follows the passage: 'I do not build at all on the argument that . . . there is some claim to equality which ought to be admitted. I have always disliked anyone who talks about equality in politics. It is almost always a mistaken argument, because equality of capacity does not exist, and when you are dealing not with a question of right but of capacity, equality is out of place.' In the matter of the franchise, however, we are dealing not with a question of capacity but with a question of right. The candidate actually chosen will participate in legislation upon matters deeply affecting women's interests quite as much as those of men; and the normal woman has surely the requisite capacity to make up her mind and register a vote in the same way as a man does. In virtue of their interests as citizens—difference of sex has nothing to do with the affair—they are entitled to be represented in Parliament. We want the ordinary security for them which men enjoy—the security that their interests shall not be ignored. This is a reasonable measure of justice.

116. The first point I wish to make with regard to all this is the same as the one already made, namely that although he professes not to build on the claim to equality, the speaker actually does so. He points out that what we are mainly concerned with is a question of right, and agrees that in questions of right the notion of equality has a place. Men and women are alike in that they have interests to be protected, and so far as any question of representation is concerned, this is a fundamental similarity and the difference of sex is irrelevant. Therefore the demand for equality in representation is reasonable and proper. Further, although he says that equality has no place when we are dealing with a question of capacity, his argument does not really bear this out. In the full text of his speech he amuses himself at the expense of those who argue that, in deference to their weakness or perhaps their more elevated moral nature, women should be

spared the trials of thinking about politics and the terrors of the ballot-box. But women, he implies through all the banter, have as much capacity as men for this particular business; so that the argument for unequal treatment because of unequal capacity goes. What he does hold, however, is that women may not have equal capacity for public administration, and this must be taken into account if the further question of their being allowed to sit in Parliament is to be raised. This is not to say that the question of equality does not arise when we are concerned with a question of capacity. On the contrary, he assumes that the question is very relevant; and that women may not have a valid claim to act as Parliamentary representatives, while they have a valid claim to be represented, because in point of interest (which is the relevant consideration for being represented) they are on an equal footing with men, while in point of capacity for handling public affairs (which is the relevant consideration for acting as a representative) their nature is not equal to that of men. He asserts the possibility of unequal capacity, and therefore the justice of unequal treatment to a proportionate extent.

But while he does not state perfectly accurately the grounds on which he builds his argument, the distinction which he draws between 'interest' (or right) and 'capacity' is a most important one; and the way in which the principle of equality is applied is slightly different in the two cases. The difference is briefly this: When we are dealing with the matter of representation, we assume a fundamental equality in all persons as subjects-of-ends; and we act generally on the rule 'one person one vote, and one vote one value'. Here—as noted in the last chapter—we are concerned with the direct protection of interests, and dealing primarily with self-regarding interests. But when we ask whether a person is fit to be a representative, we are concerned with the common good or with mixed ends, and anyone who wishes to be a representative is in fact offering himself for a position of public trust. His mere interest in fulfilling such an office does not have a prima facie claim to protection apart from his capacity to fulfil that function (the claim to protection in the pursuit of self-regarding ends is not based on any

assessment of capacity to achieve those ends), just because the interests of others are here involved. While there is a postulate of equality amongst subjects-of-ends as such, there is no postulate of equality among persons in their capacity as administrators for the common good; and no interest which they may have in assuming such functions has a prima facie claim to be protected apart from capacity to perform the work to the general satisfaction. Only if capacity is equal can the right to engage in public administration be equal.

It is hardly necessary for me to explain that I am not trying to pronounce upon the validity of the speaker's view about capacity, but simply bringing out the assumptions which underlie his arguments. We shall have to return later in this chapter to the distinction which he has drawn between questions of right and questions of capacity; but for the moment our principal concern is to show that he, like others, is really working on the assumption that the notion of equality is fundamental in the idea of justice.

117. The last argument which I wish to discuss is interesting partly because it involves a confusion of the issues which the previous speaker so properly distinguished, and partly because of a misapplication of the term 'equality'.

(1692–99) Mr. R. M.:—The demand for women's suffrage is to be supported because men and women do not have the same interests and point of view. There is an impassable gulf between the two sexes in their experience; and these two experiences must be mingled together in legislation and administration if the state is to be adequately looked after. 'I take my stand upon inequality rather than equality, and say that the pressing need for women's enfranchisement now is that inequality.' The proposed enfranchisement measure should be adopted for one simple reason if for no other: women now do in fact exercise considerable power in political affairs, but they do so as private individuals and often simply as charming agents of personal friends without much sense of responsibility. They are likely to look at political activities from a better angle if they are appealed to as responsible electors and not merely as irresponsible friends. The main argument for women's suffrage is that responsibility ought to be added to power.

The argument here fails to observe the distinction drawn by

the previous speaker between the qualifications for representation and the qualifications for representing. The question at issue is not whether women should take part in legislative and administrative work but whether they should share the right to choose legislators and administrators. Assuredly the right to elect will normally be included in the right to be elected, but the contrary does not hold. Again, the argument seems to be thinking primarily of assigning obligations and responsibilities in connexion with the promotion of the common good rather than the granting of rights. Or at most it is thinking of the kind of subsidiary rights which must be accorded if a person is to be able to fulfil the responsibilities falling to him. But the exercise of the franchise is not primarily an obligation; it is primarily a right. One may of course feel a moral obligation to use the vote if one possesses it; but there are many who, while insisting on the right, feel a moral duty not to exercise it if they do not feel very strongly on the contrasted issues put to them. And that the exercise of the franchise is primarily a right rather than an obligation is shown by the fact that it is left to the will of the individual, as it would not be if it were an obligation. In the third place, when the speaker says that he is taking his stand on inequality rather than on equality, he is thinking of difference and identity. If we ask 'Why should inequality (difference) of interests and experience be an argument for the rights of representation and representing?', the only obvious ground (and it seems to be the one tacitly assumed) is that, being equal as subjects-of-ends, men and women have an equal right to have their interests represented, whatever those interests may be. And if the interests are fundamentally different, then it is quite impossible that women's interests should be capable of being properly represented by men. So that here again, when carefully scrutinized, the argument implies the notion of equality as one of the main elements in the conception of justice.

In short, there is no case where, in trying to find an application of the principle of justice, we come across an argument which does not explicitly or implicitly imply the acceptance of the principle of equality.

Liberty

118. The notion of equality issuing in practical equity is not, however, the whole of the idea of justice. This will be evident when we consider that, while there are many possible ways of treating people equitably, not all of these ways are considered as fulfilling the requirements of justice. Equity is, so to say, a constant ratio observed in the relation between the particular things in one series or system with their corresponding things in another series or system. And this constant ratio may take any one of an indefinite number of forms, each of which can perfectly represent the principle. Thus, if we have the series of numbers,

III, XV, IX, XLVIII, XII,

we can take the ratio 'half' and get

1·5, 7·5, 4·5, 24, 6;

or we can take the 'third' and get

1, 5, 3, 16, 4;

and so on. The number of possible ratios is indefinite.

Now if we take the series of roman numerals to represent persons with their varying characteristics, circumstances, and interests, and the series of arabic numerals to represent the different kinds of treatment which may be meted out to them; then, if equity were the whole of the idea of justice, it would not matter in the least which of the different forms of treatment we applied, provided that we observed it equitably throughout. It would not matter, e.g., whether III was assigned 1·5, 1, 1000, or ·0001, so long as the treatment of all the other persons concerned was scaled up or down accordingly. But the demand for justice assumes that it does very much matter which ratio is adopted.

One of the passages quoted earlier in this chapter[1] was from a speech by O'Connell demanding removal of the disabilities imposed on Irish Catholics, and claiming that he asks for relief only on such grounds as would give the same privilege to every other religious sect. If the application of the rule of equity were all that he was demanding in the

[1] par. 109.

name of justice, there are obviously various ways in which he could be satisfied. One could give the Catholics the same civil and political rights as were actually enjoyed by Anglicans at the time, or one could withdraw from Anglicans all rights not possessed by Catholics, or one could order every sect without exception to follow the rite it most detested, and so on. In each case one would be adhering strictly to the rule of equity, although the particular kind of right or duty belonging to each person would differ according to the 'ratio' one adopted. It is, however, evident that we are concerned not only about the universality, logicality, equity, or rationality of a rule, but also about the particular kind of right which a claimant receives under the rule. O'Connell would certainly not have been satisfied with a condition of affairs in which Anglicans' rights were simply cut down to those enjoyed by Catholics. He demanded that the latter should be raised to at least the level of the former. This, if anyone doubts it, may be inferred from a speech on the Jewish Disabilities Bill, 1848,[1] by Mr. Sheil. Advocating the right of Jews to sit in Parliament he said:

'I belong to that great and powerful community which was a few years ago subject to the same disqualification which now affects the Jew. . . . I have sat under the gallery of the House of Commons by the side of Mr. O'Connell during a discussion on which the destiny of Ireland was dependent. I was with him when Plunket convinced, and Brougham surprised, and Canning charmed, and Peel instructed, and Russell exalted and improved. How have I seen him repine at his exclusion from the field of high intellectual encounter in those lists in which so many competitors for glory were engaged, and into which, with an injurious tardiness, he was afterwards admitted!'

What he wanted was not only the equivalent of what others received but a positive opportunity to be or do something.

119. How, then, do we decide which of various possible ratios is the one which justice requires us to adopt? Granted that 'we must never act otherwise than on a maxim or rule which can be universalized', how are we to select the appropriate one?

If we remember the distinction between questions of 'interest' and 'capacity', we shall see that there are two

[1] Printed in *British Historical and Political Orations*, p. 252.

possible methods of selecting our rule. We may work on the lines adopted in the distribution of a bankrupt's estate. We give the maximum possible satisfaction to the demands of each creditor consistent with equitable distribution. If, taking the assets available, we can universalize 'eighteen shillings in the pound', then we do it; if not, then the nearest approximation to full satisfaction. On the other hand, we may work on the lines adopted by an engineer in building a bridge. The strength to be given to any particular part of the structure will be calculated on the basis of the stresses it must withstand in the bridge as a whole and from the maximum traffic load. The first mode of working is on the basis of interest, and the second on the basis of capacity to fulfil function; and it is the first of these with which we are immediately concerned.

Distribution of rights and duties on the basis of satisfaction of interest is what people have had mainly in mind in the various examples to which we have referred. The American colonists were making a claim to self-determination in their own affairs, and repudiating allegiance to the British government because these interests were not being duly considered. In accordance with the elementary principles of justice they held, they had the right to life, liberty, and the pursuit of happiness—to the pursuit of those interests which moved them as human beings. John Ball recommended the destruction of the great lords and other enemies of the people as a necessary step in achieving that 'justice' which would restore liberty and release men from their bondage. O'Connell demanded for Irish Catholics liberty for the free expression of their religious interests. Similarly, in the debate on the franchise bill, what we start with is a variety of local, class, or individual claims, and the object is to give equitable satisfaction to these to the maximum extent. In the distribution of seats, e.g., there are only a certain number to cover the country; and these are to be distributed over the country to give as much satisfaction to each locality as is possible within the limits of the supply available.

120. Let us now try to estimate the general significance of such efforts as aim at equitable distribution to satisfy

'interests'. The first point to notice is that 'just' legislation is not conceived of as the laying down of rules irrespective of the kind of life which people expressly want to live. We start with a variety of demands or claims by persons as to what they want—indicating the directions in which their interests tend to move. The rules lay down what demands can be freely satisfied, what must be curtailed, and what suppressed. Our criticism of the bureaucratic mentality is simply that it develops a network of regulations out of a passion for regimentation rather than for the harmonious interweaving of actual interests. The starting-point of just legislation—as of judicial work—is a set of claims pressing for recognition. If there are no counter-claims, the claims are granted. If we have claims and counter-claims pressing for adjustment, then justice looks for the maximum equitable satisfaction of each. These claims and counter-claims come from persons as conative beings, from what Spinoza calls the *conatus* in us; or, in Kant's terminology, we make claims as persons or subjects-of-ends. And it is in this respect that we are to understand the fundamental claim to liberty which is an element in every demand for social justice. It is the liberty of self-expression, taking the form of the pursuit of interests and the use of means for their realization. And it seems to be in this light that men view themselves when they make the claim (often in a confused way and with supposed practical implications which cannot stand analysis) to be all equal by nature. It is true that we are all equal in the sense that each of us is a subject-of-ends, an outwardly striving *conatus*.

121. The second point to notice is that all our interests cannot be satisfied if the distribution of opportunities is to be equitable. Interests conflict, and a selection is imperative. How do we decide the directions in which an individual's liberty is to be permitted to express itself? There is no purely external criterion in accordance with which interests can be divided into legitimate and illegitimate. There is no 'intrinsic good' or 'intrinsically valuable state of affairs' in the light of which our interests can be assessed. But it is clear that in cases of conflict some method of permitting, paring down, and prohibiting interests must be found. We

have already discovered part of the answer to this problem in the previous chapter. Initially, we take as legitimate interests those which are self-regarding. They have a prima facie claim to protection as others have not. As we have already emphasized, this does not mean that there is a prima facie reason for prohibiting us from doing good to our neighbours. It only means that a person has no claim to the protection of an other-regarding interest in the way that he has a prima facie claim to the protection of a self-regarding interest. If a person objects to my injuring or assisting him, or to my way of doing it, then the presumption is that I should desist; whereas his objection to my pursuit of my self-regarding interests gives him no title to object unless the means I take or the collateral consequences of my actions affect his self-regarding interests.

122. In the third place, it is to be noted that, even when we have given primacy to the self-regarding interests, we do not thereby remove all possibility of conflict. The means which I propose to take may well have repercussions on other people. And there must therefore be some method of selection amongst the self-regarding interests themselves. How, then, do we decide, as between the self-regarding interests of *A*, *B*, and *C*, which of them should be satisfied and in what proportion? The answer to this is not perfectly clear; but a remark of Ld. H.C.'s[1] seems to me to be significant when taken in connexion with the general theory of valuation outlined in the previous chapter. The remark was to the effect that 'Women want the vote; and they want it so much that they are prepared to be disorderly until they get it. This is not a decisive reason for giving it; but it is a point which should be most seriously considered.' What this suggests is that the strength and persistence of a desire is to be taken as presumptive evidence of its importance to the individual. This does not mean importance to the community at large, for we are not now discussing contributions to the common good, but only the claims of subjects-of-ends to be treated as such. What is here being suggested is that the place of a particular end or interest in a person's total conception of the good is to be measured, initially, by

[1] Already referred to in par. 115.

the strength and persistence of his actual desire for it; and that, when we are trying to determine which of his interests ought to be protected, this is to be given the most serious consideration. That is to say, we do not begin to legislate for people until we have, first of all, some indication of their various self-regarding interests and, secondly, some indication of the relative order in which they themselves place those interests. It is very intelligible that we should take this attitude when it is remembered what the conception of 'the good' means. Value judgements are not passed on 'states of affairs' irrespective of their relation to a conative subject. They express the subject's effort to adjust and shape his various ends into a coherent pattern. Thus major ends (what in his view may probably be judged major 'goods') are naturally the ones which he will tend to press most vigorously and to become disorderly about if they are consistently frustrated. Here, I think, we have reached the primary consideration upon which we determine the interests which are to be protected, and the degree to which they shall be protected. We have reduced our problem from a qualitative to a quantitative form. Push-pin is presumably as much a good to *A* as poetry is to *B*, if *A* and *B* desire these with equal persistence and intensity. Just legislation will then begin by noting the fundamental interests of individuals in this sense; attempting, so far as is possible, to give each person equal scope for the pursuit of fundamental interests of the self-regarding type; and equity will be called into play in connexion with the means which are required, and in the adjustment of subsidiary interests. Whether a person actually receives satisfaction from his fundamental ends will depend largely upon his own wisdom or foolishness in their choice.

Merit

123. We come now to the third conception included in the idea of justice, namely Merit. It will be recalled that when we were trying to discover the principle upon which we determine the particular 'ratio' required if equitable treatment is to be 'just', we saw that there are at least two different ways in which this can be done. We may aim at giving the maximum satisfaction of demand, as is done in

the case of a bankrupt's estate; or we may treat people equitably in accordance with the functions which they have to fulfil, in the same way as an engineer calculates the strength to be given to a particular part of a bridge in accordance with the function which it is designed to fulfil in the whole. If we adopt the first method we are thinking in terms of the conception of Liberty. If we adopt the second method we are thinking in terms of what a person or thing 'merits'. This latter notion frequently influences the arguments employed in the franchise debate to which reference has been made in this chapter. Whether women are to be permitted to vote is a question of right and interest; but whether they are to be permitted to sit in Parliament is a question involving assessment of their capacity for public office.

How does this question of capacity arise? It probably never arises in connexion with the allocation of real rights and duties in the technical sense, but is a factor to be taken into account when we are dealing with the allocation of personal rights and obligations in an organized community engaged in the pursuit of a common good. If individual subjects-of-ends were completely self-sufficient, pursuing their good completely independently of each other, it seems that the notions of Liberty and Equality would be the only ones necessary to explain the idea of justice. The 'just order' would be that in which each accorded to all an equal opportunity for the pursuit of personal interests in the sense already described. In such conditions there would be duties but no obligations, because there would be no special relations giving rise to 'personal' as distinguished from 'real' rights.

Personal rights and obligations, however, are always implied in the fact of mutual dependence, when our lives are so joined to those of others that some of our needs and interests are cared for by them. We then incur reciprocal obligations, and reciprocity of services plays a most important part in our idea of justice. Goods, presents, courtesies, &c. ought to be exchanged. So strong, indeed, is this demand that in some legal systems there is a bias against the notion of enforceable unilateral obligations; a promise will not generally be binding unless it is balanced by some corresponding 'consideration'.

What is of more importance for our present purpose is that the special relations in which we stand to other people arise because we are co-members of an organized community. And this, in its turn, means that there are reciprocal obligations not only between private individuals within the community but also between individuals and the community as a whole. That is to say, the fact of interdependence makes us think in terms not only of co-operation between private individuals for their mutual advantage but also of co-operation for a common good.

124. Now the community is not the sum-total of all those who are living within it at any given time. It has a life-history; we think of it as stretching back into the past and forward into the future; and our public obligations are to the community in this sense. The reciprocal claims of the individual and the community upon each other take into account the historical continuity of society from one generation to another. Public obligations are not restricted in their scope to the claims of contemporaries, but take a forward view. We enjoy, and believe that we enjoy as a matter of right, a heritage which we think our ancestry ought to have created at least partly for our benefit; and we regard ourselves as under obligation to preserve and enhance it for the enjoyment of posterity.

The sense of the community as a society with an historical life is closely bound up with all those obligations which we designate under the name of trusteeship—the obligations involved when an individual or group is allotted a certain function within the whole. Obvious examples of trusteeship are the offices of parent, educator, trade union official, local government official, member of parliament. But there are countless other instances. The trustee has a function in the community, and his function is determined by the conception of a common good to be promoted. It is assumed that there are things which the members of the society as a whole want or will want, but that they are not, as a whole, capable of clarifying those wants or of working out the means to their satisfaction. This function of 'interpreting to the members of the community their real will'—if one wishes to put the matter so—is allocated to particular persons in the form of a trust.

125. Function, or trusteeship in the community, almost always implies some degree of power over the actions of other members. Even the most humble office of trust involves at least certain 'enabling' or 'secondary' rights without which it would be impossible to perform the function allotted. I call them 'secondary rights' because they are clearly dependent upon the existence of the obligations for the performance of which they are given. This recognition does not in the least affect our analysis of the notion of a right, for in the last analysis secondary rights also draw their significance from the interests implied in their anterior obligations; but it does help us to understand why the essential relation of right to duty or obligation has so often been misunderstood. Fundamental and secondary rights are so interwoven in practical life that many thinkers have not recognized the difference, and have spoken as if all rights were nothing but opportunities granted for the performance of services. This, as we have already seen, is the view to which one naturally comes if one thinks of the common good as the ultimate standard of duty. The individual's rights and duties are determined wholly by his merits—by his potential and actual performance of some social function. On such an assumption, our conception of justice will be similar to Plato's. Justice, he thought, means 'minding one's business' in the sense of performing one's function with a view to the good of the state as a whole. It is quite consistent with this attitude that he saw no virtue in the conception of democracy even as a moral ideal, his thinking in this respect being poles apart from that of Kant, who saw, as Plato never did, how fundamental is the notion of Liberty in the conception of a moral order.

126. In the last few paragraphs I have been trying to show that, in a society properly so called, the idea of justice assumes that a person's rights are related, not only to his nature as a being who pursues a personal good, but also to his status as a contributor to the life and welfare of the group. In this latter respect he has certain positive obligations to perform; and certain enabling rights are accorded for the effective fulfilment of these obligations. In the light of this discussion, we may now return to consider the distinction

drawn, in the franchise debate,[1] between the relation of equality to 'right' ('interest'), on the one hand, and to 'capacity' on the other. It was said that the principle of equality applies in a question of right, but not—or at least not in the same way—in a question of capacity. There is a certain truth in this statement, but it is not the whole truth. 'Fundamental natural rights', as the rights derived from the idea of Liberty are often called, are presumed to be equal because we are all equal in the sense of being subjects-of-ends. But if we are to co-operate for mixed ends in a common good, this will involve the organizing of means; and the organization of such means, and the making of the relevant value judgements, requires skill or 'capacity'. In this people differ; and so the efficient promotion of the common good involves some adjustment of function to capacity. Everyone has an interest in the promotion of the common good; but no person's interest in taking part in its promotion has any valid claim to recognition unless he possesses the appropriate capacity; for we are thinking of him here not only as a subject-of-ends but also as an instrument for the promotion of common ends. It is, however, true that, having made our calculation of 'capacity', we think that a person's desire to assume functions of public trust should be dealt with in accordance with the rule of equity; for the ends which make up the common good are mixed ends in which he is himself concerned. In short, when we are dealing with questions of fundamental self-regarding interests, the notion of equality applies directly; but when we are dealing with questions of mixed interests and the office of trusteeship, the assessment of capacity operates as a filter or 'screen' interposed between the interest and the allocation of equitable opportunity to participate.

127. Equality, Liberty, and Merit, then, appear to be the three principal constituents of the idea of Justice; and in almost every situation in life involving a 'just' settlement of claims, we have to arrange our practical solution so as to meet the requirements of all three. It is, however, important to notice that, while both the conceptions of Liberty and Merit influence our ideas as to what constitutes an equitable

[1] See pars. 115–16.

allocation of rights and duties, Liberty appears to be the more fundamental of the two. This is, I think, the inevitable conclusion to be drawn from the attitude of individuals to each other. It is the conclusion to be drawn from the history of empires, from the experience of powerful states in their relations to smaller ones, and from the experience of governments engaged in the difficult task of promoting peace and prosperity in a community composed of groups with different cultural, racial, and religious affinities. Even setting aside the more narrowly selfish motives which may operate, there is a decided tendency for the dominant partner in such an association to think in terms of efficient administration, and, with its own liberties well secured, to forget that liberty is a natural aspiration of the human heart. There is a tendency to feel indignant when the conscientious bearing of 'the white man's burden' evokes little gratitude, and to ignore the fact that benevolent paternalism bent on doing what is thought best for 'the lesser breeds' is always a menace to liberty. In point of fact, no association of individuals or peoples has ever been successful unless practical policy has been guided by the idea that 'fundamental rights', based on the conception of liberty, take precedence over obligations and rights based on the conception of merit. This priority being in principle recognized, it is perfectly possible to secure general acceptance of a practical scheme involving considerable inequalities, provided that these inequalities are seen to be necessary for the pursuit of a common good. But if the priority is not recognized—or, what is equally important from the practical point of view, if there is a feeling that it is not being recognized—the association will always be an uneasy one and liable to violent disturbance. Anti-foreign demonstrations in countries where the great powers are influential is often the result not of any sense of mismanagement or exploitation, but of over-management, and of the feeling that what is vaguely called 'moral equality' is being denied. The only satisfactory basis of association is a frank recognition of equality of the fundamental interests of all concerned; and until that recognition is given, it is almost impossible to look at arguments for inequality based on even patent inequality of capacity. But this recognition

given, there is more readiness to consider the claims of functional capacity. The 'moral equality' of individuals and groups—the equal liberty of subjects-of-ends to express and pursue their interests—is taken as fundamental. The question of capacity to function in a whole is secondary. And that moral equality should issue in practical equality of treatment is taken as an initial presumption, open to challenge only on the ground that a common good (which means a system of ends really common to all concerned) cannot be realized unless some inequality of treatment is accepted, such inequality to be proportionate to capacity in promoting the joint enterprise. The burden of proof rests upon those who assert the need for inequality, and not upon those who assert the general rule of equality of treatment.

128. This same conclusion as to the priority of the notion of liberty over that of merit is supported by the assumption which we seem to make with regard to the priority of real rights and duties over personal rights and obligations. Real rights and duties mainly follow from the mere conception of persons as subjects-of-ends making claims and counter-claims against each other without implying any special pre-existing relations between them. Personal rights and obligations imply such special relations. Real rights and duties are thus more directly associated with the conception of Liberty and I believe it to be the general view that they are the more fundamental. Duties (in the technical sense) may be less numerous, less intense and exacting in their particular demands upon us; but in any clash between them and obligations, I think the general presumption is that the latter must give way. My obligations increase as a rule, in detail and intensity, the narrower the social group with which I am associated. They are greater to my country than to the international society, greater to my city than to my country, and to my professional colleagues and family than to my city. But, although they so increase, they do not acquire priority over my duties in the strict sense of the term. While I have a host of obligations to my city and few if any to, say, the individual members of a foreign country, I have at least some duties to foreign peoples which are correlative to their real rights; and if any conflict between

such duties and my civic obligations were to arise, it is the duties which would take priority in the sense that, if the obligations could not be fulfilled without infringing the duties, the obligations would cease to exist.

129. Summarizing our conclusions on the idea of Justice, we may say that, of the three conceptions contained within it, those of Liberty and Equality are the fundamental co-ordinates. The practical application of these two conceptions approximates more and more to simple equality of treatment the more individuals are related as a simple collection of independent units; and it takes on the form of equity the more they are related by special ties giving rise to personal rights and obligations. These special ties usually exist, however, because the individuals concerned form part of a social system; and the existence of the system implies for each person the notion of a function which he may perform in the whole for the realization of a common good. The assessment of capacity for the fulfilment of function now interposes itself, and the claims of Merit necessarily modify the distribution of rights which would be indicated by the mere conception of Liberty.

The principle of Justice may, therefore, be defined as: The Equitable recognition of Liberty and Merit.

130. This completes our survey of what we have called the 'morality of social justice'. It differs from customary morality mainly in being a reflective morality. The principles which more or less obscurely influence the development of customary morality are here used more consciously and deliberately as standards for the continuous criticism of established usage. In trying to see what these principles are, we began with an analysis of 'right' and 'duty'. We found that these conceptions refer both to an order of relations between persons and to the idea of the good; and in the last two chapters we have tried to establish the two following points: Firstly, that from the idea of good comes the actual content of all our duties and obligations, since these follow from the protection of interests as rights; secondly, that the formal principle of Justice comes from the conception of an order founded on universal respect for persons as subjects-of-ends.

VI

IDEAL MORALITY

131. In dealing with the morality of social justice, I attempted to examine with some care the material in which the principles for which I was seeking were likely to find their most obvious expression. In the present chapter on 'ideal morality' I shall not pretend to do anything so elaborate; for, when I have explained what I mean by ideal morality, it will be clear that any adequate discussion of this subject will involve the study of material of a very different sort, including particularly the life and thought of those who have been moved by profound religious experience. To deal at all adequately with the moral ideas which belong to this realm of experience would require that combination of sympathetic insight and critical aloofness which cannot be achieved without intimate and comprehensive acquaintance with the subject-matter. Such acquaintance I do not claim, my principal investigations having been in a different direction.

At the same time, it would give a one-sided view of my conception of the scope of ethics if I were to omit all reference to the subject of the present chapter. In my view, there are moral ideas which transcend—although they do not, I hold, conflict with—the morality of social justice; and it seems proper that I should refer, in broad outline at least, to the character of these moral ideas and to the way in which I think they are related to the conception of justice. In this chapter, therefore, I propose to touch upon two very general questions; firstly, the question whether we can properly speak of a morality which transcends justice; and secondly, the question as to how—when its nature has been properly investigated—we are likely to find this morality to be related to justice.

Morality Transcending Justice

132. The first question which we have to discuss is whether, when we take a broad view of moral notions, we find any valid reason for drawing a distinction between ideas of justice and moral ideas of another sort. We certainly do

find such a distinction in popular usage, and are familiar with expressions such as: 'Do justly and love mercy', 'He is not only just but also generous', and 'He was a beast, but a just beast'. The contexts in which such phrases are used suggest that mercy and generosity, although different from justice, are morally approved, and that something is felt to be lacking in a man who, no matter how just he may be, is a 'beast'.

These contrasts may, of course, derive their force from an unduly narrow meaning of 'justice'. It is true that justice sometimes seems to be regarded as a rigid, unimaginative adherence to the letter of the law; and it is difficult to be sure whether popular contrasts between 'justice' and something else are not using the term in this quite inappropriate fashion.

But leaving aside these obscure popular distinctions, we can approach the question from another point of view. It is possible to say that *if* there is a kind of moral attitude which looks to something other than the principles of a just order, then this attitude will be distinguishable at least negatively by the lack of certain characteristics. It must be a morality 'beyond duty or obligation'. It will not be concerned with moral 'rights' and 'duties', because rights, duties, and obligations cannot be rendered intelligible except on the basis already explained. Is there anything, then, in the moral consciousness to suggest that there is some conception of a morality beyond the principles of obligation?

133. According to Bosanquet[1] there is. Our conception of a world of finite individuals, he holds, gives rise to our idea of a moral order as bounded by rights and duties, claims and counter-claims. But this is 'mere moralism'. There is a higher point of view to which we can rise, which Bosanquet calls the attitude of 'religion'. Religion cuts across and shatters the world of claims and counter-claims, and thinks of the individual as 'real' not in virtue of his finite nature but only in virtue of his spiritual membership of a whole with which he identifies himself in thought and action. His standard of action, from the point of view of religion, is that he should act as an 'expression' of the Whole for the sake of the life of the Whole. I think it is true that, if this is a

[1] *The Value and Destiny of the Individual*, Lecture v.

genuine attitude of the moral (or, as he would prefer to call it, the spiritual) consciousness, then there is a range of moral ideas which cannot be adequately explained in terms of the principles of social justice.

Is this an account of a genuine attitude? Bosanquet was, of course, largely influenced in his account of 'religion' by his metaphysical theories. He represents an extreme reaction against the empiricist and associationist schools of the eighteenth and early nineteenth centuries in England, the reaction which, under Hegelian and other influences, produced the philosophy which we know as Absolute Idealism. According to this metaphysical theory, there is only one Individual, the Whole, and nothing short of the Whole is ultimately real. Holding such a view, Bosanquet was bound to come into conflict with the individualistic categories of thought which underlie the ethics of Kant equally with those of Bentham and Mill, to reject all the assumptions we commonly make when we speak of rights and duties, and to attempt to interpret the essentials of moral experience in some other way.

But granted that he regarded the universe with what many will call a jaundiced metaphysical eye, is there anything in our moral experience itself which lends plausibility to his doctrine? Is there any class of moral ideas or aspirations which receives emphasis in his philosophy and which is left out of account in our explanation of the conception of social justice?

134. He himself professed to find the verification of his theory in the religious consciousness. We must not, of course, expect to find this theory applying to all forms of religion; for religious attitudes vary widely in their moral manifestations. Sometimes there is a crude legalism, sometimes the rather secular sociability which we associate with one phase of Greek religion, sometimes the reverent obedience to a transcendent person. But there are undoubtedly many expressions of the religious consciousness which conform very closely to Bosanquet's description. Thus:

> 'In all life Thou livest, the true life of all;
> We blossom and flourish as leaves on the tree,
> And wither and perish—but nought changeth Thee.'

Or,

'I and my Father are one . . . the Father is in me and I in Him' (St. John); and 'I am the Vine, ye are the branches: he that abideth in me, and I in him, the same bringeth forth much fruit: for without me ye can do nothing.' (St. John.)

Or,

'Thy will was in the builders' thought;
Thy hand unseen amidst us wrought;
Through mortal motive, scheme and plan,
Thy wise eternal purpose ran.'

God is here conceived as immanent; and associated with this conception there is commonly, or perhaps always, found the aspiration towards union or absorption in God, the practical ideal being that of service, devotion, renunciation of individual interests.

What we are specially concerned with is this last—the practical ideal; and it is to be noted that it is associated not only with an immanent conception of God but quite often also with the idea of God as a transcendent person; and in the latter case it usually embraces the ideal of service to humanity. One could quote many passages to this effect. The idea forms the main theme of the prophet Amos, but much more familiar perhaps are passages from the 'Sermon on the Mount'.

'Resist not evil. . . . If any man will sue thee at the law, and take away thy coat, let him have thy cloke also. And whosoever shall compel thee to go a mile, go with him twain. . . . Love your enemies . . . do good to them that hate you. . . . And if ye salute your brethren only, what do ye more than others? Do not even the publicans so? Be ye therefore perfect, even as your Father which is in heaven is perfect.' (St. Matthew.)

The theological doctrine of the Atonement, generally regarded as fundamental in Christianity, is probably the most deliberate expression of this ideal inasmuch as it represents the divine nature as acting on a sublime scale in conformity with the principles of the Sermon on the Mount. The doctrine itself has, of course, roots in an earlier level of thought which hardly accords with the essence of the practical ideal embodied. The need for the atonement, the occasion which calls it forth, is expressed in terms of a

primitive theory of sin and punishment. Adam's disobedience having tainted his race, there is a corporate liability to supernatural retribution, God's wrath being implacable until some propitiatory rite is performed to 'purge the stain' or 'cancel the sin'; and—consistently with this whole mode of thought which has now been made so familiar to us through anthropological research—it does not much matter whether the innocent or the guilty suffer the punishment so long as the price is paid. Indeed it was a common belief that the gods have a preference for innocent victims. The appropriate sacrifice to Jehovah would be a dove or a lamb without spot or blemish; and to the god of the Nile at the annual flood, a pure virgin. In like manner, in the atonement, the sinless Christ is offered up to cancel the sin of the human race. But into this primeval order of ideas, the doctrine of the atonement introduces an idea which is all the more vivid for the contrast—the idea of God Himself as being or offering the victim. He is so moved by love for those who have offended against Him that He offers Himself or His Son to cancel the wrong and lead men to the fellowship of the blessed. When we leave aside the somewhat perplexing connexion of this act of grace with the story of the Fall and the conception of propitiatory sacrifice, and concentrate on the practical ideal implied, it is clear that this act of free grace is thought of as the perfect embodiment of the precepts of the Sermon on the Mount. And whether or not we are prepared to accept the metaphysical conceptions which are involved, the fact remains that we have here a clear expression of an ideal of conduct, a supreme ideal inasmuch as it is attributed as a principle of action to the divine nature.

What are the essential characteristics of this ideal as distinguished from that of social justice? I think that Bosanquet is right in describing the positive nature of this attitude as being concerned not with a world of rights and duties, claims and counter-claims, but with an ideal of service and counter-service. The distinction lies in the relative emphasis which is placed on different elements in our conception of the good. In social justice the emphasis rests primarily upon self-regarding ends, and secondarily upon mixed ends. In the attitude which we have now been

describing, the emphasis is primarily upon other-regarding ends, and the self-regarding ends of the agent himself do not come into the picture at all.

135. We shall have to examine the implications of this difference in greater detail presently; but, before we do so, it is important to recognize that, once we have seen the essential characteristics of this attitude of the religious consciousness, we are able to detect its influence in many departments of life not usually regarded as religious at all. Indeed, the more we understand its essence the more are we struck, not by the exceptional influence of this ideal, but by its pervasiveness.

The theory of communism, for instance, is based not on the idea of a world of claims and counter-claims but on the ideal of service and counter-service. It is a very noteworthy fact that, when people are absorbed by the interest in social betterment, they often become impatient with what they call the pettifogging bourgeois social order by which the individual is hedged in and protected in the enjoyment of his private interests; and they wish to replace this by a communist order in which private interests are merged in those of the group. It is felt that the mind which is preoccupied by personal claims cannot make its due contribution to the good of the whole; and that to abolish particular interests is the only way of releasing the energies of the individual for their social function. Thus the early Christian community seems to have been organized on a communal basis, each person voluntarily surrendering his wealth for the common use and receiving from the common stock in accordance with his needs. This ideal, 'From each according to his ability; to each according to his need', played its part in the Russian revolutionary movement also, however much it may have had to be modified in the process of application. The notion of 'personal rights and duties' was largely superseded by that of 'need and capacity'. Readers of Plato's *Republic* will remember how he attempted to apply this same principle in the construction of his ideal state. For the third or lowest class in the state he is content with a morality based primarily upon the principle of claims and counter-claims. The common citizens are to be permitted to retain private

property and ordinary family life, because they are unable to rise above the spiritual level to which such an order of society is appropriate. But a society in which this 'shopkeeping' frame of mind pervades the whole would be weak and subject to all the disharmony produced by the haggling spirit of the market-place. There must be a select class in the state—the guardians (subdivided into rulers and auxiliaries)—in whom a loftier sense of social conscience prevails, and who are perfectly content to have few possessions, and these held in common, in order that their minds may be free for the pursuit of wisdom and continuous service to the State as a whole. They will have, as one of their important functions, the task of seeing that the bourgeois order is kept within such limits as are consistent with the good of the whole. Plato is prepared for the criticism that the rulers are being treated as unprivileged servants of a society in which they themselves have no profit. He answers that our aim is not to make any one class supremely happy, but to run the State in a manner which will serve the greatest good for the whole; but he adds the significant remark that he will not be in the least surprised if the guardians find their happiness precisely in this arrangement. If they have been rightly selected from the best of the population, and if their characters have been developed along proper lines, then in devoting themselves to the common good, and in seeing it progressively developing under their hands, they will find a satisfaction far transcending anything which the citizens of the lower order can possibly conceive. For them the spartan life will not appear as a sacrifice but rather as an escape from distracting preoccupations which would interfere with what has become their main interest in life. As it is, they will receive from society in accordance with their genuine needs and will give to the full measure of their ability to serve.

136. By a natural association of ideas one passes from thinking of Plato's guardians to statesmen and other public servants in any organized society. It is with a certain diffidence that one attributes to them the other-regarding interests which Plato would have in his guardians, even when one believes that this is to a very great extent the case; for there is a widespread view that Thrasymachus was right

about the politician. I think, however, that while petty interests can influence public men and their policies, they cannot usually attain to positions of great responsibility unless they think in terms of large-scale ends in the prosecution of which they are not preoccupied with nice calculations of their private rights. It is impossible to take a vigorous part in public leadership (and this involves thinking out and standing for some objective policy) without consciously jeopardizing one's reputation and ordinary private interests. This is even clearer in the case of high military command in time of war, when the incalculable chances which affect the issue of an engagement may excite ignorant clamour and lead to unmerited disgrace. Such contingencies are taken as risks necessarily involved in the assumption of responsibility and must be left to the favour of fortune. Even though a man is interested in reaping the rewards of public service in at least the form of gratitude and honour, he will not earn them if he is continually calculating his action in order to secure them. He has to bend his will and intellect to the job in hand, or he will not even merit the reward. Whether he will get it when he does merit it is a question which, in the interests of efficiency, he will wisely leave aside. We have here, indeed, something analogous to the conclusion at which Mill arrived after the crisis in his intellectual life. He discovered, he said,[1] that although happiness is the ultimate end, 'those only are happy who have their minds fixed on some object other than their happiness; the happiness of others or the improvement of mankind, or some art or pursuit, followed not as a means but as an end'. The surest way of missing happiness is to strive directly for it. This is what has been called the 'paradox' of Hedonism, but it is simple common sense. Apart from the obviously localized pleasures and pains which can be made the direct ends of action, 'pleasure' and 'happiness' are the effective accompaniments of achievement; and achievement involves concentration on the end. In like manner, gratitude and reward are only deserved by the concentration upon other-regarding ends, and not by the attitude of mind which is primarily preoccupied by the balancing of one's rights

[1] *Autobiography* (World's Classics), p. 120.

against one's duties. I think that, when the principle which Bosanquet stresses in religion is properly grasped, it will be seen that there is no well-organized group in which it does not play its part along with the principle of justice.

The Relation of Ideal Morality to Social Justice

137. This emphasis on an ideal of service rather than on claims and counter-claims is what I call Ideal Morality. Ideal morality is not a conception restricted to certain expressions of the religious consciousness, but is—as Bosanquet would indeed have claimed—a pervasive force in all social life. We turn now to the further analysis of the conception, and to the reasons for which it is called 'ideal morality'.

In the first place I call it 'ideal' morality to distinguish it from the morality which places the emphasis on 'duty' or 'obligation'. The attitude which we are now considering often uses the language of obligation, but from the strictly theoretical point of view this is a confusion. Your duties or obligations are what others are entitled to demand and expect from you, i.e., what they can claim as a matter of right; for your obligations follow from their rights. Now they cannot claim as a right that you should neglect your own rights and give them more than that to which they have a right. This would be a contradiction in terms. And yet this neglect of your own rights is an essential characteristic of ideal morality. You concentrate on providing for the good of others, leaving your own interests to take care of themselves. You aim at fulfilling and more than fulfilling their just claims, doing good to those who despitefully use you, putting quite into the background your own counter-claims. Your own may in fact be cared for, and they will almost always be satisfied in full if the other members of your group are also imbued with the same spirit; but the satisfaction of your claims is not your concern from this point of view. Here, then, you are not thinking in terms of a principle of equality by which the just opportunities of everyone are to be measured out. You are thinking in terms of an ideal to be realized—an ideal which is within your personal conception of the good, but where the emphasis is laid on the other-

regarding ends included in that conception. To signify the difference between this attitude and the one which thinks in terms of rights and obligations, I have called this 'ideal' morality. There may be a better term, but it has not occurred to my mind; and I think that this term indicates fairly clearly the nature of the attitude in question.

138. I turn now to the question of the propriety of calling this ideal 'morality'; and in explaining why I think that 'morality' is a legitimate term to use here, I shall have to dissociate myself from one aspect of the doctrine of Bosanquet. I believe he is right in saying that this attitude does in a sense 'transcend' the point of view of social justice; but I do not think that it 'transcends' in the sense of 'cancelling' the claims of justice. It does cut across the system of claims and counter-claims, but it does not abolish the distinction between individual persons. It ignores one's own rights and others' obligations to oneself; but it certainly does not ignore the rights of others or one's own obligations to them. Ideal morality does not abolish justice. It is a righteousness which fulfils and exceeds that minimum of respect for other persons which justice requires.

In this connexion it is very interesting to note that in the Sermon on the Mount, where the precepts of ideal morality are so forcibly expressed, there are included the passages, 'Till Heaven and earth pass, one jot or one tittle shall in no wise pass from the law, till all be fulfilled'; and 'except your righteousness shall exceed the righteousness of the scribes and Pharisees, ye shall in no case enter into the Kingdom of Heaven'. (Matt. v.) What exactly was meant by 'the Law' here—whether it meant only the original 'Law of Moses' or whether it included later developments—is not clear from the context. But certainly the writer of this gospel did not feel that there was any necessary opposition between the 'law' and the 'gospel'. I mention this because I think that it points to certain conditions which have to be fulfilled before any kind of idealism can win our complete approval and be described as 'moral'.

139. Our approval of actions done from 'idealistic' motives takes several factors into account. In the first place, approval is called forth by the attitude of devotion to other-

regarding ends. This seems evident from the fact that we sometimes say of a person that his selfless devotion is worthy of a better cause. We may disapprove of the end, and yet give the person credit for the consistency with which he pursues it and elevates it above his own self-regarding interests. It is not easy to produce conclusive evidence on this point, but it seems to me that, in passing judgement on political and religious sects, even if we think that their members are bigoted and their activities on the whole harmful, we accord a certain respect to them so far as it is apparent that they endure persecution and privation in their devotion to advancing their particular faiths. Their ends must be exceptionally repulsive to us to make us refuse this credit.

But degree of devotion is not the only factor we take into account; for, in the second place, the other-regarding ends which they pursue must aim at the benefit rather than the injury of the people concerned. This is a simple point which requires no special argument, for it seems so patent. I mention it only because 'other-regarding' ends (in the terminology which I have adopted)[1] include both the interest in injuring and the interest in benefiting; and the point here is that one of the reasons for approval of the 'idealist' is that, besides showing a spirit of devotion, his devotion is directed to what he believes to be the good of others.

140. But even devotion to the good of others is not sufficient to entitle 'idealism' to be ranked as 'ideal morality'. If it were sufficient, then we should not be able to distinguish between moral idealism and fanaticism. Fanatics exhibit a high degree of devotion, and most of them are concerned about the good of our souls and bodies. It is this high concern which has made many of them honestly (however mistakenly) feel that it is better for us to have our bodies roasted than to continue existing in this world under the dominion of heterodox belief; or that the world will be a much better (even if not a happier) place for us if we are regimented under some fashionable 'ideology', and so on. Few will deny that many 'empire-builders' have been devoted to what they considered to be the good of their

[1] par. 92.

country, but this has not saved them from moral condemnation. Few will deny that many of the protagonists of racial purity and national prestige have spent themselves in promoting what they considered to be the good of their particular group; but wars have been fought in the name of humanity to destroy them and their works. Missionary zeal in its various forms—political, cultural, and religious—can undoubtedly do great good, sometimes intentionally along the lines of its primary aims, and sometimes unintentionally by calling out the virtues of good-humoured endurance in the objects of its ministrations. But unless the zeal is itself directed by wisdom and respect, it is most likely to provoke indignation.

What, then, do we require in idealism before we are prepared to acknowledge that it possesses a truly moral character? I think the answer is to be found in what is implied in the last sentence: the form which our devotion to the good of others takes must be consistent with proper respect for them. It must be consistent with our existing duties and obligations to them; that is to say, with their rights. And not only with their rights, but also with those of all other persons who may be affected by our activities. The only rights which do not need to be taken into account are our own.

141. If this is a true interpretation of our attitude, then it follows that 'ideal morality', while cutting across the nice balance of claims and counter-claims, does not cut across the fundamental principle of social justice. It is not inconsistent with justice that we should ignore our own rights. To have a right to do something is not the same as to have a duty to do it.[1] The right is a field for free choice in which we may pursue an interest or leave it alone. And if we ourselves give up our rights we absolve others from the correlative duties. It would, however, be inconsistent with the principle of justice if we, by any unilateral decision, were to consider our obligations to others as cancelled, if we were to try to affect them (even with the aim of promoting what we honestly believe to be good for them) in some way which cuts across their rights. If we look into the kind of criticism which is

[1] See par. 61.

aimed at 'fanatics' and 'well-meaning busybodies' alike, or at the paternal interference of one social group in the purely internal affairs of another, we shall see that what is objected to is precisely this lack of 'respect' for 'moral equality' which is a fundamental characteristic of the idea of justice. So that what distinguishes mere 'idealism' from idealism which calls out our moral approval is that the former is not, while the latter is, consistent with the demands of justice. Ideal morality transcends justice not in the sense of repudiating its principle in favour of a contrary one, but only in the sense of going beyond the minimum requirements of justice by substituting the rule of service and counter-service for that of claim and counter-claim.

142. To complete the account of the relations between these two attitudes it is necessary to add that the demands of justice can seldom be carried out satisfactorily in a social group unless its members are also imbued with the spirit of ideal morality. It is not absolutely impossible, but it is extremely difficult. In the conception of justice emphasis is laid upon the equalitarian order which gives to each person his due opportunities for realizing his good. Attention is mainly concentrated on the adjustment and protection of claims and counter-claims, and consequently upon the self-regarding contents of each person's conception of the good. It does not exclude the presence of other-regarding interests, but they are not essential to the idea. All that is essential is respect for those others in their own pursuit of their self-regarding interests. Justice could, at least theoretically, exist when the relations between individuals are so purely external and accidental that no question of co-operation for common ends ever arises. Interaction would, in such a case, be reduced to the simple level of elementary real rights and duties, and there would be no personal rights or obligations. Such purely accidental relations are, however, very much the exception. They form but a small proportion of the relations in which the normal man in any society stands to his fellows. There could, indeed, be no such thing as a society if such relations were the rule rather than the exception. People do sometimes come together in accidental collections, but the collection will dissipate almost at once or else begin to assume

a structure in which individuals take on special relations with each other and certain functions in the whole of which they form part. Now it is still possible, theoretically, for a society in which personal rights and obligations have grown up to conduct its affairs upon the principle of justice alone. What one ought to do may be calculated by a nice balance of claims and counter-claims. But the more complex the relations become the more difficult it is for the society to work efficiently on this plane. It is practically impossible when central organs of government and other forms of trusteeship are necessary; for by the time such institutions are necessary, the complexity of the relations would require something akin to mathematical genius in working out one's just rights and obligations on the basis of reciprocal benefits. A simpler and broader view of obligations has to be taken. They will have to be thought of, not as the 'just price' which we pay for the security of our rights, but as forms of service which we render in accordance with our ability. They have, indeed, to be thought of as the minimum service to the level of which we shall seldom fall in our contribution to the common good or the good of others. And, as a necessary consequence of this point of view, we must to a great extent rely upon the reciprocal goodwill and service of others to provide for our rights and needs.

Here the insistence on strict justice is being superseded by the point of view of ideal morality; and, as a general rule, there is far more likelihood of substantial justice following from this attitude than there is of its being secured by the cheese-paring attention to mere justice itself. The point of view of ideal morality sets us free to concentrate on the positive enrichment of the common good in which we shall normally (though not necessarily) share. Of course we cannot expect justice to follow if ideal morality exists only in a small minority of the members of the group. If they are a small minority, then they will suffer considerably; and it requires someone with an over-riding sense of a mission to be willing to see his rights systematically ignored while others reap the fruits of his endeavour. Nevertheless it is true that this attitude of mind, and the willingness to take these risks to some extent, are necessary in the majority of the

members of a group if they are to co-operate positively for common ends. Most of us will have experienced the difference both in efficiency and all-round justice between, on the one hand, the work of a body whose members are really keen in carrying out their corporate purpose, and, on the other hand, the work of a body in which each member keeps a resolute eye on what is owing to him. Without in the least intending to be unjust he will be a great nuisance, causing endless petty friction, killing enthusiasm, and causing the dissipation of energy in unproductive labour.

143. Social justice and ideal morality, then, must in practice be very closely interwoven. Ideal morality presupposes the interest in social justice, and social justice cannot proceed far in any organized society unless the members are also inspired by the principle of ideal morality. It is this very close connexion between the two which makes some thinkers hesitate to commit themselves to the view that they are two different things, two different attitudes of mind. Certainly no description of reflective morality would be complete without taking account of both, and both of these aspects of the moral consciousness actually operate in unreflective, customary morality. On the whole, however, I think the balance of the argument is in favour of the view that they are two distinct attitudes of the reflective moral consciousness. Social justice could exist in the relations of a loosely assorted collection of persons, although it could hardly in practice exist without the addition of ideal morality in a normally organized society. Further, we seem to take a different view of the individual in society according as we adopt one or other of these two moral attitudes. In the one case we are thinking primarily of the individual's demands on society, stressing his self-regarding interests; and in the other case, while we are thinking partly of his contribution to a common good in which he normally shares, still the emphasis is on other-regarding rather than on mixed ends, and self-regarding ends have no place at all. One thing, though, is clear. It is that no new fundamental principle emerges in ideal morality which we have not already come across in our analysis of social justice. We are still working here, as before, with the idea of personal good as sought by

conative agents, and the idea of an order in accordance with which these conative agents stand to each other, an order determined by the principle of 'moral equality'. The essential difference is not in the fundamental ideas which operate but in two elements of the idea of the good receiving a different emphasis. In the one case the emphasis is on opportunity for the pursuit of self-regarding interests, and in the other case on devotion to other-regarding interests.

VII

MORAL STANDARDS AND HUMAN NATURE

144. In accordance with the method described in the opening chapter of this book, we have been trying to discover what principles are implied and what standards actually used in men's day-to-day moral judgements. It is very probable that the reader will be able to point out many gaps in the argument, many points at which this method has not been faithfully applied and where preconceptions have been permitted to take the place of evidence. Still, however ill the intention may have been carried out, that is the method which I have aimed at following.

It may, however, be thought that even the most conscientious observance of such a procedure will not help us to answer the sort of question which is most fundamental in moral theory. At the best, an inquiry into the nature of the standards we actually use will tell us only of the standards which we actually use. It will afford no guarantee that these standards will be used in the future. That is to say, the results which we reach may be of only historical interest. An inquiry into 'the principles of government' might legitimately start with an account of the constitutional principles which underlie British practice in the twentieth century; and this could furnish a true account for this realm and period: but it would afford no guarantee that all or any of these principles will continue to operate in the twenty-second century here or anywhere else. Most of us want something more fundamental than this when we undertake the study of ethics; and that, presumably, is why the classical approach has been to try to discover some ultimate standard to which we 'ought' to conform in our moral judgements.

145. I have already shown that to put the problem of moral standards in this form is to be guilty of confused thinking; but there is another line of inquiry which is quite legitimate and may prove fruitful, namely to ask whether the standards we actually use are in fact grounded in human nature in such a sense that they constitute or express, as it

were, fundamental categories of all moral thinking—that, whether we know it or not, we cannot make a moral judgement or express any kind of 'ought' without assuming their validity. This is not to ask whether we ought to use such principles of moral judgement; but to ask whether it is possible to make moral judgements or express an 'ought' without taking these principles for granted.

It is this question or something like it that I shall discuss in the present chapter. I do not claim that the conclusion to which I shall come provides a definite answer to the question whether the actual standards in use are unchangeable. The issues involved are perhaps too obscure at the moment for us to be able to understand all the main considerations which fall to be taken into account; but it is, I think, possible to move a certain distance in the right direction, and to show that the standards which we have described are grounded in certain fundamental characteristics of human nature.

If we reflect upon our account of customary morality, social justice, and ideal morality, it will be clear that there are two and only two main principles which are implied in the moral consciousness in all these three forms. These are the idea of determining ourselves to act in accordance with the conception of a good to be realized, and the idea of determining ourselves to act in accordance with the conception of some kind of order. What I shall try to show is that these principles follow from what are generally called the 'faculty of Desire' and the 'faculty of Reason' respectively, from the conative and from the rational aspects of our nature. I do not offer any definition of Desire and Reason. There is, admittedly, a certain vagueness about the nature of these 'faculties' and their relations with each other. This vagueness will have to be cleared up; but I do not propose to undertake the task. There is some kind of important difference between the two, however difficult it may be to state the difference clearly; and all that is necessary for my present purpose is to point to this acknowledged difference and to show that it is the basis of the distinction between the two fundamental principles implied in moral judgement.

The 'Faculty of Desire'

146. Let us deal first with the idea of the good and its connexion with the faculty of Desire. In view of our earlier analysis of the value judgement in general, no elaborate argument will be required to show that the idea of the good is, from one point of view, grounded on the conative aspect of our nature. It implies a necessary reference to the ends or interests of a subject-of-ends, and a subject-of-ends is a being expressing conative tendencies in action. This I say requires at the present stage of our discussion no elaboration. I shall, however, go somewhat more fully into the meaning of the statement that the idea of the good is 'from one point of view' grounded on our conative nature. What I have in mind here is the distinction between the content and the form of our value judgements. Their form—that which makes them judgements capable of being true or false—is constituted by their reference to an order of objective relations between things; while their content—that which makes them 'value judgements'—comes from their reference to ends. So that, from the point of view of their content, value judgements and the idea of the good in general are grounded in the faculty of Desire. Now this applies to value judgements in general as well as to moral judgements in particular. If we consider a moral judgement (an assertion of a right or an obligation) from the point of view of its content, it draws us on inevitably to the assertion of the primacy of conation. No matter how much the idea of determining ourselves to act in accordance with the conception of an order may be implied, the order is subsidiary, and the end or ends to be achieved primary, in the sense that it is the ends which appear to be the *raison d'être* of the order.

147. We shall see that this is so if we ask why we think that a social 'order' is important. The answer seems to be that the order is important because we demand, in the behaviour of persons, a counterpart to that order which we find in the natural world. Nature, as Kant says, acts in accordance with law; and we demand that persons shall act in accordance with the conception of law. While inanimate nature operates in accordance with principles which we call

mechanical, and so enables us to form stable expectations as to how, approximately, things will behave under given conditions, the actions of voluntary agents cannot be so closely predicted since so much of their behaviour is determined by internal teleological causes. We require, however, that they should act in a regular way; and we cannot secure stable expectations with regard to their conduct unless they voluntarily bind themselves to act in accordance with rules. This is why, in elaborating his first formulation of the Categorical Imperative, Kant thinks that it can be put in the alternative form: 'So act *as if* thy maxim were to become a universal law of *nature*.' Supposing that you were suddenly endowed with supernatural power, enabling you to make a rule to which voluntary agents not only ought to conform but to which they would necessarily conform, what rule could you make with the intention that it should hold universally? This analogy between the kind of order which exists in nature and the one which we should like to exist in society is significant, because of the importance of a predictable order to our pursuit of ends and to the organizing of means for their attainment. If we could not assume the reign of law in the natural world, it would be quite impossible to co-ordinate our actions in the pursuit of ends. We could never use means with any confidence that they would produce anticipated effects; and all effort presupposes anticipation of future events.

In the co-ordination of means and ends, success depends upon our knowledge of rules in accordance with which things in nature do in fact behave. But this knowledge assumes the non-interference of voluntary agents. No laboratory work could proceed very expeditiously if an experimenter had to allow for and calculate all the results which would be produced by members of the public having access to his room and interfering with his material and instruments. If such interference takes place, then no matter how theoretically possible it may be to calculate what form it will take and what results it will have, still the possibilities open to voluntary agents are so bewilderingly varied that none of us is prepared to rely completely on our knowledge of them as the basis of our anticipation of what they will do. The possibility of their interference in our environment largely

nullifies even the advantage we gain from our knowledge of the laws of inanimate nature; and Hobbes has given a vivid picture of the poverty and misery which would attend any life devoid of contracts and pledges, or reasonable guarantees that pledges will be kept. But something like the natural order can be established amongst persons if they will bind themselves by such contracts, voluntarily acting in accordance with the conception of law. Here we depend not so much upon our knowledge of the laws of their nature as upon their knowledge of a rule. They may, of course, know and pledge themselves to observe the rule without in fact doing so; but our only hope of anticipating their behaviour is in their knowledge and acceptance.

The value of social rules, then, appears to derive from the same source as the value we attribute to an order of nature. It is the precondition of any set of stable expectations which must be assumed in the pursuit of the good.

148. If, now, we ask what kind of order we can confidently expect voluntary agents to obey, we are again directed to the idea of the good for the explanation.

It must be remembered that a social order is, in the last resort, one which can be maintained only by the wills of those who come under its sway. Since they can break its rules, there must be some ground for our belief that they will in fact generally observe them.

Our reliance is based partly on the belief in their good faith—the belief that their wills and intentions are really directed towards the conservation of the order; but partly also upon the belief that acting conformably to this order will be consistent with the characteristics of their own nature—that in making their resolutions they have not ignored the forces outside and inside themselves which affect the ways in which their wills find expression. Our powers of voluntary action are conditioned by the nature and direction of deep-seated conative dispositions—that is to say, primary instinctive tendencies, and even dispositions which have been slowly built up within the lifetime of the individual and are not capable of great modification except over a long period. Voluntary acts, at any given time, take most of these tendencies for granted.

It is not possible to lay down a hard and fast division between those dispositions which are and those which are not amenable to immediate voluntary control; but that there are some which belong to the latter class is generally accepted. No matter how much we may believe in the good faith of a person in making resolutions, we sometimes take it for granted—so far as our experience of him and of other men in similar situations affords any guidance—that he will not be able to carry them out. This is recognized in law in the plea of *jus necessitatis*. Necessity here means the operation of some motive force within a person contrary to the law, but of so powerful a nature that no kind of sanction which we would contemplate using can be expected to act as a deterrent. Though this plea is naturally discouraged, it is one which may be admitted; and even when it is not admitted in theory, its virtual recognition is implied in the merely nominal punishment which is sometimes meted out. Cannibalism, for instance, is horrible to contemplate, particularly when it is preceded by murder; but there are one or two recorded cases in which a companion had been killed and eaten by shipwrecked sailors. In at least one of these, the charge of murder was maintained; but the court was so aware of the temptation arising from the imperious craving of natural instinct that the normal punishment for murder was not inflicted.[1]

The recognition of *jus necessitatis* is not, of course, reserved for special cases. If we reflect, we shall see that we recognize it as a general condition of normal life, and base our anticipations upon its influence. Exceptional cases are simply cases where the normal tendencies find exceptional expression owing to exceptional circumstances; the tendencies themselves being taken for granted, and our code of behaviour erected on the assumption that they will operate. In a recently published book on foreign policy, the theme throughout is that the planning of policy must take account not only of the ideal of an international order but also of the nature of the human individuals and groups who are to be induced to accept and sustain it. The conduct of foreign policy is like the navigation of a ship in a number of essential

[1] Salmond, p. 406.

points. One of these is that, as the laws of navigation are based on the laws of nature and the known behaviour of the elements, so the laws of foreign policy are based upon the character of international society and the behaviour of nations as shown by experience. Again, as the purpose or destination of the ship is fixed by the aims and interests of her owners, so the aims of foreign policy are fixed by the sentiments, aims, and interests of the people it represents.[1]

An enduring order, then, must be based on something more than mere convention. It must 'follow the nature' of the persons who are to be subject to it; and a fundamental fact about their nature is that, as voluntary agents, they pursue ends of various kinds co-ordinated into a system which they describe as their good. The system of rights and duties looks to the 'faculty of Desire' as that in our nature which is to find satisfaction in the system.

The 'Faculty of Reason'

149. It will be recalled that in the foregoing paragraphs, in which the dominant stress has been laid on the idea of the good, and the 'faculty of Desire', we have been looking primarily at the content of value judgements. But when we look at these from the point of view of their form, we find that it is the conception of 'order' itself which assumes primary importance; and our capacity to determine ourselves to act in accordance with the conception of law or order comes not from the faculty of Desire but from what may be called the faculty of Reason, or at any rate from the aesthetico-logical side of our nature, if, as there is some ground for supposing, aesthetic appreciation and rational apprehension are more akin to each other than either of them is to conation.

If we consider very simple experiences, we seem to find that we sometimes act for the sake of conforming to order and nothing more. It is, of course, only in the most trifling actions that this isolation is possible, just as it is only in the most rudimentary forms of conative experience that we can hope to discover anything in the nature of a desire which does not betray the influence of rational thought. Still, at this low level of activity there do seem to be situations in

[1] Sir Edward Grigg, *British Foreign Policy*, p. 74.

which the only explanation of our action is the idea of conforming to order without any real interest in the contents of our action. Most of us can remember little idiosyncrasies of behaviour such as taking the same number of steps in each square of a footpath laid out in regular sections. What interests us here is simply making the steps come out evenly, and nothing more. It seems to be the same sort of tendency towards maintaining a balanced order which makes us beat time with a regular rhythm to music, and so on.

150. When we turn to more important levels of experience we find that, although the faculty of Desire comes into play, it is not capable of accounting completely for our behaviour. Take, for instance, the value judgement itself, and our co-ordination of means for the realization of ends. The value judgement, from the point of view of its content, certainly refers us to Desire. But, from the point of view of its form, it refers us to Reason; because, as a judgement, it is concerned with the rational apprehension of the objective relations of one thing to another, and this apprehension is a matter of reason and not of desire.

Not only is it Reason which apprehends the relations, but it is also Reason which determines us to act in adopting means to ends. I do not say that Reason necessarily determines the end we choose, although it sometimes does so, as we shall see. I only say that it is Reason operating practically which determines us to initiate the means for bringing the ends into existence. It issues 'hypothetical imperatives', as Kant would say; and in conforming to a hypothetical imperative we are acting in accordance with the conception of (natural) law. If anyone doubts this, let him consider what happens in the case of 'conflict of desires'. There is the stock instance of the man who is thirsty and sees a glass of water within reach. Desire to drink it arises within him. But as he is stretching out his hand someone tells him that the water contains a deadly poison. On hearing this he feels an aversion to the liquid. This is the situation usually described as a conflict of desires; and it is commonly said that what the man will do in the end—whether he will drink the water or leave it alone—depends upon which of the desires masters the other. This is not, however, a correct account of what

occurs. If the only things which were operating in him were mere desires, he would never even be aware of the incompatibility of the two—in this case the desire for life and the desire to quench his thirst. In themselves they are not in conflict but are just different. When we say they conflict, what we really mean is that the consequences of satisfying the one will automatically rule out the possibility of satisfying the other; and it is the knowledge of these consequences which makes the man endure his thirst. He knows that if he drinks the poisoned water he will die; and if he decides to endure his thirst, then it is not, strictly speaking, the desire for life which has determined him to abstain; it is reason. It is the knowledge of the particular causal connexion between drinking and dying; and knowledge of causal connexions comes from Reason. Leaving Reason out of the picture, the man would have drunk the water in spite of his desire to live, because the latter desire in itself could have no effect whatsoever on the former. The same thing is true whenever and wherever we adopt means to a given end. Reason, apprehending the objective relations between things, determines us to act by the initiation of the means (cause). Certainly, it initiates the means in order to gain the end; but it is not the end or the desire for it which initiates the means; it is Reason. That is to say, Reason has the capacity of determining us to act according to the conception of an order, in this case a causal order. The conception of a 'technical ought' comes from Reason; and Reason is the faculty of apprehending universal laws and of determining oneself to act in accordance with them.

151. Now so long as we are concerned only with the technical 'ought', with hypothetical imperatives, most people will be prepared to grant this practical exercise of Reason. They think that they can still explain it as somehow a form of action from Desire. But this interpretation will break down when we come to what Kant calls a categorical imperative, an 'ought' which prescribes not means to ends but ends. I am not thinking here simply of the prescription of ends within a personal conception of good (that is to say, the value judgement on an end), for this is still working within the limits of the technical 'ought'. I mean the kind

of order which limits the pursuit of the total good of one person on the principle of respect for other persons—in short, the principle of obligation. What is here implied is action in accordance with the idea of an order which is no longer subservient to the idea of the good, but to which one's conception of the good must itself conform. Moreover, the law in accordance with which we act is no longer 'natural law' but a law which we ourselves create as an expression of the principle of moral equality.

There is here, undoubtedly, a puzzling problem to be solved. If we are correct in tracing the conception of order to Reason, then it is precisely the same 'faculty of Reason' which prescribes 'categorical' and 'hypothetical' imperatives; and the difficulty is to see how this can be so. Reason, in prescribing technical 'oughts', seems to act as the servant of our ends; while, in prescribing moral 'oughts', it seems to act as the master of our total system of ends. In the former case it gives rise to the conception of 'ought' but not to that of 'obligation', for it is concerned solely with prescribing ends to fit into the system of our ends. But the moral 'ought' is the conception of 'duty' or 'obligation', prescribing limits to the nature of the system itself. And the difference seems to be that reason apprehends and determines us to act in accordance with a new conception of order once we come into relation with other persons.

152. The fact that this new order does arise when personal relations are in question is recognized by all, even by those who repudiate Kant's interpretation of its origin. Bentham, despite his egoistic assumptions, recognized it in the maxim, 'each to count as one and none as more than one'. J. S. Mill not only recognized it, but even went the length of trying to explain it in that curious argument purporting to show that we all desire the general happiness. He had been answering various criticisms against the Utilitarian theory, and one of his replies is that Utilitarianism does not say that the end is merely the happiness of the individual: it is the general happiness. Each person's happiness is a good to him, and so the general happiness is a good to the aggregate of all persons. I need not spend time criticizing this argument, for it is generally recognized to be vicious. Quite

obviously Mill is aware that he is not dealing with a standard of 'obligation' at all unless he includes in that standard the idea of the 'equality' of all persons with the agent himself. He tries to work in this equalitarian reference by arguing that, since each does in fact desire his own happiness, and since the collection of happinesses is desired by the collection of persons, this is equivalent to the collection of happinesses being accepted as a standard (and for Mill 'accepted as a standard' means 'desired') by each person. The argument is clearly false.

153. Now Kant, who like Bentham and Mill recognizes that there is some kind of order limiting our individual pursuits of the good, tries to show that the conception of this order comes from Reason. His argument bears a superficial resemblance to that of Mill, but it is essentially different. In leading up to the third formulation of the Categorical Imperative, he tells us that such an imperative can exist only if it is related to some 'end' which differs from all ends-of-inclination in being of absolute (not merely relative) worth and in being given by Reason (not by Desire). He then affirms that there is such an end given by Reason. Each person, he says,[1] does in fact regard his own rational nature as an end. This is a 'subjective end'. But he knows that every other person does likewise. And *therefore*, or *thereupon*, Reason prescribes that he should regard every rational being equally with himself as an end. This is the 'objective end' prescribed by Reason. It is unfortunate that Kant's use of the term 'end' is so ambiguous, but I think the essence of the argument, so far as it is relevant to our present point, is clear. Remembering that by a 'subjective principle' or 'subjective end' of action Kant means the one which we do in fact follow or adopt, it will be obvious that his starting-point is exactly the same as Mill's. He begins with an 'end' which the individual in fact adopts. His second step is also essentially the same as Mill's, namely the recognition by the individual that everyone else likewise adopts his own 'rational nature' (or, in the case of Mill, 'happiness') as an end. The third step marks the vital difference between the

[1] *Fundamental Principles of the Metaphysic of Morals* (Abbott's translation, pp. 47–9).

two arguments. While Mill seems to argue that this is equivalent to each adopting *in fact* the happiness of all as an end, Kant says that, once we realize that each person does in fact adopt his own nature as an end, Reason immediately steps in and says, 'Each person *ought* to regard all as equally ends.' That is to say, Reason, as the faculty of apprehending universals and prescribing behaviour in accordance with the conception of universals, at once sets up as a *standard* of behaviour the principle that each is to regard as appropriate to all what he regards as appropriate to himself.

To my mind this account of the origin of the conception of obligation in its formal nature is the only one which will fit the facts to be explained. There is much in the theory of Kant which I cannot accept. For instance, I think that if I were forced to choose between Kant's conception of 'our rational nature', and Mill's conception of 'our happiness' as the 'end' we adopt, I should prefer Mill's view as less misleading. But the most accurate statement of the case would be to use Kant's other mode of expressing himself, and to say that we all do in fact recognize ourselves as 'subjects-of-ends'. But I can think of no improvement on Kant's argument that, once a person recognizes himself as one subject-of-ends amongst others of identical nature, Reason steps in and prescribes equal treatment for all, and consequently prescribes limits to the ends which each person ought to aim at.

If it be asked why Reason should suddenly emerge as the master rather than the servant of our conception of the good, the answer is that it is here doing precisely what it does everywhere else, namely, apprehending universals and determining us to act in accordance with them. When a single subject-of-ends stands in relation to the inanimate world only, then the only universals with which reason is concerned are those holding between natural objects. The only 'ought' which it prescribes is that which is based upon apprehension of the laws of nature. Things are what they are and behave in accordance with their real nature; and reason requires that this be taken into account in all our dealings with them in the prosecution of our ends. But immediately other subjects-of-ends come into the picture, they also are recognized for

what they are, and Reason lays down the standard of action that they ought to be treated in accordance with their real nature universally; the attitude which the individual has hitherto felt to be appropriate only to himself being now regarded as appropriate to all who are of a nature like unto his own.

154. I have no doubt that this will seem highly abstract and perhaps unconvincing to many readers; and I should be the first to admit the crudeness of the account which, following the main line of Kant's argument, I have given of the origin of our conception of obligation. Like Socrates, in attempting to explain the 'Form of the Good', I can only describe in a semi-mythical fashion what I think is something like the truth. But still, I think it is something like the truth. Here is the situation confronting us: We know, from the analysis of duty, that duties are always to persons; and that, while the contents of our duties have an essential reference to the conception of personal good and therefore to our desiring nature, still our conception of duty itself cannot arise from the idea of the good; for the idea of total good is always a personally integrated system; and duty imposes limitations on the development of each such personal system. The idea of obligation therefore cannot arise from our 'idea of the good' or our 'desiring nature'. There is, however, another characteristic of human nature commonly known as the rational part (or, if one cares to broaden the description, the aesthetico-rational part). This seems to be the part which comes into action when we recognize any kind of 'order' and behave in accordance with the conception of such an order; and the essential thing about the principle of obligation is that it is the conception of an equalitarian, or logical, or universal rule of order which we use as a standard of action in the mutual relations of persons. It is therefore natural to infer that the conception of obligation arises from our aesthetico-rational nature.

How this rational element operates in this way, and how it can be a determinant of practical action, I do not profess to explain. But has anyone ever explained how desire can be a determinant of practical action? Do we not simply take it for granted that desire moves to action, this being the

obvious inference from the facts of our experience? And is there any difference between this and the inference, from the facts of our moral experience, that reason is also a determinant? I cannot see that there is. Admittedly our notions of the nature of 'desire' and 'reason' and of their relation to each other are in need of clarification. Once we admit the distinction at all, we are tempted to push it so far that we create many difficulties in the way of seeing how they can co-exist and co-operate in a single personality. The problem here is analogous to that of finding a proper way of explaining the nature and relations of 'mind' and 'body', or 'mind' and 'matter'. In short, the precise meaning of the distinction between desire and reason requires a great deal of further investigation. But, when all this is admitted, it is still true that the two different terms have obtained currency in order to indicate a difference which does really exist within our nature; and using the terms in a broad, somewhat vague sense, I think the only explanation of moral judgements and the standards they imply is to hold that two principles, neither of which is reducible to the other, are operative—the idea of good issuing primarily from our desiring nature, and the idea of system or order issuing from our rational nature; the former controlling the content, and the latter constituting the form of our ideas of obligation.

155. That, in general terms, is the answer which I give to the question whether the standards we actually use in moral judgement can with any confidence be thought of as permanent. While the fact that we use these standards is no guarantee that they represent more than a particular stage in human history, the matter appears in a different light when we trace them to their source, and find that they arise from essential characteristics of our nature. This, at any rate, is the view which I put forward as a working theory. It may require considerable modification in particular points as we proceed with its application in the interpretation of moral experience. The process of testing the theory (which I do not myself attempt) will take the form of analysing moral judgements of various types to see whether they become significant in the light of this theory rather than of any other. This test can, of course, be fairly applied only to

genuine moral judgements. It is a theory of moral ideas, and not of some other range of ideas; and a moral judgement is not a mere expression of personal preference, but one which is made in the light of some standard regarded as supreme for all men, a bona fide judgement expressing the conviction of 'what, finally, ought to be done' in a given situation.

156. As a footnote to the main argument of this chapter, I should like to indicate—but not to make any proper attempt to solve—an interesting problem which arises in connexion with the foregoing view of the origin and nature of moral standards. If, as I have suggested, the two main principles involved in our moral ideas arise from our own nature—if there is a natural tendency in us to determine ourselves to act both in accordance with the idea of good and in accordance with the conception of a universal order—then these tendencies will not only cause us to set up standards of action but will also make us try to act in accordance with them. That seems an obvious point. Its particular interest lies in the fact that it implies in us a natural urge actually to do what we think we ought to do: there will be a natural, and indeed inevitable, urge in us to follow the path of what we conceive to be our duty, to make the 'is' follow the 'ought'. Now we know that there is a distinction between the 'is' and the 'ought'. 'The good that I would, I do not; and the evil that I would not, that I do'; and the easy, optimistic theory of the inevitability of 'progress' which (so we are told) was characteristic of the latter part of the nineteenth century has not found favour in our time.

I agree that there is a problem here which requires consideration; but in dealing with it all the facts which are relevant to the matter must be taken into account. It is so easy to talk about the 'exploded belief in progress'; and so easy to forget that human life is an extremely complex affair, a fact which both the defenders and the opponents of this belief often ignore when they adduce 'proofs' to support their wild generalizations. Is the truth or falsity of the idea of progress, in moral development for example, to be measured by the way in which the world at large supports or opposes a given individual's personal conception of total good? Or is it to be measured even by the extent to which men in

general at any given time are able to live without actual conflict—quite apart from the complexity of the circumstances in which they are placed, and the need for experimenting with new techniques in social co-operation? It will be necessary, also, to examine the significance of widespread practical assumptions which—often made even by those who repudiate 'optimistic humanism'—are extraordinarily like the 'exploded theory of progress'. There is, for instance, the religious postulate of the omnipotence of God; there is the belief that the spread of knowledge and of human control over the world of nature is on the whole a good thing; there is the belief that a true ethical theory is—like any other apprehension of truth—of practical value; and there is the widespread faith that oppressive social systems have the seeds of their decay within themselves, human might tending, in the long run, to range itself behind right.

These and other related questions are too complex to deal with here; but even a brief reference to them is enough to show that there are certain broad assumptions which we very commonly make, and on which we build a great deal of our practical policy, which accord very well with the theory that our standards of morality express fundamental characteristics of our nature; and that, because of this, there is a steady tendency for actual behaviour to follow along the path marked out by our standards.

VIII

RESPONSIBILITY

157. From time to time, in the preceding chapters, arguments have been used about the nature and origin of moral standards which seem to imply something like a determinist theory of conduct. In particular, it has been argued that the standards which we use follow from our nature; we have also accepted, as a possible inference from this, that there is an inevitable tendency for action to follow along the path marked out by a standard; and we have committed ourselves to the view that voluntary action, whether moral or otherwise, always operates within the limits of certain main conative tendencies and dispositions of the subject. All this would seem to suggest that human conduct is not ultimately 'free' but is 'determined'; and if this be true, what have we to say about the idea of 'responsibility' which seems to be inherent in the moral consciousness?

As I see it, the problem with regard to moral responsibility amounts to this: We cannot hold, with respect to any given 'field' or 'world', both that it is completely 'intelligible', and also that 'indeterminism' occurs somewhere within it. The complete 'intelligibility' of human conduct will therefore be incompatible with human 'responsibility', if 'responsibility' implies 'indeterminism'. The two most important questions to be dealt with are, consequently: What are the main assumptions involved in the belief in the intelligibility of the universe? and, How far are these assumptions compatible with the postulate of the responsibility of the individual human being, in the sense in which responsibility is presupposed by our moral judgements? It is taken for granted, in posing these two questions, that, if responsibility necessarily implies indeterminism, it cannot be compatible with intelligibility.

The Intelligibility of Human Behaviour

158. I shall deal first with the problem of intelligibility, showing as briefly as possible what I take to be involved in

the causal postulate. Despite certain tendencies amongst present-day physicists to admit some sort of indeterminism in the universe, the demand for the complete recognition of the principle of causality has come mainly from physical scientists; for their methods of working have been, on the whole, the most fruitful in discovering rational connexion between events, and there seems no point at which one can set limits to the field of their investigations.

Now to 'explain' any occurrence is to establish a definite relation between it and some other occurrence, the latter being considered as the cause and the former as the effect: and it seems to be assumed that to establish a causal relation is to establish an unalterable relation, in the sense that, if the effect has happened, then its correlative cause must also have happened. The relation is unalterable in the sense that the former cannot exist apart from the prior existence of the latter.

Now it is to be noted that if the causal relation is unalterable in this sense, then 'cause' and 'effect' must be terms appropriate not to things, but to events in things. That is to say, causes and effects are never 'substances' but are always 'modes' or 'modifications' of substances; since things themselves do alter their relations with each other. If I watch a ship sailing down a river, its relations to me are continually altering. But each stage in this changing relationship gives rise to a different appearance of the ship, and the content of my particular perception is unalterably related to the particular position of the ship at any given time. One and only one impression can be produced in me by the ship in that particular position. If the ship and I change our relations in any way, then that particular appearance will cease to be.

Of course, when we say that there is an indissoluble relation between two occurrences or events, we do not mean that this ship alone is capable of producing precisely this kind of impression on me; for we say 'like cause produces like effect'. The bent appearance of a stick in a basin of water can be produced with any stick and any basin of water. What we mean is that if anything with certain specific characteristics in its nature is brought into relation with

another thing with certain specific characteristics; then, discounting the influence of other characteristics of the former and of other things which are also in relation to the latter, there will always be identity in the content of the mode in which the latter reacts to the former. The postulate of the principle of causality is that any occurrence x in a thing A can always, by a process of careful theoretical isolation from other occurrences in A, be unalterably correlated with a similarly isolable occurrence y in a thing B as 'cause'.

159. Now there is another postulate which is necessarily bound up with the postulate of causality, and this is the 'principle of conservation'. The postulate of causality is that every event is an effect, and the postulate of conservation is that every event is a cause. The former means that the causal series reaches indefinitely into the past, and the latter means that the causal series reaches indefinitely into the future. If it be thought that there is no necessary connexion between these two postulates, the following considerations will make the point clear.

Postulating that every event has a cause, let us suppose a number of things, A, B, C, D, standing in relation to each other. An occurrence (a) happens in A. Accepting that (a) must be an 'effect', we have to show that it is necessarily also a 'cause' of some further effect. Let us suppose that (a) was caused by an occurrence (b) in B. Now (b), as an occurrence, must itself have been caused; and since by hypothesis A, C, and D are the only things to which B stands in relation, (b) must have been caused by an occurrence in A, C, or D.

Suppose that (b) has been caused by a previous occurrence $(a-1)$ in A. Then since $(a-1)$ is the cause-correlate of (b) as effect, if $(a-1)$ is not present (b) must also disappear. But by hypothesis A is no longer in the state $(a-1)$ but in the state (a) caused by (b). The change from $(a-1)$ to (a) must therefore bring about a new occurrence in B, namely $(b+1)$. That is to say, (a), which was by hypothesis an effect, must also be a cause.

But (b) may not, of course, have been caused by a previous occurrence in A itself. It may have been caused by an occurrence in C or D. Suppose it was caused by (c) in C; then

(c), being an occurrence, must have been caused; and it must have been caused by an occurrence in A, or B or D. Supposing (c) to be caused by an occurrence in B itself, then this occurrence in B must have been one prior to (b), since (c) was the cause of (b); it must then have been ($b-1$). But if (c) were caused by ($b-1$), the replacement of ($b-1$) by (b) would cause in C the change from (c) to ($c+1$); i.e., (b) would be the cause-correlate of ($c+1$); but this is impossible, since by hypothesis (b) is the cause-correlate of (a). Therefore (c) cannot have been caused by an occurrence in B, and must have been caused by one in either A or D.

If (c) was caused by an occurrence in A, this must have been an occurrence prior to (a), since by hypothesis (a) has been caused by (b), and (b) by (c). The cause-correlate of (c) must therefore have been ($a-1$). But if so, then the change from ($a-1$) to (a) will cause a change in C from (c) to ($c+1$). That is to say, (a) must be a cause as well as an effect.

We may, however, suppose that (c) was caused not by an occurrence in A but by one in D, namely (d). The sequence then will be (d), (c), (b), (a). But (d) must also have been caused; and it must have been due to an occurrence in A or in B or in C.

Could the cause of (d) be a prior state in C? No, because if the cause were ($c-1$), the change from ($c-1$) to (c) would cause D to change from (d) to ($d+1$); and by hypothesis (c) is the cause of (b) and not of ($d+1$).

Could the cause of (d) be a prior state of B? No, because if the cause were ($b-1$), then the change to (b) as the effect of (c) would cause a change from (d) to ($d+1$); and by hypothesis (b) is the cause of (a) and not of ($d+1$).

The cause of (d) must therefore be a prior state of A, namely ($a-1$). But if so, then the change from ($a-1$) to (a), as the effect of (b), will cause a change from (d) to ($d+1$), since (d) can no longer remain after its cause-correlate ($a-1$) has disappeared. Hence (a) must be a cause as well as an effect.

Therefore to say that every event is an effect requires the complementary postulate that every event is a cause. The causal sequence will be—to put it in its least complicated

possible form—(d), (c), (b), (a), ($d+1$), ($c+1$), ($b+1$), ($a+1$), ($d+2$), ($c+2$), &c., indefinitely.

160. The complementary postulates of causality and conservation together require a third postulate, namely that of 'reciprocity'. But while causality and conservation refer to 'occurrences' in things or 'modifications' of substances, reciprocity refers to things themselves or substances. A glance at what I have described as the causal sequence will show—as indeed the whole argument about conservation has implied—that we are dealing here with the notion of a 'closed system' of things in reciprocal interaction, each one responding in accordance with its own nature to modifications in the others.

161. It is now possible to state in a summary form the main postulates of scientific or rational explanation. We think of the universe as a whole or system of parts or members, each one acting in accordance with its own nature in response to the action of others. If we wish to explain any particular modification in any member of the system, we do so by employing the conception of causality which seems to be the conception of ground and consequent put into a time series. Not every x followed by y is an instance of the causal relationship, but every causal connexion is thought of in terms of x followed by y.

In the conception of causality there is no question of the things or substances which compose the system having come into existence in time. It is not a conception relating to the creation of things, but only to the interaction between things. We seem indeed to assume the 'eternity' of the substances as active, there being no beginning or ending to their interaction. There is nothing in the least irrational in the idea of a causal series with neither first cause nor last effect, provided that one recognizes that the notion refers to the series of interactions of substances. It would, of course, be quite irrational if one thought of causality as the creation of substances or things themselves. Finally, there is the assumption that the interaction between things exhibits regularity. The same kind of nature will always give the same kind of reaction to the same stimulus; and for this reason the chain of events is intelligible and predictable.

162. It will be observed that, in outlining the conception of the intelligibility of the world in accordance with the principle of causality, we have not required to use such notions as 'events being guided or determined by a system of eternal laws'. We have not suggested that there is a system of things plus a system of laws which they are 'forced' to obey. A great deal of confusion has been introduced into the conception of causal connexion by the tendency to attribute to 'laws of nature' a kind of substantial existence and some sort of force which they impose from the outside upon the things whose behaviour they 'govern'. This idea, which leads or misleads so much of our speculation on the problem of freedom, is not unfairly represented in the limerick:

> Philosophers tell me I'm damn
> Well not what I thought that I am—
> My action all moves
> In determinate grooves—
> Not really a bus, but a tram.

But, so far from being predetermined 'grooves' in which things must move, 'laws of nature' are simply formulae stating the regularities of behaviour which things exhibit in their interaction with each other in accordance with their own inherent nature. To think of them otherwise is to create the same kind of metaphysical perplexity as arises when we attribute a substantial nature to 'universals', thinking of them as having some sort of mysterious existence as ideal Forms, instead of accepting them for what they really are, namely formulae which we construct for the recognition or identification of particulars.

163. It will also be observed that in describing the concept of causality nothing which has been said rules out the possibility that causation may be either mechanical or teleological. We have only said that it implies a regular correlation between an occurrence in one thing and an occurrence in another; and equally good illustrations of causal connexion would be a billiard-ball being set in motion by the impact of the cue, and the cue's being thrust forward because someone wanted to hit the ball. That is to say, while teleology and mechanism are to be distinguished from each other, they

are both types of causal connexion; and whether we look for an explanatory correlation of events in teleological or in mechanical terms depends upon the character of the problem confronting us. Mechanical explanation does not always give the intelligibility we require. For example, Socrates suggests that the only satisfactory explanation of his remaining in prison is his intention to abide by the laws of the state because he thinks it good to do so. Nor, of course, will teleological explanation always be more satisfactory than mechanical. An anatomist might be far more interested in the interaction of Socrates' bones and muscles than in Socrates' idea of what is good, as an explanation of his posture in prison.

As the distinction between mechanical and teleological causality is an important one, I shall try to explain what I take to be the essence of this distinction. I shall not, I imagine, be able to put the distinction so exactly as to meet all objections, but perhaps I shall succeed in setting down the main outlines of the two types of causation. In mechanical causation we have, I think, a simple response of a thing to an event in something else; while in teleological causation we have the response of a system to an event as an element in a system. Certain things—inanimate masses of matter—seem to be capable of reacting only to mere events. Other things—conscious beings and possibly all organic beings—are capable of reacting to an event as an element in a system. These differences in capacity of reaction correspond to differences of nature. A mass of iron, for example, although it may be composed, as the physicists tell us, of millions of tiny systems which operate on something like an organic self-maintenance principle, is a mere homogeneous mass and not itself an integrated system. It seems that a mere mass only reacts to events. There is a sense in which this is true even of a mass of human beings. A mob or homogeneous mass of persons, as distinguished from an organized society, exhibits some of the characteristics of other masses. Its reactions do not constitute typically organic responses to stimuli. It is apt to react 'in a lump' to some particular occurrence; and, once set in motion, to be carried along, as it were, by its own momentum. An organism, on the other

hand, reacts not only as a mass but also as a system. If you push a lump of iron with a certain force, it will tend to move away under the pressure. If you push a dog, it will also tend to react in the same way, but in addition it will tend to react as a system, possibly scampering off, possibly altering the position of its legs to counteract the pressure, or possibly turning round and snapping. If you push a man, again he will tend to react at first merely as a mass, but his reaction will soon become systematic, and the form it takes will depend largely on the significance he attaches to the push. He will look at it as an element in the surrounding system, and react in accordance with what he takes to be its meaning in the system. That is to say, he will react as a system to a system.

Now, to interpret an event as an element in a system means, amongst other things, to anticipate future events in the system directly or indirectly correlated with the present stimulating event. And to react to a present event in anticipation of future events in the system to which it belongs is what we mean by teleological causation as distinguished from mechanical. It is difficult to say how far down the scale of organic life genuinely teleological causality operates. All organisms certainly react as systems; but it is not easy to say how far they all react to systems, that is to say with anticipation of future events. I am inclined to the view that all organisms react to systems, and that this is a characteristic which distinguishes them as 'natural systems' evolving from within, from artificial systems such as machines which are put together by the external arrangement of parts, and which react as systems but not to systems. However, the point is not of fundamental importance for our present purpose. There are, at any rate, the two different types of causation, the mechanical, which is the reaction of a homogeneous mass to an event, and the teleological, which is the reaction of a system to the system in which an event occurs.

164. Summarizing the argument dealing with the postulate of the intelligibility of the world, we may put it as follows:

To 'explain' any occurrence in the universe—to say under what conditions it will occur—it is necessary to correlate this

occurrence with some other as its cause. We postulate that such correlation is possible, thus assuming that every event is both an effect and a cause. These events are modifications in things, the reactions of members of a reciprocating system, and their reactions to each other are determined by their nature. Correlation of reactions is assumed to be possible not only for inorganic masses but also for conscious beings; voluntary action is assumed to be intelligible quite as much as any other kind of event. But the nature of a conscious being is so different from that of an inorganic mass that we have to draw a distinction between mechanical and teleological causation. Teleological causation means the complicated reaction of a sub-system within the system of the universe, not merely to an immediate event itself, but to this event as having a place in the wider system. Thus, while the explanation of any purely mechanical reaction involves a reference only to an immediately past event as its cause, the explanation of a teleological reaction involves a reference also to the agent's anticipation of future events in the general system. Human voluntary action, therefore, being a form of teleological causation, is assumed on this view to be caused.

The Conception of Responsibility

165. The question then is: do the postulates which we make in assuming the intelligibility of the world (including human action) conflict or accord with the postulate of responsibility which we make in passing moral judgements on human action? To this question we now address ourselves.

In what sense and to what extent do we impute responsibility to persons for their actions? It is not possible to deal with all such imputations, but the general principles can be brought out sufficiently distinctly if we deal with what may be regarded as the crucial case, namely when a person is assumed to be properly liable to punishment for what he has done. This is not to suggest that penal liability and responsibility are equivalent. If they were then no praiseworthy action would be a 'responsible' one. All that is meant is that whenever we suppose a person to deserve punishment

we are imputing responsibility to him; so that if we can discover the conditions of penal liability, this will enable us to formulate at least a working theory of moral responsibility and to see how far the postulate of responsibility is compatible with that of intelligibility.

In considering the nature and practice of punishment, it is important to make sure that it is really punishment we are dealing with and not something else; and it is only in those societies in which reflection has exerted its influence on institutions that we are able to distinguish punishment from other things with which it is often confused.

Punishment, which is a form (though, as we shall see in a moment, not the only form) of 'corrective justice', must be distinguished from mere retaliation. When we retaliate we are not necessarily imputing 'moral' responsibility to the thing or person which arouses our resentment. We retaliate not only on conscious beings but also on inanimate objects. Even a philosopher, receiving a smart blow on the shin from an unexpected obstacle, will sometimes spontaneously react by giving the object an impatient kick; and we cannot suppose that, in doing so, he is imputing moral responsibility. He is of course imputing some kind of responsibility which we may call physical responsibility, meaning that it is this object rather than some other which has affected him so painfully. What exactly is being imputed in individual reactions of this sort is not always easy to determine. In many cases the state of mind of the person will be rather confused; and if we wish to know what assumptions really do lie at the back of the notion of moral responsibility it will be necessary to look at the deliberate, considered application of punishment by persons who administer it judicially in accordance with certain principles; and this we find most clearly in the procedure of criminal jurisdiction in the modern state.

166. In the judicial application of punishment, we are working on the basis of an order to which actions ought to conform—an order which it is possible for the normal individual's rational nature to follow without any serious conflict with the fundamental tendencies of his desiring nature. We assume that the order is in the main just, and

that it is to be defended against attacks in the form of breaches of its rules. And punishment is one of the forms which this defence takes. It is not, however, the only one. Corrective justice, as we may call this defence of the system of rights and duties set out by distributive justice, is divided into two main forms, and either or both of these may be brought to bear in a given case. We may aim at restoring or repairing the actual breach made in the system by ordering the culprit to redress or repair the wrong done to the injured party; and this is what is known as Reparation. On the other hand, we may take such measures against the wrongdoer as will tend to secure his (and, by example, others') respect for this order on future occasions when he may be tempted to break it; and in prosecuting this second aim we may apply either Punishment or Reformative Treatment. These two principal aims are not incompatible inasmuch as both may be pursued concurrently (in a 'civil' action for reparation and in a 'criminal' prosecution demanding punishment, for instance). It is, however, necessary to remember that the two are distinct; for in awarding reparation it is not intended to make the wrongdoer suffer (though he usually will suffer); and the injured party does not usually have the enjoyment of his right restored (though on occasion this may happen) when the person who has wronged him is punished or reformed.

167. Having drawn these important distinctions let us see what kind of responsibility is implied in the different forms of corrective justice.

In the first place they all require physical responsibility. That is to say, a person is not liable unless there is an act which is physically traceable to him rather than to another. He must have acted either as principal or as accessory. If your neighbour's tree is cut down, or his property damaged by damming operations, or his life terminated by a shot, then before you can be liable you must have acted in some way which has an ascertained causal relationship with the result complained of.

Physical responsibility, however, is not the only condition of liability, for it can be attributed to anything, including inanimate objects. If your foot is injured by a piece of rock

rolling down upon you, the rock is physically responsible in the sense that the injury is traceable to the movement of this rock rather than to something else. In the same way, a person may be violently thrown against you by the sudden stoppage of a vehicle, causing you some injury, and he is therefore physically responsible for your injury. He is not, however, liable to any proceeding in corrective justice. An additional kind of responsibility is required. He must have acted teleologically. The injury must be traceable to a voluntary, intentional, or motivated act on his part. This does not mean that he must have intended the injury. To what extent this is implied will be discussed in a moment. For the present, the point is simply that he must voluntarily have done an act, one of the consequences of which is your injury. He must have aimed at doing something, and the injury must have been either the object aimed at or a reasonably direct concomitant result of the prosecution of the aim. Thus if he shoots you, he must have been doing something voluntarily with the gun, examining the mechanism, or shooting at a target, or something of the sort. This teleological responsibility is implied in liability to all forms of corrective justice.

168. But at this point the conditions for reparation, on the one hand, and for punishment and reformative treatment on the other hand begin to diverge; and though there seems to be so much variation in conditions of liability for reparation that it is not possible to state a precise rule, I shall give what I understand to be Salmond's view of the position. In explaining[1] the current English practice with regard to punishment and reparation, he thinks that it is necessary to distinguish between (*a*) 'intentional' wrongdoing, (*b*) gross negligence or recklessness, (*c*) simple negligence or thoughtlessness, and (*d*) innocent mistake of fact.

(*a*) A result is intended only if it is both foreseen and desired by the agent. That it is desired, but not foreseen as the result of the act, cannot make it the intention behind the act. Thus, if a commander sends out a reconnaissance patrol to explore enemy dispositions, and the returning patrol suddenly meets and captures the enemy commander who has

[1] Salmond, pp. 394 ff. and 408 ff.

ventured too far ahead of his own lines, the result is no doubt highly desired by the lucky captor but cannot be said to have been included in his intention in sending out the patrol. Nor, if a result is clearly foreseen as a consequence of an action but is not desired, can it be said to be intended. Thus a commander aims at victory, and to gain victory throws his army into battle. He knows that some of his men will almost certainly be killed. But usually their death does not advance his purpose in the sense of being a means to it, and he does not desire their death. Their running the risk of death, but not their death, is a necessary means; and so the death is not intended, being desired neither as a means nor as an end. But under very abnormal conditions he might desire the death of some of his men. If he thought that, in a certain situation, it would be necessary for some of them to be killed before the rest would develop the fighting spirit necessary for his purpose, then the death would be intended because it would be both foreseen and desired as a means when he opened the engagement. So much for intention and intended results.

(*b*) Negligence refers to the unintended but concomitant consequences of action. If a result is foreseen (even though not desired) as a certain or highly probable consequence of an action, and if the action is carried out in spite of this foresight, then with regard to this result the agent is said to be negligent to the point of being reckless. To shoot at a nine-inch target held by a man at a hundred yards' distance would, for most of us, be negligent to the point of recklessness. The commander who engages in battle knowing that some of his men will almost certainly be killed is, with respect to their death, reckless. The man who enters a burning house to save someone else is, with respect to his own safety, reckless. Recklessness is not necessarily a vice. It is a state of mind which may be praiseworthy or blameworthy—the state of mind in which an action is done for a certain end in the foreknowledge that concomitant consequences not desired will probably or certainly happen.

(*c*) If the consequences are not foreseen, but would have been foreseen had the agent taken reasonable care in examining the implications of his action before doing it, then with

regard to these results he has shown thoughtlessness or simple negligence.

(*d*) Finally, as distinguished from both intentional and negligent production of results, there is the production of results through innocent mistake of fact to which men are prone even after they have taken all reasonable (or indeed anxious) care in estimating the consequences.

169. Now, so far as any general rule can be stated, the rule is that liability for reparation requires, as a minimum, the kind of responsibility found in simple negligence or thoughtlessness. But there are very many exceptions varying with the type and importance of the injury inflicted. Thus in some cases mere mistake of fact is sufficient to constitute liability.[1] If I cut down my neighbour's tree, having very reasonable grounds for believing it to be my own, I shall be liable to him. If a policeman, exercising all the care which could reasonably be expected, wrongly arrests *A* (who happens to be a remarkable 'double' of *B*, whom the policeman intends to arrest), then he is liable. The general rule, however (although the number of exceptions make one cautious about speaking of general rules here), seems to be as stated. It is necessary that I should have failed to exercise reasonable care in studying the implications of my act before I am held liable for reparation of any injury which it may have caused. What does seem quite clear (and this can, it appears, be stated as a rule) is that nothing more deliberate than simple negligence is required for reparative liability.

When we turn to punishment and reformative treatment, though, it seems that these always do require more than simple negligence as a condition of liability. There must be at least recklessness in the infringement of rights. One must either have intended the injury or have been so indifferent about committing it that one was prepared to go ahead with one's course of action, knowing that it would certainly or probably infringe rights, and so commit a breach of social order.

The fact that the dividing line for penal liability is drawn between the two forms of negligence (punishment and reformative treatment are equal in this respect) is important.

[1] Salmond, p. 428.

It means that, in punishment, we strike at the person whose character is weak on the side of determining himself to act in accordance with the conception of a social order. Simple negligence is like a mistake of fact in that it does not show a deliberate indifference to the law, but only a certain lack of effort in properly assessing the consequences of action; while recklessness is like intentional infliction of injury in the sense that it does show deliberate indifference to the law.

170. Two other points fall to be noted with regard to penal liability. The first is the assumption that a person so liable is generally normal, in the sense that he is capable of acting in accordance with categorical and hypothetical imperatives and susceptible to the interests which motivate the action of the ordinary person. Thus if he is 'insane' or mentally abnormal (if his actions are not roughly predictable on the assumption that he will take the ordinary meaning out of facts and be moved by normal interests), he will not be punished for the injury he commits. He will, of course, be put under restraint, but detention for insanity is always distinguished from punishment.

In the second place, it is assumed that the circumstances in which he acted were normal, in the sense that they were the kind of circumstances in which it would be considered possible to act conformably to the social order without imposing a desperate strain upon the individual's control of his fundamental conative tendencies. Thus, if the circumstances in which he breaks the law are such that to keep it would mean a lingering, painful death in the very presence of the means which he could use to take him out of his misery, he may be entitled to put forward the plea of *jus necessitatis*.

171. Here, then, are the conditions of penal liability, the conditions under which a person will be held responsible for his actions to the extent of deserving punishment. He must himself be a normal person, capable of being determined to action by the conception of social order, and of organizing his actions for ends in accordance with value judgements on the objective relations of things to each other. His circumstances must be those which were generally contemplated as operating for persons living under the social order. He

must have committed an act forbidden by the law. He must have acted voluntarily or causally in the teleological sense. He must have done so in the knowledge that he was certainly or most probably breaking the law.

Now this conception of responsibility seems to me to be perfectly compatible with the conception of intelligibility as outlined in the first part of the present chapter. There does not appear to be any need whatsoever to admit any kind of 'indeterminism' in the course of human conduct in order to satisfy the demands of responsibility. Indeed the assumption seems to be exactly the contrary. If one's actions are not intelligible in the light of the operation of ordinary motives and circumstances, then one will be considered irresponsible.

172. The conclusion just stated has been based on an examination of the conditions under which we attribute responsibility to a person in the sense of determining when punishment is justly appropriate. This conclusion will be reinforced if we turn to the question as to how punishment is administered. We shall see that the method of punishing as well as its aim is, like the assumption of penal liability, based on the postulate that human action is causally determined in the teleological sense.

With regard to the aim of punishment, it has already been explained that the infliction of a penalty does not, and is not meant to, correct or redress or cancel in some mysterious way the wrong which has been done. 'Correction' and 'redress' are matters with which reparation is concerned. As for 'cancellation' this is an impossible notion—in our universe at least. 'The moving finger writes, and having writ moves on....' The aim of punishment, as of reformation, is to deter from the repetition of wrongful acts in the future. That is why we often say that the whole efficacy of punishment lies not in its infliction but in its being held over a person as a threat. That, too, is why we recognize the plea of *jus necessitatis*. If no penalty which we can reasonably contemplate is likely, when present to a person's mind, to influence his behaviour, then we think that the penalty is out of place. When we attach a penalty to an action, we assume that the persons liable to it are actuated by normal motives, and we try to secure that, since they are teleological agents reacting

to the system in which they exist, their anticipation of this penalty, as a future event following on a certain action, will influence the ends they actually adopt and the means they take for their realization. If we can convince them that, should they act in such and such a way, such and such another event will follow, and if we have correctly gauged their aversion to this latter event, then we have some confidence in expecting that they will not do the act in question.

With regard to methods of punishment, these, as we all know, take the form of consequences inflicted on and endured by the wrongdoer such as he is assumed to dislike, events which he will not initiate intentionally and which, we hope, he will not be willing to endure recklessly. The method we use in punishment therefore implies a certain view about voluntary action, namely that in all voluntary action a person is determined by motives or intentions in accordance with his nature as a teleological agent. We suppose that his nature will make him react to a given situation in the light of his anticipation of future events in the system within which he exists; and we try to adjust the system, so to speak, before his eyes, so that the penalty can be anticipated just as certainly as if it followed in accordance with a mechanical law of nature. What follows in accordance with mechanical laws of nature is not, of course, punishment, although we often speak as though it were. Punishment is not a mechanically but a teleologically caused consequence of an action; but it is meant to have the same effect on the forward-looking mind as it would have if it were a necessary 'natural' result.

It is, therefore, clear that, in punishing, our method is to try to influence the direction of a person's motives or intentions. To complete the discussion and explain the difference between punishment and reformative treatment, it is advisable that we should say in what sense we are concerned with the influencing of motives in punishment. In punishing, while we are concerned with the direction of a person's intentions or motives, we assume that the person we have to deal with is directing his actions not in accordance with the conception of a social order but in accordance with the idea of the good; and, in the main, we do not make any

serious attempt to alter his character in the sense of inducing him to act from the conception of a social order; but only try to arrange matters in such a way that, acting under the conception of personal good, he will in fact feel that his good involves conformity to the law. We do not try to develop a different kind of motive; but, taking it for granted that he acts from a certain sort of motive, we try to set the external conditions so as to guide the direction in which it operates.

173. Here, I wish it to be understood, I am speaking about the main tendency which is shown in the application of punishment, once the conception of punishment itself has become clarified and distinguished from others with which it has previously been confused. I do not at all suggest that the actual system of punishments applied even in a modern society is completely guided by this principle. Legislators and judicial authorities are to some extent the heirs, both for good and for evil, of a system which has its roots in older attitudes; and they are not always clear themselves on ultimate principles. They, like philosophers, are influenced by older confusions in their theories of punishment—the retributive theory for example—and these theories have an effect on the kind of punishment they deem appropriate to a particular act of wrongdoing. There is not, I think, any theory of punishment which will give a satisfactory account of every penalty laid down by our law, for the simple reason that incompatible ideas have operated in the historical development of the system. It is, however, possible to point to main tendencies in a person's thought; and still more easy to discern main tendencies in the development of institutional systems where principles and theories become clarified in the process of being applied to practical life; and in the case of punishment we find that the clarification is in the direction of a deterrent conception of punishment such as I have outlined.

174. But as the conception of punishment, and of its aims and methods, becomes more precise, we become at the same time aware of the somewhat restricted limits within which it is efficacious to the general end of corrective justice. That general end is the defence of the social order, the maintenance of a system of rights and duties in face of attack. When

we abandon the confusion between reparation and punishment for instance, and consequently the mystical notion of 'retribution' as somehow 'cancelling' or 'cleansing from' wrong, and realize that the driving force behind punishment is the notion of deterring those who show an indifference to rules of social order and disrespect for persons, it becomes increasingly clear that we often apply penalties where they are neither appropriate nor effective. As has been seen in an earlier part of this chapter, penal liability is incurred when a person has broken a rule intentionally or recklessly; but he may have done so for either of two reasons; either because he is indifferent to the rules of social order in general, and acts simply in accordance with the idea of the good; or because he takes his obligations in general so seriously that he is prepared to break some particular rule which he believes to conflict with the fundamental principles of this order. Now, since the method of punishment, judging by the nature of the penalties we inflict, appears to be based on the assumption that a person who commits a wrong is to be influenced primarily through his conception of the good, and by our adjusting the external circumstances in which he will have to act in order to secure that good, it is obvious that punishment is neither appropriate nor likely to be efficacious in the case of a person whose motive in disobeying a particular rule is a profound respect for the principles on which all rules base their claim to our obedience. It is true that this important difference in motives for disobedience is not absent from the minds of legislators and courts of justice. It was, I think, because they were impressed by its importance that the magistrates in the case of *Eversfield v. Story*,[1] made the mistake of exceeding their jurisdiction and of misapplying the Probation of Offenders Act. The distinction also seems to be increasingly receiving legal recognition; but there is little doubt that a great deal in our current practice in punishment ignores it.

175. The clarification in the conception of punishment, with the consequent awareness of its limitations as a method of deterrence, has directed increased attention towards the idea of reformation. Reformation is a more radical form of

[1] See above, pars. 39 ff.

deterrence, for, while punishment tries to defend the social order by the simple expedient of guiding the direction of the wrongdoer's motives without attempting to modify their general character, reformation tries to deal with the character of the person and his motives. The growth of the mental and social sciences—particularly developments in psychology, educational theory, criminology, and the sociological study of law—has greatly transformed the public attitude to crime and delinquency during the past few decades; and it is increasingly recognized that, since punishment confines its attention to arranging the external conditions in which a person will have to act, and does not direct its attack on the nature of motives themselves, its effectiveness must necessarily be confined to the milder forms of offence or to persons whose indifference to public order is not very deep-rooted. To be an effective check upon those whose character is seriously lacking in respect for order, the practice of punishment would have to be greatly elaborated, refined, and invigorated, and placed under the direction of people who could combine the atmosphere of the medieval torture-chamber with the methods of the modern scientific clinic. Apart from the fear that such practices would brutalize both punished and punisher, it is felt that the skill so employed would be much more profitably used in tackling the dispositions themselves, rather than in maintaining an elaborate maze through which they must pass in order to find a harmless expression. Just as it is more effective, and in the long run less troublesome, to threaten a person with dire punishment than to employ a host of agents to keep a watch on his every action, ready to pounce on him if he looks like committing a breach of the law; so it is more effective, and less troublesome in the end, to modify a person's dispositions so that he will want to act rightly, rather than to attempt to fashion a complete system of checks and counter-checks to ensure that he will act rightly whether he wants to or not. Under the influence of this very reasonable view, corrective justice has recently developed—though the development has not yet proceeded far—certain practices directed towards reformation. We have the probation service, and juvenile courts for children and young persons. So far as these are

concerned with offenders (the juvenile courts have other functions in the case of children), their aim is to reform character itself, to develop or strengthen the dispositions which will naturally issue in a voluntary effort to respect the social order. And since reform rather than punishment is their principal aim, they work in connexion with education authorities and various philanthropic institutions.

176. Let us now summarize the chief results of this chapter as they bear on the problem of responsibility and the compatibility of this postulate with that of the intelligibility of human action. Any attempt at a scientific study of experience—and this applies to the study of human behaviour in the mental and social sciences—assumes that the occurrences within the province of experience to be studied are capable of rational explanation. They can be attributed to causes. Causal connexion means the inseparable correlation of any occurrence or set of occurrences with another set. It is not a conception relating to the bringing of one thing into existence by another, but to the correlation of the particular mode of behaviour of an existing thing with a particular mode of behaviour of another existing thing, these things being members of a total system and reciprocally interacting in accordance with their own characters or natures.

Further, causality may be either mechanical or teleological. When a thing is a mere homogeneous mass without any kind of organic structure it will react simply as a mass to a mere event in something else; and this is what is meant by mechanical causation, the 'effect' being interpreted in terms of reaction to a past event in something else. But when a thing is a natural, self-conscious sub-system within the larger system of reality, it will react as a system (involving internal readjustments of its own structure) to the system to which the stimulating event belongs. This is what is meant by teleological causation, and the effect or reaction cannot be interpreted by taking account merely of past events but must also include a reference to anticipation of future events. But, in both mechanical and teleological causation, intelligibility of all events is postulated.

In practice, however, the actions of teleological beings are the result of such complicated processes that the possibility

of prediction remains largely theoretical. Our confidence in the regularity of their behaviour depends only partly on our knowledge of their nature and circumstances. It depends at least as much upon their knowledge of and voluntary conformity to certain rules of behaviour which they set before themselves as standards of action. Their nature, which, in response to surrounding influences, determines their behaviour, has at least two fundamental elements—their desiring nature, which is primarily concerned in their pursuit of ends, under the conception of personal good, and their rational nature, which determines them to act conformably to the conception of order. So that, without knowing the complete causal processes which will determine their future conduct, we can, nevertheless, count upon their pursuing certain ends rather than others; for, assuming them to be normal, their 'rational nature' will to some extent determine them to act out of respect for order. The extent to which the 'order' motive is likely to determine action varies from individual to individual, and can be known only through experience of individual character. But all this is merely an elaboration, and not a qualification, of the statement that human beings, like inanimate beings, act as their inner nature determines.

Now whether this conception of human nature is compatible with the postulate of responsibility must depend on what exactly we are assuming in attributing responsibility to a person for his actions; and what we do assume can be most reliably inferred from the principles of punishment. Our analysis of the nature, aim, and methods of punishment seems to show that we regard a person as responsible for wrongdoing only if his action is teleologically caused, and penally liable only if it appears that 'order' motives are weakly developed in his nature (for this is what insensitiveness to obligations means, in the end). In applying punishment to him, with the object of making him conform to the social order, we strike at him through those motives which do seem to operate most effectively in him, namely his pursuit of the 'good', attempting to direct these motives away from actual conflict with the system of rights and duties. In all this, both in the assumptions regarding

liability and in the implications of the methods of punishment, we appear to take a view of responsibility perfectly consistent with the postulates of causation which we make in supposing that the universe is rationally intelligible; for there is nothing in such an idea of responsibility which requires us to assume 'indeterminism' anywhere in the world.

177. There is only one further point, I think, which requires to be dealt with in this connexion, namely, whether some kind of indeterminism is assumed in the statement that we can determine ourselves to act either under the idea of the good or in accordance with the conception of order. It may be said that if a person can determine himself to act in accordance with either of these, then he must be supposed to choose which of them he will follow; that it is in this ultimate choice that we exercise our real 'moral responsibility', and that this choice falls outside the realm of causation since, by hypothesis, it is not a motivated choice but a choice as to which of two types of motive is to govern our action. We have therefore in the end, it may be said, to admit some kind of indeterminism, assigning it to a 'self' or 'will' lying outside the intelligible order.

This is an interesting argument, and the conclusion would naturally carry a great deal of weight if it were not based upon premisses which are in fact false. While there may be some grounds in psychology or science or metaphysics (I am not aware of any such grounds) for holding that there is a 'self' or 'will' lying outside the intelligible order, there are certainly no grounds in the conception of responsibility for such an assumption. The argument assumes that 'responsibility', as we have described it, presupposes that the individual chooses which type of motive is to determine his conduct. But this is not implied in the aims and methods of punishment. What we assume is that it is possible for normal people to be determined by either of the two kinds of motives and that the two kinds do in fact operate in them; just as we think that it is possible for the wind to blow from any point of the compass. But we do not presuppose that there is something in them which chooses the type of motive which will operate any more than we presuppose something

in the wind which chooses from which point it will blow. If apparently normal people act in such a way as to suggest that they are rather indifferent to the conception of a social order, then the assumption in the application of punishment is that, although their nature can be determined by the idea of order, still in their particular case this idea has no strong hold upon them, and it is accepted as a fact that, so far as they are concerned, the other kind of motive is stronger. Accepting this as a fact, the method of punishment is to adjust matters so that the motives which do obviously influence them will be directed towards at least external conformity to the law. There may be another idea obscurely at the back of our minds, namely, that if they are brought up with a sudden jolt, and have their attention forcibly directed to the importance which we attach to the social order, this may in the future give it a greater influence over their minds—just as initiation ceremonies amongst primitive peoples are always accompanied by painful rites. Whether any such ideas are even obscurely present, influencing our manner and method of punishment, is not certain. What is certain is that, in punishing, we confine ourselves in the main to influencing those motives which operate under the idea of the good. There is nothing to suggest that we think the individual had a 'free', 'undetermined' choice as to whether he will or will not be determined in accordance with such motives. The same applies to the methods of reformation which are intended to go far more deeply into the whys and wherefores of wrongdoing. If we thought that the 'real responsibility' for the action lay not in the nature of our self as expressed in reason and desire, issuing in teleological or motivated action, but in some sort of self or will which stands apart from motives and makes unmotivated choices between the motives which are to be followed; then we should expect that any attempt to improve on punishment, as a method of producing respect for the social order, would take the form of a direct, simple appeal to this will to mend its ways. What kind of appeal could be made to a will which chooses in no intelligible fashion is not very clear; but, even apart from this difficulty, the plain fact is that what is generally regarded as an improvement on

punishment is not this sort of appeal at all, but one which uses all the resources of the medical, mental, and social sciences in methods of reformation. In short, whatever arguments there may be from other provinces of experience in support of 'freedom' in the sense of a principle of 'indeterminism' in the universe, to assert that freedom in this sense is required by the postulate of responsibility appears to have no justification.

APPENDIX

THE CONCEPTION OF INTRINSIC VALUE[1]

THE theory of 'intrinsic value' is, at the present day, associated mainly with the name of Professor G. E. Moore; for, although his views are to a great extent shared by Sir David Ross, the latter writer has devoted his attention principally to establishing the equally intrinsic nature of 'rightness'.

Professor Moore has, in one or other of his various treatments of this subject, (*a*) given a definition of intrinsic value, (*b*) held that the value called 'goodness' is a simple, unanalysable quality, and (*c*) professed to establish that there are some things which are intrinsically good. It will therefore serve to indicate some of the many difficulties in the conception if we bring out certain conclusions, following chiefly from Moore's own arguments, to the effect (*a*) that there can be no intrinsic value which conforms to the definition given by him, (*b*) that value is not a simple but a complex notion, and (*c*) that, in accepting the doctrine of 'organic unities', he has himself given up the doctrine of intrinsic value.

Before commencing to deal with these three specific points, let us summarize very briefly the substance of what is perhaps the most important statement of his view. In an essay on 'The Conception of Intrinsic Value' (*Philosophical Studies*, pp. 253 ff.), Moore raises (p. 259) the main question as to what is meant by the 'internality' of value, or what is meant by saying of a value that it is 'intrinsic'; and (p. 260) he defines it thus: 'To say that a kind of value is intrinsic means merely that the question whether a thing possesses it, and in what degree it possesses it, depends solely on the intrinsic nature of the thing in question.' He then adds that the meaning of this definition must be understood to include the two following propositions: (*a*) 'That it is impossible for what is strictly one and the same thing to possess that kind of value at one time, or in one set of circumstances, and not to possess it at another; and equally impossible for it to possess it in one degree at one time, or in one set of circumstances, and to possess it in a different degree at another, or in another set'; and (*b*) 'That if a given thing possesses any kind of intrinsic value in a certain degree, then . . . anything exactly like it must, under all circumstances, possess it in exactly the same degree' (pp. 260–1).

With regard to this second proposition there is a lengthy discussion of the meaning of 'exactly alike', the conclusion of which is that

[1] See ch. iv, par. 77.

'having the same intrinsic nature' = 'being exactly alike' = 'being exactly identical in every respect except that of numerical difference'. Following this explanation there is another discussion as to the meaning of 'impossibility' and the kind of 'necessity' implied in 'must' as these words are used in the two foregoing propositions. Moore frankly admits that he is not quite clear as to the sense in which he is using these words (p. 271); but he affirms that he is not thinking of mere factual co-existence, or causal necessity, or logical necessity.

This concludes what may be called the positive argument of the essay; and it is important to observe that he has not been arguing that there are intrinsic values, or furnishing any evidence which could suggest such a view. He has merely offered a definition of the conception of intrinsic value and explained two points which he believes to be involved in that definition.

In the remainder of the essay he simply assumes that there are intrinsic values—good and beautiful—in the sense defined, and then proceeds to show how great are the difficulties in the way of rendering the conception intelligible. These difficulties emerge so clearly in the course of the discussion and the answers to them are so shadowy that it is somewhat difficult to see what the counterbalancing arguments in favour of the theory are likely to be.

I come now to the three specific points.

(*a*) My first point is that there can be no intrinsic value conforming to the definition given by Moore. Intrinsic value he has defined as value which depends solely on the intrinsic nature of the thing which possesses it.

Now, by 'intrinsic nature' he means the sum total of the properties or predicates of which the thing is composed. Having the same intrinsic nature means being exactly alike except for numerical difference; so that to give an account of a thing's intrinsic nature means to give a complete, exhaustive description of all its properties or predicates.

This conception of intrinsic nature is emphasized again in his account of what he means by an 'intrinsic predicate'. By an intrinsic property or predicate he means whatever forms a constitutive part of the complete (intrinsic) nature of the thing. 'If you could enumerate all the intrinsic properties a given thing possessed, you would have given a complete description of it' (p. 274).

Now what can be said to *follow solely* from, or *depend solely* upon the intrinsic nature of anything as so understood? The only thing of which I am aware that does so depend is some part, property, or 'predicate' (to use his own term) of the thing's own nature. That is to say, the only thing which can so depend is what he himself calls an intrinsic predicate. And even the use of the words 'follow from' or 'depend on' is inaccurate. The intrinsic predicate does not depend on

the intrinsic nature, but is part of the intrinsic nature. If we wish to use the term 'depend on', we can only say that, given a thing of this intrinsic nature, then it *logically* follows 'that the thing must possess the intrinsic predicate *x*'. The proposition '*A* possesses the intrinsic predicate *x*' may be said to depend solely on the proposition '*A* possesses the intrinsic nature *w*, *x*, *y*, *z*'. The necessity and the dependence are logical. The dependence cannot be a dependence of the intrinsic predicate on the intrinsic nature, since to say that *B* follows from *A*, or depends on *A*, is to assume that *A* and *B* are distinct from each other; while an intrinsic predicate is not distinct from but is part of intrinsic nature. E.g., the equiangularity of an equilateral triangle, though not part of the definition, is part of the intrinsic nature of the triangle. We can say that the equiangularity follows from or depends on the equilaterality; but it does not depend solely on this but also upon all the prior postulates and demonstrations concerning triangles, angles, lines, &c. The dependence is of the logical kind, the necessity governing the relations of our geometrical concepts. But the equality of the angles is not something distinct from (and therefore not dependent on) the complete nature of the triangle, for this equality must be included in a complete description, though not in the definition, of an equilateral triangle.

The two points upon which I have been insisting are, firstly, that even when we waive the objection to the use of the term 'dependence', the only case in which it is permissible to speak of anything as depending solely upon 'intrinsic nature' is the case of an intrinsic predicate (part) in its relation to the intrinsic nature of the thing which possesses it; and, secondly, that what we are really thinking of in such assertions of dependence is the *logical* necessity by which the acceptance of an intrinsic predicate (a part) follows from the acceptance of intrinsic nature (the whole). I have insisted on these two points because they are most important for any discussion of Moore's definition of intrinsic value. He denies that value is an intrinsic predicate, and he also denies that he is thinking of logical dependence. So that, if I am correct in saying (1) that he is thinking of logical dependence, and (2) that only an intrinsic predicate can 'depend solely' on the intrinsic nature of the thing possessing it, then, on Moore's own showing, there cannot possibly be any intrinsic value in accordance with his definition, since he asserts that intrinsic value is not an intrinsic predicate.

Let us consider his assertion that he is not thinking of logical necessity. He admits that he does not know what kind of necessity he is talking about; but he puts forward the following argument to show that at least it is not logical necessity. 'Suppose you take a particular patch of colour, which is yellow. We can, I think, say with certainty that any patch exactly like that one (i.e. intrinsically the same) . . .

must be yellow, quite unconditionally . . .' (pp. 268–9). Having argued that the necessity we are thinking of is not causal necessity, he goes on to argue also that it is not logical. 'I do not see how it can be deduced from any logical law that, if a given patch of colour be yellow, then any patch which were exactly like the first would be yellow too' (p. 272). It is possible that I do not quite grasp what Moore means by a 'logical law'; but I should have thought that the certainty in this case follows 'logically' from what we used to call the fundamental 'laws of thought'—'*A* is *A*' or '*A* cannot be both *A* and not-*A*'. Yellow, according to Moore, is, what value is not, an intrinsic predicate (p. 272). That is to say, it is one of the predicates which must be included when we say that one patch of colour is exactly like another. When we say, therefore, that one patch of colour is yellow, and that another is exactly like it, we are actually affirming that the second patch is yellow; and so it follows logically that the patch cannot be both yellow and not-yellow—if indeed there is any question of 'following' when we are stating one of the fundamental 'laws of logical thought'.

Despite his denial, then, Moore is really thinking of logical necessity, and nothing else. And we have already seen that the only thing which can, in the logical sense, depend solely on the 'intrinsic nature of the thing' is one of its own 'intrinsic predicates'.

But Moore tells us that, unlike yellow, value is not an intrinsic predicate (p. 274). Therefore it is not part of intrinsic nature. Therefore it cannot be said to 'depend solely' on the intrinsic nature of the thing possessing it. Therefore there cannot possibly be any 'intrinsic value' in accordance with the definition given.

(*b*) I come now to my second point, namely that, on Moore's argument which we are now considering, 'good' cannot be—as he had asserted it in *Principia Ethica* (pars. 6–7) to be—a simple, unanalysable notion. It must be complex. He tells us (p. 274) that goodness, while it is 'intrinsic' and also a 'predicate', is not an 'intrinsic predicate'. This is, as he agrees, somewhat difficult to understand. If we are told that *x* is 'white' and that it is also a 'horse', but that it is not a 'white horse'; or that *x* is 'stupid' and is also a 'man', but is not a 'stupid man', it is all very bewildering. *x* seems to be both stupid and not-stupid, the horse both white and not-white, and goodness both intrinsic and not-intrinsic. Still, there are conditions in which this apparent contradiction in terms may be only apparent. Two contradictory propositions cannot both be true of the same thing, at the same time, in the same sense, with regard to it as a whole, in relation to the same thing. But if we are speaking of the same thing at different times, or using terms in different senses, or referring to two different parts of the thing, or to different relations in which it stands, then both propositions may well be true.

Can we find any interpretation along these lines to account for Moore's view that goodness both is and is not intrinsic? Not, it seems, on the supposition that he is talking of different times; for he tells us that it is impossible for a thing to possess intrinsic value at one time and not at another. Nor can we understand him to be referring to two different sets of relations in which the thing stands, for he has also said that a thing cannot have intrinsic value in one set of circumstances and not in another. It is possible that he is using the term 'intrinsic' in two senses, meaning one thing by it when he says that good is 'intrinsic and another thing when he says it is 'not intrinsic as a predicate'; but even this interpretation appears to be ruled out when we remember the definition of 'intrinsic value' as a value which 'depends solely on the intrinsic nature' of the thing which has it; for, as we have seen, this is precisely what is meant by 'intrinsic' when he speaks of an 'intrinsic predicate'. There is, therefore, only one possibility remaining, namely that, if goodness is both intrinsic and not-intrinsic (if, that is, it is both intrinsic and a predicate but not an intrinsic predicate), then we must be referring to two different elements or characteristics of goodness. In its characteristic as a predicate goodness is not-intrinsic, though in its characteristic as x (so far undisclosed) goodness is intrinsic. Goodness has therefore at least two essential characteristics. That is to say, it is not a simple, unanalysable notion but a complex notion.

(*c*) My third point is that, in accepting the doctrine of 'organic unities', Moore has himself abandoned the whole doctrine of the intrinsic nature of goodness. The definition of intrinsic value, he has said, must be understood to include in its meaning the proposition that it is impossible for a thing to possess this kind of value in one degree at one time, or in one set of circumstances, and to possess it in a different degree at another, or in a different set. But Moore cannot logically maintain this proposition when he has committed himself to the doctrine of organic unities which plays such an important part in his ethical theory. This doctrine (developed in *Principia Ethica*, pars. 18–22) may be summarized as follows: Many of the things which are intrinsically good are not simple but of varying degrees of complexity, and in such composite things the intrinsic goodness of the whole is not necessarily equal to the sum of the intrinsic goodness of the parts. Thus if a whole includes the parts *a*, *b*, and *c*, and these parts of the whole are the only ones of all its parts which possess intrinsic goodness, and if their intrinsic goodness is represented as 2, 3, and 4 respectively, then the intrinsic goodness of the whole may not be 9; it may, for example, be 12 or it may be 7.

Having elaborated this doctrine of organic unities, Moore still insists that the intrinsic value of the parts does not alter, even though the intrinsic value of the whole is different from that of their sum; for

if their value did alter, then it could not be true that the intrinsic value of a thing must be always of the same degree at all times and in all circumstances—a 'truth' which is implied in the meaning of the conception of intrinsic value.

Now the question is whether the intrinsic value of a part can possibly be the same when it is within the whole as it is when it is outside of the whole, if the value of the whole is not equal to the sum of the values of the parts. The first point to consider is whether Moore regards the whole as more than the sum of the parts or as equal to the sum of the parts. If the whole is, in his view, more than the sum of the parts, then the surplus presumably consists in the relations of the parts to each other. If, then, there is intrinsic goodness in the whole of the value 12, and the sum of the intrinsic values of the parts is 9, and if the value of the parts is the same whether inside or outside of the whole, then the surplus intrinsic value 3 will not be in any of the parts, and must therefore be in the relations between the parts, since it must be somewhere in the whole. But no relation or set of relations can possibly have intrinsic value; for (according to Moore) intrinsic value follows from intrinsic nature, and no relation can have an 'intrinsic' nature, for the 'nature' of a relation is to relate terms. It can only be 'completely described' by reference to the terms which are related. For this reason also, the 'test' which Moore has suggested (in *Principia Ethica*, par. 112) to determine whether anything has intrinsic value is meaningless in the case of a relation. The test is to 'think of the thing as if it existed quite alone and constituted the universe'; and to ask oneself 'whether it is better that such a universe should exist than that it should not exist'. Now it is nonsense to speak of a 'relation' as if it existed quite alone, since the meaning of a relation implies terms related; and therefore it is nonsense even to ask whether a relation can be intrinsically good.

It follows, then, that the intrinsic goodness of a whole must be distributed over its parts; and, so far as the theory of value is concerned, the whole must necessarily be equal to the sum of its parts.

If, then, there is a surplus value of 3 in the whole not accounted for in the sum of the values of the parts taken separately, this surplus must be either in those parts which hitherto have had no intrinsic value or in those parts which had originally an intrinsic value. If in those which had no value, then a thing can have intrinsic value at one time and in one set of circumstances, but not in another; and if in those which already have intrinsic value, then one or more of them have a different degree of intrinsic value at one time and in one set of circumstances from what is possessed at another or in a different set. On either alternative, intrinsic value as defined by Moore does not exist.

If, instead of there being a surplus of value in the whole over the sum of the values of the parts, there is a diminution—if, e.g., the intrinsic values of the parts are 2, 3, and 4, and the intrinsic value of the whole is 7—then since, as we have seen, the value of the whole must be the value which resides in the sum of the parts, one or more of the parts *a*, *b*, and *c* must have a less degree of value in the whole than is possessed outside of the whole.

We must therefore make our choice. Either we hold the theory of organic unities and abandon the theory of intrinsic value, or we attempt to hold a theory of intrinsic value and give up the theory of organic unities.

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