

Law Department

Meaning, Actions, Value Judgements

A Moderate Non-Cognitivist Approach

MASSIMO LA TORRE

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Contents

Chapter One, *Theories of Meaning and metaethical Theories*

1. Preliminary
2. Theories of meaning
3. Metaethical implications

Chapter Two, *Excursus: A "Formal - Finalistic" Theory of Action*

1. Preliminary
2. Definitions of "action"
3. Determinism and "free will"
4. "Theoretical information" and "practical information"
5. A formalistic teleology
6. Critical considerations

Chapter Three, *Value Judgements and Justification*

1. Preliminary. The "revelationist" metaethics
2. Naturalism, utilitarianism, intuitionism
3. Emotivism and prescriptivism
4. Universalisability of moral judgement
5. Noncognitivism and critical morality
6. Death of the subject
7. The legal and the moral domain

CHAPTER ONE

THEORIES OF MEANING AND METAETHICAL APPROACHES

Summary: 1. Preliminary - 2. Theories of meaning - 3. Metaethical implications

1. Preliminary

I propose in this essay to focus on what are the foundations, or "justifications", that can be offered for a reflexive morality. By "reflexive morality" I mean an ethic ultimately based on the subject's "reflection", or, in Kantian terms, on the autonomy of his will. My purpose here is not precisely to develop a new approach to metaethics or a normative theory of morality. I have another end in mind, more modest but of relevant significance for a theory of law: to show how an institutional concept of law can be connected with a non-cognitivist and reflexive view of ethical judgments.

I shall proceed in the following manner. In this chapter I shall first endeavour to clarify the concepts of "ethics" (or "morality") and of "metaethics". I shall then review (and criticise) some of the most influential theories of meaning and seek to bring out their metaethical implications. In the following chapter I shall again devote my attention to Ota Weinberger's work, but this time not to his theory of norm and legal order, but to his most recent theory of action. I am in fact convinced that a theory of language cannot be reliable unless founded also on a theory of action. This was also a conviction of Wittgenstein's; his line of thinking as regards meaning leads, not coincidentally, to a theory of speech acts, the fundamental contribution to which was made by John Langshaw Austin. This link is also explicit in other contemporary thinkers like Donald Davidson and Jürgen Habermas. In the last chapter I shall discuss the most important metaethical conceptions. There, finally, I shall propose the metaethical solution that seems to be most plausible. *En passant*, I shall dwell on a theme particularly debated today, the so-called "death of the subject", bringing out its repercussions in ethics and metaethics. In conclusion I shall deal with the difficult, controversial relation between law and morality.

As can be seen, I shall not concern myself much with ethics as such, that is, with normative ethics. I believe, however, that assuming a certain metaethics may have important consequences of an ethical nature. It is possible moreover that my treatment may, because of its brevity, prove inadequate to the vastness and difficulty of the problems tackled, perhaps even irritating for its

overweening ambition. The object of this essay is not, however, to propose a metaethical theory nor elaborate a normative morality in detail, so much as to prepare a discussion on the dialectics between law and morality from the angle of an institutional concept of law.

Following by now established usage, I define "ethics" as the set of value judgements an individual makes in relation to his existential reality. I, instead, define "metaethics" as the set of judgements relating to the logical, epistemological or ontological status, or the semantics, of the value judgements making up an "ethics". Metaethics consists of statements about moral judgements. I do not distinguish between "ethics" and "morality" as some do¹, using the two words interchangeably with the same meaning.

In my view, value judgements can always be expressed in linguistic statements². The linguistic statements through which value judgements can be expressed relate to extra-linguistic realities, that is, to our attitude towards certain states of affairs. Metaethical judgements, also always expressible in linguistic statements, relate instead to linguistic realities, that is, to the statements through which value judgements are expressed. We may say, then, that ethics is a "language", or also a "first degree language", that is, a language relating to extra-linguistic entities; while metaethics is "meta-language" or "second degree language", that is, a language relating to linguistic entities. The relation between ethics and metaethics is similar to that between "knowledge" and "meta-knowledge" (philosophy of knowledge or epistemology), that is, to the relation between the set of factual judgements or descriptive statements (assertions) that make up "knowledge", and the set of statements (descriptive, prescriptive, argumentative) that relate to the assertions making up knowledge.

It should be added, to avoid confusion, that when I say "ethics" I am referring to the system of behavioural norms developed autonomously by the individual for his relationships with the world (including those with himself and with others), and not the ethic actually in force in a particular community at a particular historical moment. The former is also called "critical morality", and

¹ See e.g. P. RICOEUR, *L'éthique et les conflits de devoirs: le tragique de l'action*, in *Etica e vita quotidiana*, Il Mulino, Bologna 1989, p. 5, and J. HABERMAS, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, Suhrkamp, Frankfurt am Main 1991, p. 127.

² This not so, as we know, for Wittgenstein, or at least for the "early" Wittgenstein: "Ethics, if it is anything, is supernatural and our words will only express facts" (L. WITTGENSTEIN, *A Lecture on Ethics*, in *The Philosophical Review*, January 1965, Vol. 74, Cornell University, Ithaca, p.7).

the second "positive morality"³. In the course of this study "ethics" (or "morality") will be taken exclusively to mean "critical morality".

2. Theories of Meaning

From a semantic viewpoint, that is, a viewpoint that considers the meaning of linguistic statements, it may be maintained that the two chief categories of function of language are i) to describe states of affairs and ii) to describe behaviour. A multiplicity of categorisations of the functions of language have in fact been proposed, mostly depending on the theory of meaning accompanying them. These categorisations are particularly relevant in the metaethical sphere, that is, the study of the logical, semantic and epistemological status of moral judgements.

I am restating below an analysis of the theories of meaning already given in another work of mine⁴. Here, however, I am less interested in concentrating on the Wittgensteinian positions as in presenting in more general terms the approach that will then enable me to develop my metaethical considerations. By comparison with the work just cited, this treatment is marked, though with some perhaps inevitable repetition, by less recourse to Wittgensteinian texts and by the attempt to articulate objections and arguments in general terms.

In the recent literature we may distinguish the following main theories of meaning: a) the referential theory; b) the so-called "pictorial" theory; c) the ideational theory; d) the behaviourist theory; e) the verificationist theory; f) the so-called theory of "use". I shall quickly recapitulate the main thesis of each of these theories.

a) According to the referential theory, the meaning of a term or statement always requires, as well as a "significans" (e.g., particular ink lines on a sheet of paper), a real object or state of affairs in the world. Words and statements without this reference would consequently have no meaning.

b) Related to the "referential" theory is the so-called "pictorial" theory - in German *Abbildungstheorie* - according to which the meaning of a statement represents the structure of the outside world by reproducing it in its logical form.

³ C.f. H.L.A. HART, *Law, Liberty and Morality*, Oxford University Press, London 1963, p. 20.

⁴ See M.L.A. TORRE, *Linguaggio, norme, istituzioni. Contributo a una teoria istituzionalistica del diritto*, European University Institute, Florence 1995, Chapter 1.

<<Der Satz>>, writes Wittgenstein, <<ist ein Bild der Wirklichkeit>>⁵. *Bild* is, however, not meant here in the psychological sense as a mental image, but as "logical" representation. <<Der Sinn des Satzes>>, writes Wittgenstein again, <<ist seine Übereinstimmung, und Nichtübereinstimmung mit den Möglichkeiten des Bestehens und Nichtbestehens der Sachverhalte>>⁶.

This is explained by Bertrand Russell as follows: <<[Wittgenstein] compares linguistic expression to projection in geometry. A geometrical figure may be projected in many ways: each of these ways corresponds to a different language, but the projective properties of the original figure remain unchanged whichever of these ways may be adopted. These projective properties correspond to that which in his theory the proposition and the fact must have in common, if the proposition is to assert the fact>>⁷.

In this connection one should not forget Wittgenstein's anti-subjectivist attitude in the *Tractatus logico-philosophicus*: <<das denkende, vorstellende Subjekt gibt es nicht>>⁸. Consequently, there cannot be merely psychological representations either, nor can the meaning of terms and statements be made up of such representations. As far as words and terms are concerned, Wittgenstein holds that they acquire new meaning only when used in a statement: their meaning is however identified with the object that they denote: <<Der Name bedeutet den Gegenstand. Der Gegenstand ist seine Bedeutung>>⁹. For this "early" Wittgenstein, words are thus always "proper names".

c) According to the so-called "ideational" theory, the meaning of a term or statement is the idea that the subject represents to itself through the medium of that term or statement.

d) For the behaviourist theory the meaning of a sign or set of signs consists in the response (or "disposition to respond") evoked by the sign, which is thus conceived of as a sort of "stimulus".

e) For the verificationist theory, the meaning of a statement consists in the verification or verifiability of the state of affairs the statement is about. It should be noted that the verificationist theory is closely connected with the referential

5 L. WITTGENSTEIN, *Tractatus logico-philosophicus*, Suhrkamp, Frankfurt am Main 1983, p. 35 (para. 4.021).

6 *Ibid.*, p. 49 (para. 4.2).

7 B. RUSSELL, *Introduction* in L. WITTGENSTEIN, *Tractatus logico-philosophicus*, Routledge & Kegan Paul, London 1961, p. XI.

8 L. WITTGENSTEIN, *Tractatus logico-philosophicus*, op. cit., p. 90 (para. 5.631).

9 *Ibid.*, p. 22 (para. 3.203).

one. It is in fact possible to verify the meaning of a statement in so far as it has a "referent" in the perceptible world that can be reached through observational procedure.

f) Finally, for the so-called "use" theory, the meaning of a term or statement lies in the use made of it by speakers of the given language.

These theories of meaning do not, except the last, convince me. I shall now indicate the reasons for this position.

a) It may be objected to the "referential" theory that in ordinary language there are terms that for us are entirely devoid of meaning in the sense that in the specific situations in which these terms are put forward we understand what they mean, yet they lack a concrete reference; that is, they do not denote any material object in the world. Consider, for instance, such terms as "hypogrif ???", "devil", "value", "norm", "State", "God". Moreover, even terms that seem to refer to a concrete object existing in the world, such as "table", "cat", "man", denote not a specific object but a class of those objects, which as such is not the set of all those particular objects existing in the perceptible world at a given moment, but the set of all possible objects capable of assuming certain properties. The "class" in question is, as such, an abstraction, non-existent in the perceptible world.

It should further be noted that the denotation of a term is dependent on its connotation (though without the converse being true, namely that the connotation of term depends on its extension): the extension of the class denoted is inversely proportional to the extension of the class connoted¹⁰. The more properties that make up the connotation of a term, the narrower will be the class of objects denoted by that term. Further, the fact that the particular object falls within the "denotation" or extension of a term depends on the "connotation" or "intension" of that term. The "connotation" is, however, an entirely ideal factor. What is to be emphasised, in short, is that the "denotation" has no autonomy as far as the determination of its own boundaries goes, depending in this respect on the "connotation", which can be reduced even less than the "denotation" to individual subjects existing in the perceptible world. But, if it is held that the elements in the meaning of a term are supplied by its "connotation", it must be concluded that it is not so much the "referent" or "denotation" that constitutes the condition for the perceptibility (or conceivability) of the "meaning" or "connotation" as just the opposite: it is the "meaning" of a term that is the condition for the perceptibility (or conceivability) of the "referent".

¹⁰ "Immers," writes Marc Loth, "met de vastlegging kan de intensie van het definiendum is ook zijn extensie bepaald. We kennen dan tevens het bereik van de term" (M.A. LOTH, Recht en taal. Een kleine methodologie, Gouda Quint, Arnhem 1984, p. 86).

In short, "extension" or "denotation" (in the abstract and general terms) and meaning are two quite different things. This is very well said by Quine: <<The class of all entities of which a general term is true is called the *extension* of the term. Now paralleling the contrast between the meaning of a singular term and the entity named, we must distinguish equally between the meaning of a general term and its extension. The general terms "creature with a heart" and "creature with kidneys", for example, are perhaps alike in extension but unlike in meaning>>11.

b) To the "pictorial" theory, it may be objected that there are no elements capable of plausibly upholding the notion that the structure of statements reproduces a presumed "structure" of the world. The very concept of "structure" of the world seems to me rather far-reaching, and at any rate out with observational procedures of verification or falsification. The "pictorial" theory thus seems to me to be invalidated by its over heavy ontological and metaphysical implications. At the same time, the "pictorial" theory -- as formulated by the "early" Wittgenstein -- underestimates the jump there is between an object and the term denoting it. One may indeed with some claim to reasonableness follow Joseph Conrad in saying "words [...] are the great foes of reality"12. A term is obviously not the object denoted by it, nor is the term the proper name of the object. Suffice it in this connection to consider that a term or statement continues to have meaning even when the object or situation it denotes

11 W. V. QUINE, *Two Dogmas of Empiricism*, in ID., *From a Logical Point of View*, 2nd ed., Harper, New York 1961, p. 21.

12J. CONRAD, *Under Western Eyes*, ed. by J. Hawthorn, Oxford University Press. The *Abbildungstheorie* assumes that language has an essentially "reproductive" function of what reality is; language, on this view, is a sort of mirror reflecting the reality of things. It may be objected that language performs an eminently *creative* function, producing the categories through which we then confront reality. We would then need not so much a "*Abbildungs*"-*theorie* as a "*Bildungs*"-*theorie*. The creative or constructive nature of language is already implicit in the fact that the relation between a given term and its referent is not a necessary one, and changes in every natural language. "Classification," writes Ernst Cassirer, "is one of the fundamental features of human speech. The very act of denomination depends on a process of classification. To give a name to an object or action is to subsume it under a certain class concept. If this subsumption were once and for all prescribed by the nature of things, it would be unique and uniform. But the names which occur in human speech cannot be interpreted in any such invariable manner...They are determined rather by human interests and human purposes. But these interests are not fixed and invariable" (E. CASSIRER, *An Essay on Man*, Yale University Press, New Haven and London, 1944, p.134).

is no longer in the world. I may sensibly say "the cat has disappeared," but not "the meaning of 'cat' has disappeared", and "cat" would have meaning as a term even if cats as an animal species should happen to become extinct.

c) It may be objected to the "ideational" theory that in making meaning a subjective psychological fact it so subjectivizes communication as to make it impossible, or highly problematic. For in order for there to be communication it is necessary for there to be a substantial identity between the meaning intended by the utterer of the statement (message) and that understood by the addressee or recipient. But if meaning is nothing but the psychological "idea" evoked by the sign, what guarantee do we have that there will be substantial identity between the "idea" evoked by the sign in the utterer's mind and the other idea evoked in the recipients mind? And if there is no such identity, communication between utterer and addressee of the statement is not established. It should be further noted that the "idea" spoken of in the "ideational" theory is generally the representation of a state of affairs, an image, a "figure". But there are signs or terms to which no corresponding "image" can be attributed. What "image" is, for instance, evoked by an adverb like "perhaps", or a locution like "legal transaction"? It may also be said that a certain word evokes a particular "image", yet this is not the meaning of the term. It is, for instance, possible for the word "caramel" to evoke for me the image of a Swiss governess through some psychological mechanism of associations. It does not however follow that the meaning of "caramel" is the image of a Swiss governess.

d) To the behaviourist conception it may be objected that understanding the meaning of a term or statement or discourse is something not perceivable from an "external viewpoint". That is, we are not capable from mere observation of a subject's behaviour to establish whether that subject has understood the meaning of a given term, statement or discourse. Let me give an example. Say I am in room with two other people playing cards and I do not know German. The first person gets up, looks out of the window and says "it is raining". I go on looking at my cards. Then my other companion gets up, looks out of the window and says in German "es regnet nicht". I go on looking at my cards. How can an observer establish on the basis of my behaviour whether I have understood the two statements "it is raining" and "es regnet nicht" or not? Both statements have had the same external effect on me: I kept on looking at my cards. Yet in the first case, since I know English, I understood the meaning of the statement, while in the second, not knowing German, I was not able to understand the speaker.

Underlying behaviourism is a "causal" theory of meaning, that is, between a sign and the meaning evoked by it there is a causal relation of stimulus/response type, making that particular sign a sufficient condition of that particular meaning. It may be objected to this conception that in contrast to the stimulus/response relation, where the stimulus is a sufficient condition for the response, the sign/meaning relation is mediated by a code, that is, by rules attributing that particular meaning to that particular sign. In order, then, for there to be a particular meaning, at least two conditions are necessary, though neither is sufficient: the sign and the code. This amounts to saying that since the code is located within the human being and is subject to change, the sign/meaning relation is conventional, arbitrary, and not necessitated by nature. The behaviourist theory further, in some sense, presupposes a "referentialist" conception¹³.

Note that if we accepted the causal theory of meaning, we could similarly uphold a causal theory of normative descriptions. We might, that is, assert that the relation between a natural event and a "legal effect" (between murder and a prison sentence) is "causal", that is, "causal" in the strict sense, in the sense of the murder being a sufficient condition for the imprisonment. We might thus arrive without contradicting ourselves at the position that legal laws and natural laws are "causal" in the same sense. But were we to exert that, we would be falling into a version of what is today usually called the "naturalistic fallacy", that natural facts are as such sufficient to express criteria for guiding human social behaviour¹⁴.

One may further criticise the communicative model implicit in the behaviourist theory, that communication is an eminently interpersonal message.

¹³ This has been grasped by William P. Alston: <<The attempt to give behavioural analyses of meaning is still in an early stage, and it would be premature to deliver a final verdict. Nevertheless, one must recognise that at present they exhibit some glaring deficiencies. First of all, they are saddled with the assumption that every meaningful linguistic unit is a "sign" of some discriminable extra-linguistic thing, aspect or state of affairs>> (W. P. ALSTON, Meaning, in The Encyclopaedia of Philosophy, ed. by Paul Edwards, Vol. 5, MacMillan & Free Press, London/NewYork 1967, p. 236).

¹⁴ In this connection see K.R. POPPER, The Open Society and Its Enemies, vol. 1, The Spell of Plato, V ed., Routledge & Kegan Paul, London, 1973, pp. 57. The incompatibility of a noncognitivist metaethics and a "realistic" philosophy of language has been grasped by D. ZOLO, La democrazia difficile, Editori Riuniti, Roma 1989, p. 23.

happening between an utterer and an addressee¹⁵. This sort of "simple" communication model is assumed by all theories that make the meaning of terms or statements depend exclusively upon the behaviour or mental operations of their utterer or recipient. This model is therefore common also to "ideational" or mentalistic theories of meaning. But as Mario Jori writes, "very often signs, especially linguistic signs, are used in communication situations very different from those where the speaker is in direct, contemporaneous communication with the hearer. Consider communication situations characterised by the impersonality of the relationship, where the text of the message takes on an impersonal, often permanent nature"¹⁶. "This," continues Jori, "is one of the reasons that counsels us not to link the definition of the sign process too closely with psychological facts and events (like the utterer's intention of the interpreter's mental relations). Many communication situations are, in fact, complex social institutions governed by interpersonal norms of communication"¹⁷.

e) To the verificationist theory at least two objections may be raised. i) The first is one that may also be brought against the "referential" theory of meaning. As we have said, the verificationist theory implies a referentialist theory. For it is possible to verify a statement only in relation to what there is in the perceptible world. A statement is verifiable only in so far as it has a concrete referent in the world of empirical facts. However, as we have seen there are terms and statements that, though endowed with meaning, do not refer to an object or event in the outside world. The statements making up theological disputes, for instance, rarely refer to objects or events in the empirical world.

As we know, this is the model adopted by Roman Jakobson. See R. JACOBSON Saggi di linguistica generale, It. transl by L. Heilmann and L. Grassi, edited by L. Heilmann, Feltrinelli, Milan 1986, p. 185: "The sender sends a message to the addressee. To be operative, the message first of all requires reference to context [...]; secondly, it requires a code, entirely or at least partly common to sender and addressee [...]; finally, a contact, a physical channel and psychological connection between sender and addressee" (emphasis in original). This model echoes strongly in the conception of "meaning" proposed by one of the acutest contemporaries Italian philosophers of law, Giovanni Tarello: "We call the 'meaning' of an expression of language the communication that expression makes in relation to each of the three functions of language" (G. TARELLO, Diritto, enuciati, usi, studi di teoria e metateoria del diritto, Il Mulino, Bologna 1974, p. 140).

¹⁶ M. JORI Comunicazione (semiotica), in Gli strumenti del sapere contemporaneo, vol. 2 I concetti, UTET, Torino 1985, p. 145.

¹⁷ Ibid. My emphasis.

The dispute over the trinity of God, however it may seem to or actually be scientifically devoid of meaning, is not so from a semantic viewpoint. So much so that the dispute was possible, that the parties understood each other, argued, wrote treatises on it and - sometimes - massacred each other. The principle of meaningfulness as a semantic principle (serving to discriminate what has meaning from what does not) should in my view be distinct from the principle of verifiability as a principle of meta-knowledge (serving to discriminate what can be true from what cannot)¹⁸.

ii) But there is another objection that can be brought against the verificationist theory: the verifiability of a statement depends on its having meaning, on what it means. For how could we verify a statement whose meaning we do not know? This is proof that the meaning of a statement is independent of its verification or verifiability.

I feel it is worth mentioning another objection raised against the verificationist theory. If the theory is accepted, one must also, as Karl Popper notes, conclude that all "natural laws" are without meaning, since they cannot be reduced to mere observational statements¹⁹. The "laws" are in fact, according to the inductivist theory, reached by a process of induction from n observational statements. From the observational statements to the "law", however, there is always a link, the logical justification for which continues, as we note, to be an object of dispute in the philosophy of science. It is, in any case, certain that even for the most radical neopositivist or neoempiricist theory, the "law" cannot be logically reduced to a series of observational statements. But if that is so, how can one, if the verificationist theory is accepted, uphold the meaningfulness of natural "laws"?

f) The weakest theory of meaning is in my view the one maintaining that the meaning of a term or statement depends on the use made of it by those speaking a given language. It is, as we know, the theory developed by Ludwig Wittgenstein, after he repudiated the *Abbildungstheorie* he had defended in his famous early work. However, we should be clear about what is meant by "use". In the first exegetical work on this Wittgensteinian conception three main interpretations may be identified. i) "use" is understood as regularity, mere repetition of the attribution of meaning, so that this "use" can be conceived of as

¹⁸ In this connection see U. SCARPELLI, Contributo alla semantica del linguaggio normativo, II ed., Giuffrè, Milano 1984, pp. 85 ff.

¹⁹ See K.R. POPPER, The Demarcation between Science and Metaphysics, in The Philosophy of Rudolph Carnap, ed. by P.A. Schlipp, Open Court, La Salle III, 1963, p. 192.

merely individual, without a community²⁰. ii) "Use" is understood in pragmatic terms as a "speech act", as the use of a given statement in a given context for given ends, so that there is no longer any sense in asking about the meaning *in general* of a statement or term. On this interpretation there is no "meaning of meaning", one cannot sensibly speak of what the meaning of a term (or statement) is, apart from a *given* term (or statement) and a given concrete situation in which that term (or statement) has been used for given ends. As we know, this is the position upheld by John Langshaw Austin²¹. iii) On a third interpretation, more widespread, more authoritative and, I believe, more faithful to Wittgenstein's text, "use" is understood broadly analogously to the concept of "usage" in theory of law. The "use" does result from constant repetition of certain attributions of meaning, and therefore of certain uses, but this is combined with a normative element, of a sort of *opinio iuris seu necessitatis*.

"Use", on this third interpretation, does not stand for "individual use" or "nearly objective use". Say I decide to call the table "pen" and the pen "table"; the meaning of "table" will remain the one sanctioned by common usage, not the one determined by my private use of the term. "Use", on this interpretation, is *use according to certain rules*. It is accordingly legitimate to speak of the "correctness" of linguistic uses. Not all subjective uses of a term (or statement) are correct, and it is possible to note "linguistic errors" (of those speaking or writing incorrectly).

The theory of "use", in this last version, has important theoretical consequences. The theory, though accepting a conception of language as a conventional fact, a product of man, recognises that it (language) is the outcome of a largely unconscious or unaware activity of human beings, just as many other usages and rules of social life are²². Humpty Dumpty is accordingly wrong in saying in *Through the Looking Glass* that a term means just what one wants it to

20 This is the position defended by, for instance, Baker and Hacker. See G.P. BAKER, P.M.S. HACKER, Wittgenstein, Rules, Grammar and Necessity, Blackwell, Oxford, 1986. See also G.P. BAKER, P.M.S. HACKER, Scepticism, Rules, Language, Blackwell, Oxford, 1984, p. 20.

21 See J.L. AUSTIN The Meaning of a Word in J.L. AUSTIN, Philosophical Papers, Clarendon, Oxford 1961, p. 23 ff.

22 In this connection cf. A FLEW, Thinking about Social Thinking. The Philosophy of the Social Sciences, Blackwell, Oxford 1985, pp. 63 ff.

mean. For we find language already there, we do not invent it²³; it thus contributes powerfully towards determining our very categories of thought.

The theory of "use" has one further consequence very relevant to the topic (justification of moral judgements) that interests us here. The theory of "use" maintains a plurality of "uses" of language founded on "language games" and normative systems underlying it. There is not, then, one use privileged over others or one main or unique function of language; it is instead employed in, and made up of, a multiplicity of "games" all equally important in the context of the given linguistic community. Thus while traditional theories of meaning, in particular the "referential", behaviourist and verificationist ones, tend to see moral discourse as a set of statements with a logical status in some sense "inferior" to that of the descriptive or observational statements typical of science, or "shaky" in relation to them, the theory of use acknowledges no moral statements and to normative statements in general, a worth (and meaning) equal to that possessed by descriptive statements²⁴.

3. *Metaethical implications*

Adopting a particular theory of meaning has considerable implications on the metaethical level, that is, on the way of conceiving and "justifying" value judgements, or the statements that express the individual's ethical choices²⁵. Those who defend a "referential" verificationist theory of meaning (for which in general the only statements with meaning are those that describe states of affairs) have at metaethical levels two diametrically opposed possibilities. i) The

23 As Searle says, "meaning is more than a matter of intention, it is also a matter of convention" (J.R. SEARLE *What is a Speech Act?*, also in *The Philosophy of Language* edited by J.R. Searle, Oxford University Press, Oxford, 1971, p. 46). In this connection Anthony Flew's remarks are also relevant when he notes "how fallacious it is to argue that, if something is the product or result of conscious human agency, then it must always be in practice possible radically to redesign and reshape that product or that result in such a way that it shall better accommodate the wishes of the person concerned" (A. FLEW *op. cit.*, p. 67).

24 Cf. R. ALEXY *Theorie des juristischen Argumentation. Die Theorie des rationalen Diskurses als Theorie der juristischen Begründung*, Suhrkamp, Frankfurt am Main 1983, pp. 71 ff.

25 On the relevance on the theory of meaning in relation to metaethical questions see e.g. E TUGENDHAT, *Probleme der Ethik*, Reclam, Stuttgart 1984, p. 17.

first possibility is to regard statements containing judgements as radically distinct and different from (and not reducible to) descriptive statements, and thus to maintain that there are no real ethical statements ("Darum kann es auch keine Sätze der Ethik geben," writes the "early" Wittgenstein²⁶), or that moral judgements are imperatives or commands (as Hans Reichenbach²⁷ holds), or else meaningless manifestations of feelings or emotions (as Alfred J. Ayer believes²⁸), and thus similar to an exclamation or interjection, or to beating one's fists on the table (as Alf Ross says²⁹). For all these authors, value judgements cannot be given a rational foundation (that is, on their view, one based on procedures of empirical observation and falsification or logical deduction from postulates that have the status of axioms).

ii) The second possibility open in the metaethical context to the "referential" conception of linguistic statements is to hold that moral statements, too, are descriptive statements, and thus to propose naturalistic metaethics (the case of, for instance, Moritz Schlick³⁰). According to naturalistic and institutionalist metaethics, moral values have enough objectivity to be able in fact to be *described*.

The two conclusions just mentioned, i) and ii), are, in my view both unsatisfactory: i) because it takes away the possibility of discussing and arguing and ultimately of thinking (in the sense of reflecting, deliberating) about my ethical choices; ii), because it ends up denying the normative (and subjective)

26 L. WITTGENSTEIN, Tractatus logico-philosophicus, cit., p. 112 (§ 6.142)

27 "In der Ethik werden keine Aussagen gemacht, sondern Anweisungen gegeben", writes Reichenbach (H. REICHENBACH, Der Aufstieg der wissenschaftlichen Philosophie, Friedr. Vieweg & Sohn, Braunschweig, 1968, p. 314). On ethical language as "normative eccitation", cf. I. MANCINI, Negativismo giuridico I, Edizioni quattro venti, Urbino 1981, pp. 131 ff.

28 See A.J. AYER Language, Truth and Logic, Penguin, Harmondsworth 1982, p. 137.

29 "To invoke justice," writes Ross, "is the same thing as banging on the table: an emotional expression" (A. ROSS On Law and Justice, University of California Press, Berkeley and Los Angeles 1958, p.274).

30 See M. SCHLICK Fragen der Ethik ed. by R. Heselmann, Suhrkamp, Frankfurt am Main 1984, p. 67: "Was als die letzten Namen oder die höchsten Werte gilt, muß der menschlichen Natur und dem Leben im Widerspruch stehen, kann nicht die im Leben zugrunde liegenden Werte für schlecht oder falsch erklären. Seine Normen können nicht zu den vom Leben letztlich anerkannten fordernd oder befehlend in einen wirklichen Gegensatz treten".

character of my choices. Other grounds for dissatisfaction with i) and ii) will be indicated in the next section.

In the context of a behaviourist theory of meaning, it is not so much the question of meaningfulness that counts, as that of the effectiveness and the function de facto performed by moral judgements, or better, the question of meaningfulness comes into that of the effectiveness and de facto function of those judgements. Morality, like law, will here be seen as a specific technique for conditioning (others') behaviour. In relation to morality conceived of as a technique of this nature, the only acceptable rational justification would be one based on the adequacy of that particular morality for determining particular behaviour (of others) taken (irrationally) as being endowed with value. The defect of this view is that it has to assume a notion of morality that is not the one being argued about. The morality we are interested in here, indeed what for me "is" morality, is not a body of rules or a technique for determining others' behaviour, but consists of a set of principles or norms with the object of determining primarily my behaviour, that is, the behaviour not of the recipient or interpreter of the moral judgement, but its utterer. The "critical" morality I refer to is an eminently reflexive attitude, and therefore not suited to being explained by non-reflexive models of behaviour like the stimulus/response mechanism or "conditioned reflexes". As Bertrand Russell writes, "[t]he moralist is not concerned with actions that are merely reflex or habitual, but with deliberate choices"³¹. The behaviourist approach may perhaps explain aspects of what we have called "positive morality". It does not by contrast help us with defining or elucidating "critical morality".

Defenders of an "ideational" theory of meaning which, as we have seen, does not take enough account of the fact that meaning has an inter-subjective, impersonal component that cannot be got rid of, risks falling into so-called "moral solipsism". It is certainly true that meaning judgements are eminently subjective, yet not every expression of the subject's will or desire can boast the title "moral". In the moral judgement that goes beyond the mere subjective viewpoint, there is some pretence to "universalisability" which is hard to get if a too subjectivist theory of meaning is adopted.

Defenders of a theory of meaning as "use" escape the dilemma facing the verificationist theory and do not necessarily have to conceive of morality in reference to others' social behaviour. Nor do they risk "moral solipsism", if the "use" is conceived of, as proposed above, as normatively determined use, as use

31 BERTRAND RUSSELL Human Society in Ethics and Politics, George Allen & Unwin, London 1954, pp. 125-126.

determined by rules, in relation to which the question of the correctness of individual or "private" use will always be raised. One may then seek some rational foundation for moral discourse as a discourse distinct from that of science, yet endowed with meaning, as our everyday experience woven of doubts, thoughts and debates on moral questions teaches us.

The theory of meaning as use, however, presents one problem of no slight weight for ethical theory. If it is held that the meaning of words is as it were "deposited" in uses and these are conceived of as determined by the rules of a particular "language game" tied to a particular "form of life", it might be held that the dominant values of that particular "form of life" are also conveyed by meanings of statements and words, so that no moral judgement which is not an expression of the morality of the "form of life" or community in question would be possible. This rather extreme conclusion is certainly not present in Wittgenstein, nor in Waismann, nor in Austin, but is clearly formulated by "communitarian" thinkers who take their tune from Wittgensteinian thought. This is the case for, say, Michael Walzer or Alistair MacIntyre or Richard Rorty. This position significantly coincides with that of philosophers coming from the so-called "hermeneutic" tradition such as Hans-Georg Gadamer or Rudiger Bubner. Here a synthesis seems to be coming about between late Wittgensteinian philosophy and Hegelian thought, not without some contribution from the anti-moralist critiques of those such as Nietzsche.

Some objections may be raised to this approach that, in my view, greatly reduce its plausibility and fruitfulness. First and foremost, it should be noted that this approach ends by eliminating the ethically and methodologically relevant distinction between dominant or positive morality and critical morality. Moral judgements as expressed by meanings already loaded by moral values would always be inside a morality, that of the "forms of life" in question.

Setting oneself up "reflectively" in relation to any such "form of life" would ultimately be an illusion, mere intellectual wishful thinking.

But if linguistic statements are already pre-determined in their meaning by the underlying form of life, that does not mean that these meanings are always loaded with moral values. It may reasonably be maintained that the great mass of linguistic meanings of a particular language, or within a particular "form of life", are morally neutral so that they can be used to express differing value judgements or moral judgements that may even sharply contrast with each other. Goebbels and Joseph Roth use the same language, so that it must be maintained, if the communitarian approach is adopted, that on the one hand they are the outcome of one and the same "form of life", and on the other that they express

good or bad moral judgements that are homogeneous with each other. But this conflicts with reality: Goebbels has Joseph Roth's books burned and Joseph Roth makes an appeal for his books to be burnt by the Nazis, since he regards it as dishonourable not to be included on the list of authors banned in national socialist Germany. Where here is the homogeneity of moral values conveyed by the use of a particular language?

I, in fact, believe that the Wittgensteinian approach does not allow "communitarian" application of the theory of meaning as use. This is not just because Wittgenstein does not endow the "form of life" with that intense moral relevance that the "communitarians" load it with, but also and especially because Wittgenstein is very clear as to the tension there is between the rule as the first necessary condition of meaning and its application, which is the second indispensable condition for the meaning of a statement. Wittgenstein repeats more than once that a rule does not govern its application, and even if there were a rule governing that, there would not be a meta-meta-rule governing that meta-rule. The application of rules, is in certain more or less defined, though quite unclearly, contexts left up to the subject's creativity and "the inclination". Subjectivity, which seemed to have to be chased out of the door of *Sprachphilosophie* (as the opposite of *Bewusstseinsphilosophie*) comes back in through the window.

1.CHAPTER TWO

EXCURSUS: A "FORMAL-FINALISTIC" THEORY OF ACTION

Summary: 1. Preliminary - 2. Definitions of "action" - 3. Determinism and "free will" - 4. "Theoretical information" and "practical information" - 5. A formalistic teleology - 6. Critical considerations

1. *Preliminary*

Only in recent years has Ota Weinberger moved into a field hitherto foreign to him: theory of action. That is largely due to his growing interest in sociological conceptions of law¹, and to the attempt to reach, starting from the more congenial ground for him of the logic of norms, a comprehensive legal theory. Weinberger calls his conception in this area a "formal-finalistic" conception of action. I shall here seek to summarise and discuss it, indicating what are in my view its weak points and its merits. The relevance of a theory of action for the ethical and metaethical conceptions dealt with in this essay will not be ignored.

2. *Definitions of "Actions"*

Weinberger first denies that a theory of action can be reached starting from the analysis of ordinary language. The fact that we use terms like "action", "rule", "motive", points only to the fact that they are part of our daily life, "but does not mean that the expressions usual in these contexts clearly and adequately express the corresponding intellectual relations of operations [...], nor does it offer us bases usable in tackling the philosophical problems of the practical sphere"². On the other hand, he adds, one must take one's distance

¹ See e.g. O. WEINBERGER, Soziologie und normative Institutionentheorie. Überlegungen zu Helmut Schelsky's Institutionentheorie vom Standpunkt der normativistischen Institutionenontologie, now in O. WEINBERGER, Recht, Institution und Rechtspolitik. Grundprobleme der Rechtstheorie und Sozialphilosophie, Steiner, Stuttgart 1987, p. 182 ff.

² O. WEINBERGER, Zur Idee einer formal-finalistischen Handlungstheorie, in O. WEINBERGER, Recht, Institution und Rechtspolitik, op. cit., pp. 44-45.

from the positions (put forward, as we know, by Wittgenstein and bitterly contested by Popper³) according to which philosophical questions are nothing but purely linguistic questions⁴.

Weinberger starts from the following definition: action is intentional behaviour dependent on information (*informationsabhängiges intentionales Verhalten*)⁵. He rejects, however, the conception that acting and willing, intention and motives, are to be interpreted as psychological or "awareness" phenomena, as *Bewusstseinsprobleme*⁶.

"I start," writes Weinberger, "from the finding in philosophy that awareness may oscillate considerably without the operations and the behaviour depending on them essentially changing in their structural features. In my theory, accordingly, consciousness is seen as something that arises in certain circumstances, and may in particular situations perform certain specific functions. Yet consciousness is not a constitutive element of action, nor does it define the intrinsic nature of the operations that determine action"⁷.

In Weinberger's view, reducing the relevance of the conscious element is a necessary starting point for formulating a formalist rather than empiric-descriptive theory. He takes two main objectives. a) The first is to be able in some way or some sense to formulate some decisional procedures, or more exactly some procedures subsidiary to decision (which continues to come under the actor's subjectivity and independence). b) The second objective is to delineate a theory of action that applies not only to individual human beings but also to groups and social systems. "The fundamental concepts of formal

3 "Ich halte die philosophie nicht für einen Versuch zur Analyse oder "Explikation" von Begriffen, Worten oder Sprachen" (K.R. POPPER, Wie ich die Philosophie sehe (gestohlen von Fritz Waisman und von einem der ersten Mondfahrer) now in K.R. POPPER, Auf der Suche einer besseren Welt, Piper, München 1987, p. 200). See also, for example, K. POPPER, Unended Quest. An Intellectual Autobiography, Fontana, Glasgow 1986, pp. 122-125

4 In this connection see O. WEINBERGER, Teifengrammatik und Problemsituation. eine Untersuchung über den Charackter der philosophischen Analyse in Wittgenstein und sein Einfluss auf der gegenwärtigen Philosophie. Akten des 2 Internationalen Wittgensteinsymposiums (1977), Hölder-Pichler-Tempsky, Wien 1977, pp. 290 ff.

5 See, for example, O. WEINBERGER, Zur Idee einer formal-finalistischen Handlungstheorie, op. cit., p 45.

6 Ibid., p. 46.

7 Ibid. See also O. WEINBERGER, *Freedom, Range for Action, and the Ontology of Norms*, in "Synthèse", vol. 65, 1985, p. 313.

teleology have to be understood in a non-psychological sense. When it is a question of will, of ends, of means, or of the relation between means and ends, these terms do not designate elements of mental experiences but general conceptual features that arise in relation to (finalistically oriented) systems of *any type whatever*"⁸.

Alongside the definition of action mentioned above, he gives us another: "action is behaviour ascribed (*zugeschrieben*) to a particular subject, the agent (performer of the action, actor)"⁹. This ascription can come in two main modes: i) as description of the actor, that is, of his various states through time; ii) as description of an object of the action, that is of an object on which the subject's action is exercised. One and the same action can accordingly be described as i) (say) "John aims at the hare and presses the trigger" or else as ii) "John kills the hare". Both cases, adds Weinberger, involve describing the behaviour of a certain "system" (of the actor or else of the object of the action) as a sequence of states of affairs in time.

Weinberger is keen to stress the temporal element of action. <<Behaviour is not just the static feature of a system, but can also be conceived of as a succession of states (*Zustände*) over time>>¹⁰. The passage from state Z1 at time T1 to state Z2 at time T2 is a transformation in the state of the "system" considered, assuming that T2 expresses a time chronologically subsequent to T1. A chain of transformations of states is called by him a "statal or behavioural trajectory". Z1 and Z2 can be the same or different states. A transformation Z1/Z2, in which Z1 and Z2 designate the same state at different times, corresponds to the "system" remaining identical with itself ("*identische Transformation*").

With the introduction of space and time co-ordinates, the action can further be described as i) transformation of the subject and ii) transformation of the object of the action, again in the two following modes: a) the transformation may

8 CH WEINBERGER, O. WEINBERGER, *Logik, Semantik, Hermeneutik*, Beck, München 1979, p. 138. my emphasis.

9 O. WEINBERGER, *Zur Idee einer formal-finalistischen Handlungstheorie*, op. cit., p. 49. "der Begriff der Handlung -- die Handlung ist ein informationsbestimmtes intentionales Verhalten, das einem Subjekt, dem Handlungsträger, zugerechnet wird -- wurde absichtlich so definiert, dass sowohl von Handlungen psychophysischer Personen als auch von solchen anderer Subjekte gesprochen werden kann"(O.WEINBERGER, *Norm und Institution. Eine Einführung in die Theorie des Rechts*, Manz, Wien 1988, p. 140).

10 O. WEINBERGER, *Zur Idee einer formal-finalistischen Handlungstheorie*, op. cit., p. 49

be described as passage from state Z1 to state Z2 (say, "John has got up off the chair"); b) the transformation may be described in relation to the final state ("John is now standing"). Obviously, "the behavioural trajectories may be simple transformations or else more or less complicated chains of states"¹¹.

At this point he introduces two further concepts: that of "sense" and that of "institution". For instance, the act of taking off one's hat sometimes has the "sense" of a greeting, and this "sense" is determined within the context of a given "institution". "Behaviour of a given type becomes conduct endowed with sense on the basis of different institutions"¹². The "sense" of a piece of behaviour, Weinberger stresses, is not something attributed to the behaviour from outside, so to speak, as a secondary consequence; instead, sense endowed behaviour is performed "on the basis and in the context of existing institutions (aufgrund und im Rahmen bestehender Institutionen)"¹³.

This means that sense endowed behaviour cannot exist except within certain rules that constitute it as such. Here, then, even the concept of "ascribing" sense to a state of affairs which exists anyway even without that "sense", becomes problematic. There is not first "doffing one's hat" and then our interpretation of it (or "ascription" of it) as "greeting". Instead, one takes off one's hat because one wishes to greet; the behaviour is understood immediately as the action of greeting. This is because there are rules that constitute the action of greeting in that particular way. "Sinnvolle Handlungsinhalte werden artmässig durch Institutionen konstituiert. Sinn gibt es nur aufgrund und im Rahmen von Institutionen"¹⁴. This may have the further consequence that the norms are no longer conceived of as "interpretative schemes" of a reality that exists anyway irrespective of them, but more as constitutive conditions (necessary but not sufficient) of that reality.

3. Determinism and "Free Will"

Weinberger rejects the thesis of "free will" that sees in the individual's will the *first cause* of his actions. He nonetheless acknowledges a considerable indeterminacy and freedom of human action. A high degree of freedom or of indeterminacy exists first as a social, or better, anthropological fact. "Compared

11 Ibid., p. 50.

12 Ibid., pp. 50-51.

13 Ibid., p. 51.

14 Ibid.

to that of other living creatures, the variability of human behaviour is extraordinarily high. In man purely hereditary behaviour determined by instinct is very limited. A predominant part is played by institutions, the ways of acting and behaving specific to the personal development of each. Man largely possesses the possibility of giving himself his own form of life"¹⁵. It is indicative that in this connection Weinberger also refers to the work of Arnold Gehlen¹⁶. This freedom, adds Weinberger, is not always easy to handle, and is indeed a heavy burden in man's existence, exposing him to the risk of falling victim to crazy ideas, ideological fantasies, prejudices, and of being dragged into destructive and self destructive directions.

There is also, according to Weinberger, a second type of freedom of action, in the sense that the behavioural trajectory may at a given time, T1, be before a bifurcation, with one or more alternatives: the behavioural trajectory can then be described as a "tree" structure with several branchings. "In a theological conception", writes Weinberger, "the bifurcation can be conceived of as potentialities inherent in the system, of which one has been chosen by God to be accomplished; or a strictly indeterministic conception of nature might conceive the alternatives as objective characteristics of the real system, of which only one is realised for entirely casual reasons. I reject these explanations of the tree structure of future behaviour"¹⁷.

In Weinberger's opinion the reasons why we may find ourselves facing bifurcations in the behavioural trajectory are of two chief types: i) external actions that have as their object the "system" in question (for instance, change in conditions in the surrounding environment); ii) insufficient knowledge of the "system" by the "system" itself. As regards ii this inadequate knowledge may result either from insufficient information or observation or from an impossibility

¹⁵ Ibid., p. 55;

¹⁶ See e.g. O. WEINBERGER, Die Bedeutung der Logik für die moderne Rechtstheorie, in O. WEINBERGER, Recht, Institution und Rechtstheorie, op. cit., p. 89 and cf. O. WEINBERGER Institutionstheorie und institutionalistischer Positivismus, now in O. WEINBERGER, Recht, Institution und Rechtspolitik, op. cit., pp. 169-170. Weinberger is also familiar with some contributions of modern ethology, in particular those of Konrad Lorenz (whom he frequently cites), perhaps also through the influence of his wife, who was a pupil of Lorenz (cf. CH WEINBERGER, Evolution und Ethologie. Wissenschaftstheoretische Analyse, Springer, Wein - New York 1983, with preface by Konrad Lorenz)

¹⁷ O. WEINBERGER, Zur Idee einer formal-finalistischen Handlungstheorie op. cit., p. 53.

of knowing in principle. For instance, there are changes to the "system" (subject) that are not at a certain time observable yet influence the "system's" arrangements of behaviour.

What, in a given situation, is possible as future evolution by the "system" may be considered from an objective ("external") or a subjective ("internal") viewpoint. This is either an "objective" Lebensbaum ("tree of life") or a "subjective" one as the result of the subject's representations, expectations, needs and desires. The two "trees" do not always coincide, since the subject may have an inexact representation of reality. (For instance, John may be convinced that he can win Mary's heart with a magic spell; Anthony may believe he will be happy if he marries Martha, and find a few months later that he cannot stand her).

The question of alternative actions also depends on the point in time when it is asked. (Today I cannot permit myself the choice between reading a German newspaper or a Russian one, since I do not know Russian. It is, however, possible that after a period of intensely studying Russian the alternative may concretely present itself in a few years).

Two different deterministic conceptions must be distinguished: i) that every human action (including the decision underlying it) is determined by certain conditions in the world; ii) that actions are determined by conditions which are all in theory accessible to human knowledge. According to Weinberger only type i determinism is justified and acceptable. "I reject the thesis of the knowability in principle, of the determination of the will in the sense of conception ii, since the information processes that determine action are not completely reconstructable. They are, in so far as they are conditioned, largely inaccessible to knowledge. Accordingly, it is only to a very restricted extent that forecasts about the way someone will act are possible"¹⁸. In this connection it may be added that the thesis of the knowability (in principle) of the determination of the will and the decision is perhaps irreconcilable with a noncognitivist metaethics. For this is based on the unknowability (in principle) of the subject's preferences and values. A strict, rigorous determinism must instead attack and deny this unknowability of preferences and values.

18 Ibid., p. 57.

4. "Theoretical Information" and "Practical Information"

We have seen earlier that Weinberger defines action as conduct "depending on information". This is perhaps the most original idea in the theory of action he proposes. Weinberger distinguishes between "cognitive-descriptive" (or "theoretical") information and "normative" (or "practical") information. The former expresses descriptions of states of affairs or of causal relationships or of possible behavioural trajectories. The latter expresses purposes, values, evaluative criteria, preferences or norms. "Practical information does not describe reality, the sphere of facts within which an action is performed, but represents the attitudes of the acting subjects. They are accordingly relative to a particular system"¹⁹.

Between "practical" and "theoretical" information there is such a semantic difference that no possible logical inference from one of these types of information to the other is possible. From premises containing only practical information, no conclusion is possible that contains theoretical information, and conversely from premises that contain only theoretical information no conclusion may be drawn that contains any theoretical information.

In this connection Weinberger insists on rejecting a "realistic" or "referential" theory of meaning. Norms, values, ends, which are expressed in "practical" statements and represent the core of practical information, are not for Weinberger entities in themselves, existing irrespective of the attitude of the subject uttering the statements in question. A referential theory of meaning risks - where it does not prefer to consign the whole sphere of practical information to the area of emotions and "nonsense"- falling into a sort of *Wertobjektivismus*. For it is constrained if it wishes to attribute "sense" to norms, values and ends (or better to the statements expressing them) to assume entities to which norms, values and ends (or better the statements in question) correspond in "reality". "Communication," writes Weinberger, "is the transmission and comprehension of ideal contents (*Gedankeninhalten*), which do not always have to correspond with an object as the entity described. The practical statement (*der praktische Satz*), as information, is not a proposition relating to a norm, value, etc., but the understanding of a specific ideal content"²⁰.

¹⁹ Ibid., p. 58.

²⁰ Ibid., p. 59.

5. A Formalistic Teleology

The "formalistic" aspect of Weinberger's theory is displayed not only in the endeavour to expel any psychological element from the definition of the concept of action, but also in a proposed formalisation of the decision to act in a rationalist teleology²¹. Weinberger's rationalism is however very measured, and aware of its own limits²².

A system of purposes is, according to Weinberger, "a system of tendencies, not the description of a possible world"²³. This definition (which excludes reference to an ontology of possible worlds as far as human purposes are concerned) accepts that it is in principle possible to desire simultaneously situations that are in contradiction or conflict with each other, that is, situations that empirically cannot coexist. (I may simultaneously hope it will rain to water the garden, and not rain so that I can play football).

A system of purposes, according to Weinberger, thus accepts conflicts among purposes²⁴, and indeed its principal task is to settle such conflicts. If systems of purposes were to be asked for a structure devoid of conflict, an essential part of teleological deliberation would be excluded from teleology. In considerations of a teleological nature, ascertainment of conflicts of purposes plays a relevant part. If I ascertain that *p* and *not-p* are simultaneously desired, this commits me to establishing a further evaluation of *p* and *not-p*, that is, a criterion for preferring between them.

Weinberger draws on the relations between means and ends. In the case where one starts from considering a single goal *F*₁, it may be that it can be reached by a) one means only, b) several means, or c) no means. Cases a and b are fairly simple. Here our possibilities of action are predetermined: in a there is

21 Cf. O. WEINBERGER, Rechtslogik, Versuch einer Anwendung moderner Logik auf das juristische Denken, Springer, Wien/New York, pp. 292 ff.

22 See, for example, O. WEINBERGER, Rationales und irrationales Handeln, now in O. WEINBERGER, Studien zur formal-finalistischen Handlungstheorie, Lang, Frankfurt am Main/Bern/New York, 1983.

23 O. WEINBERGER, Zur Idee einer formal-finalistischen Handlungstheorie, op. cit. p. 69.

24 An opposite opinion is taken by Georg Henrik von Wright, who postulates the absence of conflicts within a system of purposes. See G.H. von WRIGHT, On So-called Practical Inference, in Practical Reasoning, edited by J. Raz, Oxford University Press, Oxford, 1978.

25 O. WEINBERGER, Op. ult. cit., p. 69.

only one, in c none. The problems arise with b. Here the plurality of means obliges us to make a further evaluation: that of the means.

Means M1 may be evaluated in relation to means M2 according to three main viewpoints: i) the quantitative viewpoint (M1 offers "greater" or "lesser" realisation of the purpose in question, F1, than M2); ii) a qualitative viewpoint (M1 offers "better" or "worse" realisation of F1 than M2); iii) a viewpoint that reconciles i and ii (M1 offers a "bigger" and "better" or "smaller" and "worse" realisation of F1 than M2). At this point the problem arises whether to prefer means M1, which offers a "bigger" realisation of F1, or else means M2 offering a "better" realisation.

"More" and "less" are, in the context of achieving a goal, measures largely up to the decision of the person concerned so that they escape mathematical type calculation. "The question of how these measures are to be determined," writes Weinberger, "remains unresolved. The way these elements act on overall preferences depends on attitude (on the decision)"²⁶. Weinberger's conclusion is that "a rationalisation of teleological thought through logically based operations so as to render decisions superfluous is impossible"²⁷. An element of irrationality in determining action exists not just as regards the choice of goals; the choice of means too cannot be regarded as entirely rational. The model of teleological deliberation should accordingly be seen more as a "regulatory idea" that indicates the logical structure of a decision and serves to check the various stages through which the decision is reached²⁸.

The impossibility of full rationalisation of decision, adds Weinberger, is also because the "relevance of time co-ordinates to assessment is not logically determinable, but a matter open to decision"²⁹. It cannot be determined through a decision (nor by calculation), for instance, whether one is to prefer satisfaction of goal F1 today, or else equal (or greater) satisfaction of F1 tomorrow³⁰.

Weinberger also presents an outline of the logic of preferences. There are, he maintains, two possibilities: a) operating with only two predicates, strong preference P and equivalence G; or else b) operating with the further predicate

26 Ibid., p. 72.

27 Ibid., p. 73.

28 Ibid., p. 79.

29 Ibid., p. 80.

30 In this connection see CH. WEINBERGER, O. WEINBERGER, Logik, Semantik, Hermeneutik, op. cit., pp. 146-147

of weak preference P_d which applies between p and q if ' $pPq \vee pGq$ ' applies³¹. According to Weinberger, terminology a is closer to ordinary language, and, above all, offers a simpler and perhaps more effective model for teleological considerations. Weinberger accordingly considers this model only.

For any p, q , the triad: ' pPq ', ' pGq ', ' qPp ' applies³². Since equivalence is a symmetrical relation, this triad may also be expressed in the form: ' pPq ', ' qGp ', ' qPp '. This triad asserts that where an assessment relating to two objects or states of affairs is engaged in, one of the statements making up the triad is valid. This does not however mean that from the viewpoint of a "system" (or according to a certain value criterion) one of the evaluations must apply, since p and q might designate objects and states of affairs that according to that particular "system" (or value criterion) cannot be assessed relatively, or else de facto are not assessed at all. Only when it is ascertained that a relative assessment of p and q according to that particular "system" is possible, and that is in fact carried out, can the invalidity of two members of the triad be used to deduce the validity of the third.

In the case of the equivalence of two or more alternatives there is no unambiguous determination of the choice. Among equivalent alternatives, accordingly, the choice is at random in a quite arbitrary manner. "When," writes Weinberger, "there is a full order of preferences, then the choice may in essence be calculated. This is however possible only given certain conditions, which are rarely met"³³.

In order to make this calculation possible, one would according to Weinberger, have to know all the real parameters imaginable, and for each pair of alternatives the determined preference would have to already exist. But this is hard to achieve in the daily life of each individual. Often the actor is not clear what his or her own preferences are. And, it might be added, even where such preferences are clear, practical action is not always oriented according to them³⁴. Moreover, the states of affairs that constitute a subject's purposes, once

31 O. WEINBERGER, Zur Idee einer formal-finalistischen Handlungstheorie, op. cit., p. 75.

32 See CH. WEINBERGER, O. WEINBERGER, Logik, Semantik, Hermeneutik, op. cit., p. 144. Cf. O. WEINBERGER, Rechtslogik, op. cit., p. 298.

33 O. WEINBERGER, Zur Idee einer formal-finalistischen Handlungstheorie, op. cit., p. 76.

34 "I do not," writes A.J. Ayer, "believe that people, even when acting intentionally and freely, always do what they prefer. They are prevented by inertia, or by bad habits, or by social pretensions, or even by moral considerations which they respect even though it is

realised, may not correspond with the representations and the expectations of the subject in question. "Die erlebte Einstellung zum Ziel entspricht nämlich nicht immer dem Wert des vorgestellten Gegenstandes"³⁵.

This has the further consequence that an individual's preferences cannot be deduced from his behaviour. "By observing behaviour," writes Weinberger, "only a weak preference can be documented.. It might even in fact be the case that the subject regards *p* and *q* as equivalent (*pGq*) and that he has accordingly chosen that alternative action at random"³⁶.

6. Critical Considerations

Weinberger's thoughts on the theory of action seem to me important for the metaethical study of value judgements. In particular, his thinking seems to me relevant in relation to the conception of moral judgements as utility judgements, in which he is sometimes believed to have found an objective or quasi objective criterion for ascertaining the "morality" of behaviour. But Weinberger, who as we have seen is very far from disputing the desirability of attempts to formalise and rationalise teleological calculation, shows us clearly how in deciding on behaviour the essential feature is the subject's decision. <<The combination of various scales of preferences according to individual criteria into a single overall scale is not rationally decideable, that is, it usually depends on a further adoption

unpleasant for them" (A.J. AYER, Freedom and Morality and Other Essays, Clarendon, Oxford 1985, p. 42).

35 CH. WEINBERGER, O. WEINBERGER, Logik, Semantik, Hermeneutik, op. cit., p. 147.

36 O. WEINBERGER, Zur Idee einer formal-finalistischen Handlungstheorie op. cit., p.76. See also CH. WEINBERGER, O. WEINBERGER, Logik, Semantik, Hermeneutik, op. cit., pp. 147-148. According to Weinberger, thus, an agent's intention cannot be deduced from observing his behaviour. In this connection cf. J. HABERMAS Handlungen, Spechakte, sprachlich vermittelte Interaktionen und Lebenswelt in J. HABERMAS Nachmetaphysisches Denken. Philosophische Aufsätze, Suhrkamp, Frankfurt am Main 1988, p. 64: "diese Intention können wir der Beobachtung nicht entnehmen; wir unterstellen vielmehr einen allgemeinen Kontext, der es rechtfertigt, eine solche Intention zu vermuten" (emphasis in the original). Ascertaining an agent's intention is accordingly, for oth Weinberger and Habermas, hypothetical in nature. (cf. O. WEINBERGER, Rechtslogik, op. cit., p. 304)

of a stance (Stellungnahme)³⁷. This is true both in relation to goals to pursue, and all the more so, in a system where goals conflict with each other, as in relation to means. The choice of means, except in very simple cases rare in everyday life, also requires a decision, and is indeed sometimes entrusted to chance where there are several equivalent means.

I find problematic the concept of action as behaviour "ascribed" to a certain subject. In this definition of action proposed by Weinberger it is not clear what the link (or perhaps difference) is between "description" and "ascription" of an action.

In ordinary usage describing and ascribing are acts governed by different pragmatic rules. A description may be true or false; an ascription valid or invalid, correct or incorrect, regular or irregular. Lack of a clear distinction between one activity or the other may make us fall into a sort of "naturalistic fallacy", or else uphold a thesis that would at least require strong justification: that every description is an ascription, or else, in the area of theory of truth, that the truth value is reducible to the validity (according to certain rules and within the system they constitute).

Also problematic is the definition of action as "behaviour dependent on information". In what sense can behaviour be dependent on information, or information "determine" behaviour? The question is asked by Weinberger himself: "Are these information elements [...] to be regarded as causes (Ursachen) of the action's outcome?"³⁸. The thesis that some information may "determine" action is in conflict with the commonly accepted opinion that an action may be caused or provoked only by real states of the world and not by mere information.

The definition of action as "behaviour dependent on information" is exposed to the risk, despite the distinction between "practical" and "theoretical" information, of a sort of "cognitivism" which makes the volitional element in a piece of behaviour depend on the cognitive element. This risk is something Weinberger himself was aware of, seeing himself compelled to a clarification which, however, calls into discussion the "fallaciousness" of the definition of action as behaviour dependent on information. "The carrying out of action originates not from the information process determining the action, but from the

37 CH. WEINBERGER, O. WEINBERGER, Logik, Semantik, Hermeneutik, op. cit. p. 145. "In der Regel werden auch Entscheidungen beim Zusammenschluß zu einer Gesamtwertung erforderlich" (ibid., p. 146). See also O. WEINBERGER, Rechtslogik, op. cit., p. 300.

38 O. WEINBERGER, Zur Idee einer formal-finalistischen Handlungstheorie, op. cit., p. 76.

active attitude.... The information process that determines the action does nothing but give the tendency to action a functionally adequate direction"³⁹. What really determines action is, then, the "active attitude" (*aktive Einstellung*) of the subject, that is, his will. Information is subsidiary to this will. In particular, "the practical information entering the information process is an expression of the tendencies to action or a rationalisation of these efforts"⁴⁰.

Weinberger goes so far as saying that the processing of information is only a mediate cause of action. The processing of information serves only to discipline an already existing rule. "The decisional process, the decisions taken on the basis of preference operations, are only elements of mediation, which do not themselves cause real processes but guide effective active attitudes along relatively effective lines"⁴¹. But if this is so, it cannot be maintained other than entirely metaphorically that action is behaviour determined by information.

Weinberger does not, in short, succeed in his attempt to expunge from the concept of action the moment of awareness as intention. This emerges clearly from his treatment of the "identity" of two distinct actions. It is not, he says, enough for there to be two identical transformations of states of affairs. "The identity of transformations represented through distinct descriptions does not yet mean identity of the action, since the action is also specified through the content of intent"⁴². Accordingly the "identity", or the difference between actions depends not just on observable facts but also on the subject's intent, which, as

39 Ibid., p. 60. "Der handlungsbestimmende Informationsprozeß ist keine Ursache der Handlungs sondern die vorhande Fähigkeit zur Aktivität durch den Informationsprozeß in gewisse Bahnen gelenkt" (O. WEINBERGER, Praxis, Logik und praktische Vernunft, in "Rechtstheorie", Bd. 18, 1987, p. 140) See also O. WEINBERGER, Der Weg zur formalistischen Handlungstheorie, in O. WEINBERGER, Studien zur formal-finalistischen Handlungstheorie, op. cit., p. 10, and O. WEINBERGER, Norm und Institution, op. cit., pp. 142-143.

40 O. WEINBERGER, Zur Idee einer formal-finalistischen Handlungstheorie op. cit., p. 60.

41 Ibid.

42 Ibid., p. 62 On this point cf. what John Langshaw Austin writes "I can perhaps 'break a cup' voluntarily, if that is dine, say, as an act if self-impoveryishment: and I can perhaps break another involuntarily, if say, I make an involuntary movement which breaks it. here, plainly the two acts described as 'breaking a cup are really very different" (J.L. AUSTIN A Plea for Excuses now also in The Philosophy of Action, edited by A.R. White, Oxford University press, Oxford 1979, p. 32, emphasis in original).

Weinberger notes, is accessible exclusively to an "understanding" (*verstehende*) interpretation⁴³.

We thus come to a further definition of action that conflicts with the intention to do without psychological concepts: "To act," writes Weinberger "means essentially to bring about a desired situation intentionally (voluntarily)"⁴⁴. "Desire", "intention", "will", are all, I think, terms that refer that to states of conscience and the autonomy of the subject. This is bound to have consequences for the study of value judgements and moral argumentation.

In particular, it seems to endorse on the one hand a non-cognitivist metaethics: human behaviour, human conduct, is ultimately based on intentions not on cognition. On the other hand, it confirms that morality is a reflexive enterprise, in so far as attitudes towards decisions are not only intentional, but also -- using a terminology by John Searle -- "intensional"⁴⁵, that is, self-conscious. Intentionality presupposes "intensionality", in the sense that to take a decision means to be aware of taking it and that without such an awareness we could not be said to have taken a decision. Weinberger's failed attempt to expel psychological (intensional and intentional) concepts from the explanation of human conduct -- somehow contradictory with his radical non-cognitivist position -- compels us to be very suspicious about any strong objectivist approach in the analysis of values and ethical judgements.

43 See O. WEINBERGER, *op. ult. cit.*, p. 62.

44 *Ibid.*, p. 60.

45 Cf. J.R. SEARLE, Intentionality. An Essay in the Philosophy of Mind, Cambridge University Press, Cambridge 1983.

CHAPTER THREE

VALUE JUDGEMENTS AND JUSTIFICATION

Summary: 1. Preliminary. The "revelationist" metaethics - 2. Naturalism, utilitarianism, intuitionism - 3. Emotivism and prescriptivism - 4. Universalisability of moral judgement - 5. Noncognitivism and critical morality - 6. Death of the subject - 7. The legal and the moral domain

1. Preliminary. The "Revelationist" Metaethics

As far as metaethical conceptions are concerned, that is, conceptions regarding the "nature" of moral judgements, in the history of philosophy the following solutions can be picked out: a) religious voluntarism; b) naturalism; c) historicism; d) utilitarianism; e) intuitionism; f) emotivism; g) prescriptivism; h) universalism. These are, obviously, only *some* of the solutions that have been presented down through the history of human thought. Nonetheless, they are the most recurrent and significant among the metaethical theories. This is the reason why I wish to set them forth here -- albeit very briefly -- and discuss them.

On the first conception, to be found in all the so-called "revealed" religions, it is "revelation" that is the ultimate source of right and wrong. This source can be known by man through faith, which may, depending on the versions of this conception, take on, more or less, the rationalist features. At one end, for instance, we have the voluntarist versions, for which the divine world, inscrutable to man, can desire everything and its opposite, good and evil, so that if God wishes evil it becomes good and if God abhors good it will be evil. This amounts to denying that there is any constant criterion of right and wrong, good and evil, different from that of God's will, incomprehensible to man. This voluntarist and irrationalist version of the modern theory based on divine revelation is upheld by, for instance, Ockham and Luther. In this connection recall these words of Luther's: "Menschliche Vernunft und Natur kann Gott in seiner Majestät nicht begreifen, darum sollen wir nicht weiter suchen noch forschen, was Gottes Wille, Wesen und Natur sei, als soweit er's uns befohlen

hat"¹.

At the other end of the range of versions of the religious voluntarist conception we find a rationalist position according to which God cannot but will good, that is, what appears to men endowed with reason as good. The foundation of right can be attained by use of man's typical rational faculties through which he shares, however modestly, in the universal reason of God.

Simplifying a little, religious voluntarism may be summarised in four propositions: i) God exists; ii) God wishes x; iii) since God exists and wants x, x is good (or right); iv) Since God exists and wants x, and x is therefore good (or right), x is obligatory. The problems are numerous; I shall list a few of them. Who tells us that God really exists? What actual proof do we have of his existence? And who tells us there is only God, and not instead several Gods with mutually conflicting moralities? Why then, having ascertained or assuming that God exists, ought we to consider that what he wants is good? Less problematic, perhaps, is the following question: why ought what is good for me be obligatory for me? For it may be plausibly maintained that calling some behaviour "good", defining it as good, semantically implies the acceptance, or better the assertion of the obligatoriness of that conduct or behaviour.

Two considerations, I feel, are enough to invalidate the "revelationist" metaethics. a) The existence of God is controversial, unverified and in all probability unverifiable from the scientific viewpoint. It remains a great mystery, around which the human heart can only continue to declare its "anxiety". This anxiety, even for the believer, cannot help reflecting on his moral judgements, rendering them less absolute, in some sense relative, in need of other reasons, different from mere appeal to the divine world. b) God's will is not a sufficient reason to render an act or behaviour or a state of affairs good or right *for me* too. For it is ultimately I who am the real judge of my ethical choices. "There was a mad woman," writes Sartre, "who had hallucinations: she imagined somebody was talking to her on the telephone and giving her orders. The doctor asked her: "But who is speaking?" She replied "He says he's God". But what proved to her that it was really God? If an angel comes to me, what proves to me that it is an angel? And if I hear voices, what proves to me that they come from heaven and

1 M. LUTHER, Tischreden, ed. by K. Aland, Reclam, Stuttgart 1981, p. 43. It is worth recalling that in the Tischreden Luther defines reason as "the devil's whore" (ibid. , p. 57).

not from hell, or from a subconscious, or from some pathological state? Who proves that they are really directed at me [...] *If a voice is directed at me, it will always be I who decides that that voice is the angel's voice*"².

"Ultimately," as an Italian legal philosopher, Rodolfo De Stefano, writes, "every man is alone with himself and his own conscience, and has to give a judgement on the good or evil that may result from his own actions"³. Were it not so, the concept of morality underlying the ideas presented here would collapse: that of a set of autonomous rules the individual adopts for himself and for which he is accordingly responsible. As Enrico Pattaro says, moral responsibility is, above all, responsibility for the rules, not towards the rules⁴. Denying autonomy would thus imply denying moral responsibility. "The fact that God," writes Popper, "or any other authority, commands me to do a certain thing is no guarantee that the command is right. It is I who must decide whether to accept the standards of any authority as (morally) good or bad. God is only good if His commandments are good; it would be a grave mistake -- in fact an immoral adoption of authoritarianism -- to say that His commandments are good simply because they are His, unless we have first decided (at our own risk) that He can only demand good or right things of us"⁵.

It might be replied to the above objections that God is omnipotent and that if we want to avoid his punishment we must obey his commandments. This argument, however, as Betrand Russell notes, "makes morality indistinguishable

2 J.P. SARTRE, L'existentialisme est un humanisme, Nagel, Paris, 1970, pp. 30-31. "Écoutons le voix de Dieu", dit le croyant. 'Il nous dira lui-même le qu'il attend de nous'. Mais un tel espoir est naïf. C'est seulement à travers une voix terrestre que Dieu pourra se manifester car nos oreilles n'en entendent aucune autre; mais comment alors reconnaître son caractère divin?" (S. DE BEAUVOIR, Pour une morale de l'ambiguïté, Gallimard, Paris, 1947, pp.273-274).

3 R. DE STEFANO, Assiologia. Schema di una teoria generale del valore e dei valore, Laruffa, Reggio Calabria 1982, p. 68.

4 See E. PATTARO, Reflexiones sobre pluralismo ético, in "Anuario de derechos humanos", 1988, p. 403.

5 K.R. POPPER, Facts, Standards and truth: A Further Criticism of Relativism, in K.R. POPPER, The Open Society and its Enemies, vol 2, The High Tide of Prophecy: Hegel, Marx, and the Aftermath, V ed., Routledge & Kegan Paul. London 1974, p. 385

from prudence"⁶, that is, from the prudential, utilitarian calculation. This, as well as considerably reducing the rank of ethics, takes no account of the fact that morality is different from utilitarian calculations. The consideration whether it is, say, more useful to build a bridge between Scilla and Faro, or else between Villa San Giovanni and Grotte (various points on the strait of Messina) is certainly a prudential calculation, but cannot at all be said to belong to morality. Prudential calculation and morality do not coincide, so that any move directed at reducing the latter to the former is bound to prove fallacious.

Finally, revelationist voluntarism proves particularly dangerous in the event of conflict among various ethical positions maintained by differing subjects. The appeal to the divine rule is absolute and not open to compromise. It may, since in the contemporary world there are *several* revealed religions with different or even opposing ethical contents, mean that the dispute becomes one between subjects calling on mutually irreconcilable faiths, thus ending in a situation of incommunicability.

"Revelationist" metaethics has an authoritarian note that cannot be got rid of. It is a clear example of the ethical relevance of acceptance of a particular metaethics. Whoever accepts religious voluntarist metaethics can no longer except at the cost of clamorous self contradiction, adopt a libertarian morality. The authoritarianism inherent in "revelationism" is well illustrated by one of the Christian thinkers closest, and most sensitive, to libertarian principles: Leo Tolstoy. Tolstoy does not really distinguish between religion (so conceived of as "revelationism") and morality: morality is for him the religion that speaks to the individual conscience and is therefore manifest in it, that is, religion is seen from the subject's viewpoint. The basis of morality is thus, for the Russian novelist, the divine will "revealed" to the individual conscience. As we know, Tolstoy's political and social ideals are close to anarchist conceptions⁷; nonetheless in ethical areas Tolstoy proves singularly authoritarian, in open contradiction with his political faith. Recall some concluding phrases of *Resurrection*: "Are we not doing the same," Nekhlyudov thought, "when we imagine ourselves to be masters of our lives, and think that life is given us for enjoyment? For evidently, that is absurd. We were sent here by someone's will and for some purpose. And

6 B. RUSSELL, *Human Society in Ethics and Politics*, cit., p.98.

7 In this connection, cf. G. WOODCOCK, *Anarchism. A History of Libertarian Ideas and Movements*, Penguin, Harmondsworth 1983, pp. 207 ff.

we have made up our minds that we live only for our own enjoyment, and of course things go ill with us, *as they do with labourers when they do not fulfil their master's orders*. The master's will is expressed in these laws. As soon as men fulfil these laws the kingdom of heaven will be established on earth, and men will reach the greatest good they can attain"⁸. Right and good are thus contained in the commandments of God, absolute "master" of men's life and death. It is folly and impiety for men to believe themselves masters of themselves and to seek their own happiness.

2. *Naturalism, Utilitarianism, Intuitionism*

2. 1. The naturalist metaethics says that moral values are derivable or deducible from the ascertainment, or description, of certain states of affairs existing in nature. A particular version of "naturalism" is the conception that -- following a suggestion by Robert Alexy⁹ -- may be called "subjectivism". On this conception value judgements would be nothing but descriptions, assertions, regarding a mental or psychic state of the subject giving the judgements in question. "Thou shalt not steal", or "it is wrong to steal", or "it is good to help one's neighbour", would be capable of reformulation into statements such as "I want you not to steal", "I feel it is wrong to steal", "I hope you will help your neighbour", where "I want", "I feel", "I hope", are to be understood in the descriptive sense. This theory is the equivalent in the metaethical sphere of the doctrine that legal norms (like contracts) are declarations of will, assertions about the mental state of the one laying down the norm (or stipulating the contract). Historicism, too, can be considered a form of "naturalism", with the difference that for historicism moral values are deducible from the description not of "natural states" but of "historical situations" or from a (social) nature conceived as a dynamic and evolving concept.

Natural law theory, especially in its secular, revolutionary version, is a typical representative of metaethical "naturalism". For natural law theory, for instance, the descriptive statement that men *are* (by nature) free and equal is the

⁸ L. TOLSTOY, Resurrection, transl. by L. Maude, Oxford University Press, London, 1962, p. 498.

⁹ See R. ALEXY, Theorie der juristischen Argumentation, op. cit., p. 61.

justificatory basis for the normative statement that men *must* (in law) be free and equal. Hence the indignation that rings in Rousseau's famous words: "L'homme est né libre, et partout il est dans les fers"¹⁰.

Equally, in a historicist conception, in Marxism for instance, the descriptive statement (more properly apparently or allegedly descriptive) that history is tending towards a certain end is the justificatory basis for the normative statement that it "is right" to ("one must") pursue that definite end. Once it is ascertained that the end of history is the abolition of class, then that end becomes the (normative) criterion for "right" and "wrong". Moreover, since historicism is often presented as a theory of "phases" according to which history necessarily goes through certain periods which are all finalised towards the ultimate goal of the course of history, the "phase" itself turns into a normative criterion. Once it has been found that today we are living in a "bourgeois" phase and since (because of the "iron" laws of history) it is impossible to leap over any "phase", what is "right" is what serves the maturation of the "phase" itself. This is the explanation for, say, the following phrase from Karl Kautsky: "it is capital that creates the material basis for a universally human morality"¹¹.

Naturalism and historicism may be reproached with falling into what is usually called the "naturalist fallacy", that is, the unfounded deduction of normative conclusions from exclusively descriptive premises. It cannot, in fact, be seen how from a description of a state of affairs one may derive or deduce any value judgement relating to that same state of affairs, still less -- as is more or less explicitly done in historicism -- an always positive value judgement (history, says Croce, is always justifier, never executioner).

Our value judgements, when their object is natural facts, sometimes evaluate them negatively. A dog breaking a cat's back with one snap may make us exclaim: "What cruelty!". Our moral judgements often relate to really existing states of affairs but do not necessarily describe them positively. From the descriptive statement or statement of fact that "there are concentration camps in the Soviet Union" it does not logically follow that "in the Soviet Union there ought to be concentration camps". Indeed if it were so, if the logical implication were possible, we would have no need to state moral judgements or morals of

10 J. J. ROUSSEAU, Du contrat social, Union générale d'éditions, Paris 1973, p. 60.

11 K. KAUTSKY, Etica e concezione materialistica della storia, Italian transl. by M Montanari, Feltrinelli, Milano 1958, p. 135.

any kind, and indeed the moral problem itself would have no reason to exist. For the moral problem consists in asking about the value of a fact, a question that assumes the possibility of attributing different values to that fact. This attribution always involves an element of decision, a subjective decision, hence the responsibility of the individual author of the decision.

If we instead assumed that the fact bears a value by itself, the point would no longer be to ask about and decide about the value to attribute to the fact (the moral problem) but to ascertain and prove the existence of the fact (a scientific problem). The "truth" and "justice" of a fact are not, however, in ordinary language or experience, sayable with the same meaning. Saying that a fact is "true" in no way implies that it is, also "right" or "good". On the other hand, saying a moral judgement is "true" may have as much sense as saying that a logical operation is "healthy". A logical operation can be called correct or incorrect, valid or invalid, but certainly not "sick" or "healthy". Equally a moral judgement or a norm can be "right" or "wrong" but certainly not "true" or "false".

Naturalist metaethics in fact conceals a naturalist *ethics*, namely the conviction that the dictates of nature are good and right or that one must "obey" the principles that govern nature. But this is not obvious. This is shown by the pretences in the history of human thought that, instead, "nature" as such represents evil and not good: *gnostic* thought. Nor should one forget, in this connection, the so-called "nihilist metaethics": Ivan Karamazov accuses not just the creator, but the creation itself¹².

12 Cf. A. CAMUS, *L'homme révolté*, Gallimard, Paris 1951, p. 81. A good example of "nihilist metaethics" is offered by the central figure, Doctor de Vriendt, in a novel by Arnold Zweig: A. ZWEIG, *de Vriendt kehrt heim*, Aufbau, Berlin and Weimar 1988, pp. 60-61. Not everything that is "natural" is also "positive" for man. An earthquake, cholera, drought, are natural events, yet very harmful for man, who fears them and fights them. Even the death of each of us, is a natural fact, and even more inevitable than any earthquake or cholera outbreak; yet our very innards rebel at the idea of it. So we cannot make the "natural" of "nature" the basis for our values. This has been well put by Max Frisch: "Was wir ablehnen: Natur als Götze. Dann müsste man schon konsequent sein: dann auch kein Penicillin, keine Blitzableiter, keine Brille, kein DDT, kein radar und so weiter. Wir leben technisch, der Mensch als Beherrscher der Natur, der Mensch als Ingenieur, und wer dagegen redet, der soll auch keine Brücke benutzen, die nicht die Natur gebaut hat. Dann müsste man schon konsequent sein und jeden Angriff ablehnen, dass heisst: sterben an jeder Blinddarmentzündung" (M. FRISCH,

Moreover, what counts in a given epoch as "natural" is largely the outcome of cultural and ideological conceptions dominating in that age. The change in sexual morality in various epochs is indicative in this connection. It should further be recalled that "nature" is today increasingly the work of man; it is no longer "found" but in some respects "invented" by human intervention. Concepts formerly "natural" *par excellence*, such as "mother", become today, with the evolution of genetic techniques, increasingly problematic. "Nature" is no longer able, in such areas as artificial fertilisation, to supply us with answers, but instead, must, so to speak, await the answer from us. Accordingly, the reformulation, taking up the same example, of the ethical and legal concept of "mother" cannot derive from an entirely problematic "naturalness" (which even has to be regulated) but has to come from intrinsically moral principles.

Truly, nature is "silent" to those who ask what course to give their own actions, their own social behaviour. Nature is by its nature - if I may be forgiven that horrible word game - entirely deaf to moral questions. This is forcibly expressed in a verse of Goethe's:

<<Denn unführend
ist die Natur:
Es leuchtet die Sonne
Über Bö's und Gute
Und dem Verbrecher
Glänzen, wie den Besten

Homo faber. Ein Bericht, Suhrkamp, Frankfurt am Main 1977, p. 107). Whoever acts upon nature, changes it, ipso facto expresses his discontent with the "natural" pattern of things and sets himself up critically towards it. This is an argument used by Ludwig Feuerbach but not so much to assert an anti-naturalist position as to attack faith in a rational divine entity held to be manifest in nature "Sie setzen," the author is referring to Christians, "reissenden Strömen Dämme entgegen oder leiten sie ab; kurz, sie verändern die Natur nach ihrem Sinn, zu ihrem Besten, soviel sie nur können. Jede solche Tat drückt aber eine Kritik der Natur aus; ich trage keinen Berg ab, wenn ich mich nicht vorher über sein Dasein geärgert, nicht vorher ihn verwünscht, verflucht habe; indem ich ihn abrage, verwandle ich nur diesen Fluch in die Tat" (L. FEUERBACH, Vorlesungen über das Wesen der Religion, in L. FEUERBACH, Gesammelte Werke, edited by W Schuffenhauer, vol 6, Akademie, Berlin 1984, pp. 191-192. My emphasis).

Der Mond und die Sterne>>13

It may, finally, be objected to historicism that history is not always "rational" or "moral". As Jean Améry says, it is a privilege of the human being to be able to revolt against the "existent" in the name of principles foreign to and higher than it. "Recht und Vorrecht des Menschen," he writes; "ist es, dass er sich nicht einverstanden erklärt mit jedem natürlichen geschehen, also auch nicht mit dem biologischen Zuwachsen der Zeit. Was geschah: der Satz ist ebenso wahr, wie er moral- und geistfeindlich ist. Sittliche Widerstandskraft enthält den Protest, die Revolte gegen das Wirkliche, das nur vernünftig ist. Solange es moralisch ist"¹⁴.

If there is an end to history, it is inscrutable; and why ought that end to be "salvational", that is, "right" and "good"? Historicist metaethics ultimately proves, perhaps even more than naturalist metaethics, to be an "ideology", in a twofold sense: i) It disguises normative statements as descriptive statements¹⁵; ii) It sets up a convenient "false consciousness", allowing itself a morality that is in every case in agreement with what happens and hence never fallible, never "wrong". Historicism thus ends up as an extraordinary mixture of opportunism and moral absolutism. This second "ideological" aspect of historicism has been well grasped by Nicola Chiaromonte. "It is not in fact true," writes Chiaromonte, "that those who appeal to history, to science, to the inevitable trend of the world are taking an impersonal course of things to be right. It is primarily themselves they take to be right; and they basically indulge themselves"¹⁶.

13 J.W. GOETHE, Das Göttliche in J.W. GOETHE, Gedichte, chosen and introduced by S. Zweig, Reclam, Stuttgart 1983, p. 86.

14 J. AMÉRY, Jenseits von Schuld und Sühne. Bewältigungsversuche eines Überwältigten, DTV, München 1988, p. 91.

15 In this connection cf. Th. GEIGER, Ideologie und Wahrheit. Eine soziologische Kritik des Denkens, II ed., Luchterhand, Neuwied & Berlin 1968, pp. 56-57

16 N. CHIAROMONTE, Credere e non credere, Bompiani, Milano 1971, p. 197
Historicism ends up being "an ideology that claims that even the truth is determined by circumstances and refuses to see itself bound by anything said and taken as true yesterday, if today's conditions require something else" (J. BENDA, Il tradimento dei chierici. Il ruolo dell'intellettuale nella società contemporanea, trad. it. by S. Teroni Menella, II ed., Einaudi, Torino 1976, p. 43).

2. 2. Arguments similar to those brought against "naturalism" can in my view also be brought against utilitarian metaethical conceptions. It is true that in utilitarianism there is not always a clear demarcation line between ethics and metaethics. The ethics of utilitarianism is directed towards satisfying the needs (the "happiness") of the greatest number of people with the least possible sacrifice. Metaethics equally affirms that value judgements, or, better, moral judgements, can be translated into statements relating to the happiness of the greatest number. Utilitarian metaethics thus represents a case of what some define as "rational-universalistic" metaethics¹⁷. Utilitarianism in metaethics (and in ethics) is anything but individualistic and idealistic as is sometimes wrongly claimed. It aspires to the happiness of the greatest possible number of people, not that of the single individual.

Utilitarian metaethics too, however, falls, in my view, into the "naturalistic fallacy", when, as it often does, it holds that utility or happiness can be ascertained objectively. If the happiness of the greatest number is ascertainable, calculable, and can be expressed in descriptive statements, it will be possible to check whether a certain value judgement tends to promote that happiness. Moral evaluations would then be reducible to statements on the most appropriate means to secure the happiness of the greatest number. And since the means/end relationship, that is, the appropriateness of the means to the end, can be verified through observational instruments, moral judgements too can be reformulated as descriptive statements.

But is it really true that the happiness of the greatest number is objectively ascertainable? And is the happiness of the greatest number perhaps not the sum of the happiness of the greatest number of individuals, that is, the sum of so many individual happinesses? If that is so, however, the problem of ascertaining happiness remains unresolved. What my happiness consists in, and whether I ought to pursue it assuming I know what it is, are the two questions one seeks to answer by adopting a morality. Happiness, I believe, is not the supposition for individual morality, something higher than it, but the outcome of the thoughts and questions that make up what we assume to be our morality.

In reality, although it sometimes likes to flaunt mathematical formulae and calculations taken from economics, utilitarianism supplies us with rather

17 See P. KOLLER, *Rationalität und Moral*, in *Grazer Philosophische Studien*, 20, 1983, p. 276 ff.

problematic, counter-intuitive criteria in moral respects. Racism, for instance, directed against a small minority may calmly be justified by utilitarian considerations. The fact is that for this metaethics/ethics all the desires, needs and aspirations of various human beings are placed on the same level: what counts is not their "quality", but their "quantity"¹⁸.

Moreover, utilitarianism tends to reduce considerations of a moral nature to a sort of prudential calculation. But by so doing, as was indicated earlier, it loses the specific feature of morality, which can no longer be distinguished from spheres that are instead ordinarily separate from it. If as an engineer I design a bridge, my aim will be for it to satisfy the needs of the maximum number of users at the lowest possible cost to the firm building it. I shall certainly not set about distinguishing between the needs of white and black users, of Nazis and Jews: the user my design is aimed at will ideally be the whole human race. However, it certainly cannot be maintained that my civil engineering calculations and designs fall within the sphere of what is usually called "moral reflection".

Another point worthy of note, I feel, is the following; If we adopt a utilitarian approach, we may legitimately ask why one ought to adopt a utilitarian metaethics should it prove more useful (to the greater number) to adopt, let us say, an institutionalist metaethics. The unclear distinction utilitarianism makes between ethics and metaethics may mean repudiating utilitarian metaethics in the name of utilitarian ethics. But if that were so, the strength and the attraction of utilitarianism (which lies in its apparent capacity to supply mathematisable criteria of morality) would disappear at a stroke.

2. 3. The metaethical positions of intuitionism can be summarised in four chief propositions. i) "morality", or "goodness", or "justice", is a quality or property intrinsic to reality. ii) This "quality" cannot be defined and thus not empirically ascertained. iii) Nonetheless, this "quality" is self evident, analogously with mathematical truths. iv) Each of us, even if unable to define them, knows those "qualities" through the intuitive capacities typical of the

¹⁸ Cf. B. WILLIAMS, Ethics and the Limits of Philosophy, Fontana, London 1985, p. 86. "Whether the one state," writes Moore, "was better than the other would depend not merely upon the number of desires that were simultaneously satisfied in it, but upon what the desires were desires for" (G.E. MOORE, The Nature of Moral Philosophy, in G.E. MOORE, Philosophical Studies, Routledge & Keegan Paul, London 1970, p. 339).

human being. Among the "classical" representatives of this theory are G.E. Moore, H.A. Pritchard, W.D. Ross, all of them British philosophers. In French philosophy Bergson is an intuitionist, as in Germany is Max Scheler. A more recent formulation (rather fresher and more deeply felt) of the theory can be found in Robert M. Pirsig's fine novel, Zen and the Art of Motorcycle Maintenance: "But how do we know what's good?" but almost before the question was out of his mouth he would realise the answer had already been supplied. Some other student would usually tell him 'you just see it'¹⁹.

One implication of intuitionism should be stressed: it excludes the possibility and need for "proof" (justification and argumentation) of ethical choices. For intuitionism there is no point in asking for a justification or "proof" of the "truth" (better validity) of moral intuitions, because according to it when one is convinced one knows the "good" or the "right" (that is, has a moral intuition), one cannot err. It is worth adding that for this theory knowledge, too, has no need of proof, since if one knows, that is, is convinced of knowing, one cannot err. Intuitionism thus ends by also implying the thesis of the unjustifiability of empirical knowledge itself (of facts, not of "qualities").

Intuitionism is, in my view, a particularly fallacious metaethics. For it is founded on the one hand on hypothetical intuitive capacities of human beings (not further illustrated) and, on the other, on the concept of the self evidence of mathematical truths (alleged to apply also to moral truths). But while many of the criticisms directed at "naturalism" can be brought against intuitionism, in particular those regarding the logical impossibility of deriving an ought from an is, it must be noted that the very concept of self-evidence is anything but unanimously recognised in the mathematical sphere, too²⁰. It has, for instance, been shown in the sphere of logic and mathematics that some of what seemed at first "obvious truths" prove on closer analysis to be clamorous errors²¹. For intuitionism (as for "naturalism" and for metaethical cognitivism in general) there

19 R.M. PIRSIG, Zen and the Art of Motorcycle Maintenance, Corgi Books, London 1987, p. 203. Emphasis in the original.

20 Cf. M KLINE, Mathematics: The Loss of Certainty, Oxford University Press, Oxford 1980, chapter 10.

21 See, for example, F WAISMANN, Ethik und Wissenschaft, in F. WAISMANN, Wille und Motiv. Zwei Abhandlungen über Ethik und Handlungstheorie, edited by J. Schulte, Reclam, Stuttgart 1983, p. 164 ff.

are values (Werte) irrespective of evaluations (Wertungen). One clear example of this intuitionist position is represented by the Polish philosopher Bochenski. "Eine Wertung -- unsere Einsicht in die Werte und unsere Reaktion auf sie," he writes, "ist etwas ganz anderes als die Werte selbst. Die Wertungen sind veränderlich, relative, immer wechselnd; diese Werte aber selbst sind ewig und unveränderlich"²². This distinction between "values" (eternal and immutable) and "evaluations" (transient and changeable) is, I think, indefensible from the viewpoint of critical morality. From this viewpoint a state of affairs, or a piece of conduct, has "value" in so far as the subject attributes values to it, "evaluates" it. Value judgements, on this view, are not ascertainties or recognitions or "intuitions" of values already existing in some sphere of reality, but evaluations, the production or attribution of values.

Intuitionism in the metaethical sphere leads to a sort of romantic irrationalism. What is 'right' is what I "feel" to be. As Bruce Ackerman notes, intuitionist metaethics exalts monologue, not dialogue. From the moment I "feel", "see", "intuit" what is right, I have no need to face others and explain my reasons to them. This is stated explicitly by, for instance, Bochenski: "The proposition 'you must not cut your mother's throat to get money to drink' cannot be given a foundation. It is obvious; it can only be said that it is so, and that in this connection there is no room for discussion"²³.

The irrationalism of this metaethical position is highlighted by the assertion of the indefinability of what is right. "If you can't define Quality," writes Pirsig, "there's no way you can subordinate it to any intellectual rule"²⁴. But why can moral qualities not be defined? This question awaits in vain a response from the intuitionists. To those who proclaim the indefinability of a concept or term, I reply with Wittgenstein's lapidary observation: Whereof one cannot speak, thereof must one be silent.

I think, further, that metaethical intuitionism also has to face some of the criticisms brought against epistemological intuitionism, namely the theory asserting that the privileged source of knowledge is intuition, especially as regards some allegedly "primordial" concepts like space and time. It may be

22 J.M. BOCHENSKI, Wege zum philosophischen Denken. Einleitung in die Grundbegriffe. IX ed., Herder, Freiburg i. Br. 1985, pp. 76-77

23 Ibid., p. 71.

24 R.M. PIRSIG, op. cit., p. 207.

objected against epistemological intuitionism that: i) our "intuitions" (for instance that of time) are to some degree determined by the culture we are part of and the theories we hold²⁵; ii) intuition, a sort of "flash of genius" that every one of us in fact experiences in understanding or solving a problem has to do with what is usually called the "context of discovery" (as distinct from the "context of justification"). But in speaking of epistemological or gnoseological criteria, reference is made to "proof", "arguments", "procedures", that are intersubjectively verifiable. "Proof", "arguments", "procedures", are hard to apply to the "context of discovery" which represents a strictly individual, unrepeatable position, at any rate one that cannot be shared by others who have not lived that particular experience.

All that can be intersubjective is the "context of justification", which is accordingly the context of relevance when one wishes confirmation of one's own convictions or "intuitions". This is true also of the context of morality. I may intuitively hold that some conduct is right. But this is not enough to justify the "rightness" of the conduct. I must communicate my intuition, check it intersubjectively, and this is the task of moral argument. Intuition as such may perhaps be a starting point for a process of argumentation and deliberation, but needs in turn to be brought into discussion and given a justification.

3. *Emotivism and Prescriptivism*

3. 1. Emotivism and prescriptivism are metaethical conceptions that derive from (or are implied by) adoption of a certain theory of meaning. This implication between metaethics and philosophy of language is by contrast not there (at least so obviously) in intuitionism or "naturalism" nor in utilitarianism.

Emotivism is the metaethical theory that maintains that value judgements and in general prescriptive, directive or normative statements are mere manifestations of feelings or emotions. A fine formulation of the emotivist position can be found in Guy de Maupassant: "Nous ne sommes pas de gens logiques ni raisonnables, mais des gens à sentiments subtils; et les plus justes arguments ne valent, dans

25 Cf. K.R. POPPER, *Epistemology Without a Knowing Subject*, in K.R. POPPER, *Objective Knowledge. An Evolutionary Approach*, revised edition, Clarendon, Oxford 1986, p. 135

notre esprit, quelque préjugé poétique. En politique, en morale, même en art, nous ne sommes jamais déterminé par des raisonnements, mais toujours par des impulsions raffinées et souvent fausses"²⁶.

Moreover, i) from adopting a verificationist or referentialist or behaviourist conception of meaning (with the consequence that the only statements endowed with meaning will be those verifiable or with a "referent" or "effects" in the empirical world) and ii) from conceiving the chief function of language to be the representative or descriptive one, with beside that only one other function, the expressive one (that of expressing emotions or feelings), one will come to the conclusion that value judgements (through which only emotions are expressed) are devoid of meaning. Thus, if value judgements are not regarded as composed of descriptive statements, they will, on this view, be conceived of as expressions of emotions and equated with mere exclamations. "The exhortations to moral virtue," writes A. J. Ayer, "are not propositions at all, but ejaculations or commands which are designed to provoke the reader to action of a certain sort"²⁷.

It may first be objected to the emotivist theory, on the level of philosophy of language, that it assumes an over-restricted concept of meaning. It cannot be seen why this ought to be confined to the sphere of the empirically observable. Suffice it, for instance, to think of symbolic phenomena - like music, which can be "read" as well as "heard", and thus understood quite apart from its material execution - that are not aimed at representing an existing reality, to realise that the explanation of symbolic or linguistic phenomena given by the verificationist, or referentialist, or behaviourist theory is entirely inadequate.

The emotivist theory leads to the unjustifiability of moral judgements. Considering that for it, language either describes or expresses or seeks to evoke an emotion, it will not on this theory be possible to find reasons in favour of or against a moral judgement. Such a justification, the presentation of reasons for or

²⁶ G. de MAUPASSANT, A propos du divorce, now in G. de MAUPASSANT, Chroniques, vol. 2, Union générale d'éditions, Paris 1980, p. 86

²⁷ A.J. AYER, Language, Truth and Logic, cit., p. 137. Emotivist metaethical positions are, as is well known, also defended by Charles Stevenson, Rudolph Carnap, and by Ogden and Richards (see, for example, C.K. OGDEN, I.A. RICHARDS, The Meaning of Meaning. A Study of the Influence of Language upon Thought and the Science of Symbolism, X ed., Routledge & Kegan Paul, London 1972, p. 125).

against a moral judgement, could not in fact declare its character as being purely emotional without losing its justificatory function. On the other hand, it cannot be purely descriptive either, since one cannot infer from a description (assuming a noncognitivist position denying the deduction of normative statements from descriptive statements), statements that are normative in the broad sense. And an argument 'for or against' is in the broad sense normative. From an emotivist point of view it thus proves impossible to argue for (or against) particular ethical choices, and in general to discuss in moral terms. "We cannot bring forward," writes Ayer, "any arguments to show that our system is superior. For our judgement that it is so is itself a judgement of value, and accordingly outside the scope of the argument"²⁸.

This is in my view an absurd consequence, since it contradicts ordinary experience which, particularly in hard cases, raises the question of justifying moral choices. Emotivism, by denying the possibility of moral argument, ends up in a conception according to which in moral areas one cannot ask questions (as to the meaning of and reason for our ethical choices) since we do not have the linguistic means for asking such questions. The conclusion is then irrationalist, as already anticipated in Maupassant's formula cited earlier: all that is possible is to abandon oneself to one's own feelings and one's own emotions.

The criterion of what is "right", moreover, from some emotivist philosophers -- consider, for instance, the "early" Wittgenstein, and in his wake Waisman²⁹ -- is the fact that a choice be sincerely felt, be the outcome of a sincere commitment by the subject, accompanied by a strong emotion. (Here emotivism takes on nuances that bring it close to Satre's existentialism). But how can it be denied that Hitler sincerely believed in and was strongly committed to his value judgements? Well then, was Hitler "right"?

Two further objections can be brought against emotivism. i) The first is that the theory is, so to speak, "empty", since it says nothing meaningful. Every human action is in some sense a manifestation of feelings, or at any rate, from any human behaviour one may draw a hypothesis about the emotions of the subject in question. Saying then, that moral judgements are expressions of feeling or emotions tells us nothing about them, since ethical judgements too, as well as

²⁸ A.J. AYER, Language, Truth and Logic, cit., p.147.

²⁹ See F. WAISMANN, Ethik und Wissenschaft, in F. WAISMANN, Wille und Motiv, cit., p. 184

gastronomical ones, or artistic activity itself, or sitting at table, going for walks, smoking, etc. etc. are expressions of feeling or emotions. As Popper writes, "everything a man as an animal can do is (among other things) an expression of an internal state, of emotions, and of a personality. This is trivially true for all kinds of human and animal languages. It holds for the way a man or a lion walks, the way a man coughs or blows his nose, the way a man or a lion may look at you, or ignore you. It holds for the ways a bird builds its nest, a spider constructs its web, and a man builds his house [...] For the same reason expressionist or emotive theories or language are trivial, uninformative, and useless"³⁰. "The same," adds Popper, "holds true for expressionist or emotive theories of morals, and of moral judgements"³¹.

ii) The second additional objection is as follows. It may be stated that typically human feelings like love, hate, reverence, etc. are present in the human soul only when they can be expressed linguistically. This means that the feeling depends on its expressibility in one or more propositions endowed with meaning (that is, not in turn reducible to mere expressions of feeling). "Vielleicht könnte man so weit gehen zu sagen," writes Günter Patzig, "dass auch das 'lebendige Gefühl der Zustände' erst zu sich selbst kommt, wenn es adäquaten Ausdruck gefunden hat. Es ist das, was es ist, nämlich dieses bestimmte Gefühl dieses bestimmten Zustandes, nicht ohne die aufschliessende Funktion des ihm eigentümlichen Ausdrucks"³². Here it is not denied that there cannot be feelings that cannot be expressed in words. But in this case we have to deal with: a) rather "primitive" feelings not typically human, such as physical pain, hunger, fear, sexual desire, etc. or else b) confused feelings we are still not clear about³³.

The emotivist theory, once the unjustifiability of moral judgements is asserted, maintains that in moral areas there can be no room for discussion. This is put very clearly by A. J. Ayer: <<It is plain that the conclusion that it is

30 K.R. POPPER, Unended Quest, cit., p. 62

31 Ibid., p. 209

32 G. PATZIG, Satz und Tatsache, now in G. PATZIG, Tatsachen, Normen, Sätze, Reclam, Stuttgart 1980, p. 12.

33 "Violent outcries - of fear, of rage, of pain or joy - are not a specific property of man. We find them", writes Cassirer, "everywhere in the animal world" (E. CASSIRER Essay On Man, op. cit., p.115.)

impossible to dispute about questions of value follows from our theory also>>34. This position leads to absolutism in ethics. But refusing to discuss values means refusing to bring them into discussion even in relation to oneself, in that internal monologue in dialogue form, in which each of us from time to time evaluates the reason for a moral choice or life decision. Emotivist metaethics thus ends up denying the reflectivity of human action.

There is, however, an idea of emotivism I feel I can share: the pre-eminence at bottom, in moral respects, of feeling over abstract rationality. Without feelings one cannot be in a position either to postulate the first principles of morality nor, especially, to "live" them, to make them a reality. One may, for instance, with more or less plausibly and rationally justified arguments, hold that the human being's freedom and dignity are the supreme principles of morality, yet nonetheless, apart from declarations of principle, constantly violate those principles in daily relations with others, and indeed adopt opposite ones. This often happens not from hypocrisy or "weakness of will", but because these values have been acquired only as the result of a pure intellectual exercise, but are not felt.

3. 2. Prescriptivism is the metaethical theory that holds that value judgements are reducible to, or expressible in, or consist of, prescriptive statements, that is, statements that prescribe or command particular behaviour. A first version of prescriptivism can be found in emotivist theories like Carnap's or Ayer's, for which moral judgements are nothing but commands aimed at bringing about certain behaviour in a given subject, yet these commands are in themselves without meaning, and are more expressions of emotions. In speaking of "prescriptivism" one generally alludes to a less narrow conception for which, instead, commands are distinguished from mere emotional manifestations, and are endowed with meaning. Below, in speaking of "prescriptivism", we shall be referring to the latter conception.

One more or less "classical" example of prescriptivism is supplied by the first book published by Richard Mervin Hare, The Language of Morals³⁵. Prescriptivism assumes a theory of meaning broader than that defended by the

34 A.J. AYER, Language, Truth and Logic, cit., p. 146. In addition, cf. G.E. MOORE, The Nature of Moral Philosophy, cit., p. 333 ff.

35 Clarendon, Oxford 1952.

representatives of emotivism. For prescriptivism adopts a theory of Wittgensteinian extraction: the meaning of a term or statement is here given by its "use". Moreover, this metaethical theory holds that alongside a descriptive meaning there may be a normative meaning, or better a prescriptive one. Hare draws a distinction, very well known today, between the propositional (semantic and representative) part of a statement and the part that indicates the statement's function. The former designates a certain state of affairs (the closure of a window) and has been called "phrastic"; the latter, indicating the statement's function (either affirming -- "it is so" -- or prescribing -- "it ought to be so" -- closure of the window), is called "neustic"³⁶. In moral judgements we thus find ourselves faced with prescriptive statements in which a certain "phrastic" part (identical also in the corresponding statement) is accompanied by a prescriptive or imperative "neustic" part. Thus the statement "it is wrong to kill a human being" would, according to Hare, break down into a "phrastic" ("killing a human being") and a "neustic" ("is wrong", or better "there is no need to", "one ought not to").

In Italy a prescriptivist conception was adopted by Norberto Bobbio in the early fifties. Bobbio distinguishes three functions of language: a) descriptive, b) expressive, c) prescriptive. "The descriptive function, typical of scientific language, consists in giving information, communicating particular information to others, transmitting knowledge, in short, making known; the expressive function, typical of poetic language, consists in making certain feelings clear and seeking to evoke them in others, so as to make others share in the particular emotional situation; the prescriptive function, typical of normative language, consists in giving commands, advice, recommendations, warnings, so as to influence and alter the behaviour of others, in short, in getting done"³⁷.

The link between evaluative and prescriptive language, indeed their equivalence as asserted by prescriptivism, is not very plausible if considered in relation to aesthetic language. The statement "this landscape is ugly" or "this painting is kitsch" can hardly be reduced to the statement "this landscape should

36 R.M. HARE, The Language of Morals, Clarendon, Oxford 1986, p. 17 ff.

37 N. BOBBIO, Teoria della Norma, Giappichelli, Torino 1958, p. 83, emphasis in the text. Cf. also, for example, R GUASTINI, Il linguaggio precettivo, in S CASTIGNONE, R GUIASTINI, G. TARELLO, Introduzione teorica allo studio de diritto, ECIG, Genova 1979, pp. 18-19.

be changed" (or "this landscape should not be looked at"), or "this painting should not be bought" (or even "this painting should be destroyed"). It is indeed possible to say without contradiction "this painting is ugly, but I advise you to buy it", or "this is a splendid canvas, but don't go and see it", which proves the fact that in ordinary language value judgements and commands (and advice) have quite distinct meanings and functions³⁸.

Prescriptivism further makes justifying prescriptive statements, in particular moral ones, very problematic. For the justification for a prescriptive statement - on the prescriptivist view - can consist either of prescriptive or descriptive statements (or of expressive statements). But the statements whereby one argues for or against an ethical choice cannot be reduced to any of these types of statement (prescriptive, descriptive, expressive). The justification for a moral statement cannot be constituted entirely of descriptive statements, on pain of falling into the "naturalistic fallacy". Nor can that justification be made up of prescriptive statements, since in that case we would again find ourselves facing an imperative, a prescription, but not an argument³⁹.

Nor could this justification be supplied by an expressive statement. The latter could at most express the motive for my making a particular ethical choice, but cannot justify it; that is, give it a rational foundation. The statement "I hate him", for instance, cannot justify my statement "It is right to seek to take Hitler's life", though hatred of the German dictator might be one of the motives, or indeed the only one, why I made the statement in question. In the metaethical sphere too, as we have already mentioned, a distinction can be drawn similar to the one employed in meta-knowledge between the "context of discovery" and the "context of justification". In the metaethical context one may, in my view, distinguish between a "context of choice" and a "context of justification", with the consequence that criteria valid for one are not necessarily also valid for the other.

Prescriptivism accordingly has an irrationalist outcome: it does not allow argumentation about ethical choices. This has been acutely grasped by Stephen Toumlin. "Sometimes," he writes, "when we make ethical judgements, we are not just ejaculating. When we say that so and so is good, or that I ought to do

38 C.f. B. WILLIAMS, *Ethics and the Limits of Philosophy*, cit., p. 124 ff.

39 In this connection, see G.J. WARNOCK, *Contemporary Moral Philosophy*, MacMillan, London 1967, pp. 27-29, pp. 46-47.

such-and-such, we do so sometimes for good reasons, and sometimes for bad ones. The imperative approach does not help us in the slightest to distinguish the one from the other - in fact by saying that to talk of reasons in this context is nonsense, it dismisses our question altogether. However, the doctrine is not only false but innocuous, for it draws on its own fangs. If as we must, as we still refuse to, treat ethical judgements as ejaculations, its advocates can produce no further reasons for his view. By his own account, all he can do is to evince his disapproval of our procedure, and urge us to give it up: it would be inconsistent of him to advance 'reasons' at his stage"⁴⁰.

Obviously, the incompatibility between justification of moral judgements and arguing them on the one hand and prescriptive metaethics on the other assumes that arguing is taken as an activity done not so much at pragmatic level as eminently on the semantic level. "Justifying", or arguing for, a normative statement is not, as Umberto Scarpelli writes, a "discourse [...] aimed at convincing the addressees"⁴¹. "Justifying" a moral statement is not equivalent to persuading a subject of its "rightness" or "validity" just as demonstrating a mathematical theorem or verifying an existential statement is not equivalent to convincing a particular subject of their "truth"⁴².

Furthermore, prescriptivism obscures one feature of what I would call "moral experience" or "critical morality", as individual morality distinct from and sometimes opposed to "positive morality", to the socially dominant morality. The typical feature of "critical morality" is to be autonomous: it is the individual himself who gives himself his rules and principles. But if the imperativist view is adopted, moral judgements consist of statements directed, as Bobbio writes, at

⁴⁰ S. TOULMIN, An Examination of the Place of Reason in Ethics, Cambridge University Press, Cambridge 1970, p. 70.

⁴¹ U. SCARPELLI, Semantica, morale, diritto, Giappichelli, Torin 1969, p. 92. But cf. U. SCARPELLI, Gli orizzonti della giustificazione, in Etica e diritto, ed. by L. Gianformaggio and E. Lecaldano, Laterza, Bari, 1986, where it is stated that "one should avoid making the connection between argumentation and persuasion an analytical connection, that is, avoid making a doctrine of argumentation into, by definition, a theory of persuasion" (*ibid.*, p. 22).

⁴² On this point the fundamental considerations are to be found in K.R. POPPER, Objective Knowledge. An Evolutionary Approach, cit., p. 106 ff.

getting done; that is, at influencing others' behaviour⁴³. Moral judgements are however directed above all at doing, that is, at directing the behaviour of the subject stating them. Conceding (though not admitting) that moral judgements consist in direct commands for others' conduct it remains for the addressee of the demand to assess and decide - through a moral judgement, whether to comply with that command. But even accepting that this difficulty is overcome, and that prescriptive statements apply also to one's "own" conduct, in what sense can it be said that the individual commands himself by formulating a moral judgement? Accordingly, maintaining that moral judgements consist in, or imply prescriptions (imperative commands) is, in reference to "critical morality", to say the least, deceptive.

4. *Universalisability of Moral Judgements*

Hare's theory is not just prescriptivist; it maintains that moral judgements consist of, or imply, universal imperatives. It is worthwhile at this point dwelling on another metaethical theory (which, here, combines with "prescriptivism"), asserting that moral judgements are universalisable statements. What does this mean?

The universalisability of moral statements is spoken of in at least two senses. i) A value judgement is universalisable in the sense that if I assert that "x is good (or right)" I am ipso facto committed to defining as good or right any act or state of affairs that is similar to x in relevant features. ii) A value judgement is universalisable in the sense that when I affirm, in a particular situation, that "x is good (or right)", this must also hold for any other individual in an analogous position to the one I am in at the moment of stating my value judgements. In this second case the following question immediately arises: what does "valid" mean here? Various answers can be given to this question. They can, however, be subsumed under two main ones. a) For some, a value judgement is "valid" as universalisable if it is able to secure the assent of all those interested. b) For others, instead, a value judgement is "valid" as universalisable if given certain normatively determined and variously (sometimes in detail) specified ideal conditions, that judgement is such as to have to be accepted by any rational subject.

43 See N. BOBBIO, *op. ult. cit.*, p. 83

The following objections may be made to the universalistic conception maintaining that moral judgements are (or ought to be) universalisable statements in sense *i* defined above. Ascertaining what is similar to *x* in relevant aspects, that is, determining the limits of the class of acts or states of affairs to which (if universalised) that particular moral judgement belongs, refers to a decision. That is, it is not an ascertainment pure and simple but a choice. Unless universalisability is conceived in purely formal terms; in which case, however, it will no longer be of any assistance (in determining the class or applicability of moral judgements), since it permits the unlimited entry of acts and states of affairs into the class in question. "Wenn ich Universalität bloss formal verstehe," writes, in this regard, Ota Weinberger, "und jede beliebige Differenzierung der Subsumptionsbedingungen zulasse, dann bedeutet dieses Postulat gar keine Einschränkung für die Zulässigkeit des Inhaltes normativer Regeln: es stellt also kein Beurteilungskriterium der Gerechtigkeit dar"⁴⁴.

The choice of acts or states of affairs to include in the class to which *x* belongs (or is made to belong) is arbitrary, that is, it depends on certain normative postulates. Universalisability, or its degree or breadth, of the judgement "*x* is right (or good)" depends on moral principles accepted by the subject stating that judgement. "Universalisability" can thus not constitute the criterion for the "morality" (the moral quality) of a value judgement, since it refers to, and is based on, another value judgement (the normative postulates that lead us to include *x* in a given class). The conception in type *i* above is accordingly not a metaethics (which describes what moral judgements are), but an ethic as such (that tells us what, in its view, moral judgements ought to be).

To the conception that instead upholds (prescribes) the universalisability of a moral statement in the sense that it ought to be valid for every rational subject finding himself in the same situation as the utterer, the following may be objected. This conception (type *ii* above) presupposes the normative principle that all human beings are subjects of equal dignity, "persons". Consider a Nazi saying "every man is entitled to a wage that enables him to live decently". In Nazi literature we frequently find such normative statements. Jews were

44 O. WEINBERGER, Die Conditio humana und das Ideal der Gerechtigkeit, in D.N. MACCORMICK, O. WEINBERGER, Grundlagen des Institutionalistischen Rechtspositivismus, Duncker & Humblot, Berlin 1985, p. 252. . Cf. H.L.A. HART, The Concept of Law, Clarendon, Oxford 1961, pp. 155-156.

nonetheless deprived of their property and, before being physically annihilated, reduced to hunger. How is this to be reconciled with what "our" Nazi asserted earlier? Is it perhaps an internal contradiction in "Nazi morality"? In fact there is no contradiction here, since when a Nazi says "every man" he means "every Aryan"; he does not include Jews in the class of men. Nor is this an absolute novelty in history. Until the affirmation of Christianity it is rare to find in the West a community or a people that does not reserve the status of "man", "person", "subject" for its own members alone. Consider too in this connection the phrase "people of men" which some North American Indian tribes designated themselves. Without, then, the (moral) postulate of a "humanity" that embraces all human beings, that is, of the equal dignity of all people, the universalist conception of type *ii* is impossible.

Type *ii* universalism also depends on the adoption of certain normative principles, and is not a metaethics but an ethic. It does not express a factual truth but only a moral principle (which I personally share and defend). It is however necessary to be aware of this (of the ethical and not metaethical status of this conception) in order not to fall back into the "naturalistic fallacy" (deducing an "ought" from an "is") and into an objectivist position (for which a morality would be "capable of being true"). This is, in my view, not just manifestly unfounded from the logical viewpoint, but also very dangerous from the ethical viewpoint itself. A morality that believes it is true also believes that it is the only possible morality, and hence ends up denying the quality of being "moral" to all other moralities (different from itself), thereby denying -- and this is what worries me -- that morality is the product of the individual's autonomy. It is, then, I feel appropriate to draw a distinction between what is "moral", what belongs to the context of morality, and what we regard as immoral, improper, cruel, wrong, bad. A position may at the same time be "moral", belong to a class of moral statements, and yet be for us immoral (in the sense of wrong). It is not contradictory to speak of "wrong morality", just as it is, by contrast, to speak of "unjust justice".

5. Noncognitivism and Critical Morality

Let us summarise some conclusions which I feel follow from what has been said in this essay so far. i) I hold that the theory of meaning to accept, albeit with

supplementations and qualifications, is the one of "use", understood as *rule governed use*, and hence as collective use. ii) The theory of "use" allows us to reformulate in liberal terms the typology of functions of language, since this theory recognises the plurality of linguistic "uses". Following Karl Popper, I believe it is appropriate to introduce alongside the descriptive, expressive and prescriptive functions, at least the argumentative one 45.

iii) Noncognitivist metaethics seems to me hard to refute. One cannot deduce from a piece of "theoretical information" -- using Ota Weinberger's terminology⁴⁶ -- a piece of "practical information" (an end, a value, a purpose). Note that adopting a noncognitivist metaethics does not commit us to accepting the special version of noncognitivism that emotivism is. Emotivism is only *one* variant of noncognitivism, though some make them coincide completely⁴⁷.

iv) It seems to me important to distinguish between three levels (or types) of obligation. a) There is the socially dominant obligation (which corresponds to the contents of so-called "positive morality". b) There is, then, the mental sense of obligation, feeling oneself obliged (corresponding to the individual's so-called "moral sense"), likewise dependent on the "positive morality" of which it is the, let us say, "internal" aspect, where the behaviour required (termed "obligatory") and usually followed as such by members of the community in question represents the "external" aspect of "positive morality". c) Finally, there is moral obligation in the strict sense, corresponding to so-called "critical morality", the outcome of more or less rational reflection by the subject in question.

Consider, for instance, the following statement by an imaginary "Wehrwolf", a young Nazi educated from childhood in the values of national-socialism: "I feel obliged to fight for the Führer, but I do not know if I ought to". In this example the conflict is clear between the mental feeling of obligation and "critical morality". Consider this other statement by the imaginary young Nazi: "My companions have to fight for the Führer, but I don't know whether it is right".

45 See, for example, K.R. POPPER, Materialism Transcends Itself, in K.R. POPPER, J.C. ECCLES, The Self and its Brain, Springer, Berlin-New York 1985, p. 57 ff.

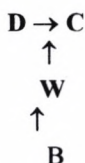
46 See, for example, O. WEINBERGER, Norm und Institution. Eine Einführung in die Theorie des Rechts, Manz, Wein 1988, p. 20 ff.

47 This is the case, for example, with M. RIEDEL, Normative oder kommunikative Ethik? Zur Begründbarkeit moralischer Werturteile und Überzeugungen, now in M. RIEDEL, Norm und Werturteil. Grundprobleme der Ethik, Reclam, Stuttgart 1979, p. 69.

Here, the first part of the statement ("My companions have to fight for the Führer") is merely descriptive: it describes a socially dominant obligation, as such actually (habitually) complied with. The second part of the statement instead raises a question typical of "critical morality". In this latter case there is conflict between "positive morality" and "critical morality".

v) Finally, the possibility should be recognised of rationally justifying moral judgements. This justification is here a "strong" justification, as happens for empirical statements verified through observational procedures and inductive and deductive logical processes, or with analytic judgements that draw their justification from postulates (conventional according to some, intuitive according to others) from which the analytic statement is deduced by purely logical means (that is, through transformation rules already laid down). The justification of moral judgements can only be "weak". That is, it can come from two procedures: a) deduction by argumentation (not strictly logical) of descriptive statements using what Hans Albert calls *Brücken-Prinzipien*⁴⁸; b) logical deduction (not merely argumentative) from other normative statements, which can be accompanied -- and indeed usually are -- as minor premises by descriptive statements.

In this connection one might recall the model of argument proposed by Stephen Toulmin and taken up by Jürgen Habermas⁴⁹. The graphical representation is as follows:



In this diagram C represents the normative conclusion of a moral argument

48 See H. ALBERT, Traktat über kritische Vernunft, III ed., Mohr, Tübingen 1975, chapter three

49 See S. TOULMIN, The Uses of Argument, Cambridge University Press, Cambridge 1958, p. 95 ff. and J. HABERMAS, Wahrheitstheorien, now in J. HABERMAS, Vorstudien und Ergänzungen zur Theorie des kommunikativen Handelns, Suhrkamp, Frankfurt am Main 1984, p. 162 ff. In this connection cf. R. ALEXY, Theorie der juristischen Argumentation, cit., p. 114 ff.

(for instance, "I must give John fifty pounds"), D represents the "reason" for C (here, "John lent me fifty pounds"), W is the rule that makes D a "reason" for C ("One must return sums borrowed"), and finally B is the justification, or justificatory principle for C (here the weighting of the respective consequences of complying or not complying with B). In this chain of "justificatory principle", "rule", "reason" and "normative conclusion", while the passage from D to C by considering W can be portrayed as deductive, the passage from B to W is not deductive. The move from B to W can in turn be represented as deductive if one assumes as major premise a further rule W', which in the above example might run: "one ought not to gain from doing unjust harm to others". Obviously, the question of the justification for W' remains open. For Toulmin, however, not all rules of moral argument need justification: it is affirmed that without agreement on some general rules asserted beforehand by those who take part in moral discourse, this discourse cannot even begin⁵⁰. Habermas by and large accepts this position of Toulmin's, though he seeks to provide additional bases for the agreement intrinsic to moral discourse. As we know, the path taken by the German philosopher -- according to some indications from Karl Otto Apel⁵¹ -- is that of "pragmatic-transcendental" justification, or as he prefers to say "pragmatic-universal", which consists in identifying rules allegedly implicit in the "happy" conduct (in the sense of speech act theory) of the discourse ⁵².

The justificatory "weakness" of moral statements may, I believe, lead us to use as "ultimate" postulates (from which individual moral statements may then be derived) widely shareable principles. On this view, I feel, the justificatory strategies that avail themselves of the principle of universalisability remain important, though on condition that they retain an awareness that this is an ethical or normative principle, not a metaethical one, i.e. one descriptive in the broad sense.

⁵⁰ See S. TOULMIN *op. ult. cit.*, p. 100 ff.

⁵¹ See, for example, K.O. APEL, Das Apriori der Kommunikationsgemeinschaft und die Grundlagen der Ethik. Zum Problem einer rationalen Begründung der Ethik im Zeitalter der Wissenschaft, in K.O. APEL, Transformation der Philosophie, Bd. 2, Das Apriori der Kommunikationsgemeinschaft, Suhrkamp, Frankfurt am Main 1984, in particular p. 399 ff.

⁵² See, for example, J. HABERMAS, Diskursethik - Notizen zu einem Begründungsprogramm, in J. HABERMAS, Moralbewusstsein und kommunikatives Handeln, Suhrkamp, Frankfurt am Main, p. 53 ff.

What in any case seems to me important, or indeed fundamental, is recognition of the dimension of "critical morality", which is the typical dimension of moral discourse, and the specific scheme on which the justification of ethical choices develops. This recognition in turn derives from a previous discovery, namely that, as Locke writes, "there cannot be any one moral rule propos'd, whereof a man may not justly demand a Reason"⁵³. "Critical morality" is just this asking oneself and giving a reason for the ethical rules followed and to be followed. This "critical" morality is, as we have said, equivalent to "autonomous" morality, a morality of a subject that himself adopts his own principles. This morality is thus eminently "reflexive", and -- irrespective of its content -- "libertarian", specifically as morality without truth, unstable, uncertain, entrusted to the freedom, the decision and hence also the responsibility of the subject.

It is worth recalling that recognition of this "critical" moral dimension is a very recent fact, typical of what is today usually called "modernity". Until the eruption of "modernity" (which coincides with the emergence of the Protestant reformation and the two great democratic revolutions of America and France) it is hard to find an awareness that "positive morality" is not morality in the normative sense. The separation of individual morality from (socially dominant) "positive morality" and the assertion that only the former is "moral" in the proper sense (that is the normative sense) -- but only when it takes the "reflective" form (hence also distinct from the "moral sentiment", the psychology, of the individual) -- has libertarian value as implicitly (but often also explicitly) asserting that the only moral subject is the rational individual, that he is the supreme judge of the morality of his actions, that the individual is autonomous in respect of the normative moral qualification of his conduct.

To be sure, this assertion, of the separation of normative morality from dominant morality, is not enough to tell us what should be considered "moral", "immoral", and necessarily refers to the contents of norms and principles used by the individual's autonomy. However without this autonomy the discourse on content could not even begin.

In this connection it seems to me appropriate to spend a few words on the position (of Nietzschean origin) that every morality is repressive and authoritarian, that is, is "le dernier visage de Dieu qu'il faut détruire, avant de

53 J. LOCKE, *An Essay concerning Human Understanding*, I. iii. 4.

reconstruire"⁵⁴. This position may be replied to by noting that in reality there are no "amoral" actions, but only immoral conduct. I mean that even the conduct that seems most wrongful (by our criteria) is either in turn practised according to certain criteria (immoral for us, but with a normative, or "moral" character that has to be recognised), or else accomplished in breach of criteria accepted as such by the actor in question.

Even those who claim not to have moral criteria are already, in virtue of this very proposition, in possession of a criterion of conduct, like the sceptic who in order to remain one has to repudiate his scepticism. Carefully considered, the alternative is not i) between accepting criteria and rejecting them absolutely, but ii) between adopting autonomous criteria given by ourselves and obeying heteronomous criteria imposed by others. The alternative is, in short, not between the absence or presence of norms but between autonomous and

54 A. CAMUS, L'homme révolté, Gallimard, Paris 1951, p. 84. The position of the intrinsically authoritarian nature of morality is upheld by Axel Hägerström, who links the moral sentiment with fear of a higher power: see A. HÄGERSTRÖM, On the Truth of Moral Propositions, English trans. by R.T. Sandin, in A. HÄGERSTRÖM, Philosophy and Religion, London 1964, p. 84. "As the product of the need to reduce the complexity of lived experience by excluding some parts in favour of others determination intrinsically has a violent nature," writes France Crespi (F. CRESPI, Azione sociale e potere, Il Mulino, Bologna 1989, p. 154, emphasis in original). Thus moral decision, as a form of determination of human conduct, would have an inescapable "violent" or "repressive" aspect. This view, which echoes Nietzsche's thought, is however, I believe, the outcome of an error. Ethical choice, like the moral norms, does not reduce the possibility of action, but produces it, in the sense that without such a choice (or such a norm) that particular action would not be possible. Think of Buridan's ass who between two sacks of oats could not decide which to choose, and so died of hunger. Had the ass chosen the sack on the right it would have accomplished a necessary condition for the "action" of eating the oats in the sack. This choice does not imply violence or the repression of any action, but accomplishes the necessary condition for carrying out an action. The choice is not then repressive, but productive of actions. The (ethical) choice is an opening, not a closing, of possibilities of action. As Simone de Beauvoir writes, "L'homme n'est qu'en se choisissant; s'il refuse de choisir, il s'anéantit" (S. DE BEAUVOIR, Pour une morale de l'ambiguïté, cit., p. 295). On Nietzsche's critique of moral philosophy see also B. ROMANO, Soggetto, libertà e diritto nel pensiero contemporaneo. Da Nietzsche verso Lacan, Bulzoni, Roma, 1983, p. 26 ff.

heteronomous norms.

In connection with the rejection of morality, regarded as "repressive" as such and with a moralism of Nietzschean stamp, the idea has grown up that any morality accompanied by the feeling of "guilt" ought to be rejected. But I cannot see how it is possible on the one hand to commit oneself seriously to following a rule and on the other not to feel oneself responsible ("guilty") when that commitment is voluntarily broken. The sense of "guilt" is the inward sanction for breach of the rule autonomously adopted. "The remorse of self-reproach or guilt," writes Bernard Williams, "[...] is the characteristic first-personal reaction within the system, and if an agent never felt such sentiments, he would not belong to the morality system or be a full moral agent in its terms"⁵⁵. Absence of the sense of guilt, where a moral rule has been deliberately broken (an autonomous rule, note), would mean that adopting the rule had not been meant seriously and had not come from an actual commitment of the subject, meaning that the rule in question did not "exist". In the extreme and thoroughly improbable case where this happened for every autonomously adopted rule, that is, in the case where someone broke each of his moral rules without feeling guilt for it, one might then speak of an "amoral" subject.

6. *Death of the Subject?*

At this point it is worth dwelling briefly, however, on one ethical (and metaethical) attitude or position much discussed today. I refer to those who invoke the so-called "death of the subject" and end by upholding the intrinsic authoritarian nature of morality. This position is closely related with the amoralism of Nietzschean stamp about which we have just spoken.

What is meant by the "death of the subject"? The phrase itself is rather ambiguous, and immediately offends the good sense of each of us who are well aware of our own subjectivity. I believe I can identify in the range of authors that might be regarded as upholders of this position two chief lines of thought. A) The first is that the subject "dies" in the sense that the distinction between "subject" and "object" or between "part" and "whole" is disappearing. "Death of the subject" means here the claim for annihilation of the "ego" in the "whole".

⁵⁵ B. WILLIAMS. *Ethics and the Limits of Philosophy*, cit., p. 177.

This "whole", in turn, may be conceived of either as (i) "a cosmic whole", or "universe", or (ii) a "social whole" or a "community". In case *i* we are in the presence of mystic thought seeking to reach the "absolute", a tension well represented in literature by the work of Herman Hesse⁵⁶. In case *ii* we find ourselves before two different attitudes. On the one hand we are in the presence of the psychological need for fusion with the "mass", an existential experience finely described by Stephan Zweig⁵⁷. On the other hand, this is a philosophy we might call "organicist". The individual as such is seen only as an appendage to the "community", and must tend to communion with it as the purpose of his life. This last position was historically represented by national-socialist philosophers like Julius Binder and Karl Larenz.

B) There is a second way of understanding the "death of the subject": represented by such French philosophers as Gilles Deleuze and Felix Guattari. In this second version the assertion of the "death of the subject" means to express the claim for plurality of subjective experiences that can no longer be reduced to the centralising unity of a single subject constant in time. The subject, on this second interpretation, breaks down into many other 'subjects' or centres of experience, needs, sensations, emotions, and especially desires, without it being possible to reduce all these to a single centre (the "subject")⁵⁸. The "death of the subject" can then be understood chiefly: A) in mystical (Hesse) or existential (Zweig) or in political (Binder and Larenz) terms; or B) in a political but anti-authoritarian sense (Deleuze and Guattari). In my view both these versions of the theory of the "death of the subject" are metaethically (and ethically) indefensible.

The following objection can be brought against type A theories. It can first of all be said that in talking of "death of the subject", in affirming this "death", there must at least be a subject who speaks, who affirms. The thesis of the "death of

⁵⁶ See e.g. H. HESSE, Siddharta, Eine indische Dichtung, Suhrkamp, Frankfurt am Main 1986, p. 34, p. 105, 119-120. the search for the "absolute" is also a search for "eternity", against the transience and fragility of individual life. "Uns ist kein Sein vergönnt. Wir sind nur Ströme", complains Hesse, sighing: "Einmal zu Stein erstarren! Einmal dauern" (H. HESSE, Klage, in H. HESSE, Poesie, edited by M. Specchio, Guanda, Milano 1978, p. 94)

⁵⁷ See S. ZWEIF, Phantastische Nacht, reprinted in Phantastisches Österreich, edited by J. Gyory, DTV, München 1980, esp. pp. 358-359.

⁵⁸ In this connection, cf. P. STRASSER, Philosophie der Wirklichkeitssuche, Suhrkamp, Frankfurt am Main 1989, p. 217 ff.

the subject" as a thesis, as a discourse, would then be self-contradictory. The experience of subjectivity is hard to annul. When one feels and suffers, loves and hates, is born or dies, there is always a subject that feels, suffers, loves, hates, is born and dies. The mystic search for the absolute, on the other hand, can be accomplished - as demonstrated by oriental philosophies and their practice of meditation, and accepted by Hesse too - only on the basis of the individual's extreme separateness and solitude, by exaltation of the ego itself⁵⁹. The organicist theory is also false since it assumes a reality (the "community") endowed with superior ontological status to that of the individual person. Yet the only sentient subject observable in any community or society is the individual person, or individual creature. The ultimate reality of society is a set of human individuals, so that while there may be an individual without society, better, an individual detached from society (say a Robinson Crusoe), there cannot be a society without individuals, or a society that is "detached" from individuals.

From an ethical viewpoint, both the mystical theory and the organicist one lead to affirming the individual's normative irrelevance. But this clashes with moral experience itself, which as we have said is intrinsically subjective and personal. If the subject dies, then, morality will die too. And with morality it is not, be it noted, "authority" or "repression" that dies but the possibility of choosing autonomously. The human being cannot do without choices relating to his own conduct, since our behaviour is not determined instinctively, and the social world leaves manifold possibilities of action open. Accordingly, either I choose, or someone else will choose for me.

I must confess that type B theories are much more congenial to me than the one just discussed. Nonetheless the second interpretation (claim) of the "death of the subject" is false. This is because it takes no account of the fact that living is a process, "is in time", and not a question of moments, of transient experience. To live, since living is living "in time", there is therefore a need for some constant reference through which it is possible to realise the "process", to have experience in time. This constant reference is the subject: the awareness of myself as

59 This is the message contained both in Siddharta (see e.g. op. cit., p34) and in Steppenwolf (see e.g. H. HESSE, Der Steppenwolf, Suhrkamp, Frankfurt am Main 1960, p. 37 (of the "Tractat vom Steppenwolf"). This sometimes leads to an exaltation of "reflective" morality;

identity⁶⁰. Let me give an example. I began to write this essay several days ago, but broke it off repeatedly to deal with other things, to eat, to sleep, to read, and then began writing again from the point I broke off, and so on, for days and days. This was possible because I am aware that the person that began writing a few days ago is myself, and it is always I who took up writing again.

If the subject were to "die" in the sense of "exploding" (or "imploding") in a multiplicity of experiences rendering impossible the unity that comes from a single ordering centre, neither I nor anyone else could ever write anything. That might perhaps not be an irreparable evil, especially if the impossibility affected only philosophers of law. Not just writing, however, but even working in general would become impossible. We would suffer too, since we would find ourselves "lost" in the world, deprived of the fundamental reference point that our identity is. Those who have known some schizophrenic patients (who in some sense might be taken as models for the second interpretation of "death of the subject") know how much pain is hidden behind the splitting of subjectivity they are invaded by at certain times.

7. The Legal and the Moral Domain

On the view accepted here, the concept of "institution" and its correlate "norm" are understood in a broad sense that covers not just legal institutions and norms but institutions and norms overall. I define as "institution" any context of action rendered possible by norms, where that context is actually "exploited", where, that is, the norms in question are actually observed, or better "employed". Norms are in my view the propositional content of normative statements, understood not just as "prescriptive" statements but as all those statements that

⁶⁰ Personal identity may, as Thomas Nagel argues, be defined only from a viewpoint within the subject. For instance, that the same appearance is retained does not justify the assumption that we are in the presence of the same subject. "Various types of continuity and similarity - physical, mental, causal, emotional - have been considered and they all seem to leave an aspect of personal identity unaccounted for. Given that any proposed set of conditions is met, there still seems to be a further question as to whether the same subject or self is preserved under these conditions" (Thomas NAGEL, *Mortal Questions*, Cambridge University Press, 1979, p. 199, emphasis in the original).

directly guide human action. The constitutive norms of an institution like chess, according to which a bishop "moves" ("is moved") diagonally, are typically not prescriptive; instead of restricting the possibilities of the conduct by human subjects they serve to widen them. Given x possibilities of action the "constitutive" norm does not reduce them to $x - n$ (as the prescriptive norm does), but makes there be $x + n$ possibilities.

This meaning of "institution" is certainly very broad. In this sense "institution" is both the game of chess and a legal trial and market of economic exchanges. The problem then arises of delimiting the "intrinsic" sphere of law vis-à-vis other "institutional" phenomena. In particular, the question arises of distinguishing between the normative system of law and that of morality. If a definition of law is given in terms of "institution", is there not a risk of confusing, or overlapping, the moral sphere and the legal sphere?

The difference between legal and moral norms is in my view that the latter are strictly individual, that is, they base their validity on recognition of the norms themselves by the individual, while legal norms or social norms whose validity is based not on recognition by the individual, but on their being either i) "fundamental" norms, conditions for the possibility of "institutions", or ii) norms derivable (by logical influence or by delegation of power) from the "fundamental" norms. It may be objected to the distinction drawn here that legal norms are not the only social norms. It may further be objected that there are social norms of a moral nature that are not legally determined, which are not, that is, legal norms (let us say, the norm that says one should not profit from others' difficulties or weaknesses to gain an advantage at their expense). I believe, however, that these so-called social norms of a moral nature either i) are part of the moral (individual) norms proper, but thought of as "social" because of a psychological mechanism of projection on others and of wishful thinking, or else ii) are norms actually enforced in the collectivity, and as such, in my view, legal norms. This solution becomes less problematic if the idea of the plurality of legal orders is accepted.

But the demarcation among social norms between legal norms and purely social or interpersonal norms remains problematic. Ota Weinberger seems in this connection favourable to accepting as legal norms only those functional for ends particularly relevant for society, like the protection of the life and health of its members and the allocation of the wealth inevitably insufficient to fully satisfy all

the demands of each member⁶¹. Weinberger would not, then, share this statement by Benedetto Croce: "The legal sphere [...] includes not just actions men do in conformity with the laws of the State, but those they do in conformity with any other rule: not just the civil and criminal code, but also the gentlemanly code and etiquette; not just a statute of the fundamental law of the State, but also the rules of games; not just the organisations of the church and freemasonry but also those of the Mafia and the Camorra"⁶².

In a society like the modern one where the State has allocated to itself the monopoly of the "legal", and in which "legal" is by and large equivalent to the product of the state's competent organs, it is hard to accept as legal, over and above the laws and decrees of State organs, the customs, usages and principles that also govern social behaviours. But if statist legal positivism, which asserts that the sole source of law is the State, were right, we should have to deny the description 'legal' to a large part of the political and social orders that have come and gone successively in human history. This is quite clearly an unacceptable conclusion⁶³. It may be held, bearing in mind an intuition of Santi Romano's,

61 See O. WEINBERGER, Jenseits von Positivismus und Naturrecht, in N. MACCORMICK, O. WEINBERGER, Grundlagen des Institutionenlistischen Rechtspositivismus, op. cit., p.148, and O. WEINBERGER, Norm und Institution. Eine Einführung in die Theorie des Rechts, cit., pp. 37-38; and cf. P. KOLLER, Meilensteine des Rechtspositivismus im 20. Jahrhundert: Hans Kelsens Reine Rechtslehre und H.L.A. Hart's "Concept of law", in Reine Rechtslehre im Spiegel ihrer Fortsetzer und Kritiker, edited by O. Weinberger and W. Krawietz, cit., p. 170. Norberto Bobbio speaks of the "minimum object" of law in connection with the definition of law as supplied by modern legal and political theories. This "minimum object" is seen as consisting in preventing actions that threaten the social order, and result in conflicts that threaten the group's subsistence, in short, in securing and maintaining social peace (see N. BOBBIO, Diritto, in Dizionario di politica, ed. by N. Bobbio and N. Matteucci, V.T.E.T., Torino 1976, p. 320),

62 B. CROCE, Riduzione della filosofia del diritto all filosofia dell'economia, Napoli 1926, p. 50 It should be recalled that Croce is, here, still, maintaining a voluntarist conception of law according to which legal norms are imperatives, or "demands or acts of will" (ibid., p. 49), and accordingly accompanied by sanctions (ibid., p. 47).

63 In this connection see H. KANTOROWICZ, The Definition of Law, cit. p. 15, where we read: "The State theory of law is unfit to guide us through the mazes of the history

that within the context of a given collectivity several legal systems may coexist (sometimes compatible, in the sense that one is the source of integration for the other; sometimes incompatible and opposed), and that the one that we "moderns" usually call "law" is only one of these systems.

One might perhaps agree with H.L.A. Hart, according to whom the difference between moral and legal norms lies in the fact that the latter, but not the former, are structured in a system of primary norms (which impose obligations) and secondary norms (which confer powers), though on condition of ceasing to follow that philosopher where he presents moral norms as social norms⁶⁴. Hart's position seems to me convincing as regards individual morality (understood in the character of "critical morality"), but no longer in relation to "positive morality" (the dominant morality in a given social context, and also, in my view, the morality de facto followed unreflectively by a subject). For all the social norms, including so-called moral ones (though not legal ones, according to a statist legal positivism) as well as imposing obligations, also confer powers. At least, they authorise fellow members to criticise (give them the power/ right to criticise) deviant behaviour from the norms in question. But there are also moral social norms (those also called "positive morality") which attribute genuine powers to issue further norms: consider, for instance, the powers attributed to the "good father" in Victorian morality, or to stay closer to home, by traditional catholic morality in Italy.

On the other hand, once morality is confined (as it should be, in my view) within the limits of the individual conscience and it is recognised that morality is the proper sphere of the "obligatory", there is no more point in attributing to law (and to so-called "positive morality") an "ethical" value, some sort of moral character, which is just what legal philosophers call the "bindingness" of law (meaning this in that very sense of "moral" bindingness). Being or feeling oneself bound by a legal norm does not necessarily involve the feeling of moral bindingness, at least no more than does feeling oneself bound by a rule of chess or of the German (or English) language. Certainly, a legal norm may meet with

of legal thought and science. It rules out any application of juristic analysis to societies before the formation of State".

64 This position of Hart's seems also to be shared by Neil MacCormick. In this connection see his Law, Morality and Positivism, in N. MACCORMICK, O. WEINBERGER, An Institutional Theory of Law, Reidel, Dordrecht 1986, pp.127ff.

the approval of my moral conscience, and coincide with a rule of my "critical morality". But then I will feel myself bound by the legal norm not because it is one (a legal one), but because it is recognised as legitimate by my moral conscience.

In my view the "binding force" of legal norms as such has little to do with moral bindingness. This in no way means that I always attribute the "binding" nature of legal norms to individual recognition by the individual member of society, or that I entirely deny this binding nature and affirm - following the "early" Binder - that law "does not oblige anything"⁶⁵, thus concluding that the law is observed in so far as it is imposed by force and the threat of punishment. If the "binding force" of norms were to be based on their "moral bindingness", this would amount to maintaining that, for instance, the rules of chess were no longer binding whenever an individual player sets himself up to dispute them. Moreover, if the "binding force" were to be reduced to individual recognition, the law as such would lose all reason for being. The function of law is to guide people's conduct, and in various ways to punish deviant behaviour. But if everyone were to be able to assert that a particular norm has no "binding force" for him, and were to act in a way contrary to that prescribed by the norm (and hence to break it) adducing in justification his decision not to recognise the norm in question, the law would constitute a set of norms that are not norms, since they are *justifiably* breachable *ad libitum*.

The "binding force" derives, in my view, jointly from the so to speak "ontic" nature as constituting a context of action, of the "fundamental" norms (in the sense mentioned earlier) of a legal order, and by the subject's intention to join this context of action, that is, will to become part of a certain situation rendered possible by legal norms. If I want to play chess, I must play in accordance with the rules of chess. If I want to buy a house, I must conclude a contract on certain terms and with certain effects (by which, accordingly, I am bound). My decision to join a certain context of action rendered possible by particular norms, that is the decision to "make mine" a certain norm of a certain system of norms, binds me not just to observe the norms that I "make mine", but also to respect the norms that follow directly (logically) or indirectly (by normative delegation, by

⁶⁵ For a similar opinion see G. ROBLES, Las reglas del derecho y las reglas de los juegos, Palma de Mallorca 1984, p. 165.

Ermächtigung, or by *Empowerment*⁶⁶) from the "fundamental" norms I have taken as a model or reference framework for my conduct.

Before concluding, allow me to just touch on a point I regard as highly relevant. It has sometimes been said that the arising of distinct normative systems (like those of law and morality respectively) has to do with the "evolution" of the social system, which by growing steadily more complex becomes structured into new, tighter and more specialised "sub systems". Morality has thus been presented as one of these "subsystems"⁶⁷.

In my view the "evolution" (admitting that there is a process of this type in relation to social realities) of the social system has very little to do with ("critical") morality. However, I do not deny, and indeed forcibly maintain, that ("critical") morality is an historically and culturally determined product. There is "morality", as we know it (that is, as eminently "critical morality") from the point when the individual begins asking about the rules of action given him by society, thereby asserting his ontological diversity (and distance) from the collectivity. "Critical" morality is, in short, an outcome of "modernity"⁶⁸, anticipated in

⁶⁶ On this point, in reference to Kelsen's doctrine, interesting observations can be found in S.L. PAULSON, An Empowerment Theory of Legal Norms, in "Ratio Juris", 1988, p. 58 ff.

⁶⁷ It has also been maintained, on the wave of this "evolutionist" craze that love in its modern meaning constitutes the outcome of progressive social "differentiation" and of the evolution towards ever more complex systems, and at the same time a mechanism for accelerating this "differentiation" and evolution (see N. LUHMANN, Liebe als Passion. Zur Codierung von Intimität, Frankfurt am Main 1984). I do not deny that the modern concept of love has come into being historically, constitutes an "idea" that is not at all rooted in man's genetic and physiological structure, and is connected with the arising of a humanist, individualist view of the universe. (In this connection see the now classic, and delightful, D. de ROUGEMONT, L'amour et l'occident, Paris 1984). However, the arising of this new "idea" or conception of love is not, in my view, connected with any "evolution" if by this is meant a process intrinsic to human society and obeying finalistic laws.

⁶⁸ "Moral philosophy arises when, like Socrates, we pass beyond the stage in which we are directed by traditional rules and even beyond the stage in which these rules are so internalized that we can be said to be inner-directed, to the stage in which we think for ourselves in critical and general terms (as the Greeks were beginning to do in Socrates' day) and achieve a kind of autonomy as moral agents" (W.K. FRANKENA, Ethics, Prentice-Hall,

many respects by the secular stage of Greek antiquity. The reflexivity in which, ultimately "critical morality" takes shape, reflection about what one's own actions ought to be, has certainly always been a characteristic of the human essence. Nonetheless, this reflectivity, in order to become "moral" needs what we might, with Hariou call an *idée directrice*: the idea that there may be two distinct (indeed opposed) systems of rules, the collectivity's and the individual's, and that the latter is the "higher" system, that is, the ultimate source of normativity⁶⁹.

New Jersey 1973 (2nd ed.), p. 4). In this connection cf. also B. WILLIAMS, Ethics and the Limits of Philosophy, London 1985, chapter one.

⁶⁹ For some time now, indeed, we have been seeing repeated attempts to repudiate ethics as a normative dimension (indicative in this connection is, say, G.E.M. ANSCOMBE, Modern Moral Philosophy, now also in The Is-Ought Question edited by W.D. Hudson, London, 1969, p. 175 ff.), or to reduce ethics to communitarian morality, that is, reduce critical morality to positive morality (this is the direction that, say, Richard Rorty is moving in: see R. RORTY, Solidarity or Objectivity?, Harrison Lecture at the University of California, Berkeley, January 1983, published in J. RAJCHMANN and C. WEST (eds.), Post-Analytic Philosophy, New York, Columbia University Press, 1986, pp.3-19. In relation to this last attempt, see the critical article by C. S. NINO, The Communitarian Challenge to Liberal Rights, in "Law and Philosophy", 1989, pp. 37 ff.



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