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MORAL MATURITY

*Joel Levin**

ARGUMENTS OF PUBLIC MORALITY usually have one of two quite distinct starting points: one which asks who shall be empowered to make the right decision, and a second which asks what criteria should be used to get the decision to be right. For example, we might be concerned with who should decide what literature is obscene or with what method should be used to judge and label such materials. The first would involve a political decision about whether freedom of expression and its limitations shall be left to the individual or to the government; or perhaps, should the decision, if governmental, rest with the judiciary or the legislature or a national or local government. As for the second, figuring out what criteria should be used to separate the pornographic from the obscene or the artistic from the pornographic would represent a very different kind of issue. Put differently, the matter of moral authority is (largely) independent of the matter of moral truth. Ethical theories of consequentialism (where moral consequences are weighed according to some common currency) or deontology (where rights and wrongs are assigned according to the interaction of complex and often incommensurate principles) may determine what is obscene, or whether, for any particular audience, it matters. The theories might not influence the decision-makers in a desirable way.

Professor Dworkin's interesting comments on four great public morality questions of our time — health care, abortion, euthanasia, and genetic engineering — try to bridge the gap between these two different starting points, and his difficulty in doing so is instructive. Dworkin restates, in a strengthened

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form, the traditional liberal view of political morality.¹ The liberal principle holds that in matters of political morality which involve at their core the concept of privacy, the individual ought to be the primary decision-maker. Of course, such a broad statement hardly does justice to the variations of the liberal principle.² Does the sale of heroin involve matters essentially private? Does the aider and abettor of a suicide have a privacy right worth protecting or, put differently, can he borrow the privacy rights of his deceased partner? What rights do minors or incompetents have? How should anti-medical religious sectarians be treated when they find their way into a hospital? In general, the liberal principle gives the individual sovereignty, and suggests that if an error in locating power is made, it ought to be made on the side of the individual who has (obviously) the greatest interest.

This is Professor Dworkin's view throughout his writings, and certainly in his Article, *Politics, Death, and Nature*.³ Abortion and euthanasia concern the most intimate of personal decisions. They involve matters of life and death that are connected, at the first instance, with the actor and only secondarily with society and its members. Dworkin's view, in accord with the liberal principle, endorses the political decision to leave the choice of death with the member of society closest to that decision. He justifies this, in general, on the grounds that no other candidate is at hand who will do the job as well. The best candidate to make a decision here is thought to be the one most deeply affected. As a general principle of public health, this is problematic. The privacy of those with AIDS and ty-

1. The best known recent statements of the liberal view, or two versions of it, can be found in JOHN RAWLS, *A THEORY OF JUSTICE* (1971) and ISAIAH BERLIN, *FOUR ESSAYS ON LIBERTY* (1969). John Locke usually is credited with the first full-blooded liberal view. See JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* (1690).

2. The liberal pedigree (though not the label) is claimed by a broad spectrum, one is tempted to say virtually the entire non-religious, literate spectrum today. Included are libertarians, utilitarians, social democrats, rights theorists, race theorists, feminists, Rockefeller and Reagan Republicans, McGovern and Clinton Democrats, and, of course, modern liberals. An excellent example of some of the debates spanning the spectrum, including arguments about who ought to carry the true liberal torch, can be found in ROBERT NOZICK, *ANARCHY, STATE AND UTOPIA* (1974).

3. Dworkin's writings are voluminous. See, e.g. RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977), particularly chapters seven and ten, and RONALD DWORKIN, *LAW'S EMPIRE* (1986).

phoid might well be worthy of only limited protection, while those struck by Ebola are worthy of significantly less. We think this because we recognize the close connection between the original and potential successive victims (the issue of contagion).

This can be put in the context of a larger criticism. The liberal principle favors privacy as a right and gives it priority over or greater weight than (certain) other considerations. It is not antagonistic to those other considerations, it is just willing to place them second. For example, suppose a pregnant woman experiences a headache which can be treated poorly with aspirin and treated well with thalidomide. The liberal principle is insufficient, standing alone, to prevent her from making a morally unjustifiable decision: abating minor pain now at the risk of deforming a potential human life later. In fact, many who support the liberal principle are uncomfortable with any significant restriction on it. Dworkin suggests that governments have legitimate justifications for restricting individual interests which are not always recognized. Usually such restrictions rest with the protection of other people's interests in a fairly transparent way: your interests can be protected only if mine are (*e.g.*, your assaulting me injures my interests, giving me a reason or justification for restricting your behavior). However, Dworkin adds the categories of the intrinsically valuable and the sacred. It is left unargued for, being obvious perhaps to Dworkin, why these are sufficient, valuable to protect, and justificatory of restrictions on liberty. For example, human work of genius is allegedly sacred. Why such works — rather than relics, reminders, oddities, good efforts, unique prototypes, or sentimental and historical objects — meet the threshold of special protection is left obscure, as is the criteria of genius. In any case, protecting choice is not the same as reaching the right choices, regardless of the idiosyncratic exceptions to governmental limitations suggested by Dworkin.

The hiatus between sovereignty (the authority to make a decision) and moral reasoning (making the right decision) can be bridged only by the use of supplemental propositions. One such addition might be stated as holding that there is no objective or rational moral interest at stake worth protecting, just political interests. This might be called the argument from mit-

igated moral skepticism — as it holds moral improvement is possible by the judicious placement of authority — but in no other manner. This is not Dworkin's argument, and it represents a position hard-pressed to claim public supporters, at least supporters in print. However, aside from suffering all the infirmities of moral skepticism generally — ontological indefensibility, moral commitments hidden in other more easily justifiable commitments, abandonment of attractive moral theories commensurate and consistent with a rational theory of mind, and for the attitude of many, the abandonment of certain theological positions — the very reasons of privacy, autonomy, dignity, and individual liberty in general which allow political interests to be taken seriously suggest the same justifications for morality.

A second supplemental proposition holds that autonomy in pursuit of privacy is so important that other values are hardly worth measuring. The value of a life to an individual is supremely important to that individual, and of significantly less importance to others. This is at the root of John Stuart Mill's argument in *On Liberty*, where he (appears to have) suggested that one may not interfere with others in their private decisions and individual liberty unless there is external or societal harm.⁴ This proposition is more tenable with regard to suicide than abortion, and more easily justified when looking at the suicide of an adult with a terminal disease than in the case of an emotionally troubled adolescent.

A third proposition bridges the gap between might and right, holding that it just is the case that by leaving decisions to the individual personally involved, a better (possibly the best) result is reached. This involves a complicated set of assumptions and beliefs. One certainly includes the observation that people act prudently in looking after themselves; another is that the habit of making intimate moral decisions causes one to be more careful, experienced, and ethical. An interesting example of this involves divorce. Once considered to be a *prima facie* moral problem (*i.e.*, under what circumstances should divorce be permitted), it is now considered at best a derivative

4. JOHN STUART MILL, *ON LIBERTY* (1859).

ethical issue (what problems of control and coercion generally arise during divorce). The spouses involved are thought, in general, both to be capable of looking after their own interests, and able (perhaps more dubiously) to protect well those of their own minor children.

The problem is that this third proposition often is simply false. Many individuals lack either the ability or the competency to make the right decision. Moral choices can be thought, for purposes here, to have two dimensions: one of good faith and one of knowledge. Let us put aside good faith, with this caveat: when moral autonomy precedes moral reasoning, bad faith can be the natural result of hypocrisy, weakness of the will, and corruption. This is part of the larger problem (if a special part) of the inability to verify moral statements, or reach consensus according to some over-arching paradigm.⁵ It is not unique to the liberal principle. It is not unique to the liberal principle.

The more interesting case is that of moral knowledge. Where is that knowledge gained? Certainly it is not learned or learnable in quite the same way as other types of knowledge. Take mathematics and science. In neither area do we particularly value human experience, and in both significant problems can be solved by symbolic manipulation. In each, stunning counter-factual propositions can at times be shown in short order to be true, compelling, and (suddenly) obvious. Finally, there is, to some degree, agreement that such things as "facts" exist, which push us to particular results. None of this reminds us of the field of ethics.

Morality hardly flows, for most, from *a priori* principles revealed or taught. If Justice Oliver Wendell Holmes believed the life of the law not to be logic but experience, so much the more so in the case of ethics. The details of moral arguments are often the whole argument: murder is wrong, but which killings are provoked, excusable, accidental, in self-defense, intended, or justified becomes the issue. The question becomes

5. For discussions, see JOHN MACKIE, *ETHICS: INVENTING RIGHT AND WRONG* (1977); Gilbert Harman, *Moral Relativism Defended*, 84 *PHIL. REV.* 3 (1975); Roger Scruton, *Attitudes, Beliefs and Reasons*, in *MORALITY AND MORAL REASONING* (John Casey, ed. 1971); and BERNARD WILLIAMS, *PROBLEMS OF THE SELF*, 166-204 (1973).

how wrong, when wrong, and what to do when the choice is among wrongs.

Thousands of years of human experience have shaped moral sensibilities. Many customs of ancient societies, even societies we admire, appear today to be not only barbaric but incomprehensible. Slavery, human sacrifice, blood feuds, caste rankings, and penal torture all were common once and are without defenders today. It takes time, apparently, to get things right, or at least not so badly wrong.

We find our way, then, in ethics without the clear markers that indicate knowledge elsewhere. Independent research, outside of social context, is generally unproductive and incoherent. Put differently, ethical decisions typically concern public problems, and it is social policy that is at stake. Moral postures are matters of constructing a coherence theory of moral truth based on felt principle and certainty about specific situations. But such a theory is constructed in fits and starts, and by judging what is reasonable when applied to individual problems. We have a principle against killing a human being, tempered by a principle of self-defense, mitigated by a caveat which requires safe retreat, abated by an exception which allows one to stand and stay in one's own home. So begins a theory of murder. We shape this theory by the experiences of society over the ages. Use of the concepts of self-defense and retreat came solely to Western civilization. Matters of intent and mental defect are relatively recent. We have become better at blame and punishment as we have fine-tuned our moral sentiments in the face of sharpened experience.

Homicide is an old problem; genetic engineering a new one. The problems presented there are new, vast, unanticipated, and without well-understood consequences. Dworkin suggests we should share some anxiety about genetic engineering because designing a human being to achieve in a certain way — *i.e.*, custom-designing people — causes the resulting product to lose the thrill of personal achievement. Put differently, determinism becomes more transparent. This is an interesting psychological concern worthy, perhaps, of future testing. However, a greater and more immediate concern is what the implications are for genetic engineering, if the liberal principle remains in force. Should individuals be left with the primary responsibili-

ty, or the right, to make the genetic selection for their offspring? (I shall ignore the problem of whether this is a parental or a maternal issue at the outset, for it is irrelevant as a matter of moral competency. However, it does echo, if somewhat faintly, the issue of where to place the right to choice in the area of abortion, and may suggest a stronger paternal involvement). Suppose, with Dworkin, we might be able to offer parents the choice of giving their offspring either greater height or greater musical ability, but not both? Should the liberal principle allow a deliberate, parental choice?

I would suggest that the answer is: not yet. Moral experiences which inform our principles are nascent, and the instincts that normally guide us are underdeveloped. The immediate analogy, given the potential harm, is not to civil rights but to research on bacterial spores for germ warfare. The issues involved have the same apocalyptic nature: are the height genes linked in some obscure way to the immune system?; is musical ability tied to neural or sensory development through channels not now understood?; should rather permanent changes be made in human development in order to achieve qualities now considered attractive (the way small feet in woman in traditional China or beard-growth in medieval Norse culture were once considered matters crucial to attractiveness, gender-definition and identity)?

The liberal principle has an implied premise of minimal competency of the individual actor to behave morally. Of course, bad faith, hypocrisy, greed, and even evil can get in the way, but these do not of themselves invalidate the liberal principle. Any repository of power can be corrupted. The issues are rather whether the repository is able, in good faith, to reach the right decision, and whether the particular repository is the best vehicle for achieving that decision. Chemists who doctor results do not invalidate the science of chemistry. Alchemists do. Are individuals ready to make crucial decisions which affect genetic engineering?

If the decisions involve new areas where experience crucial to competency is lacking, then moral mediocrity suggests a waiting period. Mediocrity alone does not invalidate the liberal principle. One might consistently be poor at table manners without being banished from all formal dinners. Mediocrity

takes on significance when the consequences of being wrong are often so much worse than the political gains from marginal improvement.

Dworkin places at the center of his argument what he calls the “principle of ethical individualism.” This principle states that government may not limit liberty when its only justification is commitment to a controversial theory about what makes human lives valuable or gives meaning to human life or makes a particular human life successful, because deciding *these* questions is the duty of people one-by-one, for themselves. This principle is part of the liberal principle, for it protects individual decision making, but it reflects only a concern about government intervention. Other forces are left undiscussed.

In traditional privacy areas, such as the matter of suicide — the easiest case of euthanasia — the liberty inherent in either the principle of ethical individualism or the liberal principle is so strong that the idea of people getting it wrong seems to take on a secondary importance. That is, who ought to know better whether it is reasonable to take on the additional pains of the last six months of cancer or AIDS than the potential suicide; or put differently, who else has an interest which places a close second? However, even here the issue of moral mediocrity has a place. We do not normally accord the same unobstructed discretion to depressed adolescents, potentially suicidal because of the alienation of a love object, that we do a seventy-five-year-old facing ALS. Certainly part of the reason for this is that we believe adolescents struck by this kind of depression lack the moral maturity to make the right decision. In fact, it is perhaps in adolescence that this first becomes an issue, and makes a seventeen-year-old’s experience with regard to emotional rejection quite unlike what he or she would know, believe, or do if struggling with a terminal disease.

To save the seventeen-year-old might require us to curtail ethical individualism. We do not believe that the seventeen-year-old has the moral maturity to make the right decisions, and at least are willing to consider limiting his or her liberty to allow him or her to live long enough to get the decision right. What we have been calling the liberal principle — namely, a principle which accords a special place to individuals in the protection of their privacy — equally is challenged by the

problem of the wayward adolescent.

The problem, however, is greater than that for the liberal principle. If moral maturity is a component in justifying the liberal principle, then in those cases where that component is suspect, so is the validity of the principle. More centrally, where the issue is not just privacy, but privacy plus the interests of others, immaturity becomes more debilitating. Suppose we were presented with a society where genetic engineering was easily available and where the parents of potentially altered offspring were themselves early to middle adolescents. How confident would we be that the decision should rest with those parents? Our discomfort is heightened by the potential effect on others, including not only people in existence, but potential people, future populations, the world at some later point, or any other apt description of individuals to come. Dworkin argues that such individuals, at least with regard to the issue of abortion, have no interests. But even if that were so, and it seems a difficult proposition to maintain, the privacy interests weigh relatively lightly against the issue of moral maturity, societal consequences, and with respect to our collective interests. We have an interest in future people in the same way we might have an interest in the well-being of animals. That interest is recognized in limitations on cruelty to animals and respect for the intentions of the last will and testament of the deceased.

Summed up, the argument against Dworkin's general position is this: Dworkin, as with many other liberals (myself included) wishes to give great sovereignty to the individual when making decisions that affect the individual's privacy. The justifications for this position are both that the individual has the closest interest to the decision and that an essential part of the rights that we call "individual liberty" can be exercised only by the individual making that decision. At the margins, genetic engineering suggests that some curtailment of the liberal principle might be necessary to prevent potentially apocalyptic results because we are so unskilled and immature at the kinds of decision making necessary. Perhaps in several years, or perhaps in several hundred years, we will be better at it, but right now, confidence is difficult to sustain. However, and more dramatically, it may be that the limiting case of genetic

engineering calls into question the entire principle, for it just may be that moral maturity is always an issue with regard to privacy arguments. Analysis of that larger question, however, must await more experience and another day.