

INTENT CONCERNING MORALITY AND JUSTICE AND THE PARTICULAR DIFFERENCES BETWEEN MORALITY AND JUSTICE

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The outcomes of an agent's actions can be both intentional as well as unintentional, and the moral and legal evaluations of an agent's actions and their particular outcomes often depend upon the evaluation of the agent's intent. However, the role of intent in moral evaluation can be quite different from the role of intent in legal evaluation. As such, I wish to examine the role of intent in terms of benevolent actions, and in terms of justice and law.

I believe that the intent of the agent and the outcomes of the action ought to be the focus of evaluation in terms of justice and law. I shall discuss the nature of intentional and unintentional action and outcomes in reference to justice and law. The concepts of morality and modern law, though different, are frequently intertwined. Often, one may think of punishable acts (justice) as immoral and praiseworthy acts such as benevolence (morality) as free from punishment. In this sense one might consider law and morality of the same principle; one applied for "bad" behavior, the other for "good" behavior. However, from a philosophical as well as legal standpoint this is not entirely accurate. Many acts that are considered immoral are nonetheless considered outside the realm of punishment. Likewise, many acts, though they may be considered moral, are punishable under law; imagine a modern day Robin Hood. There is, however, a link between justice and morality and this ought to be carefully considered.

I will address how one cannot accept moral praise for unintentional outcomes, such as unintentionally beneficent outcomes, and one cannot legally punish for unintentional outcomes, which may liken moral praise and legal punishment to two sides of the same principle. However, I believe that they are in fact different concepts established upon differing principles. I will argue that law and morality - punishment and praise - are not equivalent. One must remember that although intent and action are bound to both justice and morality, they do not bind justice and morality to one another; and there are further principles, mainly motives and duties, which separate law and morality.

In this sense, they are not mutually exclusive, and precluding the one is not sufficient grounds for precluding the other. Nevertheless, as I will show, the application of each often seems consistent with that of the other.

To begin, it is necessary first to define the legal terms and their application in modern law. This is most appropriately begun by defining the modern legal use of intent and action. Legally, intent is the state of mind accompanying an act, especially a prohibited act, and intention is the willingness to bring about something deliberate or foreseen. In this sense, intent is what one wished to do, though one may or may not have accomplished this. One could say, “I intended to hit him, but I missed.” Implicitly, one must have at least attempted to bring about the outcome, hence the necessity of the state of mind “accompanying an act.” In other words, to wish someone were dead is not likened to intent to kill, and more importantly, intent is not likened to action.¹

As for the state of mind, this is defined legally as the condition or capacity of a person’s mind. Therefore, intent is best described as the condition or capacity of a person’s mind accompanying an act. In this sense it is not a state of mind as used in common discourse. Legally, to say I was confused, or stressed, is not to say that confusion was your intent. The state of mind is instead very specific to the action.

Legally, to convict someone, and therefore inflict punishment, it is necessary to prove the presence of mens rea. Mens rea, of Latin origin, simply means “guilty mind” and is used to describe one as having a criminal intent, or intent to actually commit a prohibited act. Taken strictly, for example, it is not enough to have one’s act result in the death of another person, but rather one must also have had the intent to kill.

However, one can be held accountable for a variety of intents, not all of which are classified as immoral. For example, there is constructive intent, in which actual intent will be presumed when an act leading to the result could have been reasonably expected to cause that result. In this case, one may have intended to push a friend down a staircase merely for a cruel laugh, but could be considered to

1. The following legal terms and definitions are gathered from: ¹Bryan A. Garner. *Black’s Law Dictionary – second pocket edition*. (St. Paul: West Group, 2001), in combination with ² the *Oxford Essential Dictionary of Legal Words*. (New York: Berkeley Publishing Group, 2004).

have a constructive intent to break the friend's leg, if in fact a broken leg were to result. Essentially, the result is unintended, but should have been reasonably foreseen.

A second example is general intent, in which one is subject to punishment for the awareness of a risk or for the omission of action. For example, if one were to see a pheasant perched next to a friend, yet nonetheless attempted to shoot the pheasant, one would have taken the risk, perhaps an obvious risk, of hurting the friend, and would therefore be assumed to have had a general intent to hurt the friend, again, if this in fact resulted in hurting the friend. Likewise, if one were responsible for feeding a person and were aware of this responsibility and remembered that it needed to be done, yet did not feed the person, one could be held to have had the general intent to kill, if in fact this were to result in death.²

It is important here to distinguish intent from motive. Specifically, motive is something that leads one to act. In this sense, intent to commit an act is motivated by something (i.e. money, love, etc.), and any one motive can ground an infinite array of intents. For example, one can be motivated by stress to relax, to exercise, or to eat. When one discusses intentional conduct, as opposed to motive, one discusses situations in which one sets out to accomplish something, and he or she attempts to realize that accomplishment exactly as planned. One has a mental picture in his or her mind, so to speak, of precisely how he or she would like things to turn out. There are no accidents, no complications, no side effects, just true intent. Intent is a legal concept that goes beyond motive.³

Having clarified intent, it is important now to turn to the legal definition of act. To describe an act, or an event that happened, is not to describe intention. An act is something done or performed, especially voluntarily, and an action is the process of doing or performing. Voluntarily, in this case, is not to say it must be done with a certain kind of intent, but rather that the act occurred as a result

2. Such behavior under certain conditions might also be considered willful neglect, defined as intentional neglect or deliberate neglect. Likewise, under certain conditions, this could also be considered passive negligence, defined as negligence resulting from a person's failure or omission in acting. See negligence, Garner, *op. cit.*, 470. In this case, however, it is closer to negligent homicide, defined as the killing of a human being by criminal negligence. In one example of negligent homicide, a husband, aware that his wife was threatening to kill their child, left her without informing the authorities of the specific danger to the child, and his wife ultimately killed the child. The negligent act was not his leaving per se, but rather his failure to inform the authorities. H.L.A. Hart. *Causation in the Law*. (Oxford: Oxford University Press, 1959) 333.

3. Oliver Wendell Holmes, Jr. *The Common Law*. (New York: Barnes and Noble Publishing Company, 2004) 95-100.

of a person's will being exerted on the external world.⁴ For instance, if one were to slip and fall into someone unintentionally, one has not acted rudely because the occurrence was not the result of his or her will being exerted on the external world, but was instead accidental. On the other hand, one may say something rude without intending to act rudely. However, the act, what he or she has specifically said, was voluntary. In both cases there is no intent to bring about the outcome, yet the former is not rude, while the latter is rude on account of the voluntary action.⁵

As with intent, legality considers a multiplicity of acts. For example there are intentional acts, in which an act is the result of the agent's will directed to that end, and unintentional acts, in which it is not. The act can be identical in both instances. When act is met with intent and coupled with mens rea, a wrongful action can establish criminal liability. In law, the wrongful action is termed actus reus.⁶ If one has not intended the act, one is not subject to the same sort of punishment that one would be had one intended the act.

To exemplify, imagine a man standing peacefully inside a store. The man has done nothing illegal, and is standing appropriately in line waiting to be served. A woman enters the store. In doing so, she unintentionally hits the man with the door, thus breaking his nose. Her intention was simply to enter the store, motivated by hunger, but the act resulted in breaking the man's nose. Despite the breaking of the man's nose, the woman has not committed a crime; for she did not intend such a consequence, and this could not have been reasonably foreseen. Therefore, she would not receive punishment.

Turning now to morality, it seems that praise follows the exact same principles, and thus the same conclusion: unintentional outcomes call neither for punishment nor praise. To illustrate, imagine a man is being robbed at gunpoint in the store. The woman walking into the store hits the robber with the door unintentionally, thus knocking the robber unconscious and freeing the man. Certainly, the

4. H.L.A. Hart. *Punishment and Responsibility*. (Oxford: Oxford University Press, 1968) 28-35.

5. Aristotle, considering this principle, wrote "If a man does [an action] involuntarily, he cannot be said to act justly, or unjustly, except incidentally, in the sense that he does an act which happens to be just or unjust. Whether therefore an action is or is not an act of injustice, or of justice, depends on its voluntary or involuntary character. ...it is possible for an act to be unjust without being an act of injustice, if the qualification of voluntariness be absent." Aristotle. "Nicomachean Ethics, Book V." *The Great Legal Philosophers: Selected Readings In Jurisprudence*. Ed. Clarence Morris. (Philadelphia: University of Pennsylvania Press, 1959) 15-39.

6. David M. Adams. *Philosophical Problems in the Law – 4th Edition*. (Belmont: Thomson-Wadsworth, 2005) 386.

outcome is favorable to the man, and is at least neutral to the woman, but should she receive praise? To consider this, it is important to turn to the notions of intent and action morally, as opposed to legally. Specifically, I will consider David Hume⁷ and Lord Kames.⁸

To begin, it is necessary to understand Hume's account of the will in order to understand his account of morality. Hume defined the will simply as "the internal impression we feel and are conscious of, when we knowingly give rise to any new motion of our body, or new perception of our mind."⁹ It is implicit in Hume's definition of the will that action is any new motion that one knowingly gives rise to.¹⁰ In this sense, Hume's definition of action is similar to a legally defined action. However, to give rise to a motion of the body knowingly, as in the case of the woman who had opened the door to the store, is not yet enough to conclude responsibility for the act of saving the man, but merely the action of opening the door.

As mentioned, the will is the internal impression accompanying an action, and is likened in this sense to legally defined intention. As with legal doctrine, the woman has willed, or intended, to open the door. The legal issue here is quite simple; the woman has not violated the law with her act or intent, and is therefore free from punishment. On the other hand, if she hit an innocent man, and intended to do so, there would be criminal liability. However, for Hume, the moral issue is less clear, has not been written plainly in statute, and requires more than just the will.¹¹

Specifically, one must draw a connection from the passions and motives, to the will, and finally to the actions in order to establish the responsibility required for praise or punishment. If one intentionally moves one's body, but the internal impression one felt and was conscious of was not of one's own account, or not driven by motive, then approbation or disapprobation can hardly be justified. It is thus the case that one cannot rely solely on the will in morality, as with intention in law,

7. David Hume – (1711-1776) Scottish philosopher, historian, and essayist.

8. Henry Home, Lord Kames – (1696-1792) Scottish philosopher and jurist.

9. David Hume. *Treatise of Human Nature*. (Amherst: Prometheus Books, 1992) 399.

10. I do not address liberty and necessity. One could ask: is the will free? If it is not, many would question accountability even of "intended" actions, such as in the "dilemma of determinism." For the argument at hand this is irrelevant. Additionally, Hume would nonetheless continue to find accountability in the lack of free will. In fact, for Hume, it is the necessity of the will that truly attaches moral approbation or disapprobation towards one's actions. Hume argued that the causal necessity of human actions is not only compatible with moral responsibility but requisite to it. *Ibid.*, 575.

11. As mentioned above, legally, intent is the state of mind accompanying an act, especially a prohibited act, and intention is the willingness to bring about something deliberate or foreseen.

and must turn to the passions and motives.

As mentioned, motive is defined legally as something that leads one to act. This, however, is not necessary for the purpose of punishment. One might argue that to say “I killed the man, and I wanted to” does not always lead to punishment due to the variety of motives that may have stirred one to kill. If one’s motive in this case was to win the battle of Normandy, for example, and the person killed was the enemy, then punishment would not be enforced. However, this is a matter of legality, not motive, and it is not illegal to kill an enemy in battle. In this case, the motive could have been vengeance and there would still be no punishment, for battle nonetheless required the killing of the enemy. Likewise, if the act was illegal, the motive would continue to be irrelevant. For example, if one were to steal either due to hunger, or out of spite, in both instances one would be subject to punishment. In other words, it is not the same thing to say “I killed him out of self defense” as to say “I murdered him out of self defense.” The motive in both statements is the same, but the legality of the action has changed.¹²

Returning to Hume, one cannot ignore motive. For Hume, motives are the driving force behind the praise of actions, and actions are merely indicators of the principles of motive. The motive, in this sense, is equivalent to passion. According to Hume, the passions are impressions rather than ideas. The direct passions - which include desire, aversion, hope, fear, grief, and joy, along with volition - are those that are derived immediately from good or evil and from pain or pleasure that we experience or think about in prospect. However, Hume also grouped with them some instincts of unknown origin, such as the bodily appetites and the vengeful impulse, which do not proceed from pain and pleasure, but instead produce them. The indirect passions, primarily pride, humility, love and hatred, are generated in a more complex manner, though the generation nevertheless involves either the thought or experience of pain or pleasure.¹³

Ultimately, the passions drive the will, and thus drive the actions, and are therefore the object of moral consideration. Hume wrote, “Tis evident, that when we praise any actions, we regard only

12. Dennis Patterson. *A Companion to Philosophy of Law and Legal Theory*. (Oxford: Blackwell Publishing, 1999) 520-522.

13. Hume, *op. cit.*, 438-439. Hume’s complete moral theory appears in Book III of the *Treatise of Human Nature* and in *An Enquiry Concerning the Principles of Morals*. In both works, his theory involves a chain of events that begins with the agent’s action, which impacts the receiver, which in turn is observed by the spectator. I focus here on the establishment of the passions, the will, and the action in order to establish responsibility, and to clarify moral intent with legal intent.

the motives that produced them, and consider the actions as signs or indicators of certain principles in the mind and temper.”¹⁴ As such, to find the moral quality, we must not focus on the action, or the type of action, but instead look to the motive that produced an action as the object of approbation or disapprobation. Just as an action alone is not criminal in the law, an action alone is not virtuous in terms of morality.

In addition, to praise an action requires that the motive to produce the action be distinct from the sense of morality. This is to say that the action is not performed because it is virtuous, and that one does not praise the performance of a virtuous action, but that it is virtuous because it is derived from a laudable motive, and one ultimately praises the motive. For example, in the Normandy hypothetical, if our hero had been motivated to kill the enemy for a principle of the mind such as the regard for safety and world peace, rather than vengeance, then his motive might deserve approbation. The act of killing, however, would not.

In this case, the legal issue coincides with the moral issue. His act receives no punishment, and receives praise. If he had intentionally murdered someone outside of war, his act would receive punishment, and would not be praised. However, the consistency in which praise and punishment are applied should not confuse one into thinking they are mutually exclusive.

With this it is necessary to return to the question being considered. If one is not punished for unintended acts, and one cannot receive praise for unintended acts, then do law and morality work upon the same fundamental principles? For Hume, the answer is no.¹⁵ With a dependence on motive, approbation cannot be bestowed upon someone merely for his or her actions, as punishment cannot be bestowed merely for actions. Unlike the law, however, one cannot receive praise merely for intent. The praise is for the motive, and thus for Hume, morality and modern law are driven by different principles.

14. *Ibid.*, 477.

15. To say that unintended outcomes do not receive praise is not to say that they cannot be good, or beneficial. Bernard Mandeville argued that vice unintentionally leads to the overall good of society, and thus is both unintended and beneficial. The argument here is that they do not receive praise, despite being beneficial, because the motive is not virtuous. Implicitly, Mandeville argued that it must be vice that drives the unintentional benevolence, and cannot therefore be a virtue. Additionally, as mentioned below, Kames required an action to be beneficial, but this is merely one part of a complete equation. The benefit is a necessary condition of virtue, though not a sufficient condition. Mandeville, Bernard. *The Fable of the Bees and Other Writings*. (Indianapolis: Hackett Publishing Company, 1997).

To further exemplify, consider two men who have stolen bread, and both intended to steal the bread. In one case, man (a) stole the bread in order to push a competitor out of business. Clearly, he is not going to be the recipient of praise from any reasonable person. On the other hand, man (b) stole the bread in order to feed a dying set of young children. In this case, praise is likely. Man (b) has been moved to steal by the motive of humanity, whereas man (a) has been moved by malice.

Nonetheless, both men are susceptible to punishment. They have both intended to steal, and have done so. Though unintended action is neither punishable nor praiseworthy, one can see from this example that for Hume the two are not mutually exclusive. In other words, it is not that if you intend an action you are going to receive either punishment or praise, but rather that you may receive one, the other, neither, or both. The crucial difference is in the motive. According to Hume, we praise the motive. According to the law, we punish the intent.

However, this is not universally accepted. Though Kames agreed with Hume in some respects, such as the freedom of the will, in other ways they diverged. For Kames, unlike Hume, approbation is a result of four considerations; something is approved of if its perception gives pleasure; if it is fitted for its use - a teleological consideration; if we approve of the end to which it is adapted; and lastly, if there was voluntary intention to realize the end.¹⁶ Considering this, it is important to note Kames' reliance on intent. Unlike Hume, intent plays an important role in the establishment of approbation, and therefore the establishment of virtuous action. Specifically, Kames noted that the approbation of action proceeds from "intention, deliberation, and choice,"¹⁷ and it is intention that separates human action from the necessary laws of material objects.

Furthermore, having recognized intention, Kames noted that the action itself, or the end, must have some value, writing "A beneficial end strikes us with a peculiar pleasure; and approbation belongs also to this feeling."¹⁸ Essentially, Kames believed, similarly to Francis Hutcheson,¹⁹ if the intended action is beneficial, then it is approved as fit to be done. If it is hurtful, then it is disapproved as unfit

16. Henry Home, Lord Kames. *Essays on the Principles of Morality and Natural Religion*. (Indianapolis: Liberty Fund, 2005) 26-28.

17. *Ibid.*, 28.

18. *Ibid.*, 27.

19. Francis Hutcheson - (1694 -1746) Scottish moral and political philosopher.

to be done. To exemplify, one need only consider the robber. The robber's actions may benefit the robber, but they certainly do not benefit the woman, man, or society. In this sense, the robber's actions would not receive approbation.

Returning to the woman's action, it is quite clear that the action itself is approved of, for it was certainly beneficial. However, taking into account the full scope of Kames' analysis, it becomes clear that the action does not call for praise. Mainly, as mentioned, it is necessary to account for the beneficial ends of the action, as well as intent. The woman merely intended to enter the store, and did not intend to hit the robber. As such, the action is not entirely virtuous. Accordingly, one can see that unintentionally beneficent outcomes would not receive praise.

If this is the case, then what separates Kames' view of morality from the modern law? Whereas Hume based morality on motive, thus distinguishing it from modern law, Kames based it upon intent, much like modern law. However, it is not a feature of morality that distinguishes the two, but rather a feature of Kame's view of the law.

Primarily, Kames distinguished laws from virtues on the basis of duty, which, according to Kames, Hume ignored. The laws, in one sense, are virtues, but they are primary virtues that ought to be done obligatorily. Primary virtues include justice, a basis of punishment. On the other hand, virtues such as intentional benevolence and heroism, which are at stake with the woman opening the door, are known as secondary virtues that should be done, but are not obligatory.²⁰ This division, contrived by "the Author of our nature,"²¹ categorizes the woman's act as something that should be done only as a sort of supererogatory act, whereas the act of the robber ought not to be done by matter of duty and obligation.

Kames believed that to make virtues such as intentional benevolence or heroism obligatory, and thus to have them fall under the law, would jeopardize the whole of morality. Essentially, the task of always following such law would be impossible, Kames argued, and society would begin to disregard all laws and morals. On the other hand, Kames believed that making duties such as justice

20. Kames seems to have considered secondary virtues as falling under a sort of prima facie obligation, as opposed to the strict obligation of primary virtues.

21. *Ibid.*, 32.

obligatory is reasonable and could be accomplished. For example, we can continually refrain from theft, maintain contracts, and abstain from murder. One can see here the principle that divides law and morality in Kames' view. In both law and morality, action is relevant in the sense that it must either be good or evil. However, laws have active duties and ought to be done obligatorily. Intentional benevolence and heroism, on the other hand, do not carry this sort of duty, and are supererogatory acts that simply should be done.

In conclusion, though the outcome of unintentional action is the same in both law and morality, law and morality do not operate on identical principles. The way in which law and morality reach the conclusion is different. Modern law requires mens rea and actus reus in order to establish criminal liability. The absence of mens rea is enough to omit punishment. For Hume, the absence of intent is not exactly enough to omit praise, placing motive much higher than intent. On the other hand, Kames saw intent as crucial, and its absence is enough to omit praise. However, Kames did not liken morality to law, distinguishing laws on the basis of obligation and duty.

For both Hume and Kames, law and morality are not driven by the same principles and are not mutually exclusive. It seems rather simple, however, to confuse morality and law. Both are normative systems with norms relating to the avoidance of harm, and much of the law is based on a society's moral principles. Additionally, there are holes in the laws which require moral analysis to a certain degree, and law is often a means by which to enforce morality.²²

However, there are many differences in addition to those mentioned above. For example, laws are the result of a specific procedure and are enacted at a specific time. Morality is not. A legislature does not gather periodically to decide what is or is not virtuous. Additionally, unlike morality, the laws are public, and are applied to everyone equally by a specific system of courts. Morals and virtues differ from person to person, and neither consistency nor proper promulgation is guaranteed as is justice through modern law. Furthermore, moral approbation can be felt by any one person towards another, but legal punishment cannot be administered by any one person to another. For example, it would be wrong for one, legally, to punish someone else's child even though his or her behavior might

22. Patterson, op. cit., 436-439.

deserve it. Essentially then, whether one can or cannot receive punishment for unintended actions has no bearing on receiving praise for unintended actions. Morality, though often comparable to modern law, is driven by its own principles.

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