MORAL POSITIVISM

Paper for Jurisprudence Discussion Group, 23.11.04

[This is a draft first chapter of a book. Because it's a first chapter, I'm assuming that it will stand on its own. As it is still at quite an early stage, I'd much appreciate any comments, at the meeting or otherwise.]

1. Questions and Concepts

Philosophy books usually seek to answer several questions. Some of these questions are prior to others. A book on knowledge, for example, might contain a chapter about the kind of justification required for a true belief to count as knowledge. But an earlier chapter might well have answered the prior question whether knowledge should be understood as justified true belief in the first place. And earlier still there may have been some discussion about whether we need the concept of knowledge in epistemology in the first place.

This is a book of moral philosophy. The central concern of moral philosophy, it might be assumed, is what one ought to do. Now there is of course a large amount of moral disagreement between people. So it might well be thought that the primary question in moral philosophy would be which of the many different moral views available are correct. Indeed some philosophers seem to have thought like this. In the first paragraph of his *Foundations of Ethics*, for example, Sir David Ross says:

> I propose to take as my starting-point the existence of what is commonly called the moral consciousness; and by this I mean the existence of a large body of beliefs and convictions to the effect that there are certain kinds of acts that ought to be done and certain kinds of things that ought to be brought into existence.[1]

Ross goes on to outline his favoured 'method of ethics', which he claims to be endorsed by Socrates, Plato, Aristotle, and Kant. It consists in examining these moral beliefs, comparing them with one another, and clearing up any ambiguity. Those that remain we may assume to be justified.

It may be that Ross's use of the term 'method' here is intended to imply a contrast with the view of Henry Sidgwick, in whose *Methods of Ethics* we read:

> [W]e conceive it as the aim of a philosopher, as such, to do somewhat more than define and formulate the common moral opinions of mankind. His function is to tell men what they ought to think, rather that what they do think… [T]hough he is expected to establish and concatenate at least the main part of the commonly accepted moral rules, he is not necessarily bound to take them as the basis on which is own system is constructed. Rather, we should expect that the history of Moral Philosophy … would be a history of attempts to enunciate, in full breadth and clearness, those primary intuitions of Reason, by the scientific application of

[1] Ross, *Foundations of Ethics*, 1.

> which the common moral thought of mankind may be at once systematised and corrected.[2]

The contrast, then, might seem to be between those such as Ross and the authorities he mentions, who begin with unreflective common-sense morality and end with reflective, and Sidgwick, who claims to base his views on 'intuitions of Reason' which are themselves independent of common-sense morality. But in fact any difference here is, if anything, one of subtle degree rather than of kind. Ross approvingly quotes Aristotle's famous statement of his 'dialectical' method of ethics:

> As in our other discussions, we must first set out the way things appear to people, and then, having gone through the puzzles, proceed to prove the received opinions about these ways of being affected -- at best, all of them, or, failing that, most, and the most authoritative. For if the problems are resolved, and received opinions remain, we shall have offered sufficient proof.[3]

Often, Aristotle is guided by this dialectical principle, as for example in the discussion of incontinence (*akrasia*) in *Nicomachean Ethics* following the passage just quoted, in which he sets out competing positions on the influence of knowledge on action and seeks a plausible compromise. But equally often he engages straightforwardly in philosophical argument, on the basis of what might well be described as 'primary intuitions of Reason', such as that the human good is to be understood in the light of characteristic human activity, leaving the checking of his conclusions against common sense for later.[4] And here is he is followed by Sidgwick, who as we saw in the passage above believed that a philosopher's conclusions should be broadly consistent with common-sense morality.

Nevertheless, Sidgwick is more prepared than Ross not to assume the correctness of common-sense morality but to seek a grounding for much of that morality in rational intuition about conduct considered in abstraction from common-sense morality itself. In that sense, this book is more in the spirit of Sidgwick than of Ross.[5] Though I shall indeed begin with 'the moral consciousness', this is a beginning merely in the sense of a starting-point rather than of a foundation. The mere fact that we hold some moral belief unreflectively should not be taken to count in its favour, and such reliance on what one has been taught should be especially troubling given the vast differences in fundamental moral belief that have existed and continue to exist in and between human societies. Nevertheless, like Sidgwick, I believe that abstract rational intuition can validate many common-sense moral rules. This should not be taken to count in favour of such intuition, however, since the intuition is itself insight into the reasons behind the rules. Rules without reasons have no weight; and the reasons for the rules are knowable by intuition, and cannot be assumed to exist merely because of the existence of the rules. So in that sense my position perhaps puts less weight on any dialectical appeal to common-sense morality than does the Aristotelianism of both Ross and Sidgwick.

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[2] Sidgwick, *The Methods of Ethics*, 373-4.
[3] Aristotle, *Nicomachean Ethics*, 7.1, 1145b2-7.
[4] Ibid., 1.7, 1097b22-5; 1.8, esp. 1098b9-12.
[5] And of course, as Sidgwick fully realized, the rational intuitionist tradition in ethics, broadly construed, stretches back at least to Plato, through Kant and many others.

What, then, are my primary questions? Should rational intuition seek to answer the question of what we ought to do? In a sense, 'Yes'. But we should not begin by assuming that there *is* something we ought morally to do. A version of egoism, for example, according to which morality is a sham should not be ruled out at the start. Nor should we begin with the idea that if there are things that we ought morally to do, then doing these things is all we have reason to do. The view which became popular in the nineteen-fifties and -sixties that morality consists in whatever we have overriding reason to do seems to me liable to confuse.[6] The concern of philosophical ethics is how we should live, and in particular how we should act, where these 'shoulds' are not to be taken as equivalent to 'morally ought' but to 'have reason to'.

The primary question of ethics, then, is: What does a person have reason to do?[7] Nevertheless, the question whether we have moral reasons is clearly significant, and to answer that question requires me to go into the nature of morality itself. So let me begin.

2. Morality and Law

Philosophical ethics is like the philosophy of religion or jurisprudence, in that it emerges out of a set of social practices with their own particular place in our lives. Without religion or law, there would be no philosophy of religion or jurisprudence; and without morality, there would be no ethics. Nearly every human society that we know of has possessed some form of morality or other – what I shall call a 'positive morality':

> *Positive Morality*: An internalized set of cognitive and conative states, socially engendered and including beliefs, desires, and feelings, which leads its possessor among other things to (a) view certain actions as wrong (that is, forbidden by morality) and hence to be avoided, (b) feel guilt and/or shame as a result of performing such actions, and (c) blame others who perform such actions.

Note that this definition is intended to capture the 'core' of positive morality as we understand it. We might imagine a set of action-guiding states consisting only in beliefs about ideals, and involving as sanctions only 'carrots' rather than 'sticks' – what Hume calls in the conclusion to his *Enquiry* 'the peaceful reflection on one's own conduct', for example, and praise rather than blame. Our own positive morality of course contains such elements, but for the purposes of my discussion I shall take them as inessential. A positive morality may lack them, and on their own they are too distant from our conception of a morality to be thought of as essential. The central elements of a positive morality are attributions of wrongness, and the sanctions of guilt, shame, and blame.

Those familiar with the philosophy of law will already have guessed that I chose the name 'positive morality' advisedly, to correlate with the term 'positive law' as used to refer to those laws that have been created within some legal system or other, as opposed to 'natural law', which is not created by human beings and is independent of legal

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[6] Hare, *Freedom and Reason*, 168-9. Sidgwick also fails to draw a sharp distinction between what is right on the one hand, and what is rational or what we have reason to do on the other. See Frankena, 'Sidgwick and the History of Ethical Dualism', 193-6.

[7] Cf. Scanlon: 'I take the reason-giving force of judgments of right and wrong as the starting point of my inquiry' (*What Do We Owe to Each Other?*, 3). Scanlon's first chapter is entitled 'Reasons'.

systems understood in positive terms.[8] For I now want to claim that there are important analogies between positive law and positive morality. This is not a new view. John Locke, for example, in his *Essay Concerning Human Understanding* wrote:

> The *laws* that men generally refer their actions to, to judge of their rectitude, or obliquity, seem to me to be these three. 1. The *divine* law. 2. The *civil* law. 3. The law of *opinion* or *reputation*, if I may so call it. By the relation they bear to the first of these, men judge whether their actions are sins, or duties; by the second, whether they be criminal, or innocent; and by the third, whether they be virtues or vices.[9]

The divine law, Locke continues, is 'the only true touchstone of *moral rectitude*', whereas 'these names, *virtue* and *vice*, in the particular instances of their application, through the several nations and societies of men in the world, are constantly attributed only to such actions, as in each country and society are in reputation or discredit'. The civil law and the law of opinion, then, are both human laws.

So what are the analogies between positive morality and positive law? Let me mention three. First, they are *functionally* analogous. Both morality and law serve as socially instantiated mechanisms for guiding human action towards similar kinds of goals. Often, these goals are broadly unobjectionable. Both morality and law, for example, can serve to place limits on the harms done to one individual by another in pursuit of her self-interest. Indeed the two systems frequently operate together. A condemned murderer will receive not only a judicial sentence, but the moral opprobrium of others in her society. Morality can also be called upon in support of certain legal ordinances designed purely to resolve co-ordination problems. Only once there is a well-promulgated law requiring drivers to keep to a particular side of the road will those found driving on the wrong side be blamed. Sometimes, however, the goals of morality and law are open to objection, as for example in racist societies, where racist laws and moral principles are promulgated by the dominant group in order to preserve their dominance.

Second, morality and law are *structurally* analogous. Both centrally involve the forbidding of certain actions, and the infliction of sanctions on those who perform these actions. This is seen most clearly, perhaps, in areas such as criminal law, where the same

[8] The classical source of the distinction is Aristotle, *Ethics*, 5.7. The idea that the law can be understood as independent of morality in various ways is, of course, legal positivism, and that is a far from uncontroversial doctrine. I am inclined to think that a positivistic understanding of the law is perhaps the most attractive to most people who consider the issue, and I suspect that it is the dominant view in the philosophy of law. Partly for these reasons, but also for reasons of shape and space, I have decided not to attempt any independent defence of legal positivism in this book, other than the evolutionary arguments in the text. But my hope is that those arguments will be sufficient for many, and that my overall position is broadly compatible with a variety of positivist theories of law, including the simple command theory (see e.g. Austin, *The Province of Jurisprudence Determined*), Hart's view, in which weight is attached both to the customary basis of law and the internal perspective of participants within a legal system (see esp. *The Concept of Law*), and Raz's 'sources thesis', according to which the existence and content of a law can be identified with reference to social facts alone, and the account of authority on which it is based (see e.g. 'Authority, Law, and Morality'). One important point to note is that I am not putting any great weight on the claim that we can see through law to the reasons behind it. It may be that the internal perspective of participants, including views of authority, is itself to be understood in terms of the kind of 'error theory' which I have used in my analysis of positive morality.

[9] *Essay*, 2.28. [Check.] In general, the law/morality analogy is characteristic of the British empiricist tradition. See also e.g. Mill, *Utilitarianism*, 5.12-15, esp. 5.12.

action may be forbidden by both law and morality. And in the case of, say, contract, the penalty for default can be seen as a deterrent. A good deal of law, such as commercial law, is designed to facilitate individual or joint projects. But even here deviations from the prescribed norms can be costly. And indeed morality provides its own resources in the same sphere, in the form of the institution of promise-making, which allows individuals to create new obligations.

Finally, and most importantly, law and morality have similar *origins*. One might expect this anyway, given the functional and structural analogies noted above. But in recent years a good deal of research has been published on the possible origins of morality, and it may be that the accounts given can be carried across to law. According to one widely accepted view – put forward most significantly by the anthropologist Christopher Boehm – the development of morality into its final stage took place at the very latest about 100,000 years ago, with the emergence of so-called Anatomically Modern Humans.[10] Boehm's argument is based partly on primatological data, but mainly on evidence concerning existing nomadic foraging bands whose lifestyle is similar to those of our Palaeolithic ancestors. These bands are, without exception, politically egalitarian, in that any attempt at domination is prevented by social sanctions such as gossip. The reasons for this are straightforward. The group will function less well if valuable resources are wasted on internecine conflict, and there is also, especially in the case of big game, a need for a system to ensure roughly equalized food distribution. What Boehm calls 'morality' essentially consists in social pressure applied by the group to deviant – that is, in this case, power-seeking – behaviour. Originally, the emotions involved would have been simply the anger of the group, and the fear of the deviant individual, but as language developed, and gossip became possible, the emergence of more sophisticated and self-conscious emotions and attitudes became possible. Boehm does not discuss this in detail, but one not implausible view is that guilt and blame are especially closely related to fear of the anger of the internalized other and distancing from that other (in particular the parent, who has power over the bond between herself and the child, as well as the power to inflict punishment); whereas the development of shame went hand-in-hand with a growing awareness by individuals within the group of the importance of trusting relationships to their survival, and the development of a sense of oneself as a being whose status and membership of the group depended on being viewed with trust and respect by others, which again provides a link with the fear of exclusion, not on the basis of anger but merely through lack of status.[11] Note also that Boehm's account allows for morality to take on a life of its own. Once a method of social control was in place, it could be put to uses other than the maintenance of equality within the group. Indeed, morality might itself become a means for gaining power.

Note that Boehm's account can explain the origin of law as well as that of morality, thereby accounting also for their functional and structural similarities, and especially their overlapping scope. And even if one doubts his argument, it does seem likely on reflection that any plausible account of the origin of either morality or law will carry across to the other system.

With these analogies between positive morality and law in mind, let me now return to the question whether there are specifically moral reasons, approaching it through

[10] 'Conflict and the Evolution of Social Control'. See also *Hierarchy in the Forest*.

[11] For insightful discussions of guilt and shame, see e.g. Taylor, *Pride, Shame, and Guilt*, chs. 3-4; Williams, *Shame and Necessity*, endnote 1. [Also Freud, Civilization etc.? Check.]

an analysis of law. It will be easiest to focus on a case where there is clear overlap between law and morality, such as killing. Consider, then, the following example.

> *Inheritance*. I am poor, to the point that I am made miserable by my inability to pursue various projects that mean a great deal to me. I know that I am the only surviving relative of my uncle Jack, and that when he dies I shall inherit a large amount of money. I happen to know that Jack is in the habit of taking a late-evening walk by some deserted cliffs, and that it would be quite easy for me to kill him by pushing him off at a certain point where the path is particularly narrow.

What reasons does the law give me in this case? The common law of course prohibits me from killing Jack, and if I am caught I am likely to be severely punished. But the sheer fact of this legal prohibition does not seem to provide any reason for me to obey it, just as the sheer fact that the Town Police Clauses Act 1847 forbids the shaking of carpets in the street does not provide me with a reason not to do just that if I so wish. In *Inheritance*, the law is best seen as *transparent*, in the sense that, if it is worth obeying, it is so only for reasons that are themselves independent of the law and lie behind it. On the face of it, I appear to have a self-interested reason to kill Jack. The law serves to place a limit on my pursuit of that self-interest by providing a self-interested reason for me not to kill him; and if the law is justified it is because I have reasons independent of the law for not killing him.

At this point, morality may well be said to provide a source for my reason not to kill Jack. That is, the fact that it is wrong itself justifies the deliverance of the law on homicide in this case. But I now want to suggest that morality is transparent in the same way as law, and that this is exactly what we should expect given the analogies between the two systems outlined above. There certainly are reasons for me not to kill Jack, such as that I shall by doing so make his life shorter than it might have been and that his friends and relations will be deeply upset by his death, even if they believe it to have been an accident. But these are the same reasons that justify the law's forbidding me to kill. In Plato's *Euthyphro*, Socrates asks whether what is pious is loved by the gods because it is pious, or whether it is pious because it is loved.[12] The Euthyphro dilemma has since been developed into a general challenge to those who link morality and religion: Does God say that killing is wrong because it is wrong, or is it wrong because God says it is wrong? On the first horn of this dilemma, morality is independent of God; and yet the second seems to make morality arbitrary, and ignores the reasons against killing that we saw in *Inheritance*. We might now extend the challenge to morality itself: Does morality say that killing is wrong merely because there are non-moral reasons not to kill, or is there a special moral reason not to kill because morality says that it is wrong? Here it is tempting to see law and morality as on all fours, and to accept the first horn of the dilemma. The non-moral reasons against killing explain why morality forbids it, and it is not at all clear why the mere forbidding of the act by morality can add to my reasons not to do it.

There is an obvious objection to my claim that morality is as transparent as law. Law, it may be said, is a purely human institution, and there is no non-positive or ideal law, independent of human judgement, against which particular positive laws can be judged. Of course, over the centuries, some have claimed that there is indeed a natural law, originating, on certain views, from God. But strict divine command versions of this

[12] *Euthyphro*, 10a2-3.

position face the Euthyphro dilemma, and anyway most natural law theories are best understood as involving principles that are not really legal but rational or moral. Morality, the objection continues, is different. There are indeed positive moralities, just as there are positive laws. But when someone says that my killing Jack is wrong, they are not claiming something like: 'According to the positive morality in which we have both been brought up and which is almost universally accepted in our society, your killing Jack is wrong'. Rather, they are claiming that my killing Jack is wrong in itself, and would be wrong regardless of the views taken in any positive morality of such behaviour. In other words, while there is no natural or ideal law, there is a natural or ideal morality, and it consists in that set of principles, independent of human judgement, which state the truth about what is right and wrong.

There is indeed an important difference between law and morality. I have said that law may be seen as transparent, in the sense that, when there is a reason to obey it, we can see through its prescriptions to the reasons that lie behind it. Law can function perfectly well even if everyone sees it as transparent. Indeed, when asked why we should obey the law, few would say that we should obey because the law says we should. Rather, appeal is usually made to *moral* principles, based on ideas of contract and consent, fairness, utility, democracy, or whatever. Morality is different. For it to function most effectively requires that those who obey it should it take it be intrinsically reason-giving.[13] This is clear when we reflect upon the fact that, unlike the moral sanctions, legal penalties can be viewed merely as costs imposed in the currency of well-being. Guilt and moral shame essentially involve the thought that what the agent did was wrong, and therefore something she had a reason not to do. Expressions of blame can be made quite dispassionately, as a way of affecting the behaviour of the party blamed. But even this strategy is most likely to succeed when the blamed agent feels that she has done something wrong and therefore to be avoided. The feeling of blame is like guilt and moral shame, in that it is hard to imagine feeling that someone is genuinely blameworthy without also feeling that they had a reason not to perform the action because it was wrong.

So it is only to be expected that we who have been brought up to accept a positive morality should believe that morality itself provides reasons. And it seems somewhat unparsimonious to postulate genuine properties of wrongness, understood as intrinsically reason-giving, when their attribution by human beings can be fully explained without reference to them. Again an analogy with law is helpful. Consider the property of being blameworthy, which is usually taken to be co-instantiated with the property of wrongness, unless there are extenuating circumstances. If an action is blameworthy, then there is a reason to blame it. There are two views on the relation between blame and reasons to blame. On the internal view, some actions are such that, in themselves, they are blameworthy. So in the *Inheritance* case, for example, my killing Jack would be wrong in itself[14] and hence blameworthy. Blame, then, on the internal view is seen as appropriate to certain actions in the way that, for example, fear or other emotions are appropriate or inappropriate depending on the circumstances. Consider this from C.D. Broad:

> Some kinds of emotional quality are *fitting* and others are *unfitting* to a given kind of epistemological object. It is appropriate to cognise what one takes to be a

[13] Cf. Mackie, *Ethics*, ch. 1; Joyce, *The Myth of Morality*.

[14] Either just because it is a killing, or because of its effects, my point here being neutral between 'deontological' and 'consequentialist' conceptions of wrongness.

> *threatening* object with some degree of *fear*. It is inappropriate to cognise what one takes to be a fellow man *in undeserved pain or distress* with *satisfaction* or with *amusement*.[15]

And Ronald de Sousa provides further useful examples:

> [I]t is bizarre to experience intense amusement at the perfectly familiar taste of potatoes … and it is altogether unintelligible … to be told that someone experienced excruciating remorse at the thought of having once smiled at a child.[16]

On the internal view as I am understanding it, there are reasons to feel or not to feel emotions such as blame which correlate with their degree of rationality and appropriateness.[17] If I am reading something hilariously funny, then I have a reason to feel amusement; if I am eating chips, then I do not. On the external view, however, blame is seen as a sanction analogous to a legal penalty, and hence as part of a transparent system. Whether blame is appropriate or not depends not on the intrinsic nature of the action, but on independent considerations – one simple one being perhaps whether blaming will do any good.

According to the external view, the move made within the internal view from appropriateness or rationality to normative reasons is a mistake, in two ways. First, the fact that the emotions have evolved under selection pressure suggests that we should seek to look through them to any gains they may bring us in terms of our well-being, before taking the internal view of them at face value. It is true that, as is the case with many emotions, it is hard to take the external point of view on blame. The external view is problematic in the same sort of way that utilitarian views of punishment are often alleged to be, in that the sanction is isolated from the nature of the action. It might be said that utilitarianism may require the death penalty for those parking illegally, for example, or even for someone entirely innocent of any crime, if utility or well-being is maximized overall.[18] This seems not only inappropriate, but extremely unjust. Utilitarians, however, have a standard response to this objection. First, they can claim to be providing an alternative moral position to one based on views about injustice. So a mere conflict with that position is not in itself a difficulty. Second, they can explain our opposition to injustice as itself based on utilitarian considerations.[19] Utility is likely to be maximized overall, the argument goes, if we live by principles forbidding injustice. A similar strategy is available to the defender of the external view of blame, one analogous also in structure to that I used above to explain why morality functions best if we believe it to be a source of reasons. Blame, and the other emotions, will not serve their social functions unless there is some rationale internal to them which is commonly accepted by members of a society. But this rationale can itself be explained from the external point of view.

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[15] 'Emotion and Sentiment', 209.
[16] *The Rationality of Emotion*, 143; cf.Greenspan, *Emotions and Reasons*, 3; Nussbaum, *Love's Knowledge*, 79.
[17] See Greenspan, *Emotions and Reasons*; Skorupski, 'Reasons and Reason'.
[18] The most famous such example is that of the sheriff required to hang the innocent man to prevent a riot. See McCloskey, 'An Examination of Restricted Utilitarianism'.
[19] See Bales, 'Act Utilitarianism: An Account of Right-making Characteristics or Decision-making Procedure?'; Hare, *Moral Thinking*.

Consider fear. It is hard to believe that fear did not evolve as a mechanism for directing attention to threats and motivating avoidance of them.[20] For it so to function requires that we see such threats – spiders, say – as intrinsically fearful, that is, such that we have a reason to fear and hence avoid them. But in a world in which spiders and similar insects were always clearly harmless, it would be peculiar to claim that they were fearful. Similarly, in our world it would be odd to fear grass; but not so in a world in which grass was highly electrically charged. Claiming that an action is 'intrinsically blameworthy', then, is as implausible as claiming that spiders are 'intrinsically fearful'. In our world, we have a reason not to seek to overcome our fear of spiders, in that they can be dangerous, and our fear may assist in our identifying them and avoiding them. But it is the potential threat to our well-being that grounds the reason. The emotion of fear is transparent in the same sort of way as are morality and law. We must seek to see through it to any reasons that lie behind it.

The second problem with the move from appropriateness to normativity in the internal view is that, as we shall see in the following chapter, normative reasons are best understood as *practical* reasons, that is, as reasons for *actions*; and in that sense there cannot be a normative reason to feel any emotion. There can be reasons to resist certain emotions in particular cases, or to initiate strategies that will result in one's feeling or not feeling certain emotions to some degree or other.[21] But the rationality of emotions in itself is a matter of their *intelligibility*. For the emotions to function, as already noted, there must be some stability and agreement in their scope. Amusement is ordinarily tied to what is ordinarily accepted as funny in one's society, and suddenly finding oneself amused at the taste of potatoes would in most people be quite unintelligible to themselves (and note that it is intelligibility of which de Sousa speaks in the quotation above). It is almost unimaginable that there could be a case for seeking as far as possible to extirpate one's capacity for any particular emotion. But whether one has a reason to seek to feel or not to feel certain emotions in certain circumstances (for someone inclined to be rather gloomy to seek to feel joy, for example, or for someone brought up as a racist to seek to avoid disgust at eating alongside those she has been taught to despise) is a matter the great significance of which may be clouded by reliance on the internal view of emotions and their rationality.

3. Avoiding the Moral Concepts

I began this chapter by asking what reasons we have, and have now shown that we have no moral reasons. The only kind of morality is positive morality, and that in itself provides us with no reasons for action. But it would be a mistake to think that we can immediately conclude that, if there are no moral reasons, there is no reason to do anything, or to conform to positive morality in some form, or that there is reason to do whatever one wishes, or to pursue one's maximal self-interest. As far as reasons are concerned, everything is still up for grabs. Given the nature of our discussion so far, we must first consider morality and attempt to see through it to any reasons that might lie behind it.

The most effective way to do that, I suggest, is to avoid moral terminology as far as possible. There is one overriding reason for this, and two subsidiary ones. The

[20] See Fessler, 'The Evolution of Human Emotions'.
[21] de Sousa, *The Rationality of Emotion*, 11.

overriding reason is the following. The primary question in ethics is what normative reasons for action we have. Normative reasons can be more or less ultimate. I have a reason to catch the bus, because I have a reason to visit the dentist, because I have a reason to avoid suffering, because I have a reason to advance my own well-being. That final reason is *ultimate*, in the sense that there is no further normative reason for advancing my own well-being and it is the normative force of that reason which is inherited by the actions in the rest of the chain described. That is, I have a reason to catch the bus, other things being equal, only in so far as catching the bus is the action which will most advance my own well-being. There are no ultimate moral reasons, so there is no need for us to consider those many philosophical views which postulate them. It may be that considering them turns out to be of indirect benefit, in that we find that they point us in the direction of genuine ultimate reasons. But we should try to do without them to begin with and see how we get on.

A second reason to avoid moral terminology is related to the hermeneutic considerations raised at the close of the previous section. We may be misled into thinking that because some moral quality can plausibly be ascribed to some action (such as that it is wrong, or cruel), we have, just because of this, a reason to avoid it. More importantly (and this is the third reason for avoiding moral terminology), even if we remain clear on this point, moral language may skew our judgement. We have been brought up from our earliest days to live by a positive morality according to which certain actions are more or less strictly forbidden. If we are going to try to see through that morality to any reasons that lie behind it, we should try to avoid the risk of allowing our moral emotions to guide our judgement. Consider someone who has been brought up to accept a code of honour, and who believes that he must fight a duel to the death over some trivial matter. If he is asked to reflect upon his decision in moral terms, it is quite likely that as soon as he sees that his refusal to fight would be dishonourable, his emotions will be engaged and he will conclude that of course he has a reason to accept the challenge. But if he is asked to reflect upon the matter in less heated terms, it may be that he will see through the concept of dishonour to the rational emptiness behind it. The same goes for us. Consider the following case.

> *Blindness.* On Monday, I blind a stranger to prevent his buying the last copy of a CD I want to buy. I buy the CD. On Tuesday, I buy another CD, knowing that I could have given the money to Sightsavers and prevented the blindness of at least one person.

According to the morality we have been brought up with, though the effect on the individuals concerned is roughly equal, the blinding is forbidden, whereas the failure to prevent blindness is permissible. This kind of morality is what we would expect to have emerged from the evolutionary process. A group cannot function well if its members are permitted to harm one another; whereas permission to allow strangers to suffer would if anything advance the fitness of the group itself to survive. Given that such reactions have been engendered in us by evolution, we should not endanger the rationality and impartiality of our normative theory by allowing them to interfere with our judgement.

In seeking to avoid the influence of the emotions, I am swimming against a strong current in contemporary ethics. Writers such as Bernard Williams, Martha Nussbaum, Lawrence Blum, Michael Stocker, and many others, have mounted arguments in favour

of allowing the emotions to play a significant role in ethics.[22] Here is a typical statement of the general position, from the first page of Nussbaum's *Upheavals of Thought*:

> If emotions are suffused with intelligence and discernment, and if they contain in themselves an awareness of value or importance, they cannot, for example, easily be sidelined in accounts of ethical judgment, as so often they have been in the history of philosophy. Instead of viewing morality as a system of principles to be grasped by the detached intellect, and emotions as motivations that either support or subvert our choice to act according to principle, we have to consider emotions as part and parcel of the system of ethical reasoning. We cannot plausibly omit them, once we acknowledge that emotions can be true or false, and good or bad guides to ethical choice.

As is not uncommon in the writing of the contemporary advocates of the emotions in ethics,[23] Nussbaum here ignores an important distinction between ethics understood as that set of principles which captures the truth about which normative reasons we have (what we might call a 'normative ethics'), and ethics as what constitutes an agent's decision procedure, the most obvious example here being a positive morality. Nussbaum says that our aim should not be a 'system of principles to be grasped by the detached intellect'. But along with most other advocates of the emotions, she herself offers just such a system. Indeed it is hard to see how any substantive normative ethics could be anything other than such a system. The very view that Nussbaum states in this paragraph is not something she has arrived at through listening to her emotions. How could it be?[24] It is a philosophical position, which she has arrived at through reflection and argument. According to that position, roughly speaking, we have strongest normative reason to act according to the deliverances of 'appropriate emotion'. Consider this example from another work of Nussbaum's:

> 'Here is a case where a friend needs my help': this will often be 'seen' first by the feelings that are constituent parts of friendship, rather by pure intellect. Intellect will often want to consult these feelings to get information about the true nature of the situation. Without them, its approach to a new situation would be blind and obtuse.[25]

I have already explained why I think such a normative ethics runs the risk of being unreflective or unjustifiably conservative. The canons for the 'appropriateness' of the emotions have been shaped by non-rational factors such as selection pressure, and often appear dubious in the light of rational reflection (as may be the case with *Blindness*, for example, and surely is the case with, say, racist disgust). Further, if following one's emotions is thought, in certain circumstances, to be justifiable, many versions of the

[22] See e.g. Williams, 'Morality and the Emotions'; Blum, *Friendship, Altruism, and Morality*; Stocker, 'How Emotions Reveal Value and Help Cure the Schizophrenia of Modern Ethical Theories'; Nussbaum, *Love's Knowledge*.
[23] See e.g. Williams's claim that impartial theories provide agents with 'one thought too many', 'Persons, Character and Morality', 18.
[24] For an insightful defence of the claim that emotions do not involve judgements, see Peacocke, *The Realm of Reason*, 252-65.
[25] *Love's Knowledge*, 79.

views in opposition to which the advocates set up their own position can allow for the same emotion-based decision procedures as are recommended by Nussbaum.[26]

Michael Stocker objects that such 'split-level' theories are 'schizophrenic':

> Those theories misunderstand, and often do not allow for, large and important parts of human life, including such important goods as love and friendship. For here, motivation and value must come together if the goods are to be actualized: if I do not act for your sake, then no matter whether what I do is for the best, I am not acting out of friendship.[27]

An impartialist – a utilitarian, for example -- might claim here that her motivation to help her friends is the same as Stocker's. It is based on natural and spontaneous concern for their interests. Nevertheless, Stocker may point out, that concern is out of line with the utilitarian conception of impartiality, according to which no one matters more than any other. But that is a view at the level of normative ethics. Exactly how much concern one should feel for particular individuals is a matter of what that utilitarian normative ethical principle says about our 'decision procedures'. The utilitarian agent does not have to 'pretend' that her friend matters more than others 'from the point of view of the universe', to use Sidgwick's phrase.[28] She merely has to act on her emotions, and in so doing she may well produce the best state of affairs.

Let me now return to the matter at hand: the avoidance of the moral concepts. Which concepts do I have in mind? That which has perhaps received greatest attention in philosophy during at least the last fifty years is 'ought', and I shall say more about that in the next section. There are of course many moral concepts other than 'ought', though all of them will be related to 'ought'. At the most general level, there are the concepts of 'right' and 'wrong', where wrongness may be understood in terms of what is 'required', 'demanded', or 'forbidden', and rightness in terms of what is 'permitted'. There is also a sense of 'right', of course, in which it means 'required': 'This is the right thing to do' is equivalent to 'This is required' or 'Doing other than this is forbidden, that is, wrong'. The concept of the moral 'must' is also to be avoided, as are notions of what is 'morally good' or 'morally bad'. More specific moral concepts include that of 'moral value', and particular alleged moral values such as 'fairness', and the concepts of 'virtue' and 'vice' and of individual virtues such as 'justice' or 'generosity'.

Earlier I claimed that using moral concepts may skew our judgement when we are considering which account of our normative reasons for action is correct. The example I gave was the deeply inculcated tendency all of us have to view causing a certain amount of suffering in certain circumstances as forbidden, and allowing the same amount of suffering as permissible. Now it may well be that we have much stronger reason to avoid causing suffering than to prevent it. But that is a matter for impartial and rational consideration, and not something to be decided by the contingencies of our moral emotions.

It might now be objected, however, that I am skewing normative theory in the opposite direction, away from theories which require statement in moral language to

[26] See e.g. Railton, 'Alienation, Consequentialism, and the Demandingness of Morality'; Crisp, 'Utilitarianism and the Virtues'.
[27] 'How Emotions', 173. See also 'The Schizophrenia of Modern Ethical Theories'.
[28] *Methods of Ethics*, 382.

theories which do not – and which are perhaps likely to come from the broadly utilitarian tradition. But this objection is incorrect. It is true that act-utilitarianism can fairly easily be translated out of moral language from:

> *Moral Utilitarianism:* It is wrong not to maximize utility.

to:

> *Normative Utilitarianism:* Any agent has ultimate reason (only) to maximize utility.[29]

But the same strategy can be applied to paradigmatic 'deontological' theories such as that of Ross.

> *Rossian Deontology:* Any agent has the following *prima facie* duties: fidelity; reparation, gratitude, justice, beneficence, self-improvement, non-maleficence.
>
> *Normative Rossianism:* Any agent has the following reasons: to abide by her contracts; to provide certain goods to those whom she has treated in particular ways detrimental to them; to express thanks for benefits; to distribute well-being according to certain rules concerning the status of possible beneficiaries; to increase the degree to which she possesses intelligence and certain traits of character; not to cause decreases in the overall well-being of others.

Further, even Kantian ethics may not need as much restatement as might be expected, since, though many of the arguments use moral terms, in its essential form the position is couched in non-moral language:

> *Kantianism:* Act only on that maxim by which you can at the same time will that it should become a universal law.[30]

To take one final example:

> *Virtue Ethics*: Any agent is required to act as the virtuous person would act, that is, the person with courage, justice, generosity, etc.

may be restated as:

> *Normative Virtue Theory*: Any agent has ultimate reason only to act as the person would act with character traits that enable them in certain circumstances appropriately to control their fear, distribute goods in certain ways, etc.

Of course, explaining and providing arguments for Rossian, Kantian, or virtue ethics without using moral terminology will be hard; but it is essential if we are to avoid

[29] The parenthetic 'only' allows for utilitarian theories according to which the only reasons are moral, and those that allow for other kinds, such as reasons of self-interest or aesthetic reasons.
[30] *Groundwork for the Metaphysics of Morals* 2.25 [4: 421].

postulating ultimate reasons where there is none, as well as the risk of being led to our normative theory by emotion rather than reason.

4. Anscombe and the Myth of Obligation

In a famous paper, 'Modern Moral Philosophy', published in 1958, Elizabeth Anscombe also argued for the conclusion that we should avoid using the notion of 'ought', claiming that – once we have an adequate account of the psychology of human action – we should use instead the language of the virtues. I have recommended that we eschew this language as well, but it might be thought that my argument is merely an extension of hers or that her argument could provide further resources for my approach. Since some of her central arguments do indeed focus on a legalistic interpretation of modern morality, further examination of her position is called for.

Anscombe's suggestion is that the views of modern moral philosophers (she means those since Butler) are stated using moral concepts such as 'ought' that have now lost the context within which they once made sense. There is a perfectly respectable use of 'ought' – we might call it the 'non-moral "ought"' – which relates straightforwardly to non-moral goodness or badness. For example, 'This engine ought to be oiled' means something like, 'Running without oil is bad for this engine'. But such concepts

> have now acquired a special so-called 'moral' sense – i.e. a sense in which they imply some absolute verdict (like one of guilty/not guilty on a man) on what is described in the 'ought' sentences used in certain types of context… [They] acquired this special sense by being equated in the relevant contexts with 'is obliged', or 'is bound', or 'is required to', in the sense in which one can be obliged or bound by law (30).[31]

This legalistic sense of 'ought', Anscombe suggests, emerged from Christianity's 'law conception' of ethics, that is, a conception according to which 'what is needed for conformity with the virtues failure in which is the mark of being bad *qua* man … is required by divine law' (31). I take it that, in fact, Anscombe would count as a law conception any view according to which there is a divine law governing our action, and would not wish to restrict that notion only to conceptions of ethics expressed in terms of the virtues. For her view is that the claim of, say, a modern utilitarian that we ought, morally, to maximize utility may be taken as equivalent to the claim that divine law requires us to maximize utility. And herein lies the problem: Most modern utilitarians would not accept the existence of any such law. All that remains is the 'psychological' force of the notion (primarily, presumably, some kind of 'anti-attitude' to those who do what it is believed they ought not), and very little else. 'Ought' is 'a word retaining the suggestion of force, and apt to have a strong psychological effect, but which no longer signifies a real concept at all' (33). As Anscombe puts it, the modern usage of 'ought' is 'as if the notion "criminal" were to remain when criminal law and criminal courts had been abolished and forgotten … [W]here one does not think there is a judge or law, the notion of a verdict may retain its psychological effect, but not its meaning' (31, 33). Anscombe takes these claims to apply also to related moral concepts, such as 'obligation', 'duty', 'morally right', and 'morally wrong', and recommends:

[31] All page references in the text are to the version of Anscombe's article cited in the bibliography.

> We should no longer ask whether doing something was 'wrong', passing directly from some description of an action to this notion; we should ask whether, e.g., it was unjust; and the answer would sometimes be clear at once (34).

Anscombe supports her argument through a contrast between modern usage and that found in Aristotle's *Ethics* (26-7). In particular, she suggests, the modern sense of 'moral' is nowhere to be found in Aristotle. Aristotle distinguishes between the 'moral' and the 'intellectual' virtues, but the intellectual virtues themselves have what we would describe as a 'moral' aspect, in so far as certain intellectual failures are seen by Aristotle as blameworthy. We might want to say '*morally* blameworthy', but:

> [H]as Aristotle got [the] idea of *moral* blame, as opposed to any other? If he has, why isn't it more central? There are some mistakes, he says, which are causes, not of involuntariness in actions but of scoundrelism, and for which a man is blamed. Does this mean that there is a *moral* obligation not to make certain intellectual mistakes? Why doesn't he discuss obligation in general, and this obligation in particular? If someone professes to be expounding Aristotle and talks in a modern fashion about 'moral' such-and-such, he must be very imperceptive if he does not constantly feel like someone whose jaws have somehow got out of alignment: the teeth don't come together in a proper bite.

Given her view that we should give up on 'ought', and the claim that the problematic notion of obligation is absent from Aristotle's thought, we can understand Anscombe's recommendation that we return to an essentially Aristotelian form of virtue ethics – though, she says, we should begin rather with psychology rather than with straightforward first-order ethics, seeking to understand concepts such as 'action', 'intention', and 'virtue' more clearly than did Aristotle himself (30, 37).[32]

Let me turn then to Anscombe's general position on the moral concepts. An important preliminary point is that, even if Anscombe were right about the special modern sense of 'ought', it would not follow that we should return to any particular first-order ethics, such as one with any close similarity in content to Aristotle's or indeed Anscombe's. For many modern debates – such as those between Rossian intuitionists and utilitarians – could be carried on in the terminology of virtue (is gratitude, say, a self-standing virtue, or is every other alleged virtue to be subsumed under benevolence?). Anscombe's strategy is to suggest that, in returning to Aristotle, we drop the notions of 'ought', 'right', and 'wrong' entirely, and use only what Williams has called the 'thick concepts', such as 'injustice' (40).[33] Her hope is that we shall also accept that an action's being unjust is a matter of fact, and always avoid injustice, because, on the assumption that the virtues could not conflict, we no longer have the conceptual apparatus to ask whether there may be cases in which injustice would be right (40-1). Again, even if

[32] Anscombe says that she sees no 'no harm' in moving towards an Aristotelian conception, as opposed to a law conception, of ethics (40). But later in her article (43-4), she appears to express some doubt about the enterprise. For further discussion, see below, 000-000.

[33] Williams, *Ethics and the Limits of Philosophy*, 129. If anything like my account above of the moral concepts is correct, it is doubtful whether one could unpack the content of thick moral concepts without reference to thin.

Anscombe's history were right, we might wonder whether we could not raise the question in Aristotelian terms whether a virtuous person might not in certain circumstances procure the punishment of the innocent, or, indeed, whether we might not invent some new moral concept in which this question could be asked. Indeed Anscombe recognizes the former possibility:

> It may be possible, if we are resolute, to discard the term "morally ought", and simply return to the ordinary "ought", which, we ought to notice, is such an extremely frequent term of human language that it is difficult to imagine getting on without it. Now if we do return to it, can't it reasonably be asked whether one might ever need to commit injustice, or whether it won't be the best thing to do? Of course it can. (43)

Anscombe goes on to repeat her point that we cannot decide such questions at present because 'philosophically there is a huge gap, at present unfillable as far as we are concerned, which needs to be filled by an account of human nature, human action, the type of characteristic a virtue is' (43-4). But this raises the question how Anscombe felt entitled to such certainty herself in this paper about what justice required.

Now consider Anscombe's 'criminal' analogy. What might be going on in the culture in which judicial institutions have been forgotten? There would of course be no place for the use of the term within those very institutions. But it might well be used of those who commit certain actions which were once crimes, such as assault. If so, the most plausible initial interpretation would be not that 'criminal' no longer had any sense, but that it had changed its sense to become equivalent to something like 'morally bad individual'. So we should ask whether, even if Anscombe is right about the past sense of 'ought', the term might not have taken on some new sense. It is indeed a little surprising to find the Wittgensteinian Anscombe looking not to use but to etymology. A simple 'open question argument'[34] throws the onus directly onto Anscombe: Whether 'ought' means 'required by divine legislation' seems an entirely open question, which fact at least suggests that the senses of each are different.

Recall that Anscombe allows for uses of 'ought' – non-moral uses – which involve no reference to divine law, such as, 'This engine ought to be oiled'. As I have said, Anscombe sees this as equivalent to something like, 'Running without oil is bad for this engine'. But this seems to leave out any reference to action. That phrase, in the standard case, is better seen as amounting to, roughly, '[Given that you want this engine to function], you have a reason to oil it'. That is, it is something resembling what Kant would have called a hypothetical imperative. So we shall need to ask whether there is space in our conceptual scheme for something like a Kantian categorical imperative, an action-guiding analogue to Anscombe's 'absolute verdict'.

With these thoughts in mind, let me now address the contrast Anscombe seeks to draw between Aristotle and modern moral philosophy. Anscombe asks whether Aristotle has the notion of 'moral blame', as opposed to any other. Her example of non-moral blame is criticism of the workmanship of a product or the design of a machine, but this is problematic, since such blame could well be understood to be moral criticism of the worker or designer, of her lack of conscientiousness or attention to detail perhaps. A better example might be someone's blaming the weather for ruining their holiday. Such

[34]Moore, *Principia Ethica*, 15-17.

blame (if that is what it is) may have certain properties in common with some paradigm cases of moral blame: One may be angry at the weather, for example. But what is missing is the possibility of holding the object blamed responsible, on the assumption that the object has the capacity to act for reasons, and may now have to pay the penalty for not doing so appropriately in this case. Does Aristotle have this idea of moral blame? He certainly does: Praise and blame fix the boundaries of the voluntary, which he seeks to elucidate in the first five chapters of the third book of the *Ethics*, and he frequently notes that the excesses and deficiencies of character that constitute the vices are to be avoided as blameworthy.[35] It is central to his conception of ethics.

But what of the law conception of ethics? Surely that is not to be found in Aristotle? Anscombe is of course right that Aristotle does not claim that we must be virtuous because it is required by divine law.[36] But her claim that the law conception led to a change in sense of 'ought' such that the word became 'equated in the relevant contexts with "is obliged" , or "is bound", or "is required to", in the sense in which one can be obliged or bound by law, or something can be required by law' (30) is less plausible.[37] For that sense can be found in Aristotle. Anscombe suggests that the Greek word '*hamartanein*' was the one most apt for expressing the concept of being bound. *Hamartanein* means something like 'to miss the mark', but Anscombe fails to consider whether Aristotle may have had in mind the sense of 'missing the *moral* mark', that is, 'being bound to hit a moral target but failing'. It can be used, in deliberate contrast with *adikein* ('to commit injustice or wrong-doing'), to mean *mere* 'error', but this is not usual: '[A]ny crime or sin can be called "error" in Greek'.[38]

It is true that there is little room in Aristotle's ethics for the notions of being permitted or excused, which Anscombe sees as correlative to 'being bound' and as likewise the 'consequence of the dominance of Christianity' (30). But that is a result not so much of the language in which he states his position, but of the content of that position itself.[39] As is the case with, say, utilitarianism, and not the case with the 'Hebrew-Christian ethic' to which Anscombe subscribes, it is not easy to find room in Aristotle's ethics for 'agent-centred options',[40] in the sense of a sphere of life free from moral demands in which it is entirely up to the agent how she shall act, or for a clear and distinct conception of supererogation.[41] There is always something that one is required to do: to act as the virtuous person would act. Any deviation from that standard would be to

[35] See e.g. Aristotle, *Nicomachean Ethics*, 1109b30-31, 1126b7. The contrast between 'moral' and 'intellectual' virtues in Aristotle noted by Anscombe (26-7) is between virtues of character and those of thought. Aristotle's 'morally good person' would be required to possess both.

[36] This is not to say that the notion was alien to the Greeks. Zeus came to be seen as the most prominent of the gods, and part of his role was to punish moral transgressions. This aspect of Zeus can be found even in Homer (C8 BCE) (Lloyd-Jones, *The Justice of Zeus*, 7, 77-8) (see also Hesiod, *Opera et Dies*, e.g. 9-10, 238-9). See in general Dover, *Greek Popular Morality in the Time of Plato and Aristotle*, 246-61, and in particular 255, which gives some useful examples from the orators in which certain positive laws are ascribed to divine prescription. For a particularly clear expression of a divine law conception of ethics, see Sophocles, ???, 450-7. We should remember also of course that for Aristotle theology is 'first philosophy', so that there is a theological grounding for ethics as for everything else.

[37] See Baier, 'Radical Virtue Ethics', 128.

[38] Dover, *Greek Popular Morality*, 152. One finds a similar contrast – this time between 'wickedness' and the 'frailty' of the tragic hero – in Aristotle's account of tragedy (*Poetics*, 1453a8-10).

[39] There are of course Greek concepts Aristotle could have used: *exesti* ('it is permitted'), for example.

[40] See Kagan, *The Limits of Morality*, 3.

[41] Aristotle does speak of 'superhuman virtue' at *Nicomachean Ethics*, 1145a19. But gods and heroes likewise cannot go beyond what is required by virtue at their level.

'miss the mark', and that of course is never permitted. And the fact that Aristotle uses *hamartanein* in the moral context, in which missing the mark is blameworthy, unless also involuntary, shows that he does – *pace* Anscombe (30-1) – have a 'blanket term … meaning much the same as our blanket term "wrong"'. Missing the mark, in the moral context, just is acting wrongly, according to Aristotle. And to say that someone has missed the mark is to express an 'absolute verdict' on them: They have acted wrongly, and are hence candidates for blame.[42]

In fact, *hamartanein* strikes me as not the most obvious word in Aristotle to study in search of claims about moral obligations. That word is *dei*, a standard word in Greek for 'one ought', 'one should', or 'one must'.[43] It is most plausibly seen as an impersonal form of *deō*, 'to need'. So it is quite natural to translate Aristotle's doctrine of the mean as follows:

> For example, fear, confidence, appetite, anger, pity, and in general pleasure and pain can be experienced too much or too little, and in both ways not well. But to have them at the time one ought [or: it is necessary; or: one is required to; or: one is obliged to; or: one is bound to; or: it would be wrong not to; or: one should; or: one must; or: one has to; or: at the right time; or: …], about the things one ought [or: it is necessary…] … is the mean and best.[44]

Indeed, *dei* came to be used in the fifth century, in contrast to *chrē*, for 'objective' necessities or constraints.[45]

What about the word 'ought' itself? Its history is illuminating. It is a petrified imperfect of 'to owe', which has now taken a self-standing present ('You ought to φ'), past ('You ought to have φ-ed'), or future sense ('When the clock strikes, you ought to φ'). 'Owe' replaced the Old English *sculan* (a form of 'shall', from which derives 'should' ('You should φ')), which meant both 'to owe' and 'to have it as a duty'.[46] Now it is almost certain that *chrē* is related to *chreos*, ('need' or 'debt').[47] This suggests a general conception of practical necessity or 'bindingness' running from the Greeks, through Old English, into the modern day.

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[42] Here it is worth noting the origin of 'right' in the Latin root 'reg-', 'to make or lead straight', and the fact that 'wrong' has for at least a thousand years had as one of its senses 'having a crooked course or direction; twisted', and has been used to mean 'marked by deviation' (which is perhaps why the *OED* chooses to elucidate its moral sense as 'deviating from equity, justice, or goodness'). For these and other relevant references in my text below, see *Oxford English Dictionary*, s.v.

[43] Nor should one forget *chrē* (see below in the text), or *adikia*, 'justice', especially the notion of 'universal justice' employed at the beginning of *Nicomachean Ethics*, bk. 5; see Pigden, 'Anscombe on "Ought"', 33.

[44] *Nicomachean Ethics*, 1106b18-22. Translation adapted from that cited in bibliography.

[45] See Williams, *Shame and Necessity*, 184, who refers to Bernadete, 1965.

[46] See Mitchell, 1985, sects. 932-3, quoting S. Ono: 'It was towards the end of the eleventh century that the meanings [of *agan*] "to have to pay" and "to have as a duty (*to do*)" became prevalent. In the earlier period these meanings were usually expressed by *sculan*'. I am grateful to Brendan Biggs for this reference, and for pointing out to me that the connection between possession ('owe') and necessity is found today also in the word 'have'. Like *dei* (Liddell and Scott, 1940, s.v.), 'shall' in Old English was used to express necessity of various kinds; cf. *OED*, s.v., B.II.3: I am most obliged again to Brendan Biggs for translating and placing in context the passages of Old English there cited. Note for example the passage from *Gregory's Past* (dating from c. 897), according to which a bishop 'must remember himself, even if he is unwilling', which may plausibly be seen to concern an alleged moral obligation or duty.

[47] Cf. Goodell, 1914, 94. Note also Nietzsche's attempt to account for the origin of guilt in the legal notion of debt (1967, II.4, 8).

Here, then, as far as the moral sense of *dei* and 'ought' is concerned, we have a metaphor for morality as something that 'binds' us, a matter of necessity, whose requirements are, like a debt, to some degree inescapable -- something adherence to which can be demanded from us. A not implausible hypothesis is that this conception of morality as something binding emerged from the sense of morality as something external to one's self and its largely egoistic desires, putting constraints on one's actions, these constraints to be understood as a kind of 'law' (*nomos*). The divine law conception of ethics, then, is one early expression of the notion of a binding morality, a notion which can be expressed, as in Aristotle and secular modern philosophy, without reference to divine law.

So, far from its being the case that Aristotle's ethics provides us with an alternative to the modern conception of 'ought', we have found the same metaphor underlying both ancient and modern thought – of morality as a set of constraints, requirements, or 'debts'. As we have seen, this aspect of morality can be seen as analogous to law. Just as the law constrains or requires, and will exact its penal 'debt' from those who transgress it, so the same is true of morality. In one sense, of course, both positive morality and positive law do constrain me. If I violate either, I am likely to suffer various sanctions. But the mere fact that there are such sanctions is not sufficient to give either system normative or reason-giving content. Since 'ought' embodies the myth of bindingness, then, we should avoid it – and other moral terms -- not for the reasons Anscombe offers, but for those outlined earlier in this chapter.