

# **“Not judge in one’s own cause” and the Nature of Ethics\***

J.C. O’Neill

The principle “You can’t be judge in your own cause” is both self-evident and powerful. It is the principle that compels us to recognize that the ethical enterprise entails submitting to a higher judgment than our own first judgment. Moreover, it is the principle that commits us to conceding that ethical judgments are objective. Those two conclusions are accepted by many moralists. There is a third conclusion that, unless I am mistaken, follows just as inexorably as these two, but is rarely, if ever, accepted in modern discussions. If you can’t be judge in your own cause you commit yourself to depend on the praise and blame of a judge who is competent to judge your cause. The principle “Not judge in one’s own cause” entails an ethics of reward and punishment, because praise is a reward and blame a punishment.

## ***“Not judge in one’s own cause”***

The principle “You cannot be judge in your own cause” is self-evident. It ordinarily applies in cases where I am in dispute with someone else over property: perhaps over ownership of land or fishing rights or the proceeds of a will. The principle is extended to cover issues such as the ban on an examiner from examining a relative, or a magistrate from presiding at the trial of a business associate.

No one doubts the applicability of the rule in these relatively unproblematic cases. What could be easier, it might be argued (but never is) than discounting one’s tendency to severity or to leniency when examining one’s own child? Yet most moral dilemmas are far more difficult than property disputes and arguments over examination grades. Every dispute inevitably involves the “cause” of every disputant.

Furthermore, the “cause” always has two components, the theoretical and the practical. The bar room discussion is just as likely to feature theoretical “causes” (“Everyone has rights” and “Hard cases make bad rules”) as the common room discussion to feature practical “causes” (“But to force others to be passive smokers is out” and “It is immoral to charge top-up fees”). Anyone who engages in ethical discussion has a cause, even

the determined impartial moralist (who looks down the nose at partisans, both theoretical and practical). A philosopher actively engaged in tackling some of the most testing problems in philosophy once said to me, "I don't do Ethics; it is too hard." The difficulty lies partly in the consciousness we all have that our judgment is likely to be skewed by the passion that the very fact of engaging in ethical disputes kindles in our own breasts.

The self-evident rule, "Not judge in one's own cause", applies across the whole range of morals, from a single practical decision to the most complicated theoretical model for taking practical decisions. Once we embark, we immediately have a "cause".

One further consequence, a disagreeable one. The principle, "Not judge in one's own cause," has hidden within it the assumption that an ounce of self-interest in any decision we are called on to take is likely to make us act badly — to our own hurt or to our own wrong advantage. The rule is a slur on our capacity to judge. But can we deny this consequence and still claim to take part in practical and theoretical discussions about morality?

The very fact of having a "cause", of wanting to maintain a position on a decision about what we should do, the very fact of trying to come to a moral decision of any sort whatsoever entails that one is submitting oneself to an observer who will judge. The moral enterprise itself, even if undertaken in solitude, always involves submitting the decision to a judge. Every human being who uses the language of "I ought" is willy-nilly submitting that language to judgment: always to their own conscience, and their own conscience always says that it is best (note the moral language again) to submit the decision to a better judge, if that judge be available. The self-evidence of the point that "You cannot be judge in your own cause" is embedded in the nature of moral discourse; anyone who denied the principle would be cancelling their licence to engage in moral discourse. I would not object to someone saying, "I will not listen to anything or anyone except my own conscience", although I would want to argue against such a philosopher; but if anyone said "I have the capacity to make moral rulings that are subject to no checks" I would have to walk away because that person is stating a truism (we all make rulings that we subject to no checks) and then throwing in the adjective "moral", which is meaningless. Human moral rulings are rulings that have been submitted to or are being submitted to judgment.

It is worth noting that this feature of moral discourse is shared by all discourse designed to establish or defend any truth, whether that truth be physical, chemical, mathematical, medical, historical, linguistic or aesthetic. Anyone who claimed to make truth claims in those fields that were not to be checked by higher judgment than the first judgment of the

person making the claim; anyone who said, "I never check my results and I refuse the right of anyone else to check them", would deprive themselves of a licence to practise in that field.

A good example of the importance of the concept of not being judge in our own cause, of the importance of seeking a detached impartial judge in our moral dilemmas, is provided by the Golden Rule. The Golden Rule does not of course mean that we should give others what we want them to give us. Bernard Shaw's crack, "Do not do unto others as you would that they should do unto you. Their tastes may not be the same" is sufficient refutation of that interpretation.<sup>1</sup>

The Golden Rule requires us to imagine ourselves in a similar sort of situation to that of the neighbour with whom we are dealing and whose situation calls on us to act. We are advised by the rule to imagine ourselves in the same sort of situation, and we are then asked to imagine what we would want them to do to us. As Marcus G. Singer pointed out in his classic article on the subject, we have to imagine them acting as impartial loving judges should act.<sup>2</sup> We invoke our own best interests and our full knowledge of our own situation in order to make sure that they do not treat us out of ignorance or out of spite, but we also imagine them taking full account of the wider situation and the longer term than we are prone to do, our eyes being preoccupied with ourselves and our own short-term interests.

When we have made this thought-experiment of imagining the others judging what to do if we were in a like case with them, we then adopt the same policy with regard to them.

Our actions, by this rule, have been submitted to loving, competent and independent judges. They have been imagined as judges in our cause, and that helps us avoid being merely judges in our own cause with them.

If human moral rulings are rulings that have been submitted to or are being submitted to judgment then all the ethical systems must contain this principle within themselves.

The truth of intuitionism, for it clearly contains truth, must include the principle that our moral intuitions have been submitted or are being submitted to judgment. The truth in intuitionism is evident when we consider the lack of symmetry in the requirement to give reasons for our action or choices: we are required to give further reason for our wrong actions or choices, and are not required to give further reason for our good actions or choices. So we do not have to give any further reasons beyond, "I had to tell the truth" or, "I could not be cruel". Conversely, we are always required to give reason why we told a lie or were cruel. Nevertheless, the claim to have done right or to have chosen to do right has always to be submitted to loving impartial judgment, for the prima

facie good action or choice, that needs no further justification, may not be good at all or right. We may have overlooked, for example, that to tell the truth would also be cruel. The truth in intuitionism is that we intuitively know that there are good actions, actions that have attached to them the unique privilege of requiring no further justification. Yet all intuitions of actual examples of goodness have to be submitted to judgment to see if they are what we take them to be.

The truth of utilitarianism, for it clearly contains truth, must include the principle that our calculation of the moral utility of the type of action on which we rule has been submitted or is being submitted to judgment. The truth of the variant of utilitarianism that emphasizes the importance of framing our moral judgments as rules must include the principle that our rules have been submitted or are being submitted to judgment. The truth of the variant of utilitarianism that emphasizes the importance of considering not only the pleasure of individuals and of humanity and the moral well-being of individuals and of humanity but the total well-being (including the moral, intellectual and aesthetic good) of individuals and of humanity must include the principle that this judgment has been submitted or is being submitted to judgment.

Timothy Sprigge makes this point for his version of utilitarianism. He is discussing the problem, "Suppose that we somehow knew the totality of the ways in which the world would be different according as to which of two actions were done, then what should make us regard one as the better totality to choose?"<sup>3</sup> There would be a mixture of pleasures and pains in each totality. His conclusion is that the decision would rest with an ideal observer who gained an increasingly adequate view of each totality and who judged that one totality would influence behaviour so as to produce more pleasure and less pain than the other. In his own words: "...different possible results in terms of pleasure and pain are better or worse than each other in virtue of the power to influence behaviour to promote [pleasure] or prevent [pain] on which increasingly adequate representations of [different possible results in terms of pleasure and pain] would converge in a mind subject to no other influence."<sup>4</sup> Sprigge rightly wants to submit his hardest case to the judgment of "a mind subject to no other influence", an ideal benevolent detached observer. Every good theory (and there is good in all of them) must contain the principle, No one judge in their own cause.

The more far-reaching point I am insisting upon is that not only moral decisions that we have to make from day to day about the right thing to do are subject to the principle, No one may be judge in their own cause, but also moral decisions about the best theory to espouse in order to make better moral decisions. Theories are "causes" too; and no one should be

judge in their own cause.

But does not the view I am advocating rule out the moral integrity, the need to take full responsibility for our actions, that lies at the heart of morality?

Jean-Paul Sartre was consulted by a former pupil. The pupil's father had fallen out with his mother and, anyway, was inclined to collaborate; his eldest brother had been killed in the German offensive of 1940 and this young man wanted to take revenge. His mother lived alone with him; she was distressed by the near-treason of his father and by the death of her eldest son, and she had no other solace than the young man. He was faced with the choice, to join the Free French forces in Britain and abandon his mother, or to stay with her and help her to live. Sartre discusses at length for us, the readers, the pros and cons of each choice, but to the young man himself Sartre would make only one reply: "You are free: Choose, that is to say, Invent."<sup>3</sup>

At first sight Sartre seems to be displaying a truth that contradicts all that I have been arguing for, the truth that, in the end, everyone must take full and sole responsibility for their own decision. However, my case is not that anyone can escape taking full and sole responsibility for their own decision but that, before coming to that point, they are required to seek out the ruling of the best available impartial loving observer. The decision anyone in a dilemma like that of Sartre's pupil must take is that person's own decision, in the end — but a decision in submission to the ruling of the best available judge.

Sartre makes fun of the possibility that the young man could be directed, in his moral dilemma, to a professional advisor. Perhaps a priest? But then he would have had to choose between collaborationist priests and opportunist priests and priests who favoured the Resistance. By choosing he would already have decided! Well, yes, I reply. And the young man had already chosen Sartre to consult, who was not likely to have counselled collaboration.

Sartre's just emphasis on every moral agent's final responsibility cannot support his conclusion that everyone invents their own morality. He cannot mean that whatever I will wholeheartedly and take full responsibility for is right, for that would allow what he and his pupil agree is wrong. Only in the form, Align your will wholeheartedly with the will of the best judges and take full responsibility for doing what is right in their eyes, however hard and dangerous it is to do so, can Sartre's advice satisfy one of his own moral judgments.

### *Moral Judgments Objective*

On the self-evidence of the principle that one cannot be judge in one's own cause hangs the second conclusion: that moral judgments are objective. The fact that we must submit our judgments to scrutiny entails that our judgments are about objective matters. If it were true that we were all judges in our own cause, that might imply that our moral judgments were subjective; that no one is judge in their own cause implies that all the judges (conscience and colleagues and critics and dead and future judges) were working, are working or will be working on the objective truth of the matter. Of course, not all of our moral judgments produce a fixed code or rule of right and wrong, for some of our moral judgments are relative. For example, a decision about whether I may take away someone's reputation falsely or not seems to call for a fixed code or rule of right and wrong; I am forbidden to do it by all good judges. A decision about whether I become an historian or a philosopher or an engineer is a moral decision which is relative to circumstances, although arguably relative to circumstances when all the people of that disposition, education and character in those circumstances ought to act the way I ought to act. The relative character of some moral decisions and the absolute character of others does not at all entail that moral decisions are subjective, as Renford Bambrough has demonstrated.<sup>6</sup>

There is a curious feature of our duty to submit a decision about the objective value of a moral judgment to judgment which cries out for attention. I first became acutely aware of this feature of moral judgment while reading, with great admiration, the essays of Richard B. Brandt on *Morality, Utilitarianism and Rights*. Brandt, a rule utilitarian, concedes my main point, writing that "...the concept of the morally obligatory, or the morally right probably cannot be explained without reference to the concepts of moral disapproval, condemnation, and so on".<sup>7</sup> Brandt proposes what I call "The 90% Rule". He is defending the Ideal Moral Code theory that "an act is right if and only if it would not be prohibited by the moral code ideal for the society..."<sup>8</sup> This theory requires that a moral code should have currency in a society, and "The 90% Rule" arises from the consideration that a high proportion of the adults in the society must subscribe to the moral principles of the code, taken together with Brandt's judgment that "probably it would not be wrong to require at least 90 percent agreement"<sup>9</sup> This strikes me as dangerous. I was reminded of Bertrand Russell's favourite Old Testament text, Exodus 23.2: "Thou shalt not follow a multitude to do evil".

It is uncomfortable to disagree with Brandt, but we must not flinch before the principle that the judgment we seek concerning our attempts at moral rulings or concerning our attempts to discover good moral theories

is the judgment of the best judges available. The judgment in moral matters is no less strict than the judgment in mathematical matters or medical matters: the judgment of the best judges available, past present or future. Though Einstein, an official in the Bern patents office and not a university professor, stood alone in 1905, he was right to stick out for the judgment of scholars making experiments yet to be made and of scholars yet to be convinced. It is useful to know the moral principles of 90% of our fellow citizens, just as it is useful to know the moral principles of 90% of our fellow inhabitants of the globe and the moral principles of 90% of the people who have ever lived. But we are rightly inclined to listen more closely to Plato, Aristotle, Augustine, Aquinas, Hume, Kant, Hegel and Frege than to the results of the opinion polls just mentioned.

We cannot, as Bernard Williams once advocated in a lecture on “Who needs moral knowledge?”<sup>10</sup>, choose whether we will go to judges who favour chastity or judges who do not favour chastity; we are required to go to the just, merciful and loving impartial judge and cannot be fobbed off onto any other. Otherwise we would be judge in our own cause, preferring the judge that fitted in with our own desires rather than the judge who would be impartial and detached. We might have a masochistic streak that preferred judges who approved of what we labelled “chastity”, but we would be in need of a judge who could distinguish between chastity and masochism.

But you will object: We are not to listen to impartial, loving judges, even the best of them (Plato, Aristotle and rest) but to their arguments. Knowing who are the best arguers is useful because it saves us a lot of time reading inferior thinkers — although it is often the inferior thinkers who put us on to the best and tell us what to look for in the best — , but we only pay attention to the best because they have the best cases. I have to concede the truth in this objection; we always do reserve the right to disagree with even the best judge we can find. All I wish to insist upon is that, when we do so, we are appealing to a better judge than they. We are not in a position to say that our disagreement with the best judge available is based on our own unreflective judgment. We are always required to submit our own opinion to the judgment of our own conscience alone, for the time being, but in the expectation that better judges in the future will concur with our present view of the matter or that God, who supports us in this matter, will vindicate us in time. We dare not speak lightly of the task of deciding what is just and good; we must concede that few people are detached enough or wise enough or good enough to be good at moral reasoning; the fact that we are bound to submit all our own moral reasoning at least to the judgment of conscience implicitly concedes the fact that our passions and prejudices and interests get in the way of good

moral judgments; we may even have to concede that people who are not good thinkers like us often have better moral insights; but none of this can absolve us from the intellectual challenge of deciding in the matter of moral theories and moral rulings. But, to insist on my main point again, such decisions are decisions about what the best judges would decide. If God exists, then they are the decisions he would endorse.

The proof of this lies in the fact that we all recognize that the best judges sometimes give a ruling that we do not want to accept. We go to them because we have tested their past judgments and have recognized their quality. But because we see them to be the best judges we feel bound to accept their ruling on our cause (whether it be a particular moral decision or a decision about a better version of a theory) even when our own judgment gives a different ruling.

Conversely, if someone we recognize to be a bad judge in moral matters recommends a position that we have formerly espoused, we would do well to reexamine that position in the fear that it, too, is unsound.

I raised the question of God as the ultimate arbiter. Here is Wittgenstein's account of a conversation with Friedrich Waismann held on the 17th December 1930. "Schlick says that there are two versions of the nature of the good in theological ethics. According to the superficial explanation, what is good is good because God wills it; according to the more profound explanation, the reason God wills the good is because it is good. I think [says Wittgenstein] that the first version is the more profound: what God recommends is good. The reason is that this first version blocks the path to an explanation of why something is good while the second version is the one that is really superficial and rationalistic, acting as though what is good could be somehow justified by further argument."<sup>11</sup>

I am obviously sympathetic to Wittgenstein. I do accept Samuel Rutherford's maxim, "This is the difference between God's will and the will of the king, or any mortal creature. Things are just and good, because God willeth them, ... and God doth not will things, because they are good and just; but the creature, be he king or any never so eminent, do will things, because they are good and just, and the king's willing of a thing maketh it not good and just; for only God's will — not the creature's can be the cause why things are good and just".<sup>12</sup> Yet I remain unhappy with Wittgenstein, and I do not want Samuel Rutherford's maxim to cut short the giving of reasons why things are good and useful and why theories are good and useful. The very principle I insist on, that all moral discourse at the theoretical level and at the practical level consists in submitting our judgments to better judges than ourselves involves us, this side of death,



in giving arguments and listening to reasons. My case is that all arguing on the basis of evidence in practice means submitting to authority, the authority of our own consciences and the authority of the best moral judges we can find. The end of any debate in morality is always reached when we submit to authority, but the end is always provisional and may be reopened at the request of an authority or at the urgent prompting of our own conscience or of our own desires. The provisional nature of our submission to the authority of the best judges does not preclude the pledge of perpetual allegiance to one judge, just as people are morally praiseworthy who pledge their allegiance to their native land or to an adopted land, to one partner, to one church or to one order in a church, to one vocation, to one good cause, to one game or to one sport. Such allegiance produces obvious moral advantages and is praised by the best moral judges and some or all of these pledges to adhere to one overriding loyalty may reasonably be regarded as perpetually binding. If God exists, he is the one judge to whom we ought always to submit all our moral rulings; but he has wisely decreed that none of us has direct access to him and that we have to rely on his ten commandments, the law of nations, the teachings of his prophets as well as on the wisest of his human creation who are the best moral judges — and all these sources need interpretation, even the teachings of Jesus; so that we are confined to evidence and argument in these matters as much as in all other matters that are open to our scrutiny. If God exists, everyone ought to submit to his judgment now and everyone will submit to his judgment eventually.

Not only do we have an obligation to submit our decisions and our theories to the best judges; we also have a moral obligation to consider how best to act when we are called on for wise impartial and loving judgment.

Since human beings differ markedly in their moral insight, human beings should ask themselves whether or not they are endowed with the requisite qualities by genetic inheritance, education and character to be good judges; if they are, they have a great responsibility to their fellow human beings; if they are not, they had best attach themselves to those who are (living or dead — and the dead are steadier and safer, if not always so well-informed). Fortunately, we all have a conscience, a steady authority to which we do well to attend and to obey, unless our conscience is overruled by a better authority.

### ***An Ethics of Praise and Blame***

There is a third and final conclusion to which adherence to the principle that no one should be judge in their own cause leads us, to the conclusion that one aim of moral reasoning or of reasoning about morals should be the earning of praise from the best judges and the avoidance of their

censure and blame.

Adam Smith brings out this point well in his discussion of the effect of utility upon the sentiment of approbation. After observing that if it were possible for a person to grow up without any "communication with society", that person's actions might be disagreeable or agreeable on account of their tendency to produce happiness or disadvantage. However, these perceptions would be no stronger than matters of taste: "they probably would not be attended to by one in his solitary and miserable condition." "He would not be cast down with inward shame at the thought of his deformity; nor would he be elevated with secret triumph of mind from the consciousness of the contrary beauty. He would not exult from the notion of deserving reward in the one case, nor tremble from the suspicion of meriting punishment in the other. All such sentiments support the idea of some other being, who is the natural judge of the person that feels them; and it is only by sympathy with the decisions of this arbiter of conduct, that he can conceive either the triumph of self-applause, or the shame of self-condemnation."<sup>13</sup>

This conclusion seems to fly in the face of all morality and may indeed be, to some, the *reductio ad absurdum* of the whole argument I have hitherto been mounting.

To Kant, the autonomy of the will was the highest principle of all morality and the heteronomy of the will the source of all counterfeit principles of morality. The heteronomy of the will would lead either to the empirical error that would make our own happiness the principle of morality or to the rational error that would make the ontological ideal of perfection the principle of morality or, worse, would derive morality from the divine supremely perfect will.<sup>14</sup> Kant's objection to deriving morality from the divine, supremely perfect will is founded on his horror that the only conception of God's will left to us would be drawn from the characteristics of lust for glory and dominion combined with the terrible conception of might and vengeance. In other words, morality would depend on the power of someone else who not only demanded submission but even exacted submission by promises of rewards or threats of punishment. A morality based on the search for the praise of the best judges and the avoidance of their blame would seem to cut at the basis of morality, for it requires us to act or to decide an ethical principle as a means to pleasing our conscience or a competent judge.

We must at once concede a point to Kant. Our moral actions are potentially vitiated if they are done for a reward from those we benefit by our benevolence. If I intend to boost the self-confidence of a shy friend in order to strengthen them to bear the responsibilities they bear, well and good. Once I suspect that I am really flattering them in order to secure a

post I covet, I am in trouble. I have to turn to my conscience to arbitrate. I may receive the decision to go ahead, or I may have to abandon my intended action. In Kant's language, I must not treat my friend as a means to an end of my own. However, that does not really touch the principle I am defending. That principle seeks the approval of an impartial competent judge. The very fact that I know that I must not be judge in my own cause shows how highly I value impartiality. That impartiality I must show in my own actions so that I isolate as far as I can my actions and my judgments from the bias liable to arise from a consideration of how I might benefit in acting rightly. But nevertheless I do so in order to meet the approval of a just and impartial judge who is competent and well-informed and wise. Kant's principle is a key consideration with respect to my neighbour but not at issue with respect to my judge.<sup>15</sup>

But can I escape Kant's stricture so easily? Does not the choice of the action that will incur praise and the avoidance of the action that will incur blame render such choice *ipso facto* immoral? There is no doubt that this rule would apply if the praise and blame came from someone who wanted to pervert justice, to corrupt the pure, or to encourage evil. It is more difficult to see how the praise or censure of a good and loving judge, as soon as it was referred to by an actor, should vitiate the action. We are rightly delighted when a citizen, not knowing of the reward, does the generous self-denying action that in fact earns the reward. Presumably God is delighted to see someone who does not believe in the rewards of heaven living such a life as will earn those rewards. But is the person who acts so as to gain heaven and avoid hell acting immorally? Surely not. Unpremeditated spontaneous goodness without reference to consequences, good or bad, we rightly praise. Acting from gratitude to God rather than from calculation of the reward attached to good and the punishment attached to evil is obviously the higher way. The one who sings:

My God, I love Thee; not because  
I hope for heaven thereby,  
Nor yet because who love thee not  
Are lost eternally

is following the higher way.<sup>16</sup> The substantial point is that those who act with reference to reward and punishment do not thereby act immorally. They need, perhaps, the heavier hand of the good and loving judge. If the highest praise is reserved for sheer, unpremeditated goodness, we recognize in practice that these actions are rare. We note that no one seems able in practice to avoid the lighter hand of the good and loving judge, the lighter hand dispensing mere praise and blame. If this praise and blame is not available, we commonly imagine it. Our conscience is

just such an imagining. We assume that a real judge is better than an imaginary one, for we know too well that our imagination may produce a partial judgment.

If there is no perfect loving just judge available we feel that the moral universe is somehow incomplete. This is like the feeling that gives the Ontological Proof of the Existence of God its continuing fascination. Put in a way to suit the present discussion: If God is the perfect loving judge than whom none other is more perfect nor more loving, then he must exist, for an existing perfect and loving judge would be greater than an imaginary one. A figment of our imagination might be the principle of evil in the disguise of a perfect and loving judge. Whether or not there really is a necessity to come at last to an actual perfect and loving judge, even an atheist may find it natural to imagine one. Renan gives Théocriste the following speech to say towards the end of his third Philosophical Dialogue (*Dreams*): "For my part, I don't crave immortality but I would like two things. First, that I have not sacrificed to nothingness and the void whatever I have been able to do for what is good and true. I don't ask to be rewarded, but I want this to be of some use. In the second place, as to the little I have done, I'd be pleased if someone were to know of it; I want God's esteem, nothing more — that's not too much to ask, is it? Do we reproach a dying soldier for being interested in the success of the battle, and for wanting to know if his commander is satisfied with him?"<sup>17</sup>

I concede that we do not have to submit each of our actions to the praise and blame of an impartial good and loving judge, for some people seem to be spontaneously good with no thought of praise or blame. I contend, however, that as soon as any question arises about an action or a moral theory on which we act, we cannot be judge in our own cause but must submit the action or theory to our conscience and to real good and loving judges for their verdict. Willy-nilly, we are required to submit to praise or blame, reward or punishment. The process of submitting to judgment ends only with our death. The judgment of our fellow human beings need not cease while there are human beings who think it worthwhile to judge our lives; the divine judgment (if there is such) comes immediately. Either way, I cannot do any further action to render my life good or bad when I am dead.

Kant himself saw the impossibility of his enterprise. If reason should explain the necessity of adopting the categorical imperative, that very explanation would entail explaining that we had an interest in adopting the categorical imperative — which would, according to Kant, destroy the morality of the categorical imperative itself. "So we do not in fact comprehend the practical unconditioned necessity of the moral imperative, but we only comprehend the incomprehensibility of that

necessity.<sup>18</sup>

I reply. Kant has conceded that if the categorical imperative were shown by reason to be necessary, that would establish an interest in our following it. The categorical imperative itself, which says that we should act without reference to our own interests, would be shown to be in our interest to follow. I would rather abandon the system than leave the system irrational. We do not lose the good and valuable points Kant has made on the way if we concede that praise and blame, reward and punishment, are inseparable from both morality and rationality. If it is in our interest to submit to any moral duty that we see to be laid upon us, we should be morally brave enough to take our medicine and to admit that we seek at least one reward, the reward of knowing that we have done what we ought to have done.

One final point. If I must act so that my action and the principles of my action are approved by a good and wise impartial judge, I must not only hope but believe that the best judge will be merciful. Impersonal judges like my conscience cannot be merciful and it is very dangerous to encourage people to believe that their consciences could be so. Only personal judges can be merciful, because mercy cannot be decided by rule or it would not be mercy. The plea for mercy is the plea for a decision not to exact the penalty required by the offence of a bad action or the offence of the formulation of a bad moral principle; the plea for mercy admits that the penalty is just and in accordance with the graveness of the offence. Such a plea is the recognition that the decision is up to the judge; the judge cannot be blamed for withholding the asked-for mercy. Clearly, the offering of such a plea entails the recognition that the judge has the normal human characteristic of being able to act freely and of not having to act according to fixed and unalterable requirements of the law. The plea involves the recognition that the law allows mercy. *When* it allows it cannot be fixed by law but requires the decision of the supreme lawgiver or of authorised deputies. Mercy cannot be deserved although it may be asked for — which, in itself is a sign that we know the sort of things involved in asking for it, like repenting and making restitution.

The existence of competent judges, who themselves need competent judges, and so on till we reach the final judge (for must there not be a first judge?) means that there is a network of benevolence that wants us all to behave and to think better; and such a network, given our seemingly incurable tendency to do badly which the existence of our conscience witnesses to, seems to require that there should be a way we can receive mercy. It also seems necessary that we should be able to obtain forgiveness for past wrongs that we have done. Otherwise we would succumb to despair, and despair (if I may invoke a utilitarian argument)

tends to produce great wickedness and destroys the incentive to do better.

I have not quite, like Newman, produced an argument for the existence of God out of the existence of conscience, but I have come close. Let me end with Newman's own words. In illustration of the truth that sentiments imply objects and duties he wrote, "Thus conscience, the existence of which we cannot deny, is a proof of the doctrine of a Moral Governor, which alone gives it a meaning and a scope; that is, the doctrine of a Judge and Judgment to come is a development of the phenomenon of conscience."<sup>19</sup> There are the words of a good judge, but what does the reader think? I rest my case and await the judgment.

\*A paper read at the Staff/Graduate Seminar of the Department of Philosophy, The University of Edinburgh on 9 December 1994.

- 1 Bernard Shaw, *Man and Superman: A Comedy and a Philosophy*: Supplement: "The Revolutionist's Handbook and Pocket Companion by John Tanner, M.I.R.C. (Member of the Idle Rich Class)". Final section: Maxims for Revolutionists. "The Golden Rule", 1903; Collected Plays, (London, 1971), p. 781.
- 2 Marcus G. Singer, "The Golden Rule", *Philosophy*, 38 (1963), 293-314.
- 3 T.L.S. Sprigge, *The Rational Foundations of Ethics* (Problems of Philosophy: Their Past and Present; London & New York: Routledge, 1988), 202.
- 4 op.cit., 209.
- 5 Jean-Paul Sartre, *L'Existentialisme est un humanisme* (Collections Pensées; Paris: Les Editions Nagel, 1946), 39-47. See a telling discussion of the same passage by Renford Bambrough, *Moral Scepticism and Moral Knowledge* (Studies in Philosophical Psychology; London: Routledge & Kegan Paul, 1979), 95-96.
- 6 Op.cit., especially 26-37.
- 7 Richard B. Brandt, *Morality, utilitarianism, and rights* (Cambridge: Cambridge University Press, 1992), 218-219.
- 8 Op.cit., 119-120.
- 9 Op.cit., 120; cf. 223; 295.
- 10 Delivered in Edinburgh, 31 January, 1992.
- 11 Friedrich Waismann, *Friedrich Waismann, Wittgenstein und der Wiener Kreis* (Aus dem Nachlass herausgegeben von B.F. McGuinness; Oxford: Basil Blackwell, 1967), 115. See J.P. Stern, J.P. 1992: "Wittgenstein in Context", in *The Heart of Europe: Essays on Literature and Ideology* (Oxford: Blackwell, 1992), 384.
- 12 Samuel Rutherford, *Lex, Rex, or The Law and The Prince: Whether or no the King be the sole supreme and final interpreter of the Law* (1644), reissue, (Harrisonburg, Virginia: Sprinkle, 1982), 138 = Question XXVII, Assertion 2, Paragraph 3.
- 13 Adam Smith, *The Theory of Moral Sentiments: or, An Essay towards an analysis of the principles by which men naturally judge concerning the conduct and character, first of their neighbours, and then of themselves* (1759), cited according to 11th ed. (London: Cadell & Davies; Rivington; Longman, Hurst, Rees, Orme & Brown. Edinburgh: Creech; Bell & Bradfuth, 1812), 333-334 = Part IV, Chapter II, end. I am indebted to Clement Dore for directing my attention to the importance of the Ideal Observer in moral discourse. He argued in 1976, and has repeated the argument in 1991, that if something is morally obligatory for a given person, that might well be the same as God's being disposed to disapprove of that person's doing what is morally obligatory. God is "the supremely perfect Ideal Observer". Clement Dore, *Moral Scepticism* (Library of Philosophy and Religion; London: Macmillan, 1991), 39, 33-47, referring to an article, "Ethical Supernaturalism" *Sophia*, (1976).
- 14 Immanuel Kant, *Grundlegung zur Metaphysik der Sitten* (Riga: Hartknoch, 1785; 2nd

- ed. 1786), 87-93. English translation: *The Moral Law: Kant's Groundwork of the Metaphysic of Morals*, (Translated & analysed by H.J.Paton; London: Hutchinson, 1948), 101-104. The passage was cited and made the key to his argument by James P. Mackey, *Power and Christian Ethics* (New Studies in Christian Ethics; Cambridge: Cambridge University Press, 1994), 55.
- 15 The Sermon on the Mount recommends that alms be done in secret, so much in secret (a philosophical joke) that the left hand should not be allowed to know what the right hand is doing; but so that "thy Father which seeth in secret himself shall reward thee openly" (Matthew 6.1-4).
  - 16 *O Deus, ego amo te* attributed to St Francis Xavier (1506-1552) translated by Edward Caswall (1814-1878).
  - 17 Ernest Renan, *Dialogues et fragments philosophiques* (Paris: Calmann-Levy, 1876; 9th ed., 1922) 141-142. The speech ends, "Consolons-nous, pauvres victimes; un Dieu se fait avec nos pleurs", 143.
  - 18 Op.cit., German, 127-128; Paton, 123, = Part III, concluding remark.
  - 19 J.H. Newman, *An Essay on the Development of Christian Doctrine* (London, 1845), Chapter I, Section II, Paragraph 7; (The 1878 edition reprinted; New York: Doubleday, 1960), p. 70.

## A Scholastic Universalist The Writings and Thought of Bernard Kelly (1907—1958)

William Stoddart

Bernard Kelly was a regular contributor to *Blackfriars* and other Catholic periodicals over a lengthy period extending from the 1930s to the 1950s. Rayner Heppenstall, in his book on Léon Bloy,<sup>1</sup> called him "a man of the purest genius". In more recent times, however, he seems to have been strangely forgotten. If we speak of him now, it is because we believe that his insights, drawn from scholastic philosophy and especially from the writings of St. Thomas Aquinas, are of value not only for present-day Catholics, but for all Christians, and indeed for spiritual seekers of all faiths. Kelly once said: "There are some of us who can't rightly pray without a pen in our hands." Kelly was clearly no ordinary writer: for him writing was prayer. He epitomized the view that prayer could only be accomplished on the basis of truth, and his writing was a means of