

Can Moral Philosophy Teach Us Anything?

Charles Landesman

I

“Probably to most students of Moral Philosophy there comes a time when they feel a vague sense of dissatisfaction with the whole subject.” This is how H. A. Prichard introduced the problem of his famous 1912 essay “Does Moral Philosophy Rest on a Mistake?”¹ Moral philosophy is concerned to prove that the things we take upon reflection to be our moral obligations or duties really are our obligations and duties. The mistake lies in thinking that there are any such proofs. Any attempt to offer a proof will fail to be more convincing than our immediate sense of obligation itself. Our moral intuitions are all that we have to rely upon, and reasons extrinsic to the nature of the action whose obligation is in question fail to be persuasive.

In his new book, *The Problematics of Moral and Legal Theory*,² Richard A. Posner, the prolific Chief Judge of the U. S. Court of Appeals for the Seventh Circuit, also argues that moral philosophy rests upon a mistake and for much the same reason. There are no philosophically persuasive proofs determining our obligations. Despite this agreement, Prichard and Posner approach the question from quite different perspectives. To Prichard the hardness of a statement of moral obligation is of the same degree as the hardness of a mathematical truth. Just as there is no argument to convince us that $7+5=12$ that is more persuasive than what we find when we reflect directly upon this equation, so there is no argument to convince us that promises ought to be kept that is more persuasive than what we find when we reflect upon the nature of promising. For Prichard, moral facts are discovered in the way that mathematical facts are discovered, namely by reflecting upon their content. Posner, on the other hand, denies that there really are moral facts that can be discovered either by empirical methods or rational reflection. A moral code is a set of norms functioning as a system of social controls; it contributes to a society’s survival and to other social goals that are achievable only by keeping the self-interest of individuals in check. A statement of moral obligation is not something that can be judged to be either true or false; nor does our accep-

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tance of it count as knowledge. There is no objective moral order to be right or wrong about. To the extent to which moral philosophy is an effort to reveal an objective moral order (moral realism), then it rests upon a mistake.

Posner calls himself a relativist: “morality is local . . . there are no *interesting* moral universals” (6). Our moral intuitions are not insights into transcultural moral universals but are merely symptoms of internalized culturally determined norms. Posner waffles somewhat over the question of moral universals. There may be some, but they are not interesting. Some of them are mere tautologies such as “Murder is wrong” where “what counts as murder . . . varies enormously from society to society.” Others are “rudimentary principles of social cooperation—such as don’t lie *all* the time or break promises without *any* reason or kill your relatives or neighbors indiscriminately” (6). It is not clear why these are uninteresting since they seem to be indispensable in sustaining a climate of comfort, trust, and cooperation in our social interactions. If the moral codes of human social groups include such principles and special cases of them, then the idea that morality is local is itself uninteresting if not false. In any case, the extent to which moral codes are made up of principles common to them all is an empirical question to which Posner pays little attention. Relativism in this empirical sense is a matter of degree. Some rules are limited to certain groups such as the prohibition against eating pork or consuming alcoholic drinks. But there may well be a core of moral rules realized in almost all social groups. Perhaps what is central to Posner’s conception is not this empirical relativism so much as his “*adaptionist* [or functionalist] conception of morality, in which morality is judged . . . by its contribution to the survival, or other ultimate goals, of a society or some group within it” (6).

II

There is nothing particularly original about the functionalist conception of morality Posner offers. One would expect something like this from almost any thinker oriented toward the social sciences. The main difficulties with moral realism were formulated over two hundred and fifty years ago by David Hume in his *Treatise of Human Nature*: Normative rules cannot be reduced to or deduced from statements of fact; the function of rational procedures is to identify efficient means to realize our ends; our ultimate ends are beyond rational consideration; disagreements with others over moral issues can be settled by empirical means only if there is substantive agreement on moral norms; where there is no agreement, appeal to reason sooner or later comes to an end. A good deal of moral discussion is rhetorical rather than rational, and it frequently appeals to the emotions rather than facts because verifiable facts soon run out and, besides, there are no moral facts.

The main point of interest in Posner’s book, then, lies not in the underlying philosophical standpoint but in his efforts to debunk moral philosophy. His sallies against the professors of philosophy (the purveyors of what he calls

academic moralism) and the professors of law who think that moral philosophy is useful in judicial decision making are both harsh and humorous. Here is a passage that is particularly brilliant and illustrates the ardor of his animus against the philosophers:

The moral codes of academic philosophers tend in fact to be at once nonstandard and hackneyed, predictable, and seemingly unexamined. The liberals favor abortion rights à outrance, women's rights, greater equality of incomes, and a mild socialism. They disapprove of Soviet-style communism, but very quietly, with maybe a soft spot for East Germany, or Cuba, or Yugoslavia—or even Mao's China. They are internationalists, multiculturalists, sometimes vegetarians. They are against capital punishment, and so it might be said of them unkindly that they pity murderers (and penguins, and sea otters, and harp seals) more than fetuses. They support the theory of evolution when the question is whether creationism should be taught, but reject it when the question is whether there is a biological basis for any of the differences in attitude or behavior between men and women. They want to regulate cigarette smoking out of existence but to permit the smoking of marijuana. They argue for abortion by analogizing mother and fetus to strangers (Thomson's analogy) but against surrogate motherhood by emphasizing the bond between mother and newborn They believe that people are prone to wishful thinking, cognitive dissonance, rationalization, hyperbolic discounting (shortsightedness), false consciousness, and all sorts of other cognitive disabilities that make market choices and folk beliefs lack authenticity; but they do not consider the effect these disabilities are likely to have on the power of academically directed moral deliberation to engender moral improvement (75-6).

III

Academic moralism is what Posner calls the effort by philosophers to employ philosophical arguments to justify or to establish on rational grounds obligations that the philosopher thinks are correct. The history of moral philosophy offers certain paradigms and styles of thinking about moral issues. One finds in the writings of Aristotle, Aquinas, Hobbes, Locke, Kant, Bentham, Mill, Sidgwick, Rawls, and many others a variety of fundamental principles to determine how individuals ought to act, how society should be organized, and how life should be lived. One can resolve disagreements by appealing to the life of reason (Aristotle), natural law in various versions (Aquinas, Hobbes, Locke), the categorical imperative (Kant), the principle of utility in various versions (Bentham, Mill, Sidgwick), or the deliberations of free and equal persons in the original position under the veil of ignorance (Rawls). These fundamental abstract principles and methods can be used to determine the less abstract rules that constitute a moral code and thus directly or indirectly settle such outstanding moral questions as abortion, capital punishment, the extent of altruism, the distribution of income, the extent of free speech, the use of atomic weapons, and many more. They can be used by judges to decide cases in the "open area" where the legal rules and precedents run out. For the

academic moralist, moral philosophy constitutes a body of expert opinion to be used to establish the correct moral code, the one universal set of principles to guide the actions of mankind.

This characterization does not apply to all philosophers who work in ethics, only to those among them who presuppose (silently or explicitly) moral realism and universalism, who think that there is one right way to go that can be determined by philosophical reason. Although Posner rejects academic moralism, he does not deny that philosophers can make worthwhile contributions to the study of morality: they can analyze concepts deployed in moral thinking such as responsibility, intention, benefit, and cost in order to clarify their meaning; they can help elucidate the content of existing moral codes (along with anthropologists and sociologists); and they can apply insights from epistemology and the philosophy of language to understand the nature of moral discourse and the modes of justification of which it is susceptible. In fact, the framework within which Posner conducts his polemic against academic moralism owes a great deal to certain traditions within moral epistemology in its rejection of moral realism and its view of the limited role of reason in moral argument. Although Hume is mentioned only in passing, it is his work in moral epistemology that confers plausibility upon Posner's framework.

IV

What exactly is wrong with academic moralism? One of the aims of contemporary moral philosophy is to discover some method or style of argument that can help people resolve moral disagreements. What is the right answer to the question about the moral status of the fetus? What is the right answer to the question of the legitimacy of capital punishment? In Plato's Socratic dialogue *Euthyphro*, Socrates points out that disagreements about numbers can be settled by calculation and disagreements about length can be settled by measurement. But disagreements about moral right and wrong are capable of making us angry at one another and turning friends into enemies. Certainly it would be a gift from the gods to be able to settle such disagreements amicably. Since the gods themselves disagree, as Socrates pointed out, perhaps philosophical ethics can come to the rescue.

However, the contemporary equivalent of the gods atop Mt. Olympus (namely being a tenured professor in a top graduate program in philosophy) is in no better position to help us. We cannot, Posner thinks, turn to moral philosophy to eliminate the indeterminacy in our moral codes that leave so many issues unsettled for the simple reason that moral philosophy itself is divided into competing schools and points of view. The application of philosophical argumentation to moral problems, the attempt to resolve moral conflicts by the appeal to rational methods and rationally certified principles, generates its own form of indeterminacy. Unlike science whose empirical methods encourage and actually generate provisional agreement among the

experts, the methods of philosophy generate a proliferation of a wide variety of points of view. This may not be a bad thing, but it certainly thwarts the hope of producing agreements on moral issues among contending parties.

Posner insists that the arguments of academic moralists are weak and have no power to change our entrenched intuitions. Since they cannot attain agreement among themselves, what hope is there in producing agreement among parties that contend about real problems? "Every move in a normative moral argument can be checked by a counter-move" (53). "For every argument on one side of a moral issue there is an equally good one on the other side" (41). Since the arguments are mostly *a priori*, they cannot be supported by means of empirical procedures. Often what passes for arguments in moral philosophy are mere bare assertions surrounded by rhetorical rather than logical moves. Academic moralists frequently read their own preferences into their accounts of the content of morality. There is no privileged point of view, says Posner, to criticize the ends that society may adopt. Academic moralism is "ineffectual," "epistemically feeble," and futile. There is no evidence at all that philosophical systems have had much influence upon current practices. "Interminable moral disagreement and debate may not prove that there is nothing to academic moralism, but assuredly do not prove that there is something to it" (85).

Posner does not deny that moral philosophy has some value.

A moralist cannot persuade you by the methods of reason to one morality or another, but he can *offer* you a morality that you can accept or reject for reasons of pride, comfort, convenience, or advantage, though not because it is "right" or "wrong" At its best, moral philosophy, like literature, enriches; it neither proves nor edifies (31-2).

Moreover, Posner does not deny that our moral codes are susceptible of rational criticism. If a moral code generates logical inconsistencies or is a poor means to a society's ends or even thwarts some worthwhile end (as, for example, restrictions on birth control interfere with reducing population growth), then pointing these out is a worthwhile criticism. But this is not philosophical criticism; it is simply the application of logical and empirical methods to identify a supposed defect in an intellectual structure. Even if such errors are rectified, Posner doubts that there is such a thing as moral progress. Of course, changes occur, some of which we may approve but that does not represent absolute progress because there is no objective basis on which to compare our present with our past. "For in saying that reintroducing slavery would be morally retrogressive we would be describing our own moral feeling rather than appealing to an objective order of morality that might enable moral comparisons to be drawn between us and our predecessors" (23-4).

Moral change itself comes about not by means of philosophical argument but through emotional reactions to various experiences or through techno-

logical developments or discoveries of new empirical facts. Those individuals who skillfully cause people to change their values Posner calls moral entrepreneurs; they take advantage of the needs of the time to redirect people's emotions, using rhetorical devices rather than rational methods. Examples that Posner mentions of moral entrepreneurs—Jesus, Bentham, Hitler—indicate that we might not approve of many of the changes they have introduced or proposed. Moral change is not indicative of moral progress, although, relative to our own preferences, we might consider some changes to be improvements. But to say that X is an improvement over Y in the light of our current moral code and preferences does not mean that X is an improvement over Y in the light of an objective moral order.

Just as academic moralism is useless for Posner in resolving moral disagreements, it is also useless in the law. Judges who study moral philosophy will have no better basis for reducing the indeterminacy of law than judges who ignore it. As we saw, the fact of the proliferation of philosophical points of view means that philosophy itself breeds indeterminacy and disagreement. "Philosophical issues are not solvable by even the best-trained philosophers. Judges know or sense this and steer clear of such issues" (133).

Posner recommends that law should be based upon social science rather than philosophy. "The only sound basis for a legal rule is its social advantage, which requires an economic judgment, balancing benefits against costs" (208). Judges, he thinks, are not only appliers of law but they are, inevitably, makers of law; they should aim at the best result and hence need to rely upon social science to evaluate the consequences of alternative policies. Legislators make law as well, but judges do so only in the light of past decisions and precedents. For Posner, there is no duty to conform to precedent; one of the virtues of a legal system is its predictability, so there is a good reason to pay attention to the past. "The pragmatic judge may not ignore the good of compliance with settled rules of law" (263). But such compliance is not founded upon the intrinsic value of the settled rules but upon the utility of compliance for the future. For the pragmatic judge, the past is valued only in relation to the present and the future.

V

Let us test Posner's interpretation of academic moralism by reviewing a couple of examples drawn from the literature. The first, taken from an article by Peter Singer, is an effort to modify our understanding of our obligations to others. Singer argues that most of us "are failing to live a morally decent life" because we spend money on things we don't really need instead of using it to save and improve the lives of poor people, complete strangers who could be helped by our donations.³ He recommends that a household earning \$100,000 should donate \$70,000. The average household needs only \$30,000 for necessities; any amount beyond that should be given away.

The moral code most of us have internalized is not so exacting. It prescribes that we should be charitable to some degree, but does not require the extraordinary level of sacrifice that Singer recommends. We might praise people who live up to Singer's standards, but most of us would consider their donations beyond the call of duty. Our pre-reflective moral intuitions fail to support his claim that most of us are failing to live a morally decent life because we spend money on ourselves beyond the bare necessities of life.

Singer offers two arguments in favor of changing our moral code to comply with his recommendations. The first is his claim that donating funds beyond the bare necessities is required by the utilitarian morality he has adopted as his own. Utilitarianism evaluates actions by their consequences, and Singer thinks large donations produce benefits that clearly outweigh the costs. Now, utilitarianism comes in many forms and varieties, so it is not clear that the benefits would outweigh the costs in the long run and all things considered. For example, if everyone did as Singer recommends, our economy would collapse and untold misery would result. Singer is singularly naive in his idea that such a significant reallocation of the gross national product can only be beneficial on the whole. But let us suppose, for the sake of argument, that Singer is correct and that his proposal does receive support from utilitarianism. That shows that our actual moral code conflicts with utilitarianism. Our actual code permits us to care much more for our own good and for the good of members of our families and for our friends than for total strangers. We struggle to earn a living, and we are entitled to spend it on ourselves and those we care about. The fact that utilitarianism fails to support our practice might just as well lead us to reject that philosophy rather than change our practice. If Posner is correct, the utilitarian philosophy merely represents the preferences of a certain subset of moral philosophers; others are not required to live by it since there are no good arguments in its favor that are not matched by arguments in favor of other positions. Of course, Posner does recommend, as we saw, that policies should be based upon cost-benefit analysis, so he too leans toward utilitarianism. But he also thinks that the judge should respect public opinion and existing entrenched moral practices, and therefore he would not use utilitarian arguments to foster large scale changes in human behavior. Moreover, by his own arguments, even his own preference for cost-benefit analysis is just that, a preference of his, not something binding upon anyone else.

Singer himself suggests that human nature may not be sufficiently altruistic to motivate the large sacrifices he recommends. Perhaps people are not programmed to behave in that way; most people just won't do it. Perhaps that is why we consider such sacrifices to be beyond the call of duty. But that makes no difference to Singer. We can not conclude, he thinks, that there is no such obligation merely from the fact that human nature is unable to conform to it. We should just struggle to live up to the obligations that the objective moral

order ordains. The fact that human nature is against it does not tell him he might be mistaken about the nature of our obligations.

He offers a second argument, relying upon an example cooked up by Peter Unger. Bob has invested most of his retirement savings in an expensive antique car; one day he parks it near the railroad tracks and goes for a walk. He sees a runaway train coming that will kill a small child who is playing on the tracks. A switch is nearby to divert the train away from the child, but if he pulls the switch, it will smash into his car. He refuses to pull the switch and the child is killed. Singer comments that "Bob's conduct, most of us will immediately respond, was gravely wrong." Moreover, "Bob's situation resembles that of people able but unwilling to donate to overseas aid." Therefore, their conduct too must be gravely wrong.

This example is intended to make it intuitively obvious to us that great sacrifices are morally required whether or not we accept the utilitarian philosophy. Now consider this example. Your bank offers you the following opportunity: whenever you accumulate \$10,000 in your savings account, it will automatically send the money to a physician in Africa to preserve the life of an AIDS victim for one year. Is it gravely wrong not to seize that opportunity? Not according to our actual moral code. Whatever immediate response we are inclined to give, a more reflective response prompted by placing the example in a broader context will likely lead most people to deny that they have any such obligation. What Bob did was not gravely wrong, at least according to his lights. Should he not be concerned about his retirement?

I don't wish to deny that examples may influence our conduct. Jesus' good Samaritan parable may encourage people to be kind to strangers in distress, but the parable does not direct us to do anything that goes beyond what our existing morality also finds desirable. Some examples just encourage us to live up to our own values. But when Jesus recommends that people should give up all they have and follow him, he will find few takers. Even if we are sufficiently impressed by the circumstances to think that Bob should have pulled the switch, we wouldn't think that there is an obligation for such a sacrifice to become part of Bob's daily regimen as Singer suggests. Responding to a one time emergency is quite different from devoting one's life to helping strangers. Neither Singer's appeal to an abstract moral principle nor his use of a clever example defeats Posner's claim of the futility of academic moralism.

VI

Our second example is an attempt to persuade some people to change their views about a past event. In his 1995 paper, "Fifty Years after Hiroshima," now reprinted in his *Collected Papers*, John Rawls undertakes to show that "both the fire-bombing of Japanese cities beginning in the spring of 1945 and the later atomic bombing of Hiroshima on August 6 were very great wrongs."⁴ Rawls himself was in the army during World War II and served in the Pacific as a

private. For this reason, one should respect his opposition to the bombings. But one must be careful about condemning past decisions in a retrospective judgment made under entirely different circumstances. Although I was too young to serve in the war, I still remember the great relief that was felt after the dropping of the atomic bomb. This tragic war against vicious tyrants fought under great peril requiring the mobilization of the entire nation was coming at last to an end.

Rawls mentions several principles that he thinks lend support to his conclusions. I do not have the space to discuss all of them, but will mention just several of the more pertinent ones. What is interesting about them is that he concedes that he cannot justify them in the space at his disposal, and he says: "I hope they seem not unreasonable" (565). Not a promising start to a rational consideration of a contentious issue. Posner would not be surprised, for there is not much one can do but hope when dealing with fundamental values. After all, they are nothing but their author's preferences. If you, dear reader, also share these preferences, you may find Rawls's argument cogent.

One principle is: "The aim of a just war waged by a decent democratic society is a just and lasting peace between peoples, especially with its present enemy" (565). This is surprising since the actual aim of almost all Americans after 7 December 1941 was to defeat the enemy and thus to avoid the peril that the enemy threatened to their very existence. The success years later in bringing about a just and lasting peace with Germany and Japan was a substantial benefit to all the world, but was not the primary purpose for entering the war. The war would have been justified (by my lights) even if a just and lasting peace had not been attained.

Another principle is: "Just peoples by their actions and proclamations are to foreshadow during war the kind of peace they aim for and the kind of relations they seek between nations The way a war is fought and the actions ending it endure in historical memory and may set the stage for a future war" (567). But certainly this principle forms no part of a reason why the atomic bomb should not have been dropped. After all, the way the war ended did not set the stage for a future war with Germany and Japan. On the contrary, it set the stage for peaceful relations among the principals. In fact, it is impossible to identify any general relationship between how a war is fought and the nature of the relations among the adversaries that follow. Would anyone have been able to predict that Germany and Japan would become our allies in the cold war against communism?

A third principle says: "A decent democratic society must respect the human rights of the members of the other side, both civilians and soldiers" (566). But there is no mention here that there may be a difference between respecting the human rights of those with whom one is at peace and of those with whom one is at war. An alternative principle would say that the rights of the enemy should be respected in a just war only to the extent that such restraint

does not prevent or delay victory. Rawls does not think that the civilians “often kept in ignorance and swayed by state propaganda” (566) bore any responsibility for the war. That is a questionable judgment. He refers to “the peculiar evil of Nazism” but fails to take into account that some historians believe with good reason that the evil could have been implemented only with widespread participation by the civilian population. He neglects to mention that actions by civilians and others might have shortened the war (note the almost successful attempt to assassinate Hitler).

A corollary of this third principle is that civilians “can never be attacked directly except in times of extreme crisis” (567). This “extreme crisis exemption . . . never held at any time for the United States in its war with Japan” (569). Why not? Rawls thinks “the peculiar evil of Nazism” implied that “under no conditions could Germany be allowed to win the war” (568). The exemption, then, did apply to Germany at least until the Soviet victory at Stalingrad in 1942. I would infer that Rawls does not think the Japanese regime was also an example of “peculiar evil,” and, therefore, it is not true that under no conditions could Japan be allowed to win the war. Tell that to the millions upon millions of people whose countries were occupied by the Japanese until they were liberated by the armed forces of the allies. In addition Rawls thinks that by the middle of 1945, “an invasion was unnecessary at that date, as the war was effectively over” (570). This is a retrospective judgment that was not shared by many of the military leaders of the allies who were justifiably concerned about the enormous numbers of casualties an invasion of Japan would generate. It is possible though not provable that the bombings that Rawls opposes saved many more lives than they sacrificed. In any case, Rawls does not believe that the “calculus of lives” outweighs the principles he advocates. But what he dismisses as the calculus of lives consisted in the middle of 1945 of the hope of millions of Americans of their loved ones returning alive. Why should those concerns be outweighed by the abstract principles of just war theory that he prefers?

Rawls’s paper is another good example of the deficiencies of academic moralism Posner points out. Principles are put forward as if they were universal truths but which are merely the preferences of their author and others in his circle of like thinkers. While matters of empirical fact are considered, they are dealt with cavalierly; Rawls seems to feel quite certain about issues that historians are still debating. A retrospective judgment is put forward as if it were plausible at the time of decision. The weakness of the arguments is masked by the certitude with which they are presented.

VII

Posner’s framework is not without its own difficulties. We have seen that universalism, the idea that there is a core morality common to all or almost all societies, may be correct even if moral realism is not. Posner admits that “Some

moral judgments are so widely accepted that they can lay claim to the title of moral truth. These truths . . . give moral realism what little plausibility it can claim" (114). He thinks many issues in law and everyday life may be resolved by the empirical methods of cost-benefit analysis: "The only sound basis for a legal rule is its social advantage, which requires an economic judgment, balancing benefits against costs" (208). However, disagreements about how to identify and weigh costs and benefits often lead to a proliferation of conflicting policy recommendations. Cost-benefit analysis fails to eliminate indeterminacy, although it may reduce it in some instances.

Finally, the absence of a considered account of obligation in Posner's discussion threatens to make his conception of the duties of the judge incoherent. On the one hand, he denies that the judge has a duty to be bound by precedent and established rules:

The past is valued [for the pragmatic judge] not in itself but only in relation to the present and the future. That relation may be a very important one. In many cases the best the judge can do for the present and the future is to insist that breaks with the past be duly considered. In such a case the only difference between the positivist judge and the pragmatic judge is that the latter lacks *reverence* for the past, a felt duty of continuity with the past. That sense of duty would be inconsistent with the forward-looking stance and hence with pragmatism (261).

On the other hand, a few pages later he stresses the importance of compliance with the past:

The pragmatic judge may not ignore the good of compliance with settled rules of law. If a federal judge is free to issue an injunction that has no basis in federal law, merely because he thinks the injunction will have good results, then we do not have pragmatic adjudication; we have judicial tyranny (263).

Compliance with precedent and established rules enhances both the stability and the predictability of law. Compliance is also necessary to avoid judicial tyranny. Given that the judge is not free to ignore these important goods, it is reasonable to conclude, in the light of the concepts and preferences embedded in our practice of supporting moral claims, that the judge has an obligation to comply with the past.

We can ask what sort of obligation this is. In the first place, the role of the judge is different, as Posner points out, from the role of the legislator. The legislator is not bound by the past in the same way or to the same extent as the judge. The obligation of the judge to comply with the past is a role obligation, part of his job description. He would not be doing his job if he took no account of precedents and settled rules. Moreover, since performing this role well is important to the smooth functioning of our society, the judge also has a moral obligation to conform to this role obligation. This manner of thinking about and supporting duties and obligations is an intrinsic part of the

logic of thinking about and supporting duties and obligations in general. Pointing out the important benefits of a certain practice is a way of justifying the duties of participants to act in a way that sustains that practice.

The reason why Posner denies that the judge has a duty toward the past is that he is implicitly interpreting the notion of duty in absolute or unconditional terms as if the judge is not free to consider anything else but compliance with the past. Yet a number of moral philosophers have argued that duties cannot be absolute because they may conflict with one another. They may, in the language of W. D. Ross, be merely *prima facie* duties or obligations. In a given case, the judge's duty to comply with precedent may conflict with his duty to do justice to a criminal defendant. What the judge ought to do in that case is to be determined by the weights to be assigned to the competing obligations, and these depend upon the various goods at stake, our moral intuitions, and the judge's sense of what is important.

Given this mode of arguing about our obligations that is internal to our moral system, it would appear that some determinations of obligation are better than others, that there can be a right and a wrong about what our duties are. Widely accepted conclusions of arguments based upon premises internal to our ethical system will even be considered to be true. This is not moral realism, for the logic of obligation ultimately depends upon the wants and needs of human beings and the nature of the practices they create to further their interests, and not upon an objective moral order. But judgments of obligation are not capricious or subjective. There is room within moral philosophy both to clarify and understand this logic as well as to apply it to particular cases. In that role, moral philosophy does not rest upon a mistake.

Notes

1. H. A. Prichard, "Does Moral Philosophy Rest on a Mistake," *Mind* 21 (1912). Reprinted in many texts such as in Wilfrid Sellars and John Hospers, *Readings in Ethical Theory* (New York: Appleton-Century-Crofts, 1952).
2. Richard A. Posner, *The Problematics of Moral and Legal Theory* (Cambridge, MA: Harvard University Press, 1999).
3. Peter Singer, "The Singer Solution to World Poverty," *New York Times Magazine*, 5 September 1999, 60-63.
4. John Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), 565.